

# Texas Historical Statutes Project

1956 SUPPLEMENT  
TO  
VERNON'S TEXAS STATUTES 1948



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**VERNON'S  
TEXAS STATUTES  
1956 SUPPLEMENT**

**Including General and Permanent Laws,  
53rd Legislature, First Called Session  
54th Legislature, Regular Session**

**TABLES and INDEX**

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

**KANSAS CITY, MO.  
VERNON LAW BOOK COMPANY**

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**Tex. St. Supp. '56**

## 1956 SUPPLEMENT

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This Supplement to Vernon's Texas Statutes includes the laws of a general and permanent nature enacted at the First Called Session of the 53rd Legislature and at the Regular Session of the 54th Legislature. It supplements the 1948 Edition and the 1950, 1952 and 1954 Supplements.

The First Called Session of the 53rd Legislature convened March 15, 1954 and adjourned April 13, 1954. The Regular Session of the 54th Legislature convened January 11, 1955 and adjourned June 7, 1955.

Important new laws, among others, included in this Supplement are the—

Probate Code  
Business Corporation Act  
Securities Act  
Insurance Securities Act  
Uniform Limited Partnership Act

The Constitutional Amendments approved by the voters on November 2, 1954 are included.

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

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

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

VERNON LAW BOOK COMPANY

January, 1956

### Cite This Book by Article

Vernon's Texas Civ. St., 1956 Supp. Art. —.

Vernon's Texas P. C., 1956 Supp. Art. —.

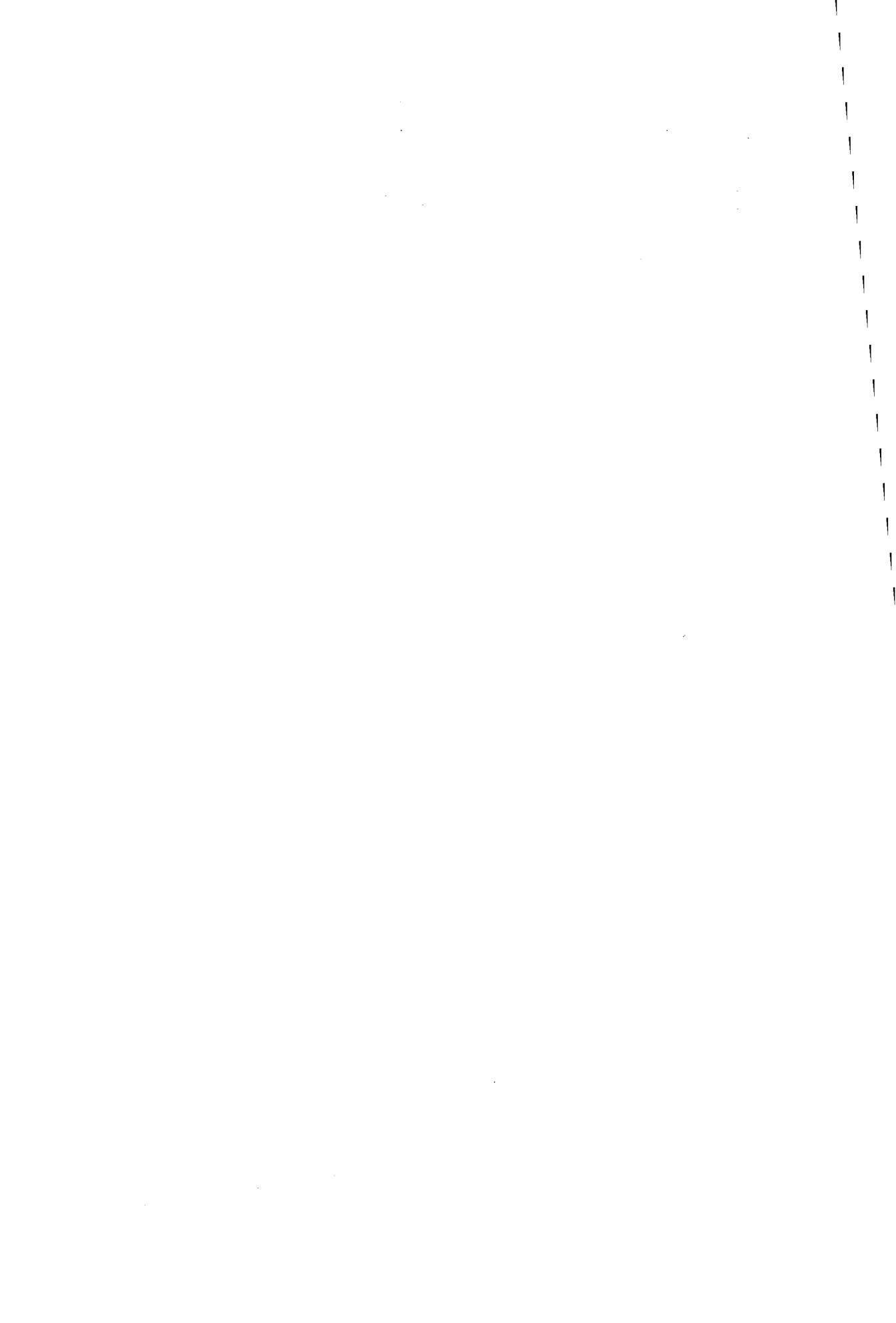
Vernon's Texas C. C. P., 1956 Supp. Art. —.

Vernon's Texas Probate Code, § —.

Vernon's Texas Bus. Corp. Act, Art. —.

## TABLE OF CONTENTS

	Page
Judges and Officers .....	VII
Officials of the State of Texas .....	IX
Officers and Members .....	X
Constitution of Texas .....	XV
Adopted .....	XV
Proposed .....	XXIV
Index to Constitution .....	XXXV
List of Titles and Articles .....	XXXIX
Civil Statutes .....	1
Texas Rules of Civil Procedure .....	889
Penal Code .....	899
Code of Criminal Procedure .....	941
Table of Session Laws .....	955
Table of Repealed Laws .....	971
General Index .....	973



# JUDGES AND OFFICERS

---

## SUPREME COURT

J. E. HICKMAN, CHIEF JUSTICE

FEW BREWSTER, ASSOCIATE JUSTICE      CLYDE E. SMITH, ASSOCIATE JUSTICE  
W. ST. JOHN GARWOOD, ASSOCIATE JUSTICE      WILL WILSON, ASSOCIATE JUSTICE  
MEADE F. GRIFFIN, ASSOCIATE JUSTICE      FRANK P. CULVER, Jr., ASSOCIATE JUSTICE  
ROBERT W. CALVERT, ASSOCIATE JUSTICE      RUEL C. WALKER, ASSOCIATE JUSTICE  
GEORGE H. TEMPLIN, CLERK  
CARL B. LYDA, CHIEF DEPUTY CLERK

---

## COURT OF CRIMINAL APPEALS

W. A. MORRISON, PRESIDING JUDGE

KENNETH K. WOODLEY, JUDGE      LLOYD W. DAVIDSON, JUDGE  
ERNEST BELCHER, COMMISSIONER  
WESLEY DICE, COMMISSIONER  
GLENN HAYNES, CLERK  
VERNER STOHL, SECRETARY AND BAILIFF

---

## COURTS OF CIVIL APPEALS

### *First District—Galveston*

W. P. HAMBLÉN, Jr., CHIEF JUSTICE

T. H. CODY, ASSOCIATE JUSTICE      G. G. GANNON, ASSOCIATE JUSTICE  
ROLA HAMM, CLERK PRO TEM.

### *Second District—Fort Worth*

FRANK A. MASSEY, CHIEF JUSTICE

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

### *Third District—Austin*

ROY C. ARCHER, CHIEF JUSTICE

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

### *Fourth District—San Antonio*

W. O. MURRAY, CHIEF JUSTICE

JAMES R. NORVELL, ASSOCIATE JUSTICE      JACK POPE, ASSOCIATE JUSTICE  
ROBERT L. COOK, CLERK



JUDGES AND OFFICERS

COURTS OF CIVIL APPEALS—Cont'd.

*Fifth District—Dallas*

DICK DIXON, CHIEF JUSTICE

TOWNE YOUNG, ASSOCIATE JUSTICE

WM. M. CRAMER, ASSOCIATE JUSTICE

JUSTIN G. BURT, CLERK

*Sixth District—Texarkana*

REUBEN A. HALL, CHIEF JUSTICE

WILLIAM J. FANNING, ASSOCIATE JUSTICE

MATT DAVIS, ASSOCIATE JUSTICE

M. E. MERRILL, CLERK

*Seventh District—Amarillo*

E. L. PITTS, CHIEF JUSTICE

HERBERT C. MARTIN, ASSOCIATE JUSTICE

ERNEST O. NORTHCUTT, ASSOCIATE JUSTICE

ELMO PAYNE, CLERK

*Eighth District—El Paso*

R. W. HAMILTON, CHIEF JUSTICE

JOSEPH MCGILL, ASSOCIATE JUSTICE

ALAN R. FRASER, ASSOCIATE JUSTICE

E. J. REDDING, CLERK

*Ninth District—Beaumont*

R. L. MURRAY, CHIEF JUSTICE

CHARLES B. WALKER, ASSOCIATE JUSTICE

JOHN R. ANDERSON, ASSOCIATE JUSTICE

ELIZABETH LE BLANC, CLERK

*Tenth District—Waco*

FRANK G. McDONALD, CHIEF JUSTICE

JAKE TIREY, ASSOCIATE JUSTICE

JOSEPH W. HALE, ASSOCIATE JUSTICE

RUTH SAPP, CLERK

*Eleventh District—Eastland*

CLYDE GRISSOM, CHIEF JUSTICE

MILBURN S. LONG, ASSOCIATE JUSTICE

CECIL C. COLLINGS, ASSOCIATE JUSTICE

HOMER SMITH, CLERK

JOHN B. SHEPPERD, ATTORNEY GENERAL

ROBERT S. TROTTI, FIRST ASSISTANT

JOHN ATCHISON, ADMINISTRATIVE ASSISTANT

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

---

ALLAN SHIVERS -----Governor -----Port Arthur  
BEN RAMSEY -----Lieutenant Governor -----San Augustine  
JOHN BEN SHEPPERD --Attorney General -----Gladewater  
TOM REAVLEY -----Secretary of State -----Jasper  
JESSE JAMES -----State Treasurer -----Austin  
JOHN C. WHITE -----Commissioner of Agriculture ----Wichita Falls  
J. EARL RUDDER -----Commissioner of General Land Office ---Brady  
ROBERT S. CALVERT ---Comptroller of Public Accounts -----Austin  
JAMES M. FALKNER ----Banking Commissioner -----Austin  
CHARLES H. CAVNESS --State Auditor -----Austin

# SENATE

PRESIDENT ----- Ben Ramsey  
 PRESIDENT PRO TEMPORE ----- Crawford C. Martin  
 SECRETARY OF THE SENATE ----- Charles A. Schnabel

<i>Name</i>	<i>District</i>
Aikin, A. M., Jr. -----	Paris ----- 1
Ashley, Carlos -----	Llano ----- 16
Bracewell, Searcy -----	Houston ----- 6
Colson, Mrs. Neveille H. -----	Navasota ----- 5
Corbin, Kilmer B. -----	Lubbock ----- 28
Fly, Wm. S. -----	Victoria ----- 18
Fuller, Jep S. -----	Port Arthur ----- 4
Hardeman, Dorsey B. -----	San Angelo ----- 25
Hazlewood, Grady -----	Amarillo ----- 31
Kazen, Abraham, Jr. -----	Laredo ----- 21
Kelley, Rogers -----	Edinburg ----- 27
Lane, Wardlow -----	Center ----- 2
Latimer, O. E. -----	San Antonio ----- 26
Lock, Ottis E. -----	Lufkin ----- 3
McDonald, Warren -----	Tyler ----- 7
Martin, Crawford C. -----	Hillsboro ----- 12
Moffett, George -----	Chillicothe ----- 23
Moore, William T. -----	Bryan ----- 11
Owen, Frank III -----	El Paso ----- 29
Parkhouse, George -----	Dallas ----- 8
Phillips, Jimmy -----	Angleton ----- 17
Ratliff, David W. -----	Stamford ----- 24
Roberts, Ray -----	McKinney ----- 9
Rogers, A. J. -----	Childress ----- 30
Rogers, Johnnie B. -----	Austin ----- 14
Secret, Jarrard -----	Temple ----- 13
Shireman, Wm. H. -----	Corpus Christi ----- 20
Strauss, Gus J. -----	Hallettsville ----- 15
Wagonseller, Wayne W.* -----	Bowie ----- 22
Weinert, R. A. -----	Seguin ----- 19
Willis, Doyle -----	Fort Worth ----- 10

\* Deceased.

# HOUSE OF REPRESENTATIVES

SPEAKER ----- Jim T. Lindsey  
 CHIEF CLERK ----- Mrs. Dorothy Hallman

<i>Name</i>	<i>District</i>
Allen, William W.*	Laredo 80
Allison, Mack	Mineral Wells 75
Anderson, Louis H.	Midland 102
Andis, Bill R.	Amarillo 94f
Armor, L. L.	Sweetwater 91
Atwell, Ben	Hutchins 51 Pl. 2
Baker, Robert W.	Houston 22 Pl. 4
Banks, Stanley, Jr.	San Antonio 68 Pl. 3
Bates, Garth C.	Houston 22 Pl. 8
Bell, Marshall O.	San Antonio 68 Pl. 4
Benton, Capt. J. A.	Wylie 50
Bergman, Douglas E.	Dallas 51 Pl. 7
Berlin, Edgar L.	Port Neches 9 Pl. 2
Berry, George S.**	Lubbock 97 Pl. 2
Bishop, A. J., Jr.	Winters 77
Blaine, John E.	El Paso 105 Pl. 2
Bradshaw, Floyd	Weatherford 72
Brashear, Paul	Cisco 76
Briscoe, Dolph, Jr.	Uvalde 79
Bristow, J. Gordon	Big Spring 101
Bryan, Jack C.	Buffalo 43
Burkett, Joe, Jr.	Kerrville 78
Carmichall, Jim	Hillsboro 54
Carpenter, Frank H.	Sour Lake 19
Carr, Waggoner	Lubbock 97 Pl. 1
Chambers, W. R.	May 73
Chapman, Joe N.	Sulphur Springs 11
Cheatham, Tom	Cuero 34
Clements, Jamie H.	Crockett 28
Cloud, E. J. (Ed)	Rule 83
Cobb, Carroll	Seminole 99
Cole, Criss	Houston 22 Pl. 7
Cooper, J. W., Jr.	Corpus Christi 36 Pl. 1
Cory, R. H.	Victoria 33
Cowen, Warren C. (Red)	Fort Worth 60 Pl. 7
Cox, James E.	Conroe 29
Cox, John T.	(Temple, Rt. 5) 63 Pl. 1
Crim, E. F.	Henderson 16
Crosthwait, John L.	Dallas 51 Pl. 1
De La Garza, Eligio	Mission 38 Pl. 3
Dewey, B. H., Jr.	Bryan 44
Duff, Miss Virginia	Ferris 52

\* Resigned.  
 \*\* Deceased.

## HOUSE OF REPRESENTATIVES

<i>Name</i>		<i>District</i>
Dugas, Louis, Jr.	(Orange)	8
Elliott, Wm. M.	Pasadena	22 Pl. 2
Ellis, J. T., Jr.	Weslaco	38 Pl. 1
Fenoglio, Anthony	Nocona	71
Ferrell, Ben	Tyler	14
Ford, Curtis, Jr.	Corpus Christi	36 Pl. 2
Ford, George D.*	Bogata	3
Garrett, Gustin	Raymondville	40f
Gillham, J. O.	Brownfield	98
Glass, W. W.	Jacksonville	17
Glusing, Ben. A.	Kingsville	37f
Hale, L. DeWitt	Corpus Christi	36 Pl. 3
Hardeman, D. B.	Denison	49f
Hazlett, Guy	Borger	86
Heatly, W. S. (Bill) Jr.	Paducah	82
Heideke, H. A.	Seguin	67
Heitman, Charlie	Nacogdoches	6
Hogue, Grady	Athens	26
Holstein, L. L.	Pandora	58
Hosey, Jean E.	Galveston	21 Pl. 1
Houston, Horace B., Jr.	Dallas	51 Pl. 3
Huffman, Reagan R.	Marshall	4
Hughes, Charles E.	Sherman	48
Hunt, Billy	Center	5
Hutchins, Edgar, Jr.	Greenville	25
Isaacks, Maud (Miss)*	El Paso	105 Pl. 1
Jackson, J. Horace	Atlanta	2
Jackson, Robert C., Jr.	Corsicana	42
Jamison, Alonzo W., Jr.	Sanger	59
Johnson, Pearce	Austin	65 Pl. 1
Jones, Obie	Austin	65 Pl. 2
Joseph, Thomas R., Jr.	Waco	53 Pl. 1
Kelly, Moyne L.	Afton	85
Kennard, Don	Fort Worth	60 Pl. 3
Kennedy, Harold G.	Marble Falls	74
King, Tom	Dallas	51 Pl. 6
Kirkham, Charles D., Jr.*	Cleburne	61
Kirklind, W. G.	Odessa	103
Koliba, Homer L., Sr.	Columbus	46
Lane, T. W. Buckshot	Wharton	31
Latimer, Truett	Abilene	84
Lee, Otis	Port Arthur	9 Pl. 3
Lehman, Henry G.	Giddings	57
Lieck, Charles, Jr.	San Antonio	68 Pl. 4
Lindsey, Jim T.	Texarkana	1 Pl. 1
McDaniel, Bert T.	Waco	53 Pl. 3
McDonald, Scott	Ft. Worth	60 Pl. 4
McGregor, Frank B.	Waco	53 Pl. 2
McGregor, Malcolm	(El Paso)	105 Pl. 4
McIlhany, Grainger W.	Wheeler	87

\*Elected March 6, 1954.

## HOUSE OF REPRESENTATIVES

<i>Name</i>	<i>District</i>
McNeil, W. T. -----	Edna ----- 32
Martin, Amos A. -----	Paris ----- 10
Maverick, Maury, Jr. -----	San Antonio ----- 68 Pl. 2
Moore, Carlton, Sr. -----	Houston ----- 22 Pl. 3
Moore, Jim* -----	Arlington ----- 60 Pl. 2
Morgan, Jack C. -----	Kaufman ----- 41
Mullen, Bob -----	Alice ----- 70
Murphy, Charles** -----	Houston ----- 22 Pl. 1
Murray, Menton J. -----	Harlingen ----- 39 Pl. 1
Niemann, Fred -----	Yoakum ----- 47
Osborn, Jesse M. -----	Muleshoe ----- 96
Parish, Harold B. -----	Portland ----- 35
Patten, Robert -----	Jasper ----- 7
Patterson, Robert R. -----	Snyder ----- 90
Pipkin, Maurice S. -----	Brownsville ----- 39 Pl. 2
Pool, Joe R. -----	Dallas ----- 51 Pl. 5
Puckett, Herman V., Jr. -----	Quitman ----- 12
Pyle, Joe -----	Fort Worth ----- 60 Pl. 1
Reeves, Elbert -----	Matador ----- 88
Ross, W. C., Sr. -----	Beaumont ----- 9 Pl. 1
Sadler, Jerry -----	Percilla ----- 27
Sandahl, Charles L., Jr. -----	Austin ----- 65 Pl. 3
Sanders, Barefoot -----	Dallas ----- 51 Pl. 4
Saul, Leroy -----	Kress ----- 89
Sayers, Scott P. -----	Fort Worth ----- 60 Pl. 5
Schram, O. H. (Muggie)* -----	Taylor ----- 64
Schwartz, A. R. -----	Galveston ----- 21 Pl. 2
Schwartz, Walter C. -----	Brenham ----- 45
Seeligson, F. S. -----	San Antonio ----- 68 Pl. 7
Shannon, J. W. (Bill) -----	Stephenville ----- 62
Sheridan, Ed -----	San Antonio ----- 68 Pl. 5
Slack, Richard C. -----	Pecos ----- 104
Smith, Max C. -----	San Marcos ----- 66
Smith, Vernon E. "Gene"*** -----	Fort Worth ----- 60 Pl. 6
Smith, Will L. -----	Beaumont ----- 9 Pl. 4
Spilman, Wade F. -----	McAllen ----- 38 Pl. 2
Spring, Gilbert M. -----	Apple Springs ----- 18
Stewart, Vernon J. -----	Wichita Falls ----- 81 Pl. 1
Stilwell, Thomas H. -----	Texarkana ----- 1 Pl. 2
Stone, Stanton -----	Freeport ----- 23
Storey, Cecil -----	Longview ----- 13
Strickland, R. L. -----	San Antonio ----- 68 Pl. 6
Stroman, W. A. -----	San Angelo ----- 92
Talasek, Reuben D. -----	Temple ----- 63 Pl. 2
Thurmond, George M. -----	(Del Rio) ----- 100
Turman, James A. -----	(Gober) ----- 24
Walling, J. B. -----	Wichita Falls ----- 81 Pl. 2
Ward, J. F. -----	Rosenberg ----- 30
Welch, Jack -----	Marlin ----- 55

\*Elected March 6, 1951.

\*\*Resigned.

## HOUSE OF REPRESENTATIVES

<i>Name</i>	<i>District</i>
Wheeler, Bob ----- (Tilden) -----	69
White, Richard C. ----- El Paso -----	105 Pl. 3
Wilson, J. Edgar ----- Amarillo -----	93
Winfree, J. E. ----- Houston -----	22 Pl. 5
Wohlford, Sam E. ----- Stratford -----	95
Wood, Bill ----- Tyler -----	15f
Yancy, James W., Jr. ----- Houston -----	22 Pl. 6
Yezak, Herman ----- Bremond -----	56
Zbranek, J. C. (Zeke) ----- Daisetta -----	20

# CONSTITUTION OF THE STATE OF TEXAS

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## ADOPTED

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### ARTICLE III

#### LEGISLATIVE DEPARTMENT

##### Sec. 24.

Members of the Legislature shall receive from the public Treasury a per diem of not exceeding Twenty-five (\$25.00) Dollars per day for the first 120 days only of each session of the legislature.

In addition to the per diem the members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed \$2.50 for every 25 miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller, to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one day after the adjournment of a regular or called session. Sec. 24, Art. 3, adopted Nov. 2, 1954.

##### Sec. 51a.

The Legislature shall have the power, by General Laws, to provide, subject to limitations and restrictions herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient for assistance to, and for the payment of assistance to:

(1) Needy aged persons who are actual bona fide citizens of Texas and who are over the age of sixty-five (65) years; provided that no such assistance shall be paid to any inmate of any State supported institution, while such inmate, or to any person who shall not have actually resided in Texas for at least five (5) years during the nine (9) years immediately preceding the application for such assistance and continuously for one (1) year immediately preceding such application; provided that the maximum payment per month from State funds shall not be more than Twenty (\$20.00) Dollars per month.

(2) Needy blind persons who are actual bona fide citizens of Texas and are over the age of twenty-one (21) years; provided that no such assistance shall be paid to any inmate of any State supported institution, while such inmate, or to any person who shall not have actually resided in Texas at least five (5) years during the nine (9) years immediately preceding the application for such assistance and continuously for one (1) year immediately preceding such application.

(3) Needy children who are actual bona fide citizens of Texas and are under the age of sixteen (16) years; provided that no such assistance shall be paid on account of any child over one (1) year old who



## CONSTITUTION

has not continuously resided in Texas for one (1) year immediately preceding the application for such assistance, or on account of any child under the age of one (1) year whose mother has not continuously resided in Texas for one (1) year immediately preceding such application.

The Legislature shall have the authority to accept from the Federal government of the United States such financial aid for the assistance of the needy aged, needy blind, and needy children as such government may offer not inconsistent with restrictions herein set forth; provided however, that the amount of such assistance out of State funds to each person assisted shall never exceed the amount so expended out of Federal funds; and provided further, that the total amount of money to be expended out of State funds for such assistance to the needy aged, needy blind, and needy children shall never exceed the sum of Forty-two Million (\$42,000,000.00) Dollars per year. Sec. 51a, Art. 3, adopted Nov. 2, 1954.

### Sec. 51-b.

(a) The State Building Commission is hereby created. Its membership shall consist of the Governor, the Attorney General and the Chairman of the Board of Control. The Legislature may provide by law for some other State official to be a member of this Commission in lieu of the Chairman of the Board of Control, and in the event said State official has not already been confirmed by the Senate as such State official he shall be so confirmed as a member of the State Building Commission in the same manner that other State officials are confirmed.

(b) The State Building Fund is hereby created. On or before the first day of January following the adoption of this amendment, and each year thereafter, the Comptroller of Public Accounts shall certify to the State Treasurer the amount of money necessary to pay Confederate pensions for the ensuing calendar year as provided by the constitution and laws of this State. Thereupon each year the State Treasurer shall transfer forthwith from the Confederate Pension Fund to the State Building Fund all money except that needed to pay the Confederate pensions as certified by the Comptroller. This provision is self-enacting. The State Building Fund shall be expended by the Commission upon appropriation by the Legislature for the uses and purposes set forth in subdivision (c) hereof.

(c) Under such terms and conditions as are now or may be hereafter provided by law, the Commission may acquire necessary real and personal property, salvage and dispose of property unsuitable for State purposes, modernize, remodel, build and equip buildings for State purposes, and negotiate and make contracts necessary to carry out and effectuate the purposes herein mentioned.

The first major structure erected from the State Building Fund shall be known and designated as a memorial to the Texans who served in the Armed Forces of the Confederate States of America, and shall be devoted to the use and occupancy of the Supreme Court and such other courts and State agencies as may be provided by law. The second major structure erected from the State Building Fund shall be a State office building and shall be used by whatever State agencies as may be provided by law.

Under such terms and conditions as are now or may hereafter be provided by law, the State Building Commission may expend not exceed-

## CONSTITUTION

ing five (5%) percent of the moneys available to it in any one year, for the purpose of erecting memorials to the Texans who served in the Armed Forces of the Confederate States of America. Said memorials may be upon battlefields or other suitable places within or without the boundaries of this State. The authorization for expenditures for memorials herein mentioned shall cease as of December 31, 1965.

Under such terms and conditions as are now or may hereafter be permitted by law, the State Building Commission may expend not exceeding Thirty Thousand (\$30,000.00) Dollars in the aggregate for the purpose of erecting memorials to the Texans who served in the Armed Forces of the Republic in the Texas War for Independence. Said memorials may be erected upon battlefields, in cemeteries, or other suitable places within or without the boundaries of this State. The authorization for expenditures for memorials herein mentioned shall cease as of December 31, 1965.

(d) The State ad valorem tax on property of Two (2¢) Cents on the One Hundred (\$100.00) Dollars valuation now levied under Section 51 of Article III of the Constitution as amended by Section 17, of Article VII (adopted in 1947) is hereby specifically levied for the purposes of continuing the payment of Confederate pensions as provided under Article III, Section 51, and for the establishment and continued maintenance of the State Building Fund hereby created.

(e) Should the 53rd Legislature enact a law or laws in anticipation of the adoption of this amendment, such shall not be invalid by reason of their anticipatory character. Sec. 51-b, Art. 3, adopted Nov. 2, 1954.

### Sec. 51g.

The Legislature shall have the power to pass such laws as may be necessary to enable the State to enter into agreements with the Federal Government to obtain for proprietary employees of its political subdivisions coverage under the old-age and survivors insurance provisions of Title II of the Federal Social Security Act as amended. The Legislature shall have the power to make appropriations and authorize all obligations necessary to the establishment of such Social Security coverage program. Sec. 51g, Art. 3, adopted Nov. 2, 1954.

### Sec. 52-b.

The Legislature shall have no power or authority to in any manner lend the credit of the State or grant any public money to, or assume any indebtedness, present or future, bonded or otherwise, of any individual, person, firm, partnership, association, corporation, public corporation, public agency, or political subdivision of the State, or anyone else, which is now or hereafter authorized to construct, maintain or operate toll roads and turnpikes within this State. Sec. 52-b, Art. 3, adopted Nov. 2, 1954.

### Sec. 61.

The Legislature shall not fix the salary of the Governor, Attorney General, Comptroller of Public Accounts, the Treasurer, Commissioner of the General Land Office or Secretary of State at a sum less than that fixed for such officials in the Constitution on January 1, 1953. Sec. 61, Art. 3, adopted Nov. 2, 1954.

# CONSTITUTION

## ARTICLE IV

### EXECUTIVE DEPARTMENT

#### Sec. 5.

The Governor shall, at stated times, receive as compensation for his services an annual salary in an amount to be fixed by the Legislature, and shall have the use and occupation of the Governor's Mansion, fixtures and furniture. Sec. 4, Art. 4, adopted Nov. 2, 1954.

#### Sec. 21.

There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary in an amount to be fixed by the Legislature. Sec. 21, Art. 4, adopted Nov. 2, 1954.

#### Sec. 22.

The Attorney General shall hold office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary in an amount to be fixed by the Legislature. Sec. 22, Art. 4, adopted Nov. 2, 1954.

#### Sec. 23.

The Comptroller of Public Accounts, the Treasurer, and the Commissioner of the General Land Office shall each hold office for the term of two years and until his successor is qualified; receive an annual salary in an amount to be fixed by the Legislature; reside at the Capital of the State during his continuance in office, and perform such duties as are or may be required by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section or in his office, shall be paid, when received, into the State Treasury. Sec. 23, Art. 4, adopted Nov. 2, 1954.

# CONSTITUTION

## ARTICLE V

### JUDICIAL DEPARTMENT

#### Sec. 9.

There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters for State and county officers, and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury. In case of vacancy, the Judge of the District Court shall have the power to appoint a Clerk, who shall hold until the office can be filled by election. Sec. 9, Art. 5, adopted Nov. 2, 1954.

#### Sec. 15.

There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a County Judge, who shall be well informed in the law of the State; shall be a conservator of the peace, and shall hold his office for four years, and until his successor shall be elected and qualified. He shall receive as compensation for his services such fees and perquisites as may be prescribed by law. Sec. 15, Art. 5, adopted Nov. 2, 1954.

#### Sec. 18.

Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. Divisions shall be made by the Commissioners Court provided for by this Constitution. In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. Each county shall in like manner be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County Commissioner, who shall hold his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed. Sec. 18, Art. 5, adopted Nov. 2, 1954.

#### Sec. 20.

There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks. Sec. 20, Art. 5, adopted Nov. 2, 1954.

## CONSTITUTION

### Sec. 21.

A County Attorney, for counties in which there is not a resident Criminal District Attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of four years. In case of vacancy the Commissioners Court of the county shall have the power to appoint a County Attorney until the next general election. The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of District Attorneys in such districts, as may be deemed necessary, and make provision for the compensation of District Attorneys and County Attorneys. District Attorneys shall hold office for a term of four years, and until their successors have qualified. Sec. 21, Art. 5, adopted Nov. 2, 1954.

### Sec. 23.

There shall be elected by the qualified voters of each county a Sheriff, who shall hold his office for the term of four years, whose duties and perquisites, and fees of office, shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners Court until the next general election. Sec. 23, Art. 5, adopted Nov. 2, 1954.

### Sec. 30.

The Judges of all Courts of county-wide jurisdiction heretofore or hereafter created by the Legislature of this State, and all Criminal District Attorneys now or hereafter authorized by the laws of this State, shall be elected for a term of four years, and shall serve until their successors have qualified. Sec. 30, Art. 5, adopted Nov. 2, 1954.

## ARTICLE VI

### SUFFRAGE

#### Sec. 1.

The following classes of persons shall not be allowed to vote in this State, to wit:

First: Persons under twenty-one (21) years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make. Sec. 1, Art. 6, adopted Nov. 2, 1954.

#### Sec. 2.

Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one (21) years and who shall be a citizen of the United States and who shall have resided in this State one (1) year next preceding an election and the last six (6) months within the district or county in which such person offers to vote, shall be deemed a qualified elector; and provided further, that any voter who is subject to pay a poll tax under the laws of the State

## CONSTITUTION

of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner, the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation. Any member of the Armed Forces of the United States or component branches thereof, or in the military service of the United States, may vote only in the county in which he or she resided at the time of entering such service so long as he or she is a member of the Armed Forces. Sec. 2, Art. 6, adopted Nov. 2, 1954.

Sec. 2a. Repealed. Nov. 2, 1954.

## ARTICLE VIII

### TAXATION AND REVENUE

Sec. 14.

Except as provided in Section 16 of this Article, there shall be elected by the qualified voters of each county, an Assessor and Collector of Taxes, who shall hold his office for four years and until his successor is elected and qualified; and such Assessor and Collector of Taxes shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the Legislature. Sec. 14, Art. 8, adopted Nov. 2, 1954.

Sec. 16.

The Sheriff of each county, in addition to his other duties, shall be the Assessor and Collector of Taxes therefor; but, in counties having 10,000 or more inhabitants, to be determined by the last preceding census of the United States, an Assessor and Collector of Taxes shall be elected as provided in Section 14 of this Article, and shall hold office for four years and until his successor shall be elected and qualified. Sec. 16, Art. 8, adopted Nov. 2, 1954.

Sec. 16a.

In any county having a population of less than ten thousand (10,000) inhabitants, as determined by the last preceding census of the United States, the Commissioners Court may submit to the qualified property taxpaying voters of such county at an election the question of adding an Assessor-Collector of Taxes to the list of authorized county officials. If a majority of such voters voting in such election shall approve of adding an Assessor-Collector of Taxes to such list, then such official shall be elected at the next General Election for such Constitutional term of office as is provided for other Tax Assessor-Collectors in this State. Sec. 16a, Art. 8, adopted Nov. 2, 1954.

# CONSTITUTION

## ARTICLE IX

### COUNTIES

#### Sec. 4.

The Legislature may by law authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000 and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county owned hospital, or where the hospital system is jointly operated by a county and city within the county, and to provide for the transfer to the county-wide Hospital District of the title to any land, buildings or equipment, jointly or separately owned, and for the assumption by the district of any outstanding bonded indebtedness theretofore issued by any county or city for the establishment of hospitals or hospital facilities; to levy a tax not to exceed seventy-five (\$.75) cents on the One Hundred (\$100.00) Dollars valuation of all taxable property within such district, provided, however, that such district shall be approved at an election held for that purpose, and that only qualified, property taxpaying voters in such county shall vote therein; provided further, that such Hospital District shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county, and thereafter such county and cities therein shall not levy any other tax for hospital purposes; and provided further that should such Hospital District construct, maintain and support a hospital or hospital system, that the same shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for the construction, maintenance or improvement of the said hospital or hospitals. Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character. Sec. 4, Art. 9, adopted Nov. 2, 1954.

## ARTICLE XVI

### GENERAL PROVISIONS

#### Sec. 19.

The Legislature shall prescribe by law the qualifications of grand and petit jurors; provided that neither the right nor the duty to serve on grand and petit juries shall be denied or abridged by reason of sex. Whenever in the Constitution the term "men" is used in reference to grand or petit juries, such term shall include persons of the female as well as the male sex. Sec. 19, Art. 16, adopted Nov. 2, 1954.

#### Sec. 44.

The Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State, of a County Treasurer and a County Surveyor, who shall have an office at the county seat, and hold their office for four years, and until their successors are qualified; and shall have such compensation as may be provided by law. Sec. 44, Art. 16, adopted Nov. 2, 1954.

#### Sec. 63.

Qualified members of the Teacher Retirement System, in addition to the benefits allowed them under the Teacher Retirement System shall

## CONSTITUTION

be entitled to credit in the Teacher Retirement System for all services, including prior service and membership service, earned or rendered by them as an appointive officer or employee of the State. Likewise, qualified members of the Employees Retirement System of Texas, in addition to the benefits allowed them under the Employees Retirement System of Texas shall be entitled to credit in the Employees Retirement System of Texas for all services, including prior service and membership service, earned or rendered by them as a teacher or person employed in the public schools, colleges, and universities supported wholly or partly by the State. Sec. 63, Art. 16, adopted Nov. 2, 1954.

### Sec. 64.

The office of Inspector of Hides and Animals, the elective district, county and precinct offices which have heretofore had terms of two years, shall hereafter have terms of four years; and the holders of such offices shall serve until their successors are qualified. Sec. 64, Art. 16, adopted Nov. 2, 1954.

### Sec. 65.

The following officers elected at the general election in November, 1954, and thereafter, shall serve for the full terms provided in this Constitution:

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

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

In any district, county or precinct where any of the aforementioned offices is of such nature that two or more persons hold such office, with the result that candidates file for "Place No. 1," "Place No. 2," etc., the officers elected at the general election in November, 1954, shall serve for a term of two years if the designation of their office is an uneven number, and for a term of four years if the designation of their office is an even number. Thereafter, all such officers shall be elected for the terms provided in this Constitution. Sec. 65, Art. 16, adopted Nov. 2, 1954.



# CONSTITUTION

## PROPOSED AMENDMENTS

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### ARTICLE I

#### BILL OF RIGHTS

##### Sec. 11a.

Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder.

Proposed by House Joint Resolution No. 9, Acts 1955, 54th Leg., p. 1816. For submission to the people in Nov. 1956.

##### Sec. 15-a.

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

Proposed by House Joint Resolution No. 11, Acts 1955, 54th Leg., p. 1817. For submission to the people in Nov. 1956.

### ARTICLE III

#### LEGISLATIVE DEPARTMENT

##### Sec. 48a.

In addition to the powers given the Legislature under Section 48, Article III, it shall have the right to levy taxes to establish a fund to provide retirement, disability and death benefits for persons employed in the public schools, colleges and universities supported wholly or partly by the State; provided that the amount contributed by the State to such fund each year shall be equal to the aggregate amount required by law to be

## CONSTITUTION

paid into the fund by such employees, and shall not exceed at any time six per centum (6%) of the compensation paid each such person by the State and/or school districts, and shall in no one (1) year exceed the sum of Five Hundred Four Dollars (\$504.00) for any such person; and provided that no person shall be eligible for retirement who has not rendered ten years of creditable service in such employment, and in no case shall any person retire before either attaining the age fifty-five (55) or completing thirty (30) years of creditable service, but shall be entitled to refund of moneys paid into the fund.

The Legislature may authorize all moneys coming into such fund to be invested in bonds or other evidences of indebtedness of the United States, or of this State, or any county, city, school district, or other municipal corporation or district of this State; or in such other securities as are now or hereafter may be permitted by law as investments for the Permanent University Fund or for the Permanent School Fund of this State; provided a sufficient sum shall be kept on hand to meet payments as they become due each year under such retirement plan, as may be provided by law; and provided that the recipients of such retirement fund shall not be eligible for any other State pension retirement funds or direct aid from the State of Texas, unless such other State pension or retirement fund, contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid; providing, however, that this section shall not amend, alter, or repeal Section 63 of Article 16 of the Constitution of Texas as adopted November, 1954, or any enabling legislation passed pursuant thereto.

Proposed by Senate Joint Resolution No. 5, Acts 1955, 54th Leg., p. 1814. For submission to the people in Nov. 1956.

### Sec. 49-b.

There is hereby created a Board to be known as the Veterans' Land Board, which shall be composed of the Commissioner of the General Land Office, and two citizens of the State who shall be appointed by the Governor with the advice and consent of the Senate. The Governor shall biennially appoint one such member to serve for a term of four years, with the initial appointments to the Board under this section to be for terms of two and four years, respectively, and all subsequent appointments to be according to provisions of this section. One such appointive member shall be well versed in veterans' affairs and the other such appointive member shall be well versed in finances. The Commissioner of the General Land Office shall act as Chairman of the Board and shall be the administrator of the Veterans' Land Program under such terms and restrictions as may be now or hereafter provided by law. The compensation for said appointive members shall be as fixed by the Legislature, and each shall make bond in such amount as may be prescribed by the Legislature. The Veterans' Land Board may issue not to exceed Two Hundred Million Dollars (\$200,000,000) in bonds or obligations of the State of Texas for the purpose of creating a fund to be known as the Veterans' Land Fund. Such bonds shall be executed by said Board as an obligation of the State of Texas, in such form, denominations, and upon the terms as are now provided by law or as may hereafter be provided by law; provided, however, that said bonds shall bear a rate of interest not to exceed three per cent (3%) per annum, and that the same shall be sold for not less than par value and accrued interest.

## CONSTITUTION

In the sale of any such bonds, a preferential right of purchase shall be given to the administrators of the various Teacher Retirement Funds, the Permanent University Funds, and the Permanent School Funds; such bonds to be issued as needed, in the opinion of the Veterans' Land Board.

The Veterans' Land Fund shall be used by the Board for the sole purpose of purchasing lands suitable for the purpose hereinafter stated, situated in this State, (a) owned by the United States, or any governmental agency thereof; (b) owned by the Texas Prison System, or any other governmental agency of the State of Texas; or (c) owned by any person, firm, or corporation. Provided, however, the portion of the Veterans' Land Fund not immediately committed for the purchase of lands may be invested in short term United States bonds or obligations until such funds are needed for the purchase of lands. The interest accruing thereon shall become a part of the Veterans' Land Fund.

All lands thus purchased shall be acquired at the lowest price obtainable, to be paid for in cash, and shall be a part of the Veterans' Land Fund.

The lands of the Veterans' Land Fund shall be sold by the State to Texas veterans of the present war or wars, commonly known as World War II, and to Texas veterans of service in the armed forces of the United States of America subsequent to 1945, as may be included within this program by legislative Act, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now provided by law, or as may hereafter be provided by law.

All monies received and which have been received under the Constitutional Amendment as adopted by the people of Texas at the election held on November 13, 1951, and which have not been used for repurchase of land as provided herein by the Veterans' Land Board from the sale of lands and for interest on deferred payments, shall be credited to the Veterans' Land Fund for use in purchasing additional lands to be sold to Texas veterans of World War II, and to Texas veterans of service in the armed forces of the United States of America subsequent to 1945, as may be included within this program by legislative Act, in like manner as provided for the sale of lands purchased with the proceeds from the sales of the bonds, provided for herein, for a period ending December 1, 1959; provided, however, that so much of such monies as may be necessary during the period ending December 1, 1959, to pay the principal of and interest on the bonds heretofore issued and on bonds hereafter issued by the Veterans' Land Board, shall be set aside for that purpose. After December 1, 1959, all monies received by the Veterans' Land Board from the sale of the lands and interest on deferred payments, or so much thereof as may be necessary, shall be set aside for the retirement of bonds heretofore issued and to pay interest thereon, and any of such monies not so needed shall not later than the maturity date of the last maturing bond or bonds be deposited to the credit of the General Revenue Fund to be appropriated to such purposes as may be prescribed by law. All bonds issued hereunder shall, after approval by the Attorney General of Texas, registration by the Comptroller of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute obligations of the State under the Constitution of Texas. Of the total Two Hundred Million Dollars (\$200,000,000) of bonds herein authorized, the sum of One Hundred Million Dollars (\$100,000,000) has heretofore been issued; said bonds heretofore issued are hereby in all respects validated and declared to be obligations of the State of Texas.

## CONSTITUTION

The additional bonds herein authorized may be sold in such installments as deemed necessary and advisable by the Veterans' Land Board. All monies received from the sale of land and for interest on deferred payments on land purchased with the proceeds of such additional bonds, shall be credited to the Veterans' Land Fund for use in purchasing additional lands to be sold to Texas veterans, as herein provided, in like manner as provided for the sale of lands purchased with the proceeds from the sales of the bonds provided for herein, for a period ending December 1, 1965; provided, however, that so much of such monies as may be necessary to pay interest on the additional bonds herein provided for shall be set aside for that purpose. After December 1, 1965, all monies received by the Veterans' Land Board from the sale of the lands and interest on payments, or so much thereof as may be necessary, shall be set aside for the retirement of said additional bonds and to pay interest thereon, and any of such monies not so needed shall not later than the maturity date of the last maturing bond be deposited to the credit of the General Revenue Fund to be appropriated to such purposes as may be prescribed by law.

This amendment shall be effective on and after January 1, 1957.

Proposed by Senate Joint Resolution No. 2, Acts 1955, 54th Leg., p. 1811. For submission to the people in Nov. 1956.

### Sec. 51-b.

The Legislature shall have the power to provide by general laws, under such limitations and restrictions as may be deemed by the Legislature expedient, for assistance to needy individuals, who are citizens of the United States, who shall have passed their eighteenth (18th) birthday but have not passed their sixty-fifth (65th) birthday, who are totally and permanently disabled by reason of a mental or physical handicap or a combination of physical and mental handicaps and not feasible for vocational rehabilitation, and who are residents of the State of Texas, who have resided in this State for at least one (1) year continuously immediately preceding the application and who have resided in the State for at least an additional five (5) years during the nine (9) years immediately preceding the application for assistance; and providing further that no individual shall receive assistance under this program for the permanently and totally disabled during any period when he is receiving old age assistance, aid to the needy blind, or aid to dependent children, nor while he is residing permanently in any completely State supported institution; and provided further that not more than Twenty Dollars (\$20) a month out of State funds may be paid to any individual recipient; and provided further that the amount paid out of State funds to any individual may never exceed the amount paid to that individual out of Federal funds; and provided further that the amount paid out of State funds for assistance payments shall not exceed One Million, Five Hundred Thousand Dollars (\$1,500,000) per year.

The Legislature shall have the authority to accept from the Government of the United States such financial aid for individuals who are permanently and totally disabled as that Government may offer not inconsistent with the restrictions herein provided.

Proposed by House Joint Resolution No. 30, Acts 1955, 54th Leg., p. 1824. For submission to the people in Nov. 1956.

## CONSTITUTION

### Sec. 51-c.

The Legislature may grant aid and compensation to any person who has heretofore paid a fine or served a sentence in prison, or who may hereafter pay a fine or serve a sentence in prison, under the laws of this State for an offense for which he or she is not guilty, under such regulations and limitations as the Legislature may deem expedient.

Proposed by House Joint Resolution No. 31, Acts 1955, 54th Leg., p. 1825. For submission to the people in Nov. 1956.

## ARTICLE VII

### EDUCATION

#### Sec. 11a.

In addition to the bonds now enumerated in Section 11 of Article VII of the Constitution of the State of Texas, the Permanent University Fund may be invested in first lien real estate mortgage securities guaranteed in any manner in whole by the United States Government or any agency thereof and in such corporation bonds, preferred stocks and common stocks as the Board of Regents of The University of Texas may deem to be proper investments for said fund; and the interest and dividends accruing from the securities listed in Section 11 and Section 11a, except the portion thereof which is appropriated by the operation of Section 18 of Article VII for the payment of principal and interest on bonds or notes issued thereunder, shall be subject to appropriation by the Legislature to accomplish the purposes declared in Section 10 of Article VII of this Constitution. In making each and all of such investments said Board of Regents shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital; provided, however, that not more than fifty per cent (50%) of said fund shall be invested at any given time in corporate stocks and bonds, nor shall more than one per cent (1%) of said fund be invested in securities issued by any one (1) corporation, nor shall more than five per cent (5%) of the voting stock of any one (1) corporation be owned; and provided, further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors. This amendment shall be self-enacting, and shall become effective upon its adoption, provided, however, that the Legislature shall provide by law for full disclosure of all details concerning the investments in corporate stocks and bonds and other investments authorized herein.

Proposed by House Joint Resolution No. 15, Acts 1955, 54th Leg., p. 1818. For submission to the people in Nov. 1956.

#### Sec. 17.

In lieu of the State ad valorem tax on property of Seven Cents (7¢) on the One Hundred Dollars (\$100) valuation heretofore permitted to be levied by Section 51 of Article 3, as amended, there is hereby levied, in

## CONSTITUTION

addition to all other taxes permitted by the Constitution of Texas, a State ad valorem tax on property of Two Cents (2¢) on the One Hundred Dollars (\$100) valuation for the purpose of creating a special fund for the continuing payment of Confederate pensions as provided under Section 51, Article 3, and for the establishment and continued maintenance of the State Building Fund as provided in Section 51b, Article 3, of the Constitution.

Also, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a State ad valorem tax on property of Five Cents (5¢) on the One Hundred Dollars (\$100) valuation for the purpose of creating a special fund for the purpose of acquiring, constructing and initially equipping buildings, or other permanent improvements at the designated institutions of higher learning; and the governing board of each of such institutions of higher learning is fully authorized to pledge all or any part of said funds allotted to such institution as hereinafter provided, to secure bonds or notes issued for the purpose of acquiring, constructing and initially equipping such buildings or other permanent improvements at said respective institutions. Such bonds or notes shall be issued in such amounts as may be determined by the governing boards of said respective institutions, shall bear interest not to exceed three per cent (3%) per annum and shall mature serially or otherwise not later than September 1, 1968, and September 1, 1978, respectively; provided, the power to issue bonds or notes hereunder is expressly limited to a period of twenty (20) years from the effective date of this amendment; and provided further, that the Five Cent (5¢) tax hereby levied shall expire finally upon payment of all bonds or notes hereby authorized; provided, further, that the State tax on property as heretofore permitted to be levied by Section 9 of Article VIII, as amended, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed Thirty Cents (30¢) on the One Hundred Dollars (\$100) valuation. All bonds shall be examined and approved by the Attorney General of the State of Texas, and when so approved shall be incontestable; and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas. Said bonds shall be sold only through competitive bids and shall never be sold for less than their par value and accrued interest.

Funds raised from said Five Cent (5¢) tax levy for the ten-year period beginning January 1, 1958, shall be allocated by the Comptroller of Public Accounts of the State of Texas on June first of that year, based on the average long session full-time student equivalent enrollment (fifteen (15) semester credit hours shall constitute one full-time student) for the preceding five-year period of time, to the following State institutions of higher learning then in existence, to wit:

- Texas State College for Women at Denton
- Texas College of Arts and Industries at Kingsville
- Texas Technological College at Lubbock
- East Texas State Teachers College at Commerce
- North Texas State College at Denton
- Sam Houston State Teachers College at Huntsville
- Southwest Texas State Teachers College at San Marcos
- Stephen F. Austin State College at Nacogdoches
- Sul Ross State College at Alpine
- West Texas State College at Canyon
- Texas Southern University at Houston
- Lamar State College of Technology at Beaumont

## CONSTITUTION

Not later than June first of the beginning year of each succeeding ten-year period, the Comptroller of Public Accounts of the State of Texas, based on the average long session full-time student equivalent enrollment (fifteen (15) semester credit hours shall constitute one full-time student) for the preceding five-year period of time, shall re-allocate, to the above-designated institutions of higher learning then in existence, all funds to be derived from said Five Cent (5¢) ad valorem tax for said ten-year period; and all such designated institutions of higher learning which participate in the allocation or re-allocation of such funds shall not thereafter receive any General Revenue funds for the acquiring or constructing of buildings or other permanent improvements for which said Five Cent (5¢) ad valorem tax is herein provided, except in case of fire, flood, storm, or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the uninsured loss so incurred may be made by the Legislature out of any General Revenue funds. The State Comptroller of Public Accounts shall draw all necessary and proper warrants upon the State Treasury in order to carry out the purpose of this amendment; and the State Treasurer shall pay warrants so issued out of the special fund hereby created for said purpose. This amendment shall be self-enacting; provided, however, it shall not become operative or effective upon its adoption so as to supersede or repeal the former provisions of this Section, but shall become so operative and effective on January 1, 1958; provided, further, that nothing herein shall be construed as impairing the obligation incurred by any outstanding notes or bonds heretofore issued by any State institution of higher learning under this Section prior to the adoption of this amendment, but such notes or bonds shall be paid, both as to principal and interest, from the fund as heretofore allocated to any such institution under this Section, nor shall the provisions of this amendment affect in any way the prior allocation of the revenue for the ten-year period beginning January 1, 1948, as heretofore authorized by the provisions of Section 17 of Article VII of this Constitution as adopted August 23, 1947. Chapter 330, Acts, Regular Session, Fifty-third Legislature is repealed upon the effective date of this Amendment; but the principal and interest due on any obligations incurred by the governing boards of Lamar State College of Technology at Beaumont and of Texas Southern University at Houston under the provisions of said Chapter 330 prior to its repeal shall be paid from the allocations to Lamar State College of Technology and Texas Southern University from the funds raised by the Five Cent (5¢) ad valorem tax levy as provided in this Section, and the annual allocations to these institutions under this Section shall be first devoted to current requirements for meeting such obligations in accordance with their terms.

Proposed by House Joint Resolution No. 15, Acts 1955, 54th Leg., p. 1818. For submission to the people in Nov. 1956.

### Sec. 18.

For the purpose of constructing, equipping, or acquiring buildings or other permanent improvements for the Texas Agricultural and Mechanical College System, including the Agricultural and Mechanical College of Texas at College Station, Arlington State College at Arlington, Prairie View Agricultural and Mechanical College of Texas at Prairie View, Tarleton State College at Stephenville, Texas Agricultural Experiment Stations, Texas Agricultural Extension Service, Texas Engineering Experiment Station, at College Station, Texas Engineering Extension Service, at College Station, and the Texas Forest Service, the Board of Directors of the

## CONSTITUTION

Agricultural and Mechanical College of Texas is hereby authorized to issue negotiable bonds or notes not to exceed a total amount of one-third ( $\frac{1}{3}$ ) of twenty per cent (20%) of the value of the Permanent University Fund exclusive of real estate at the time of any issuance thereof; provided, however, no building or other permanent improvement shall be acquired or constructed hereunder for use by any part of The Texas Agricultural and Mechanical College System, except at and for the use of the general academic institutions of said System, namely, the Agricultural and Mechanical College of Texas, Arlington State College, Tarleton State College, and Prairie View A. and M. College, without the prior approval of the Legislature or of such agency as may be authorized by the Legislature to grant such approval; and for the purpose of constructing, equipping, or acquiring buildings or other permanent improvements for The University of Texas System, including the Main University of Texas at Austin, The University of Texas Medical Branch at Galveston, The University of Texas Southwestern Medical School at Dallas, The University of Texas Dental Branch at Houston, Texas Western College of The University of Texas at El Paso, The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston, The University of Texas Postgraduate School of Medicine, The University of Texas School of Public Health, McDonald Observatory at Mount Locke, and the Marine Science Institute at Port Aransas, the Board of Regents of The University of Texas is hereby authorized to issue negotiable bonds and notes not to exceed a total amount of two-thirds ( $\frac{2}{3}$ ) of twenty per cent (20%) of the value of the Permanent University Fund exclusive of real estate at the time of any issuance thereof; provided, however, no building or other permanent improvement shall be acquired or constructed hereunder for use by any institution of The University of Texas System, except at and for the use of the general academic institutions of said System, namely, the Main University and Texas Western College, without the prior approval of the Legislature or of such agency as may be authorized by the Legislature to grant such approval. Any bonds or notes issued hereunder shall be payable solely out of the income from the Permanent University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty (30) years from their respective dates.

The Texas Agricultural and Mechanical College System and all of the institutions constituting such System as hereinabove enumerated, and The University of Texas System, and all of the institutions constituting such System as hereinabove enumerated, shall not, after the effective date of this Amendment, receive any General Revenue funds for the acquiring or constructing of buildings or other permanent improvements, except in case of fire, flood, storm, or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the uninsured loss so incurred may be made by the Legislature out of General Revenue funds.

Said Boards are severally authorized to pledge the whole or any part of the respective interests of the Agricultural and Mechanical College of Texas and of The University of Texas in the income from the Permanent University Fund, as such interests are now apportioned by Chapter 42 of the Acts of the Regular Session of the Forty-second Legislature of the State of Texas, for the purpose of securing the payment of the principal and interest of such bonds or notes. The Permanent University Fund may be invested in such bonds or notes.

All bonds or notes issued pursuant hereto shall be approved by the Attorney General of Texas and when so approved shall be incontestable.



## CONSTITUTION

This amendment shall be self-enacting and shall become effective January 1, 1958; provided, however, that nothing herein shall be construed as impairing any obligation heretofore created by the issuance of any outstanding notes or bonds under this section by the respective Boards prior to the adoption of this amendment but any such outstanding notes or bonds shall be paid in full, both principal and interest, in accordance with the terms of such contracts.

Proposed by House Joint Resolution No. 15, Acts 1955, 54th Leg., p. 1818. For submission to the people in Nov. 1956.

## ARTICLE VIII

### TAXATION AND REVENUE

#### Sec. 9

The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed Thirty-five Cents (35¢) on the One Hundred Dollars (\$100) valuation; and no county, city or town shall levy a tax rate in excess of Eighty Cents (80¢) on the One Hundred Dollars (\$100) valuation in any one (1) year for general fund, permanent improvement fund, road and bridge fund and jury fund purposes; provided further that at the time the Commissioners Court meets to levy the annual tax rate for each county it shall levy whatever tax rate may be needed for the four (4) constitutional purposes; namely, general fund, permanent improvement fund, road and bridge fund and jury fund so long as the Court does not impair any outstanding bonds or other obligations and so long as the total of the foregoing tax levies does not exceed Eighty Cents (80¢) on the One Hundred Dollars (\$100) valuation in any one (1) year. Once the Court has levied the annual tax rate, the same shall remain in force and effect during that taxable year; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property tax paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed Fifteen Cents (15¢) on the One Hundred Dollars (\$100) valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. This Section shall not be construed as a limitation of powers delegated to counties, cities or towns by any other Section or Sections of this Constitution.

Proposed by House Joint Resolution No. 23, Acts 1955, 54th Leg., p. 1822. For submission to the people in Nov. 1956.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 1. Members of the Legislature, and all other elected officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will

## CONSTITUTION

to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. So help me God."

The Secretary of State, and all other appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof. So help me God."

Proposed by House Joint Resolution No. 46, Acts 1955, 54th Leg., p. 1826. For submission to the people in Nov. 1956.



# INDEX

## TO

### CONSTITUTION OF THE STATE OF TEXAS

---

#### **APPROPRIATIONS**

Social security, political subdivision employees, Const. art. 3, § 51g.

#### **ARMED FORCES**

Memorials, confederate soldiers, Const. art. 3, § 51-b.

#### **ASSESSORS AND COLLECTORS OF TAXES**

Term of office, Const. art. 16, § 65.

#### **ATTORNEY GENERAL**

Salary, Const. art. 3, § 61.

State Building Commission member, Const. art. 3, § 51-b.

#### **BOARD OF CONTROL**

State Building Commission member, Const. art. 3, § 51-b.

#### **COMMISSIONER OF GENERAL LAND OFFICE**

Salary, Const. art. 3, § 61.

#### **COMPTROLLER OF PUBLIC ACCOUNTS**

Salary, Const. art. 3, § 61.

#### **CONFEDERATE PENSION FUND**

State building fund, transfer of money, Const. art. 3, § 51-b.

#### **CONSTABLES**

Term of office, Const. art. 16, § 65.

#### **COUNTIES**

Hospital districts, Const. art. 9, § 4.

Population in excess of 190,000, hospital districts, Const. art. 9, § 4.

Tax assessor and collector, election, Const. art. 8, § 16a.

#### **COUNTY ATTORNEYS**

Term of office, Const. art. 16, § 65.

#### **COUNTY CLERKS**

Term of office, Const. art. 16, § 65.

#### **COUNTY COMMISSIONERS**

Precincts 1 and 3, term of office, Const. art. 16, § 65.

Precincts 2 and 4, term of office, Const. art. 16, § 65.

#### **COUNTY COURTS AT LAW**

Judges, term of office, Const. art. 16, § 65.

## INDEX

### COUNTY CRIMINAL COURTS

Judges, term of office, Const. art. 16, § 65.

### COUNTY DOMESTIC RELATIONS COURT

Judges, term of office, Const. art. 16, § 65.

### COUNTY JUDGES

Term of office, Const. arts. 5, § 30; 16, § 65.

### COUNTY OFFICERS

Term of office, Const. art. 16, § 64.

### COUNTY PROBATE COURTS

Judges, term of office, Const. art. 16, § 65.

### COUNTY SURVEYORS

Term of office, Const. art. 16, § 65.

### COUNTY TREASURERS

Term of office, Const. art. 16, § 65.

### CRIMINAL DISTRICT ATTORNEYS

Term of office, Const. art. 16, § 65.

### DISTRICT ATTORNEYS

Criminal district attorneys, term of office, Const. art. 5, § 30.

Term of office, Const. art. 16, § 65.

### DISTRICT CLERKS

Term of office, Const. art. 16, § 65.

### EMPLOYEES' RETIREMENT SYSTEM OF TEXAS

Benefits allowed, Const. art. 16, § 63.

Credit, service in teaching profession, Const. art. 16, § 63.

### GALVESTON COUNTY

Hospital districts, Const. art. 9, § 4.

Taxation, hospital districts, Const. art. 9, § 4.

### GOVERNOR

Salary, Const. art. 3, § 61.

State Building Commission member, Const. art. 3, § 51-b.

### HIDE AND ANIMAL INSPECTOR

Term of office, Const. art. 16, §§ 64, 65.

### HOSPITAL DISTRICTS

Counties in excess of 190,000, Const. art. 9, § 4.

Galveston county, Const. art. 9, § 4.

Taxation, Const. art. 9, § 4.

### INSPECTION AND INSPECTORS

Hides and animals, term of office, Const. art. 16, § 64.

### JUSTICES OF THE PEACE

Term of office, Const. art. 16, § 65.

## INDEX

### LEGISLATURE

Aged persons, power to provide assistance, Const. art. 3, § 51a.  
Blind persons, power to provide assistance, Const. art. 3, § 51a.  
Children, power to provide assistance, Const. art. 3, § 51a.  
Compensation, Const. art. 3, § 24.  
Credit of state, toll roads or turnpikes, Const. art. 3, § 52-b.  
Federal agreements, social security for state employees, Const. art. 3, § 51g.  
Federal aid, power to accept, Const. art. 3, § 51a.  
Mileage, Const. art. 3, § 24.  
Per diem, Const. art. 3, § 24.  
Social security for employees, authorization, Const. art. 3, § 51g.  
State Building Commission membership, Const. art. 3, § 51-b.  
Toll roads, credit of state, Const. art. 3, § 52-b.  
Turnpikes, credit of state, Const. art. 3, § 52-b.

### POLITICAL SUBDIVISIONS OF STATE

Social security for proprietary employees, Const. art. 3, § 51g.

### PRECINCTS

Officers, term of office, Const. art. 16, § 64.

### PUBLIC WEIGHERS

Term of office, Const. art. 16, § 65.

### SECRETARY OF STATE

Salary, Const. art. 3, § 61.

### SHERIFF

Term of office, Const. art. 16, § 65.

### SOCIAL SECURITY

Public employees, authorization, Const. art. 3, § 51g.

### STATE

Credit, operation of toll roads and turnpikes, Const. art. 3, § 52-b.

### STATE BUILDING COMMISSION

Created, Const. art. 3, § 51-b.  
Expenditures, Const. art. 3, § 51-b.  
Membership, Const. art. 3, § 51-b.  
Property, powers and duties, Const. art. 3, § 51-b.

### STATE BUILDING FUND

Confederate pension fund, transfer of money, Const. art. 3, § 51-b.  
Created, Const. art. 3, § 51-b.

### STATE TREASURER

Salary, Const. art. 3, § 61.

### TAX ASSESSOR AND COLLECTORS

Counties of less than 10,000 population, Const. art. 8, § 16a.  
Election, counties of less than 10,000 population, Const. art. 8, § 16a.

### TAXES AND TAXATION

Ad valorem taxes, Const. art. 3, § 51-b.  
Galveston county, hospital districts, Const. art. 9, § 4.  
Hospital districts, Const. art. 9, § 4.

## INDEX

### TEACHERS RETIREMENT

Benefits, Const. art. 16, § 63.

Credits, officer or employee of state, Const. art. 16, § 63.

### TERM OF OFFICE

County officers, Const. art. 16, § 64.

Elective district, Const. art. 16, § 64.

Inspector of nides and animals, Const. art. 16, § 64.

Precinct officers, Const. art. 16, § 64.

### TOLL ROADS

Credit of state, Const. art. 3, § 52-b.

### TURNPIKES

Credit of state, Const. art. 3, § 52-b.

**TITLES AND ARTICLES**  
**VERNON'S**  
**ANNOTATED TEXAS STATUTES**  
 AND  
**REVISED STATUTES OF TEXAS 1925**

---

Title	REVISED CIVIL STATUTES	Article
1	General Provisions .....	1
2	Accountants—Public and Certified .....	31
3	Adoption .....	42
3A	Aeronautics .....	46c—1
4	Agriculture and Horticulture .....	47
5	Aliens .....	166
6	Amusements—Public Houses of .....	178
7	Animals .....	180
8	Apportionment .....	193
9	Apprentices .....	201
10	Arbitration .....	224
10A	Architects .....	249a
11	Archives .....	250
11A	Assignments, in General .....	260—1
12	Assignments for Creditors .....	261
13	Attachment .....	275
14	Attorney at Law .....	304
15	Attorneys—District and County .....	321
16	Banks and Banking .....	342
17	Bees .....	549
18	Bills and Notes .....	566
19	Blue Sky Law—Securities .....	579—1
19A	The Securities Act .....	600a
20	Board of Control .....	601
20A	Board and Department of Public Welfare .....	695b
21	Bond Investment Companies .....	696
22	Bonds—County, Municipal, etc. ....	701
23	Brands and Trade Marks .....	843
24	Building and Loan Associations .....	852
25	Carriers .....	882
26	Cemeteries .....	912
27	Certiorari .....	932
28	Cities, Towns and Villages .....	961
29	Commissioner of Deeds .....	1270
29A	Commissioners on Uniform Laws .....	1273a



**TITLES AND ARTICLES**

**REVISED CIVIL STATUTES—Cont'd**

Title	Article
30 Commission Merchants .....	1274
31 Conveyances .....	1288
Corporations—Business Corporations Act	
32 Corporations—Private .....	1302
33 Counties and County Seats .....	1539
34 County Finances .....	1607
35 County Libraries .....	1677
36 County Treasurer .....	1703
37 Court—Supreme .....	1715
38 Court of Criminal Appeals .....	1801
39 Courts of Civil Appeals .....	1812
40 Courts—District .....	1884
41 Courts—County .....	1927
42 Courts—Practice in District and County .....	1971
43 Courts—Juvenile .....	2329
44 Courts—Commissioners .....	2339
45 Courts—Justice .....	2373
46 Credit Organizations .....	2461
46A Declaratory Judgments .....	2524—1
47 Depositories .....	2525
48 Descent and Distribution .....	2570
49 Education—Public .....	2584
Election Code	
51 Eleemosynary Institutions .....	3174
52 Eminent Domain .....	3264
52A Engineers .....	3271a
53 Escheat .....	3272
54 Estates of Decedents .....	3290
55 Evidence .....	3704
56 Execution .....	3770
57 Exemptions .....	3832
58 Express Companies .....	3860
59 Feeble Minded Persons—Proceedings in Case of .....	3867
60 Feeding Stuff .....	3872
61 Fees of Office .....	3882
62 Fences .....	3947
63 Fire Escapes .....	3955
63A Fire Protection Districts .....	3972a
64 Forcible Entry and Detainer .....	3973
65 Frauds and Fraudulent Conveyances .....	3995
66 Free Passes, Franks and Transportation .....	4005
67 Fish, Oyster, Shell, etc. ....	4016
68 Garnishment .....	4076
68A Good Neighbor Commission of Texas .....	4101—1
69 Guardian and Ward .....	4102
70 Heads of Departments .....	4330
71 Health—Public .....	4414
72 Holidays—Legal .....	4591

## TITLES AND ARTICLES

### REVISED CIVIL STATUTES—Cont'd

Title	Article
73 Hotels and Boarding Houses .....	4592
74 Humane Society .....	4597
75 Husband and Wife .....	4602
76 Injunctions .....	4642
77 Injuries Resulting in Death .....	4671
Insurance Code	
79 Interest .....	5069
80 Intoxicating Liquor .....	5075
81 Jails .....	5115
82 Juveniles .....	5119
83 Labor .....	5144
84 Landlord and Tenant .....	5222
85 Lands—Acquisition for Public Use .....	5240
86 Lands—Public .....	5249
87 Legislature .....	5422
88 Libel .....	5430
89 Library and Historical Commission .....	5434
90 Liens .....	5447
91 Limitations .....	5507
92 Lunacy—Judicial Proceedings in Cases of .....	5547
93 Markets and Warehouses .....	5562
94 Militia—Soldiers, Sailors and Marines .....	5765
95 Mines and Mining .....	5892
96 Minors—Removal of Disabilities of .....	5921
97 Name .....	5924
98 Negotiable Instruments Act .....	5932
99 Notaries Public .....	5949
100 Officers—Removal of .....	5961
101 Official Bonds .....	5998
102 Oil and Gas .....	6004
103 Parks .....	6067
104 Partition .....	6082
105 Partnerships and Joint Stock Companies .....	6110
106 Patriotism and the Flag .....	6139
106A Passenger Elevators .....	6145a
107 Pawnbrokers and Loan Brokers .....	6146
108 Penitentiaries .....	6166
109 Pensions .....	6204
109A Plumbing .....	6243—101
110 Principal and Surety .....	6244
Probate Code	
110A Public Offices .....	6252—1
111 Quo Warranto .....	6253
112 Railroads .....	6259
113 Rangers—State .....	6560
113A Real Estate Dealers .....	6573a
114 Records .....	6574
115 Registration .....	6591
116 Roads, Bridges and Ferries .....	6663

## TITLES AND ARTICLES

### REVISED CIVIL STATUTES—Cont'd

Title	Article
117 Salaries .....	6813
118 Seawalls .....	6830
119 Sequestration .....	6840
120 Sheriffs and Constables .....	6865
120A State and National Defense .....	6889—1
121 Stock Laws .....	6890
122 Taxation .....	7041
123 Timber .....	7360
124 Trespass to Try Title .....	7364
125 Trial of Right of Property .....	7402
125A Trusts and Trustees .....	7425a
126 Trusts—Conspiracies Against Trade .....	7426
127 Veterinary Medicine and Surgery .....	7448
128 Water .....	7466
129 Wills .....	8281
130 Workmen's Compensation Law .....	8306
131 Wrecks .....	8310
Final Title	

## TITLES AND ARTICLES

### PENAL CODE

Title	Article
1 General Provisions .....	1
2 Offenses and Punishments .....	47
3 Principals, Accomplices and Accessories .....	65
4 Offenses Against the State, Its Territory, and Revenue ...	83
5 Offenses Affecting the Executive, Legislative and Judicial Departments of the Government .....	158
6 Offenses Affecting the Right of Suffrage .....	188
7 Religion and Education .....	281
8 Offenses Against Public Justice .....	302
9 Offenses Against the Public Peace .....	439
10 Offenses Against Morals, Decency and Chastity .....	490
11 Offenses Against Public Policy and Economy .....	536
12 Public Health .....	695
13 Offenses Against Public Property .....	783
14 Trade and Commerce .....	979
15 Offenses Against the Person .....	1138
16 Offenses Against Reputation .....	1269
17 Offenses Against Property .....	1304
18 Labor .....	1561
19 Miscellaneous Offenses .....	1622

### CODE OF CRIMINAL PROCEDURE

Title	Article
1 Introductory .....	1
2 Courts and Criminal Jurisdiction .....	51
3 The Prevention and Suppression of Offenses, and the Writ of Habeas Corpus .....	65
4 Limitation and Venue .....	177
5 Arrest, Commitment and Bail .....	212
6 Search Warrants .....	304
7 After Commitment or Bail and Before the Trial .....	333
8 Trial and Its Incidents .....	578
9 Proceedings After Verdict .....	751
10 Appeal and Writ of Error .....	812
11 Justice and Corporation Courts .....	867
12 Miscellaneous Proceedings .....	921
13 Inquest .....	968
14 Fugitives from Justice .....	997
15 Costs in Criminal Actions .....	1009
16 Delinquent Child .....	1083

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VERNON'S  
REVISED CIVIL STATUTES  
OF THE  
STATE OF TEXAS

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**TITLE 4—AGRICULTURE AND HORTICULTURE**

<b>Chap.</b>		<b>Art.</b>
7B. Noxious Weeds [New]	-----	135c

**CHAPTER THREE—PINK BOLLWORM**

<b>Art.</b>	
82a. Elective provisions; additional powers of Commissioner of Agriculture [New].	

**Art. 82a. Elective provisions; additional powers of Commissioner of Agriculture**

**Purpose of Act**

Section 1. It is hereby declared to be the purpose of the Texas Legislature in the enactment of this law to grant additional powers to the Texas Commissioner of Agriculture to aid in furthering the enforcement of laws heretofore enacted, same being to eradicate menace to the cotton industry of *Pectinophora Gossypiella*, Saunders, commonly known as pink bollworm.

**Election**

Sec. 2. The cotton growers of this State shall have the opportunity to approve or reject the provisions of this Act. Immediately after the passage of this Act the Commissioner shall divide the State into districts of at least four (4) cotton growing counties and shall designate a number for each of said districts so divided.

The Commissioner of Agriculture or his authorized agent shall upon receipt of a petition signed by not less than one hundred (100) eligible voters as hereinafter defined, establish and conduct each year the necessary election procedures and safeguards to ascertain the will of the cotton growers of the various districts to participate or not to participate under this Act. The election shall be conducted between August 1st and August 15th or during any two-week period which the Commissioner shall designate during the ginning season beginning in the year 1955 to determine whether the provisions of this Act shall apply for the following year. Notice of such election shall be given by publishing such notice in a newspaper or newspapers of general circulation in each county con-

tained in the district once each week for three consecutive weeks. Said elections shall be conducted and said ballots on the prescribed forms shall be collected at those gins so designated by the Commissioner of Agriculture, which designation shall include at least one gin in each county in the district. The election and collection of the ballots shall be conducted and supervised by representatives of the Commissioner of Agriculture on such forms and under such rules as shall be determined by the Commissioner of Agriculture to assure a fair and just determination of the will of the growers of the district. Only cotton farmers of the district shall be eligible to vote and only one vote shall be allowed for each grower regardless of the number of bales ginned or the volume of cotton grown by said grower. A grower under the terms of this Act shall be any person who has applied and received a permit to plant cotton pursuant to authority vested in the Commissioner of Agriculture under the provisions of Articles 68-82, Vernon's Civil Statutes of Texas, or who is the owner and holder of an allotment card issued by the United States Secretary of Agriculture through the County Agricultural Services and Conservation Committee.

**Bond of cotton growers; forfeitures for violations; escrow agent;  
disposition of proceeds**

Sec. 3. The Commissioner of Agriculture is hereby authorized to promulgate such additional rules and regulations necessary to establish a system whereby each cotton farmer in those districts approving by a majority vote under Section 2 above is required to pay into escrow account Seven Dollars and Fifty Cents (\$7.50) per bale of cotton grown by such cotton farmer.

The sum of Seven Dollars and Fifty Cents (\$7.50) per bale as herein authorized is to be deposited and to be held in escrow solely for the purpose of assuring the compliance by the permittee with the rules and regulations of the Commissioner of Agriculture and the conditions of the permit relating to planting and the destruction of cotton stalks. Under existing statutory authority of the Commissioner, applicants for growers' permits shall file such application with the Commissioner of Agriculture or his duly appointed agent on forms to be furnished by said Commissioner. These permits will authorize the planting of such cotton only during periods to be determined by the Commissioner of Agriculture. Each application for permit would provide that where a majority of growers in a district has approved the system the escrow agent or depository as described below would be authorized upon receipt of such funds to deduct a portion thereof as escrow fees and to hold the balance for the benefits of the applicant until proper certificate had been received from the Commissioner of Agriculture or his duly authorized agent that a satisfactory destruction of cotton stalks has been completed. Upon a receipt of a certificate and information that satisfactory destruction of cotton stalks has been completed the grower shall be entitled to a refund of the balance of all moneys he has paid into the escrow account less the fee for escrow handling unless the grower has failed to comply with existing requirements for eradication of the pink bollworm menace within a reasonable time to be designated by the Commissioner.

Where a grower has failed or refused to plow up or in other respects has not complied with the rules and regulations as promulgated by the Commissioner of Agriculture for the purposes of eradicating pink bollworm shall forfeit that part of his Seven Dollars and Fifty Cents (\$7.50) per bale contribution which is required to pay or compensate for the plow-up or conditioning of property to render same safe from pink boll-

worm danger. The plow-up or conditioning of the property shall be under the supervision of representatives of the Commissioner of Agriculture and such funds here designated shall be used to defray the costs of plow-up. Any balances remaining to the credit of the defaulting grower over and above the costs of plow-up and escrow fees so provided in the Act shall revert to and be payable to the grower depositor. The purpose here being not to penalize any failures but to assure plow-up and conditioning by the grower depositor or in the event he fails or refuses to do so to provide a method whereby it can be done by the Commissioner out of these deposited funds. Any further accumulation of funds unclaimed and over and above the escrow fees shall be disbursed as the Commissioner may authorize towards research and improvement of present controls whereby the menace of pink bollworm can be eliminated.

The Seven Dollars and Fifty Cents (\$7.50) per bale surety as required herein shall be paid to a representative or authorized agent of the designated depository at the gin where the cotton is ginned and at the time of ginning of each bale. Such agent or representative of the depository shall be required by the depository to transfer the receipts to the depository or escrow agent on or before Saturday of each week.

The designated escrow agent is hereby authorized and instructed upon receipt of such funds to deduct as escrow fees not to exceed one per cent (1%) of the deposits received hereunder, the amount of such deduction to be determined under the bid system described in Section 4 below upon receipt of certificate from the Commissioner of Agriculture or his duly authorized agent, such certificate not to be issued until thirty days after the stalk destruction deadline, as ordered by the Commissioner, so as to assure the Commissioner of Agriculture that a satisfactory destruction of stalks has been completed. The depository or escrow agent shall refund to the grower-depositor as provided above.

#### Selection of Depository

Sec. 4. The escrow agent, as herein provided for, shall be any institution organized under the laws of this State or of the United States to conduct a depository or fiduciary business. Such depository shall be authorized to enter into a contract with the Commissioner of Agriculture for the benefit of cotton growers electing to be governed under the provisions of this Act, said contract to be in terms substantially equal to those set out below.

Any institution authorized under the laws of this State or of the United States to do a depository or fiduciary business and which institution is domiciled in the district where the cotton growers have elected to be governed under this Act and such institution desiring to be designated as depository or escrow agent shall make and deliver to the Commissioner of Agriculture an application applying for such funds. Said application shall state the amount of paid-up capital<sup>1</sup> stock and permanent surplus of such institution along with a statement showing its financial condition as of the date of the application. The application shall also be accompanied by a sealed bid of the applying institution which shall reveal the minimum escrow fee not to exceed one per cent (1%) of the total deposits received, for which fee the applying institution agrees to perform such service as required of the depository or escrow agent under this Act. Such applications and bids shall be submitted to the Commissioner of Agriculture before September 15th of each year.

Prior to November 1st of each year the Commissioner shall select and shall publish his selection of the depository or escrow agent for the various



districts which have elected to be governed by this Act. Such selection shall be based on the lowest bid. Where two or more applying institutions have submitted identical low bids the Commissioner shall select the applicant who offers the most favorable terms and conditions for the handling of such funds in addition to the escrow fee stated in the bid. Where all terms, conditions and fees of two or more low bidders are equal the Commissioner shall select that institution which is located nearest the geographic center of the district. Any depository selected under the provisions of this Act shall be required to enter into an agreement with the Commissioner of Agriculture on terms substantially as follows:

The depository or escrow agent and the Texas State Commissioner of Agriculture witnesseth:

“(1) Depository agrees to act as escrow agent to receive deposits in escrow accounts and disburse such moneys as cotton growers deposit as a guaranty of good faith that they will destroy all cotton stalks on or before \_\_\_\_\_ date. Said deposits are to be made pursuant to certain contracts between such cotton growers and the Commissioner of Agriculture providing, among other things, for escrow deposits of Seven Dollars and Fifty Cents (\$7.50) per bale of cotton deposited with an escrow agent. Said contracts are particularly explained on copy of application for permit to grow cotton, the copy of permit card, and the copy of grower’s information sheet attached hereto and made a part hereof for all purposes.

“(2) It is agreed that depository is to have and retain a withholding charge of not more than one per cent (1%) of all moneys deposited as is hereinabove described, and such fees to be exactly \_\_\_\_\_% of this fund.

“(3) Depository agrees to pay over to the Commissioner of Agriculture the profits derived from this agreement for cotton research and improvement and pink bollworm eradication when such profits shall exceed and when such funds accumulated herein shall exceed the agreed escrow fee of not more than one per cent (1%) described in Section 2 above.

“(4) Depository agrees to make all arrangements with cotton growers for deposit of said moneys, and further agrees to arrange and give authority for clearing of said escrow accounts by presentation of grower’s affidavits (mentioned in said information sheet) properly stamped and passed for payment.

“(5) Depository agrees to pay for such printing expenses of second party as may become necessary by reason of said escrow accounts.

“(6) Depository agrees to pay reasonable expenses and salaries of necessary personnel to be employed by second party, commencing on the effective date of this agreement. Traveling expenses are to be based as follows: Mileage at Seven Cents (7¢) per mile and meals for inspectors when they are away from headquarters on inspection duties.

“(7) Depository agrees to assume and pay the costs of the bonds and statutory fees for appointment and commissioning of certain notaries public acting for and in behalf of second party, it being agreed and understood that said notaries public are to be not more than eight (8) in number.

“(8) Depository agrees to keep such records as is deemed necessary by the Commissioner of Agriculture or the State Auditor.

“(9) Depository agrees to bond all employees charged with handling funds under this agreement, such bonds to be prescribed as to character and amount as is deemed necessary by the Commissioner of Agriculture for the public’s protection.

"(10) This agreement is executed in duplicate and is to terminate on the written notice of either party; approved and entered into this \_\_\_\_\_ day of \_\_\_\_\_, signed by (1) the first party depository, and (2) the Texas Commissioner of Agriculture."

The Commissioner of Agriculture is hereby authorized to supplement by such rules and regulations by him deemed necessary to supplement the program described herein so long as such rules and regulations are consistent with the provisions of this Act. The Commissioner of Agriculture should by proper notice and publication set out any further requirements for the selection of a depository as he may deem necessary. Acts 1955, 54th Leg., p. 541, ch. 170.

<sup>1</sup> So in enrolled bill. Probably should be "capital".

Emergency. Effective May 7, 1955.

Section 5 of the Act of 1955 was a severability clause.

## CHAPTER FOUR—AGRICULTURAL SEEDS

### Art. 93b. Texas Seed Law

#### Definitions

Sec. 2. When used in this Act.

(a) The term "person" shall include a partnership, corporation, company, society, vendor, or association.

(b) The term "agricultural seeds" shall include the seeds of grass, forage, cereal, and fiber crops and any other kind of seeds commonly recognized within this State as agricultural or field seeds, and mixtures of such seeds.

(c) The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this State.

(d) The term "weed seeds" shall include the seeds of all plants generally recognized as weeds within this State, and shall include noxious weed seeds.

(e) Hybrid Seed Corn. The term "hybrid seed corn" means the first generation seed of a cross produced by controlling the pollination, and by combining two, three, or four inbred lines, or by combining one inbred line or a single cross with an open-pollinated variety. Hybrid designations shall be treated as variety names.

(f) Noxious weed seeds shall be divided into two classes, "primary noxious weed seeds" and "secondary noxious weed seeds" which are defined in (1) and (2) of this subsection. Provided, that the Commissioner of Agriculture may add to or subtract from the list of seeds and may prohibit or establish the rate of occurrence allowed in Section 3(a) (5) of this Act.

(1) "Primary noxious weed seeds" are the seeds of weeds such as not only reproduce by seed, but also may spread by underground roots or stems, and which, when established, are highly destructive and difficult to control in this State by ordinary good cultural practice.

"Primary noxious weed seeds" in this State are the seeds of Johnson grass (*Sorghum halepense*), Field bindweed (*Convolvulus arvensis*), Dodder (*Cuscuta* spp.), Curled Dock (*Rumex crispus*), Nutgrass (*Cyperus ro-*

tundus), Blueweed (*Helianthus ciliaris*), and Canada Thistle (*Carduus arvensis*).

(2) "Secondary noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens of this State, but can be controlled by good cultural practice.

"Secondary noxious weed seeds" in this State are the seeds of Russian thistle (*salsola kali*), Bermuda grass (*Cynodon dactylon*), Wild oats (*Avena fatua*), Cheat (*Bromus secalinus*), Wild carrot (*Daucus carota*), Buckhorn (*Plantago lanceolata*), Bracted plantain (*Plantago aristata*), Purple (or silverleaf) nightshade (*Solanum elaeagnifolium*), Wild onion and/or garlic (*Allium vineale*), Darnel (*Lolium temulentum*), Wild mustard (*Brassica kaber*), Goat grass (*Aegilops* spp.), Puncturevine 'goat head' (*Tribulus terrestris*), Downy brome grass (*Bromus tectorum*), Cocklebur (*Xanthium* spp.), and Wild radish (*Raphanus raphanistrum*).

(g) The term "labeling" includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

(h) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this Act. As amended Acts 1955, 54th Leg., p. 1144, ch. 431, § 1.

#### Label Requirements

Sec. 3. Each container of agricultural or vegetable seed which is sold, offered for sale, or exposed for sale, within this State for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(a) For Agricultural Seeds.

(1) Commonly accepted name of (a) kind, or (b) kind and variety, or (c) kind and type, of each agricultural seed component in excess of five per cent (5%) of the whole, and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

(2) Lot number or other lot identification.

(3) Origin, if known, of alfalfa, red clover, and field corn. If the origin is unknown, that fact shall be stated.

(4) Percentage by weight of all weed seeds.

(5) Primary and secondary noxious weed seeds will be shown at rate per pound.

(A) Nutgrass and Field Bindweed are prohibited from sale if present.

(B) Dodder, Curled Dock, Blueweed, Canada Thistle, and Johnson grass in excess of 100 weed seed per pound are prohibited from sale, except that crops containing Johnson Grass in excess of 100 weed seed per pound may be labeled "Pasture Mixture" and sold.

(C) Secondary noxious weed seed in excess of 200 weed seed per pound are prohibited from sale.

(D) Primary and secondary noxious weed seed in any combination in excess of 200 per pound are prohibited from sale.

(E) All determinations of noxious weed seeds are subject to tolerances and methods of determination prescribed in the rules and regulations under this Act.

(6) Percentage by weight of agricultural seeds other than those required to be named on the label.

(7) Percentage by weight of inert matter.

(8) For each named agricultural seed (a) percentage of germination, exclusive of hard seed, (b) percentage of hard seed, if present, and (c) the calendar month and year the test was completed to determine such percentages. Following (a) and (b) the additional statement "total germination and hard seed" may be stated as such, if desired.

(9) Name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this State.

(10) All fescue, certified or noncertified, must have shown on the tag that the seed contains rye grass, if any, and the amount given in percentage. If no rye grass is found in the sample, the tag shall state "None Found".

(b) For Vegetable Seeds.

(1) Name of kind and variety of seed.

(2) For seeds which germinate less than the standard last established by the Commissioner of Agriculture under this Act.

(A) Percentage of germination, exclusive of hard seed;

(B) Percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine such percentages;

(D) The words "below standard" in not less than eight-point type; and

(3) Name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within the State. As amended Acts 1953, 53rd Leg., p. 744, ch. 292, § 1; Acts 1955, 54th Leg., p. 1144, ch. 431, § 2.

### Prohibitions

Sec. 4. (a) It shall be unlawful for any person to sell, offer for sale, or expose for sale any agricultural or vegetable seed within this State:

(1) Unless the test to determine the percentage of germination required by Section 3 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

(2) Not labeled in accordance with the provisions of this Act, or having a false or misleading labeling.

(3) Pertaining to which there has been a false or misleading advertisement.

(4) Any agricultural seeds containing primary noxious weed seeds subject to tolerances and methods of determination prescribed in the rules and regulations under this Act.

(b) It shall be unlawful for any person within this State:

(1) To detach, alter, deface, or destroy any label provided for in this Act or the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purposes of this Act.

(2) To disseminate any false or misleading advertisement concerning agricultural or vegetable seed in any manner or by any means.

(3) To hinder or obstruct in any way any authorized person in the performance of his duties under this Act.

(4) To fail to comply with a "stop-sale" order. As amended Acts 1955, 54th Leg., p. 1144, ch. 431, § 3.

Emergency. Effective June 14, 1955.

Section 4 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

Section 4 of the amendatory Act of 1953 repealed conflicting laws or parts of laws to the extent of the conflict. Section 5 provided that partial unconstitutionality of the Act should not invalidate the remainder.

## **CHAPTER SIX—FRUITS AND VEGETABLES**

**Art.**

**118c—3.** Sweet potatoes; inspection and classification; improvement of marketing opportunities [New].

**Art. 117.** Inspection of fruits other than citrus and vegetables other than potatoes

**Sec. 3.** The Commissioner of Agriculture is directed and empowered to enter into cooperative agreements with any Texas firm, corporation or association organized for that purpose (which firms, corporations and associations, and all inspectors shall be licensed in accordance with standards and rules prescribed by the Commissioner of Agriculture) and/or the United States Department of Agriculture, for the certification of grades of fruits other than citrus and/or vegetables other than potatoes, and he may adopt the United States Standards for all fruits and/or vegetables grown in the State of Texas in addition to the grades specified in this Act, or he may promulgate additional grades, grading rules, and regulations for fruits other than citrus, and/or vegetables other than potatoes. As amended Acts 1955, 54th Leg., p. 880, ch. 335, § 1.

Emergency. Effective May 24, 1955.

**Art. 118a.** Inspection and classification of citrus fruit

### **Establish regulations and grades**

**Sec. 3.** The Commissioner of Agriculture of the State of Texas is hereby empowered and directed to enter into Co-operative Agreements with any Texas firm, corporation or association organized for that purpose (which firms, corporations, and associations, and all inspectors shall be licensed in accordance with standards and rules prescribed by the Commissioner of Agriculture) and/or the United States Department of Agriculture, providing for the inspection of citrus fruits and under the terms of said agreements the Commissioner of Agriculture shall adopt the official United States Standards for grapefruit and oranges as applied to the State of Texas. As amended Acts 1955, 54th Leg., p. 567, ch. 184, § 1.

### **Unlawful shipments; inspection; certificate of inspection**

**Sec. 9.** Whenever grades or classifications become effective under this Act,<sup>1</sup> it shall be unlawful for any person, firm, corporation, association or other organization to ship any citrus fruits in bulk, to which such grades or classifications are applicable (except as provided in Section 15 hereof). Citrus fruits shall be inspected by a duly authorized inspector who shall issue a certificate of inspection showing the grade, or other classification thereof, and such fruit shall be packed in closed containers approved by the Commissioner of Agriculture and fruit in each container

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

must be uniformly sized. Every grower of citrus fruit in this State may dispose of his own crop of citrus fruit without complying with, or being subject to, the provisions of this Act. As amended Acts 1955, 54th Leg., p. 842, ch. 309, § 1.

<sup>1</sup> This article and Vernon's Ann.P.C. art. 719b.

Emergency. Effective May 24, 1955.

Section 2 of the amendatory Act of 1955 was a severability clause.

**Law self-financing; agreements regarding contributions from dealers and shippers for inspection**

Sec. 12. It is provided that this law shall be self-financing, and that the Legislature shall make no appropriation for the enforcement thereof; the Commissioner of Agriculture is hereby authorized and empowered to enter into agreements with any Texas firm, corporation or association organized for that purpose (which firms, corporations, and associations, and all inspectors shall be licensed in accordance with standards and rules prescribed by the Commissioner of Agriculture) and/or the United States Department of Agriculture, relative to the amounts of contributions to be received from dealers and shippers for inspection and grading services under the terms and provisions of this Act; it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided under the Co-operative Agreement, provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspecting and grading citrus fruits under the provisions and requirements of this Act and the Co-operative Agreement and the issuance of certificates with relation thereto; the amount of contribution for and in the case of each different commodity may be different, and in the case of each different service rendered on each such commodity, but shall in no case exceed the actual cost of the service for inspection and grading service performed in a regular packing house operating under a duly issued permit. As amended Acts 1953, 53rd Leg., p. 53, ch. 43, § 1; Acts 1955, 54th Leg., p. 567, ch. 184, § 1.

Emergency. Effective May 9, 1955.

**Art. 118b. Citrus fruit growers act**

**Grapefruit to show origin**

Sec. 24. All grapefruit transported, marketed or sold in Texas in its original perishable form in accordance with this Act, shall be branded or marked thereon with the name of the State or Foreign Country where produced, in letters at least three-sixteenths ( $\frac{3}{16}$ ) inches in height, but this provision shall be deemed to have been complied with if not more than twenty-five per cent (25%) of any such fruit is improperly or partially marked or branded. As amended Acts 1955, 54th Leg., p. 879, ch. 334, § 1.

**Individual trade marks or trade names; copyrighted trade marks**

Sec. 24A. Provided further, that when individual trade names or copyrighted trade marks are employed which sufficiently identify the state, or country, if foreign, of origin, compliance with this Section shall be deemed effected. Acts 1955, 54th Leg., p. 879, ch. 334, § 1.

Emergency. Effective May 24, 1955.

**Art. 118c—1. Tomato Standardization and Inspection Act****Definitions**

Sec. 2. For the purposes of this Act the following terms, when used in this Act, or the rules, regulations and orders made pursuant thereto, shall be construed, respectively, to mean:

“Commissioner”: The Commissioner of Agriculture of the State of Texas.

“Co-operative Agreement”: That certain agreement in regard to shipping point inspection service, effective October 1, 1931, made by and between the Texas Department of Agriculture and the Bureau of Agricultural Economics, United States Department of Agriculture, and all amendments thereto, or any additional and/or supplementary agreements hereafter made by and between the Texas Department of Agriculture and any Texas firm, corporation or association organized for that purpose (which firms, corporations, and associations, and all inspectors shall be licensed in accordance with standards and rules prescribed by the Commissioner of Agriculture) and/or the Bureau of Agricultural Economics of the United States Department of Agriculture, said agreements being duly authorized by Public Statute Number 717, of the Seventy-first Congress.<sup>1</sup>

“Inspector,” “Agent,” or “Employee”: Any employee of the Department of Agriculture of the State of Texas and/or the Department of Agriculture of the United States of America and/or of the Inspection Service of the Federal Bureau of Agricultural Economics duly authorized by either of the agencies aforesaid to inspect, grade, or certify for shipment, tomatoes within the State of Texas.

“Ship”: The transportation of tomatoes by rail, water, automobile, truck, trailer, or any other vehicle.

“Grade,” “Standard,” “Classification”: The grades, standards, and classifications as to size, pack and marking of tomatoes adopted and promulgated by the Department of Agriculture of the United States of America and such other and different grades, standards, and classifications as the Commissioner may adopt which are not directly in conflict therewith.

“Co-operative Financing Plan”: That system of collecting and financing the expenses and requirements of inspection set out in and made a part of the Co-operative Agreement; it being specifically provided that this Act shall be self-financing and that no appropriation shall be made by the Legislature of the State of Texas for the enforcement thereof.

“Dealer” and “Shipper”: Any person, firm, partnership, corporation or association of persons packing and/or delivering for transportation to any transporting medium tomatoes in commercial quantities as the term “commercial quantities” is hereinafter defined.

“Commercial Quantities”: More than five hundred (500) pounds of tomatoes packed and/or shipped and/or sold for packing and/or shipment.

“Notice”: Any notice provided for in this Act to be given to any person, firm or partnership, corporation, or association of persons shall be in writing, unless hereinafter otherwise specifically provided.

“Person”: When used herein, shall be construed to mean any individual, firm, partnership, corporation, or association of persons.

“Inspection Certificate”: The joint Federal-State Inspection Certificate, as provided in Section “C” of paragraph 9, of the Cooperative Agreement.

“Deceptive Pack”: Any container or subcontainer of tomatoes used within this State having imprinted, inscribed or otherwise placed thereon

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

any marking designating any grade, standard, count, arrangement, and/or pack which does not truly represent the grade, standard and count, arrangement, and/or pack therein contained. As amended Acts 1955, 54th Leg., p. 905, ch. 356, § 1.

1 46 Stat. 1242.

Emergency. Effective May 25, 1955.

#### Inspection contributions

Sec. 10. It is provided that this law shall be self-financing and that the Legislature shall make no appropriation for the enforcement thereof; the Commissioner of Agriculture is hereby authorized and empowered to enter into agreements with any Texas firm, corporation or association organized for that purpose (which firms, corporations, and associations, and all inspectors shall be licensed in accordance with standards and rules prescribed by the Commissioner of Agriculture) and/or the United States Department of Agriculture relative to the amounts of contributions to be received from dealers and shippers for inspecting and grading services under the terms and provisions of this Act; it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided under the Co-operative Agreement, provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspection and grading tomatoes under the Co-operative Agreement; the amount of contribution for each different service of an inspection and grading rendered may be different, but in no event shall the contribution for inspection of tomatoes exceed the actual cost of the service for inspection or grading service rendered in a regular packing house, or at a regular loading point, it is specifically provided that any regular inspection or grading service made or performed at a point distant from a packing shed or loading point, shall be for an amount sufficient to cover the actual cost of such inspection and/or grading service; all contributions for inspection or grading services rendered shall be paid and delivered to the inspector by the person packing or making the shipment prior to the delivery of the certificate of inspection; whenever any person so packing and/or shipping tomatoes fails or refuses to pay the contribution prescribed for the services rendered, the inspector shall withhold delivery of the inspection certificate until the prescribed contribution is paid; no inspector, agent or employee shall charge or collect a greater amount than the prescribed contribution for the services rendered, or an amount sufficient to cover the actual cost of such inspection and/or grading service, whichever is the lesser; and all moneys contributed for services of inspection and/or grading under the terms and provisions of this Act shall be handled and disbursed under the terms of the Co-operative Agreement; the State Auditor of any State in which this Act is operative shall have access to the financial records, books, vouchers and reports of the chief inspector at all times, and shall have the authority to make an audit of such books, when, in his judgment, an audit shall be deemed wise, and, upon written request of the Commissioner, said State Auditor shall audit and make a report in writing to the Commissioner regarding the fiscal affairs of the contribution account. As amended Acts 1953, 53rd Leg., p. 69, ch. 51, § 1; Acts 1955, 54th Leg., p. 905, ch. 356, § 1.

Emergency. Effective May 25, 1955.



**Art. 118c—2. Cabbage Standardization and Inspection Act****Definitions**

Sec. 2. For the purposes of this Act the following terms when used in this Act, or the rules, regulations and orders made pursuant thereto, shall be construed, respectively, to mean:

“Commissioner”: The Commissioner of Agriculture of the State of Texas.

“Co-operative Agreement”: That certain agreement in regard to shipping point inspection service, effective October 1, 1931, made by and between the Texas Department of Agriculture and the United States Department of Agriculture, and all amendments thereto, or any additional and/or supplementary agreements hereafter made by and between the Texas Department of Agriculture, any Texas firm, corporation or association organized for that purpose (which firms, corporations and associations, and all inspectors shall be licensed in accordance with standards and rules prescribed by the Commissioner of Agriculture) and/or the United States Department of Agriculture; said agreements being duly authorized by Public Statute Number 717 of the Seventy-first Congress.<sup>1</sup>

“Inspector,” “Agent,” or “Employee”: Any employee of the Department of Agriculture of the State of Texas and/or the Department of Agriculture of the United States of America duly authorized by either of the agencies aforesaid to inspect, grade or certify for shipment cabbage within the State of Texas.

“Ship”: The transportation of cabbage by rail, water, automobile, truck, trailer, or any other vehicle.

“Grade,” “Standard,” “Classification”: The grades, standards and classifications as to size, pack and marking of cabbage adopted and promulgated by the Department of Agriculture of the United States of America and such other and different grades, standards, and classification as the Commissioner may adopt which are not directly in conflict therewith.

“Co-operative Financing Plan”: That system of collecting and financing the expenses and requirements of inspection set out in and made a part of the Co-operative Agreement; it being specifically provided that this Act shall be self-financing and that no appropriation shall be made by the Legislature of the State of Texas for the enforcement thereof.

“Dealer” and “Shipper”: Any person, firm, partnership, corporation or association of persons packing and/or delivering for transportation to any transporting medium cabbage in commercial quantities, as the term “Commercial Quantities” is hereinafter defined.

“Commercial Quantities”: More than one thousand (1,000) pounds of cabbage packed and/or shipped and/or sold for packing and/or shipment.

“Notice”: Any notice provided for in this Act to be given to any person, firm, partnership, corporation, or association of persons shall be in writing unless otherwise specifically provided.

“Person”: When used herein, shall be construed to mean any individual, firm, partnership, corporation or association of persons.

“Inspection Certificate”: The joint Federal-State Inspection Certificate as provided in Section “c” of paragraph 9, of the Co-operative Agreement.

“Deceptive Pack”: Any container or subcontainer of cabbage used within this State having imprinted, inscribed or otherwise placed thereon any marking designating any grade, standard, count, arrangement

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

and/or pack which does not truly represent the grade, standard, count, arrangement, and/or pack therein contained. As amended Acts 1955, 54th Leg., p. 568, ch. 185, § 1.

1 46 Stat. 1242.

Emergency. Effective May 9, 1955.

#### **Contributions for inspection and grading**

Sec. 10. It is provided that this law shall be self-financing and that the Legislature shall make no appropriation for the enforcement thereof; the Commissioner is hereby authorized and empowered to enter into agreements with any Texas firm, corporation, or association organized for that purpose (which firms, corporations and associations, and all inspectors shall be licensed in accordance with standards and rules prescribed by the Commissioner of Agriculture) and/or the United States Department of Agriculture relative to the amounts of contribution to be received from dealers and shippers for inspecting and grading services under the terms and provisions of this Act; it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided under the Co-operative Agreement, provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspection and grading cabbage under the Co-operative Agreement; the amount of contribution for each different service of any inspection and grading rendered may be different, but in no event shall the contribution for inspection of cabbage exceed the actual cost of the service for inspection rendered in a regular packing house, or at a regular loading point, it is specifically provided that any regular inspection or grading service made or performed at a point distant from a packing shed or loading point, shall be for an amount sufficient to cover the actual cost of such inspection and/or grading service; all contributions for inspection or grading services rendered shall be paid and delivered to the inspector by the person packing or making the shipment prior to the delivery of the certificate of inspection; whenever any person so packing and/or shipping cabbage fails or refuses to pay the contribution prescribed for the services rendered, the inspector shall withhold delivery of the inspection certificate until the prescribed contribution is paid; no inspector, agent, or employee shall charge or collect a greater sum than the prescribed contribution for the services rendered, or an amount sufficient to cover the actual cost of such inspection and/or grading service, whichever is the lesser; all moneys contributed for services of inspection and/or grading under the terms and provisions of this Act shall be handled and disbursed under the terms of the Co-operative Agreement; the State Auditor where this Act is operative, shall have access to the financial records, books, vouchers and reports of the State Administrative Officer at all times, and shall have the authority to make an audit of such books, when in his judgment, an audit shall be deemed wise, and upon written request of the Commissioner, said State Auditor shall audit and make his report in writing to the Commissioner regarding the fiscal affairs of the contribution account. As amended Acts 1953, 53rd Leg., p. 70, ch. 52, § 1; Acts 1955, 54th Leg., p. 568, ch. 185, § 1.

Emergency. Effective May 9, 1955.

**Art. 118c—3. Sweet potatoes; inspection and classification; improvement of marketing opportunities**

**Duties of Commissioner of Agriculture as to inspection, grading, classification, etc.**

Section 1. The inspection in the State of Texas of all sweet potatoes, and the grades and classifications thereof, shall be under the direction of the Commissioner of Agriculture of the State of Texas, hereinafter known as the Commissioner, who is hereby directed to:

(a) Adopt standards for the grading, classification, and packing of sweet potatoes;

(b) Issue and promulgate rules and regulations relative to proper marking of sweet potato containers, the issuance of certified tags of inspection, and the tagging of the vehicle of transportation;

(c) Issue and promulgate rules and regulations setting forth the procedures to be followed in administering the inspection and classification services provided by this Act;

(d) Direct inspectors of the State Department of Agriculture to perform the said inspection and classification services;

(e) Fix and collect inspection fees which shall be paid by the person requesting the inspection. Said fees shall be commensurate with the cost of maintaining said inspection and classification services.

**Inspection required; classification**

Sec. 2. Upon the effective date of this Act, no person shall thereafter sell, offer for sale, or consign for sale, or transport any sweet potatoes in commercial quantities unless the said sweet potatoes have been inspected, classified and graded in accordance with the provisions of this Act. "Commercial quantities" shall be deemed to be any quantity in excess of twenty-five (25) bushels. Sweet potatoes entering into Texas from out of State shall be subject to the provisions of this Act.

**Resident growers**

Sec. 3. Every grower of sweet potatoes in this State may dispose of his own crop of sweet potatoes without complying with, or being subject to, the provisions of this Act.

**Fees collected; disposition**

Sec. 4. Fees collected by the Commissioner in the administration of this Act shall be deposited into the Special Department of Agriculture Fund. The entire amount of fees so collected and deposited, or as much thereof as may be necessary, is hereby appropriated to the State Department of Agriculture for the administration of this Act. This appropriation shall not affect any other appropriations heretofore or hereafter made to the State Department of Agriculture, but shall be in addition thereto for the biennium ending August 31, 1957.

**Inspection certificate required**

Sec. 5. It shall be unlawful for any shipper, forwarding company, private, contract or common carrier to ship, transport or accept for shipment any sweet potatoes within the meaning of this Act, unless accompanied by an inspection certificate issued by the State Department of Agriculture, and any such shipper, forwarding company, contract or common carrier may reserve the right in any receipt, bill of lading or other

writing given to the consignor thereof, to reject for shipment and to return to such consignor or hold at the expense and risk of the latter, all sweet potatoes which upon inspection are found to be delivered for shipment in violation of any of the provisions of this Act.

#### **Violation a misdemeanor; penalty**

Sec. 6. Any person, firm, corporation, association or other organization which violates any provisions of this Act or willfully interferes with the Commissioner, or his designated inspectors, in the performances or on account of the execution of his or their duties as provided by this Act, shall be deemed guilty of a misdemeanor. Any person convicted under this Act shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

#### **Partial invalidity**

Sec. 7. If any section, sub-section, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, sub-section, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, or phrases be declared unconstitutional. Acts 1955, 54th Leg., p. 1170, ch. 451.

Effective 90 days after June 7, 1955, date of adjournment.

#### **Title of Act:**

An Act relating to improvement of the marketing opportunities of sweet potatoes grown in Texas and to the protec-

tion of consumers of sweet potatoes by a prompt and efficient program for inspection and classification of sweet potatoes at reasonable cost; providing a savings clause; and declaring an emergency. Acts 1955, 54th Leg., p. 1170, ch. 451.

### **CHAPTER SEVEN A—PLANT DISEASES AND PESTS**

**Art. 135b—1. Insecticides and fungicides; labeling; coloring; registration; analysis; forfeiture; fraud in sale; exemptions**

#### **Inspection or sampling**

Sec. 7. The Commissioner of Agriculture in person or by duly authorized representative shall have the power to enter into any building or place owned, controlled or operated by a registrant or dealer where, from probable cause, it reasonably appears that said building or place contains agricultural insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of agricultural insecticides or fungicides found within the State, and said samples shall be sealed and transmitted directly to the State Chemist at the Texas Agricultural and Mechanical College System at College Station. It shall be the duty of the State Chemist to make an examination and analysis of such samples or to have the same made by a duly authorized representative under his direction. If necessary, however, the State Chemist may contract with any approved commercial laboratory to make an examination and analysis of such samples and to make reports thereon to him. The State Chemist shall not disclose to such commercial laboratory any information which might reveal the identity of the manufacturer or registrant of the product or of the dealer from whose possession the sample was taken. All of such analyses shall be made by the methods of the Association of Official Agricultural Chemists of North America, if the

necessary method has been adopted, or in the absence of such method, the State Chemist shall be authorized to select a method. As amended Acts 1955, 54th Leg., p. 935, ch. 366, § 1.

**Notice of misbranding or adulteration; prosecution; annual reports**

Sec. 8. (a) If it shall appear from the examination and analysis of any of such samples that the same are misbranded or adulterated within the meaning of this Act, the State Chemist shall certify the results to the Commissioner of Agriculture, who shall cause notice thereof to be given to the manufacturer of said product, and said notice shall be accompanied by a copy of said analysis so made, together with the statement by said Commissioner as to where such samples were taken; whereupon, the Commissioner shall issue and enforce a written "Stop Sale" order to the owner, custodian, or manufacturer on such examined and analyzed lot or lots of insecticides or fungicides shown to be misbranded or adulterated. Such order shall prohibit further sale of any such insecticide or fungicide until the law has been complied with and the Commissioner has issued an order withdrawing the "Stop Sale" order. It shall be the duty of each prosecuting attorney of this State to whom the Commissioner of Agriculture shall report any violation of this Act to cause appropriate proceedings to be commenced and prosecuted in the proper courts of this State, without delay, for the enforcement of the penalties as in such case herein provided. Provided, that in respect to insecticides and fungicides which have been denied sale as provided in this section, the owner, custodian or manufacturer shall have the right to demand a portion of any sample taken for examination and analysis by the State Chemist by requesting the same in writing within thirty (30) days after receipt of the notice above provided; and provided further, that the owner, custodian or manufacturer shall have the right to appeal from such order to a court of competent jurisdiction where the insecticides or fungicides are found, praying for a judgment as to justification of said order and for the discharge of such insecticides or fungicides from the order prohibiting sale in accordance with the findings of the court.

(b) The Commissioner of Agriculture shall issue at least one report annually setting forth the analysis of agricultural insecticides and fungicides made under the provisions of this Act, the operation of this law, and such other information concerning violations of the law, or operations of this Act, or otherwise, as may be considered necessary; provided, however, that the Commissioner of Agriculture and the State Chemist shall in no event be authorized or permitted to divulge to any person any trade secrets, formulas, or practices of any person, firm, or corporation subject to this Act. As amended Acts 1955, 54th Leg., p. 935, ch. 366, § 2.

**Registration fees**

Sec. 10. (a) For the sole purpose of defraying the expenses connected with the inspection of agricultural insecticides or fungicides sold, or exposed or offered for sale, in this State, and with the making of examinations and analyses thereof, all firms, corporations, or persons engaged in the manufacture or sale of agricultural insecticides or fungicides shall, in place of a tonnage tax, pay annual registration fees to the Commissioner of Agriculture as follows: Ten Dollars (\$10) per brand for the first twenty-five (25) brands registered; Five Dollars (\$5) for each brand registered in excess of twenty-five (25), up to and including seventy-five (75) brands; and Two Dollars (\$2) for each brand registered in excess of seventy-five (75) brands; but in cases where the registration fees have been paid either by the manufacturer or the jobber, as required by this Section, then in that event nothing in this Section shall be con-

strued as applying to retail dealers selling agricultural insecticides and fungicides.

(b) All registration fees collected by the Commissioner of Agriculture under the provisions of Section 10(a) shall be transmitted to the State Treasury and credited to the Special Department of Agriculture Fund. The Commissioner of Agriculture and the Texas Agricultural and Mechanical College System shall contract, as authorized by the Interagency Cooperation Act, for reimbursement for the services performed by the State Chemist under Section 7 hereof and for the payment of costs of contracts made with commercial laboratories. Such reimbursement shall be made from the Special Department of Agriculture Fund and so much thereof as may be necessary is hereby appropriated for such purpose to the Commissioner pursuant to Acts of the 53rd Legislature, 1953, Regular Session, Chapter 65. After September 1, 1955,<sup>1</sup> the expenditures shall be as provided in the General Appropriation Act. As amended Acts 1955, 54th Leg., p. 935, ch. 366, § 3.

<sup>1</sup> Article 4386c.

#### Application of section 6

Sec. 15. Section 6 of this Act shall not be construed as applying to retail dealers selling agricultural insecticides or fungicides nor to any person, firm, corporation, partnership or association engaged in the business of the sale of insecticides as an incident to application thereof, when the manufacturer or jobber of the insecticide or insecticides so sold, offered for sale, or applied has previously registered such products as required by this Act. As amended Acts 1955, 54th Leg., p. 935, ch. 366, § 4.

Emergency. Effective May 28, 1955.

Section 5 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

### CHAPTER SEVEN B—NOXIOUS WEEDS [New]

Art.

135c. Districts for control and eradication of noxious weeds in certain counties.

**Art. 135c. Districts for control and eradication of noxious weeds in certain counties**

#### Counties to which applicable

Section 1. This Act shall apply to the following counties only: Dal- lam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchison, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Biscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cochran, Hockley, Lubbock, Crosby and Dickens.

#### Legislative findings; districts authorized

Sec. 2. The Legislature hereby finds that noxious weeds are present in the above-named counties to such a degree as to constitute a menace to agriculture and to be deleterious to the proper utilization of the soil and other natural resources of the area; and reclamation of these lands from the damaging effects of noxious weeds is hereby recognized as a public

right and duty in the interest of the conservation and development of the natural resources of the State, pursuant to Section 59 of Article XVI of the Constitution of Texas. Districts for the control and eradication of noxious weeds may be formed out of territory situated in the above-named counties in the manner hereinafter prescribed.

#### **Definitions**

**Sec. 3.** As used in this Act, unless the context otherwise requires:

(a) "Noxious weed" means any weed or plant which at the time is defined as a noxious weed by any Statute of this State or which has been declared a noxious weed by the Commissioner of Agriculture of the State of Texas by authority of the Texas Seed Law or any other law of this State.

(b) "Landowner" means any natural person who holds title to lands lying within a district organized under this Act, who has attained the age of twenty-one (21) years, and is a resident of a county, all or any part of which is included in such district.

(c) "Land Occupier" means any person, firm, or corporation holding title to or being in possession of any lands lying within a district organized under the provisions of this Act, whether as owner, lessee, renter, tenant or otherwise.

(d) "Resident property taxpaying voter" means a qualified voter residing within the district who owns taxable property therein and who has duly rendered same to the county tax assessor for taxation.

(e) "District" means a noxious weed control district organized under this Act.

#### **Designation of districts; territory included**

**Sec. 4.** All districts organized under the provisions of this Act shall be known and designated as Noxious Weed Control Districts. Such districts may include the area of any county or counties, or any portion thereof, including towns, villages, or municipal corporations or portions thereof; except that no district shall contain less than thirty-two thousand (32,000) acres nor consist of territory in more than five (5) counties. A district may include any political subdivision of the State or a defined district, or a part or parts of a political subdivision or defined district, but no land shall be included in more than one (1) noxious weed control district. The land composing the district need not be in one (1) body, but may consist of separate bodies of land separated by land not embraced in the district. No district provided for in this Act shall embrace territory situated in more than one county except by a majority vote of the property taxpaying voters residing within the territory in each county sought to be embraced within the district.

#### **Petition for organization of district; signatures**

**Sec. 5.** Petition for the organization of a district shall be signed by a majority of the landowners residing within the proposed district, as shown by the county tax rolls, but if the number of landowners is more than fifty (50), the petition shall be sufficient if it is signed by fifty (50) landowners. The petition may be signed and filed in two (2) or more copies.

#### **Presentation of petition; money deposit to accompany**

**Sec. 6.** The petition shall designate the name of the districts and the area and boundaries thereof. If the proposed district lies wholly within

one (1) county, the petition shall be presented to the Commissioners Court of the county; and if the proposed district lies in more than one (1) county, the petition shall be presented to the Commissioners Court of the county in which the largest area lies (hereinafter sometimes referred to as the Commissioners Court of jurisdiction).

The petition shall be accompanied by Five Hundred Dollars (\$500) in cash, which shall be deposited with the county clerk. If the petition is refused or if the result of an election for the creation of the district is against its establishment, the clerk shall pay out of the deposit, upon vouchers signed by the county judge, all costs and expenses pertaining to the proposed district up to and including the election, and shall return the balance, if any, to the petitioners, their agent or attorney. If the result of the election is in favor of the establishment of the district, the clerk shall pay all costs and expenses up to and including the election, as above provided, and shall deliver the balance, if any, to the chairman of the Board of Directors of the District within thirty (30) days after his election; and the Board of Directors shall repay the petitioners the full amount of the deposit out of the first moneys collected by the district.

#### **Order and notice for hearing**

Sec. 7. When a petition is filed for the organization of a district the Commissioners Court shall make an order setting the date for the hearing thereon. The petition may be considered at a regular or special session of the court. The county clerk shall issue a notice of such hearing by causing it to be published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper of general circulation, published within the county, in each county in which the proposed district lies, or if there is no such newspaper, by causing the notice to be posted for at least two (2) weeks at four (4) public places within the proposed district in each county in which the notice is not published in a newspaper. The notice of hearing shall contain a statement of the nature and purpose thereof, the date and time and place of hearing, and a description of the boundaries of the district, but the boundaries may be described in general terms without the necessity of setting out the full legal description by metes and bounds.

#### **Contest of creation of district; adjournment of hearing**

Sec. 8. Upon the day set for hearing, any person whose land is included in or would be affected by the creation of such district may appear and contest the creation thereof and may offer testimony to show that such district is or is not necessary, or would or would not be a benefit to the land included thereon. Such hearing may be adjourned from day to day.

#### **Findings; effect**

Sec. 9. The Commissioners Court shall grant the petition if, after hearing, it finds that the creation of the district would be a public benefit and that a substantial portion of the lands within the proposed district would be benefited by its creation. If the court finds that any lands included within the proposed district would not be benefited by its creation, it shall exclude such lands and shall re-define the boundaries of the district accordingly. If the court should find that the proposed district would not be a public benefit or a benefit to a substantial portion of the land to be included therein, it shall refuse the petition.



**Election, order for; notice**

Sec. 10. After the hearing upon the petition, if the court finds in favor of the petition according to the boundaries as set out in the petition or as changed or modified by the court, the Commissioners Court of jurisdiction shall order an election for the purpose of submitting to the qualified property taxpaying voters residing in the district whether or not the district shall be created. Notice of the election shall be given by the clerk of the court by posting notices thereof in four (4) public places in the proposed district, and one (1) at the courthouse door of the county in which the district is located, and if the district is composed of more than one (1) county then there shall be posted a copy of the notice at the door of the courthouse of each county in which any portion of the proposed district is located, and at four (4) public places within each county in which any portion of the proposed district is located, and within the boundaries of the district. The notices shall be posted for thirty (30) days prior to the date set for the election. The notices shall state the purpose of the election and the time and places of holding the same, and shall contain a description of the boundaries of the proposed district.

**Ballots**

Sec. 11. The ballots for such election shall have printed thereon the following propositions: "For creation of the district and uniform assessment of benefits not to exceed Three Cents (3¢) per acre" and "Against creation of the district."

**Conduct of election; persons entitled to vote; voting precincts; election officers**

Sec. 12. The manner of conducting the election shall be governed by the election laws of the State, except as herein otherwise provided. None but resident property taxpaying voters of the proposed district shall be entitled to vote at the election. The Commissioners Court shall create and define, by an order of the court, the voting precincts in the proposed district, and shall name a polling place or places within such precincts, taking into consideration the convenience of the voters in the proposed district, and shall also select and appoint the judges and other necessary officers of the election.

**Returns of election; canvass of votes; order establishing district**

Sec. 13. Immediately after the election, the officers holding the same shall make returns of the result thereof to the Commissioners Court of jurisdiction, which shall canvass the vote and return and enter an order declaring the results of the election. If it is found that a majority of votes cast in each county at the election are in favor of the creation of the district, the Commissioners Court shall enter an order declaring the establishment of the district. If the proposed district embraces more than one (1) county, the Commissioners Court shall declare the district established only in the territory included in each county in which the majority of the votes cast were in favor of its creation. A copy of the order shall be transmitted to the county clerk of each county in which a portion of the district lies, and shall be filed by him as a public record.

**Board of directors; chairman; vacancy**

Sec. 14. The district shall be governed by a Board of Directors composed of five (5) members, each of whom shall be a landowner within the

district. The first Board of Directors shall be appointed by the Commissioners Court of jurisdiction. If the district comprises more than one county or parts of more than one county, one (1) member shall be appointed from each county and the remaining members shall be appointed from the district at large. Three (3) of the directors first appointed shall serve until the first annual meeting hereinafter provided for, and two (2) shall serve until the second annual meeting, the term of each to be determined by lot. Thereafter, the directors shall serve for terms of two (2) years.

The Board shall annually elect a chairman and such other officers as it desires. A vacancy during a term shall be filled by the remaining members of the Board.

#### **Annual meeting of voters; proxies**

Sec. 15. The chairman shall call an annual meeting of the resident property taxpaying voters in the district, to be held on the fourth Saturday in April, at which meeting the resident property taxpaying voters shall elect successors for the directors whose terms are expiring that year. Each director so elected shall be a resident of the territory from which his predecessor was required to be selected. The chairman shall give written notice of the time and place of the meeting, at least ten (10) days in advance thereof, to each taxpayer in the district as shown by the records of the county tax assessor-collector in each of the counties in which any part of the district lies. Any resident property taxpaying voter may appoint a proxy to represent him at the meeting. The annual meeting shall also be devoted to such other purposes as the Board of Directors think proper.

#### **Powers of board of directors**

Sec. 16. The Board of Directors shall have the following powers:

- (a) To determine which noxious weeds shall be subject to control.
- (b) To determine the method or methods of control, either by spraying, cutting, burning, tillage, or any other appropriate method.
- (c) To prescribe the specific areas within the district on which the control measures are to be carried out.
- (d) To prescribe the period within which the control measures are to be carried out.
- (e) To take such other action as is necessary to effectuate the purposes of this Act.

#### **Rules and regulations**

Sec. 17. The Board of Directors is specifically authorized to promulgate rules and regulations requiring the cleaning of farm implements and machinery which is brought into the district or which is moved from one (1) location to another within the district, and prescribing the method of disposition of materials taken from such implements and machinery. Before such rules or regulations are put into effect, notice of their adoption shall be given by posting a copy thereof at four (4) public places in each county within the district at least ten (10) days before the effective date, and by filing a copy with the county clerk of each county within the district. A violation of the rules and regulations shall constitute a misdemeanor and shall be punishable by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred and Fifty Dollars (\$250).

**Notice to land occupiers of control measures; inspection of property;  
failure to comply with order**

Sec. 18. The chairman of the Board of Directors shall give written notice to each land occupier informing him of the control measures which are in effect on his land and all other necessary information to enable the land occupier to carry out the measures.

It shall be the duty of each land occupier to comply with the control measures prescribed by the Board of Directors. It shall be the duty of the County Commissioners Court in each county to comply with the control measures on right of ways of all public roads and other public lands within the district.

The Board of Directors or any inspector appointed by the Board shall have the right to enter upon any land within the district to determine whether control measures are necessary and to determine whether control measures prescribed by the Board are being carried out. If it is found that any land occupier is not complying with the Board's directions, the Board shall give him written notice ordering him to comply within a stated time. If he fails to comply with the order, the Board may file a suit for a mandatory injunction in the district court of the county in which the land is situated, to compel him to comply with the order. Any land occupier against whom an injunction is issued shall be liable for all costs of the suit and for a reasonable attorney's fee, to be fixed by the court.

**Levy of uniform assessments; assessor-collector; bond; report of  
chairman of board**

Sec. 19. The Board of Directors may levy an annual uniform assessment against the land within the district, not to exceed Three Cents (3¢) per acre, for the purpose of paying the expenses of the district. The Board may appoint an assessor-collector to assess and collect the assessments and may allow him as compensation an amount not to exceed five per cent (5%) of all money collected by him. He may be required to give bond in an amount to be fixed by the Board. If the Board of Directors prefers, it may contract with the county tax assessor-collector to perform these services, and the county tax assessor-collector shall be entitled to retain five per cent (5%) of all money collected by him, which shall be accounted for as other fees of office; or the Board may appoint an assessor and contract with the county assessor-collector for collection of the tax, in which event the district assessor's compensation shall be fixed at an amount not to exceed two and one-half per cent (2½%) of the total assessments and the county assessor-collector may retain two and one-half per cent (2½%) of the amounts which he collects. The moneys collected shall be deposited in the district depository selected by the Board.

The chairman of the Board of Directors shall file an annual report with the county clerk of each county in which the district lies, before the first day of April of each year, showing the total amount received and an itemized statement of the amounts expended during the preceding year, together with the balance remaining on hand.

**Compensation of directors; mileage; inspectors; clerical help**

Sec. 20. Each director shall be entitled to receive Five Dollars (\$5) per day for attending meetings of the Board, not to exceed Sixty Dollars (\$60) per year, and Ten Cents (10¢) per mile for the distance actually traveled between his place of residence and the place of the meeting.

The Board of Directors may employ one or more inspectors for the purpose of inspecting the lands within the districts to determine in what

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

areas control measures are needed and to determine whether control measures are being carried out. The inspectors shall be entitled to receive their actual and necessary traveling expenses and such compensation as the Board may fix. The Board may also employ such clerical help as may be necessary and may incur all other necessary expenses in carrying out the purposes of this Act.

**Petition to dissolve district; notice of election; conduct of election**

Sec. 21. Upon petition presented to the Board of Directors of a district, signed by fifty (50) or by a majority of the landowners residing within the district, whichever is the lesser number, asking for an election upon a proposal to dissolve the district, the Board of Directors shall order an election thereon to be held not more than ninety (90) days from the date the petition is received. Notice of the election shall be given under the hand of the chairman of the Board of Directors by publication at least twice, with an interval of at least seven (7) days between the two (2) publications, in a newspaper of general circulation, published within the county, in each county in which the district lies, or if there is no such newspaper, by posting the notice for at least two (2) weeks at four (4) public places within the district in each county in which the notice is not published in a newspaper. The notice shall contain a statement of the purpose of the election and the time and place or places of holding the same. The Board of Directors shall designate the polling place or places within the district, taking into consideration the convenience of the voters, and shall also select and appoint the judges and other necessary officers of the election. None but resident property taxpaying voters of the district shall be entitled to vote at the election. The manner of conducting the election shall be governed by the election laws of the State, except as herein otherwise provided.

**Returns, election to dissolve district; order; termination of district; duties of directors**

Sec. 22. Returns of the election shall be made to the Board of Directors, which shall canvass the returns and enter an order declaring the results of the election. If a majority of the votes cast at the election are against the dissolution of the district, no further election on the proposition shall be held for a period of twelve (12) months thereafter. If a majority of the votes cast are in favor of the dissolution of the district, the Board of Directors shall enter an order declaring the district to be dissolved; and thereafter the Board of Directors shall not exercise any further powers except to terminate the affairs of the district. If there is not on hand sufficient money to pay off all claims against the district and if the annual assessments already levied will not provide sufficient funds for this purpose, the Board of Directors shall have authority to levy and cause to be collected further annual assessments but only in such amount as may be necessary to settle the claims against the district. Any money remaining on hand after all claims have been settled shall be paid over ratably to the county treasurer of each county in which the district lies in the proportion which the territory in each county bears to the total area of the district, and shall be placed by the treasurer in the general fund of the county. Acts 1955, 54th Leg., p. 943, ch. 369.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 23 of the Act of 1955 was a severability clause

**CHAPTER NINE—SOIL CONSERVATION AND PRESERVATION**

**Art. 165a—10. Funds; powers and duties of supervisors; discontinuance of districts; conventions**

**Reappropriation of unexpended balances**

**Section 1.** In pursuance of the mandate of the Conservation Amendment (Article XVI, Section 59A) to the Constitution of this State and of the Soil Conservation Statutes relating to and authorizing the creation and operation of Soil Conservation Districts as bodies politic, and recognizing and declaring the existence of a public calamity resulting from drought and wind and water erosion of soil throughout this State, and for the purpose of carrying out the mandatory Constitutional and Statutory provisions relating to the conservation of soil in this State, there is hereby appropriated all unexpended balances of funds and properties heretofore appropriated or granted to Soil Conservation Districts by Chapter 332, Acts of the Fifty-third Legislature, Regular Session, 1953, to be used and expended as provided for under the Soil Conservation Statutes and by this Act. As amended Acts 1955, 54th Leg., p. 1626, ch. 526, § 1.

**Emergency.** Effective June 8, 1955.

## TITLE 8—APPORTIONMENT

## Art. 199. 30, 22, 17 Judicial Districts

## 2.—Angelina, Cherokee and Nacogdoches

## Special Second District Court

*The Special Second District Court for Angelina, Cherokee and Nacogdoches Counties, created by Acts 1954, 53rd Leg., 1st C.S., p. 113, ch. 52, was abolished from and after Sept. 1, 1955, and a permanent district court to be known as the 145th Judicial District Court, composed of the same counties, was created by Acts 1955, 54th Leg., p. 1230, ch. 492. See 145th Judicial District, post.*

## 9.—Polk, San Jacinto, Montgomery and Waller

## Special Ninth District Court of Montgomery, Polk, San Jacinto and Trinity Counties

*The special Ninth Judicial District Court, composed of Montgomery, Polk, San Jacinto and Trinity Counties, created by Acts 1939, 46th Leg., pp. 137, 162, as amended and extended by various Acts including Acts 1954, 53rd Leg., 1st C.S., p. 117, ch. 53, was abolished by Acts 1955, 54th Leg., p. 723, ch. 258, creating a Second 9th Judicial District Court as a permanent regular district court.*

## Second 9th Judicial District Court

## Montgomery, Polk, San Jacinto and Trinity Counties

Section 1. From and after the passage of this Act, the Special 9th Judicial District Court of Texas, composed of Montgomery, Polk, San Jacinto and Trinity Counties, shall be abolished, and the Second 9th Judicial District Court of Montgomery, Polk, San Jacinto and Trinity Counties is created and is hereby constituted a permanent regular District Court.

Sec. 2. From the effective date of this Act, the terms of the Second 9th Judicial District Court shall be as follows:

In the County of Polk, on the eighteenth Monday after the first Monday in January of each year, and on the twentieth Monday after the first Monday in July of each year;

In the County of San Jacinto, on the sixteenth Monday after the first Monday in January of each year, and on the eighteenth Monday after the first Monday in July of each year;

In the County of Montgomery, on the third Monday in January of each year; on the eighth Monday after the first Monday in January of each year; on the third Monday in July of each year; and on the tenth Monday after the first Monday in July of each year;

In the County of Trinity, on the first Monday in January of each year, and on the twenty-third Monday after the first Monday in January of each year.

Each term of Court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term thereof.

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

Sec. 3. Immediately upon the effective date of this Act, the Governor shall appoint a suitable person having the qualifications provided by the Constitution and laws of Texas for District Judge of the Second 9th Judicial District, and he shall hold office until the next general election and until his successor shall be duly elected and qualified. Thereafter such Judge shall be elected as provided by the Constitution and laws of this State and he shall receive such compensation as allowed other District Judges under the laws of Texas.

Sec. 4. This Act shall become effective on September 1, 1955.

Sec. 5. The Judge of the Second 9th Judicial District is authorized to appoint an official shorthand reporter of such Court and such reporter shall receive such compensation as allowed other official shorthand reporters under the General Laws of this State.

Sec. 6. The District Attorney of the 9th Judicial District shall act as District Attorney for the Second 9th Judicial District in the Counties of Montgomery, Polk and San Jacinto.

Sec. 7. The District Attorney of the 12th Judicial District Court shall act as District Attorney for the Second 9th Judicial District in Trinity County.

Sec. 8. The District Clerks of Montgomery, Polk, San Jacinto and Trinity Counties shall also act as District Clerks for the Second 9th Judicial District in their respective counties.

Sec. 9. On the effective date of this Act the District Clerks of each of the counties in the Special 9th Judicial District Court shall transfer all civil and criminal cases to the Second 9th Judicial District Court.

Sec. 10. All processes and writs issued or served and recognizances, bonds and undertakings before this Act takes effect and made returnable to the Special 9th Judicial District Court in the Counties of Montgomery, Polk, San Jacinto and Trinity shall be considered as returnable to the next succeeding term of the Second 9th Judicial District Court; and providing that all grand and petit juries drawn and selected under existing laws in Montgomery, Polk, San Jacinto and Trinity Counties shall be considered as lawfully drawn and selected for the next ensuing term of the Second 9th Judicial District Court in their respective counties. Acts 1955, 54th Leg., p. 723, ch. 258.

Effective 90 days after June 7, 1955, date of adjournment.

Section 11 of the Act of 1955 provided that partial invalidity should not affect

the remaining portions of the Act. Section 12 repealed all conflicting laws and parts of laws.

**11, 55, 61, 80, 113, 125, 127, 129, 133, 151, 152.—Harris.**

Harris County shall constitute the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, and 152nd Judicial Districts. None of said eleven (11) District Courts shall have or exercise any criminal jurisdiction in Harris County. Said District Courts of the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, and 152nd Judicial Districts shall have and exercise concurrent jurisdiction, co-extensive within the limits of Harris County, in all civil cases, proceedings, and matters over which District Courts are given jurisdiction by the Constitution and laws of this State.

There shall be two (2) terms of each of said eleven (11) Civil District Courts in Harris County in each year, and the first term shall be known as the January-June term, and shall begin on the first Monday in January and shall continue until and including Sunday next before the first Monday in July; and the second term, which shall be known as the July-December term, shall begin on the first Monday in July and shall continue

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until and including Sunday next before the first Monday in the following January.

In all suits, actions, or proceedings in said courts, it shall be sufficient for the address or designation to be merely "District Court of Harris County". The clerk of the Civil District Courts in Harris County shall be known as the "Clerk of the District Court of Harris County, Texas". The clerk of said eleven (11) Civil District Courts shall docket alternately on the dockets of the District Courts of the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, and 152nd Judicial Districts in Harris County, all cases, actions, petitions, applications, and other proceedings filed in the District Courts of Harris County so that the first case or proceeding filed after the effective date of this Act and every eleventh case or proceeding thereafter filed shall be docketed in the 11th Judicial District Court; and the second case or proceeding filed and every eleventh case or proceeding thereafter filed shall be docketed in the 55th Judicial District Court; and the third case or proceeding filed and every eleventh case or proceeding thereafter filed shall be docketed in the 61st Judicial District Court; and the fourth case or proceeding filed and every eleventh case or proceeding thereafter filed shall be docketed in the 80th Judicial District Court; and the fifth case or proceeding filed and every eleventh case or proceeding thereafter filed shall be docketed in the 113th Judicial District Court; and the sixth case or proceeding and every eleventh case or proceeding thereafter filed shall be docketed in the 125th Judicial District Court; and the seventh case or proceeding and every eleventh case or proceeding thereafter filed shall be docketed in the 127th Judicial District Court; and the eighth case or proceeding and every eleventh case or proceeding thereafter filed shall be docketed in the 129th Judicial District Court; and the ninth case or proceeding and every eleventh case or proceeding thereafter filed shall be docketed in the 133rd Judicial District Court; and the tenth case or proceeding and every eleventh case or proceeding thereafter filed shall be docketed in the 151st Judicial District Court; and the eleventh case or proceeding and every eleventh case or proceeding thereafter filed shall be docketed in the 152nd Judicial District Court; and so on seriatim; and all cases or proceedings in this manner shall be docketed in and divided and distributed among said eleven (11) Civil District Courts, one-eleventh ( $\frac{1}{11}$ ) to each of them when first filed. All suits and proceedings shall be filed by the clerk in the order in which the petitions are presented to or deposited with him, and immediately after being so presented or deposited. In case of the disqualification of the judge of any of said eleven (11) Civil Courts in any case or proceeding, such case or proceeding, on his suggestion of disqualification, shall be transferred to another of said Courts, and the order of transfer may be made by any judge of another of said Courts and may be transferred to any other of said Courts, or instead of transferring the case the judge of any other of said Courts may sit in the Court in which the case is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the clerk accordingly. The judges of said eleven (11) Civil Courts shall sign the minutes of each term of the Courts in Harris County within thirty (30) days after the end of the term, and shall also sign the minutes at the end of each volume of the minutes, and each judge sitting in said Courts shall sign the minutes of such proceedings as were had before him.

Each judge of said Courts may take a vacation between the first day of July and the first day of October in each year, during which time the term of Court of which he is judge shall remain open and the judge of any other Civil District Court in Harris County may hold such Court during the vacation of the judges thereof. During the period of such vacation



it shall not be lawful for a special judge of such Court to be elected by the practicing lawyers of such Court because of the absence of the judge on his vacation, unless no judge of said Civil District Courts is in the county. The judges of said Courts shall, by agreement among themselves, take their vacation alternately so that there shall at all times be at least four of said judges in the county; and in the event of the absence, sickness or disqualification of the judge of any of said Civil District Courts any of the other judges of the said District Courts may act and preside or any regular practicing lawyers of the Bar of Harris County, Texas, may be elected who have the qualifications of a district judge to act and preside over any of the said Courts during such absence, sickness or inability of any of the regular judges to act and preside therein; and such special judges shall be elected according to Title 40 of the Revised Civil Statutes of the State of Texas of 1925.

The letters A, B, C, D, E, F, G, H, I, J, and K shall be placed on the docket and the court papers in the respective District Courts of Harris County to distinguish them: A, being used in connection with the 11th District Court; B, the 55th District Court; C, the 61st District Court; D, the 80th District Court; E, the 113th District Court; F, the 125th District Court; G, the 127th District Court; H, the 129th District Court; I, the 133rd District Court; J, the 151st District Court; and K, the 152nd District Court.

The clerk of the District Courts of Harris County, upon the taking effect of this Act, shall prepare promptly dockets for the Courts so created by this Act, and shall place on the dockets of said 151st and 152nd District Courts, respectively, the tenth and eleventh cases, respectively, pending on the respective dockets of the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th and 133rd District Courts, and shall continue in this manner through said dockets until all said cases thereon are exhausted and the dockets of said eleven (11) Courts are equalized as nearly as may be. No case then on trial in any of the existing District Courts, nor in any case pending on appeal therefrom, shall be transferred to the dockets of the 151st and 152nd District Courts. The cases so transferred shall bear the same docket numbers as in the Courts from which they are transferred and the judges of the existing District Courts, respectively, shall make proper orders transferring from such Courts to the 151st and 152nd District Courts the cases which have been placed on the docket of the 151st and 152nd District Courts in pursuance of this Act.

The respective judges of the District Courts of Harris County shall, from time to time as occasion may require, transfer cases from any one of such Courts to any other such Court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose Court it is pending; provided, however, that no case shall be transferred from one Court to another without the consent of the judge of the Court to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the Court as evidence thereof and such order on the minutes shall be notice of the transfer to the attorneys of record of all parties to the cause. As amended Acts 1947, 50th Leg., p. 525, ch. 308, § 2; Acts 1949, 51st Leg., p. 1354, ch. 616, § 1; Acts 1951, 52nd Leg., p. 504, ch. 308, § 3; Acts 1954, 53rd Leg., 1st C.S., p. 122, ch. 56, § 3; Acts 1955, 54th Leg., p. 872, ch. 330, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

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

*Sections 1 and 2 of Acts 1954, 53rd Leg., 1st C.S., p. 122, ch. 56, as amended by Acts 1955, 54th Leg., p. 872, ch. 330, § 1, provided:*

*"Section 1. Two (2) additional District Courts are hereby created in and for Harris County, Texas, the limits of which shall be co-extensive with the limits of Harris County. Said Courts shall be known as the 151st District Court and the 152nd District Court. The courts herein created shall be Permanent District Courts.*

*"Section 2. Upon the effective date of this Act, the Governor shall appoint two (2) suitable persons severally as judges of said respective Courts. Each shall hold office as judge of the Court to which he is appointed until the next general election and until a successor shall be duly elected and qualified. Thereafter, each such judge shall be elected as provided by the Constitution and laws of the State for the election of district judges."*

Section 3 of Acts 1955, 54th Leg., p. 872, ch. 330, related to partial invalidity. Section 2 provided: "All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only. As to all other laws or parts of laws, this Act shall be cumulative, it being the purpose of this Act to make the 151st District Court and the 152nd District Court, created by the provisions of Senate Bill No. 50, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 56, permanent District Courts at the expiration of the said temporary District Courts; and all laws heretofore applicable to the temporary District Courts shall hereafter be applicable to the permanent District Courts of the 151st and 152nd Judicial Districts."

Sections 1 and 2 of Acts 1954, 53rd Leg., 1st C.S., p. 122, ch. 56, read as follows:

"Section 1. Two (2) additional District Courts are hereby created, effective September 1, 1954, in and for Harris County, Texas, the limits of which shall be co-

extensive with the limits of Harris County. Said courts shall be known as the 151st District Court and the 152nd District Court.

"Sec. 2. Upon the effective date of this Act, the Governor shall appoint two (2) suitable persons severally as Judges of said respective courts. Each shall hold office as Judge of the court to which he is appointed until the next general election and until a successor shall be duly elected and qualified. Thereafter, each such Judge shall be elected as provided by the constitution and the laws of the State for the election of District Judges. The courts herein created shall be temporary District Courts and shall expire two (2) years from the effective date hereof."

Section 4 made appropriations. Section 5 repealed conflicting laws and parts of laws to the extent of the conflict only, and provided that, as to all other laws and parts of laws, the act should be cumulative.

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

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

Dallas County shall constitute the 14th, 44th, 68th, 95th, 101st, 116th, 134th Judicial District, the Criminal Judicial District of Dallas County, Texas, the Criminal Judicial District No. 2 of Dallas County, Texas, and the Criminal Judicial District No. 3 of Dallas County, Texas. Each of said ten (10) District Courts shall have and exercise civil and criminal jurisdiction in Dallas County. The said District Courts of the 14th, 44th,

68th, 95th, 101st, 116th, 134th Judicial Districts and the Criminal District Court of Dallas County, Texas, of the Criminal Judicial District of Dallas County, Texas, and the Criminal District Court No. 2 of Dallas County, Texas, of the Criminal Judicial District No. 2 of Dallas County, Texas, and the Criminal District Court No. 3 of Dallas County, Texas, of the Criminal Judicial District No. 3 of Dallas County, Texas, shall have and exercise, in addition to the jurisdiction now conferred by law on said Courts, concurrent jurisdiction co-extensive with the limits of Dallas County in all actions, proceedings, matters and causes both civil and criminal of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas.

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

The terms of the said Courts named herein shall continue and remain the same as now provided by law. The terms of the Criminal District Court No. 3 of Dallas County shall be the same as now provided by law for the Criminal District Court No. 2 of Dallas County. The practice and procedure in said Courts shall be the same as now provided by law, and, in civil actions, as also provided by the Texas Rules of Civil Procedure applicable to District Courts having successive terms.

The letters A, B, C, D, E, F, G, H, I, and J shall be placed on the dockets and Court papers of the respective District Courts of Dallas County to distinguish them: "A" being used in connection with the 14th District Court; "B" being used in connection with the 44th District Court; "C" being used in connection with the 68th District Court; "D" being used in connection with the 95th District Court; "E" being used in connection with the 101st District Court; "F" being used in connection with the 116th District Court; "G" being used in connection with the 134th District Court; "H" being used in connection with the said Criminal District Court; "I" being used in connection with the said Criminal District Court No. 2; and "J" being used in connection with the said Criminal District Court No. 3. All cases in said Criminal District Courts prior to the passage of this Act shall retain the same numbers and letter designations heretofore assigned to said cases.

All indictments shall be returned to the Criminal District Court of Dallas County, Texas, the Criminal District Court No. 2 of Dallas County, Texas, and the Criminal District Court No. 3 of Dallas County, Texas. The District Clerk of Dallas County shall docket successively on the dockets of the District Courts of the 14th, 44th, 68th, 95th, 101st, 116th and 134th Judicial District Courts in Dallas County so that the first case or proceeding filed after the effective date of this Act and every seventh case or proceeding thereafter filed shall be docketed in the 14th District Court; the second case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 44th District Court; the third case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 68th District Court; the fourth case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 95th District Court; the fifth case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 101st District Court; the sixth case or proceeding filed and every seventh case or proceeding thereafter shall be docketed in the 116th District Court; the seventh case or proceeding filed and every seventh case or proceeding thereafter filed shall be docketed in the 134th District Court; and so on in rotation, and in this manner all cases or proceedings

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

filed shall be docketed in and divided equally among the 14th, 44th, 68th, 95th, 101st, 116th, and the 134th Judicial District Courts, one-seventh ( $\frac{1}{7}$ ) in each court.

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

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

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

The Judges of said District Courts and Criminal District Courts of Dallas County, Texas, shall, by agreement among themselves, take vacations so that there shall at all times be at least three (3) Judges of the said Courts in the county during such vacation period.

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

The Judges of the said District Courts and Criminal District Courts shall continue to serve for the terms elected or appointed as provided by the Constitution and laws of the State of Texas.

The District Clerk for said Courts shall be elected as provided by the Constitution and laws of the State of Texas and any vacancies in the office of said clerk shall be filled by appointments of the Judges of the several District Courts and Criminal District Courts.

The Judge of each of the several District Courts and the Criminal District Courts shall appoint an official court reporter for his Court, as provided by General Law, to be compensated as provided by law.

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

The clerk of the District Courts of Dallas County shall be clerk of the 14th, 44th, 68th, 95th, 101st, 116th, 134th District Courts and Criminal District Courts and shall be compensated as provided by law.

The Criminal District Attorney of Dallas County shall be District Attorney of the 14th, 44th, 68th, 95th, 101st, 116th, 134th District Courts and Criminal District Courts and shall be compensated as provided by law.

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

The grand jury shall be empaneled by the Judges of the Criminal District Courts of Dallas County, Texas, as is now provided by law.

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

From and after the time this law shall take effect, the District Courts and the Criminal District Courts of Dallas County, Texas, shall have and exercise concurrent jurisdiction with each other in all cases, criminal and civil, and in all matters and proceedings of which jurisdiction is vested in District Courts by the Constitution and laws of the State of Texas. The Judge of any of the said District Courts and the Criminal District Courts may in his discretion try and dispose of any causes, matters and proceedings for any other Judge of said Courts. As amended Acts 1951, 52nd Leg., p. 663, ch. 383, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 1, § 2; Acts 1955, 54th Leg., p. 711, ch. 256, § 3.

Effective 90 days after June 7, 1955,  
date of adjournment.

*A temporary Special Criminal District Court of Dallas County was created by Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 1, § 1 (Vernon's Ann.C.C.P. art 52—24b), and established as a permanent district court, designated as Criminal District Court No. 3 of Dallas County, by Acts 1955, 54th Leg., p. 711, ch. 256, § 1 (Vernon's Ann.C.C.P. art. 52—24c).*

*Acts 1955, 54th Leg., p. 711, ch. 256, § 4, as well as Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 1, § 3, and Acts 1951, 52nd Leg., p. 663, ch. 383, § 3 repealed conflicting laws, but provided that nothing in such Acts is intended to repeal or amend Article 52—9 of the Code of Criminal Procedure of 1925, or the provisions of House Bill No. 93, Chapter 368, Acts of the 51st Legislature, amending Section 4, Chapter 204, Acts of the 48th Legislature, or any existing law relating to juveniles in Dallas County, the Juvenile Court of Dallas County or the Judges thereof, and in the case of any conflict with said Act the provisions of House Bill No. 93, Acts of the 51st Legislature, will control.*

Sections 5-9 of Acts 1955, 54th Leg., p. 711, ch. 256, read as follows:

"Sec. 5. The compensation of each Judge shall be the same as the compen-

sation paid to the Judges of other District Courts, including the expenses as provided by the laws of Texas, and the compensation shall be paid in the manner in

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

which other District Judges of the State are paid.

"Sec. 6. The unappropriated balances of moneys appropriated by the provisions of Section 6 of Article III of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105, is hereby appropriated for the payment of the salaries of the Judge of the Criminal District Court No. 3 of Dallas County for the current fiscal year; and the Judges of the Special District Courts of Bexar County created by the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105.

"Sec. 7. If any provision or section of this Act is held unconstitutional or invalid, such invalidity shall not affect the remaining provisions hereof, but all other parts or provisions shall remain in full force and effect.

"Sec. 8. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only; as to all other laws or parts of laws, this Act shall be cumulative, it being the purpose of this Act to make permanent the Special Criminal District Court of Dallas County, heretofore created by the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105.

"Sec. 9. This Act shall take effect on September 1, 1955."

Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 3, §§ 1-6, contained miscellaneous provisions relating to the Special Criminal District Court of Dallas County, the Special 37th District Court and the Special Criminal District Court of Bexar County created by such Act, all of which have been made permanent courts.

## 25.—Gonzales, Colorado, Lavaca and Guadalupe

### Second 25th Judicial District Court

#### Gonzales, Colorado, Lavaca and Guadalupe Counties

Section 1. The Special 25th Judicial District Court of the Counties of Gonzales, Colorado, Lavaca, and Guadalupe, heretofore established as a temporary District Court in and for such counties under the terms and provisions of Acts of 1954, 53rd Legislature, First Called Session, Chapter 54, page 118, is hereby established as a permanent District Court, the limits of which district shall be co-extensive with the limits of said counties. Such court, which shall be known as the Second 25th Judicial District Court, shall have the jurisdiction provided by the Constitution and laws of this State for District Courts; such jurisdiction to be concurrent with that of the 25th Judicial District Court in and for said counties.

Sec. 2. There shall be two terms of the Second 25th Judicial District Court in each of said counties each year as follows:

In the County of Gonzales upon the first Monday in May and December;

In the County of Colorado upon the first Monday in April and November;

In the County of Lavaca upon the first Monday in January and June;

In the County of Guadalupe upon the first Monday in February and September. The Judge of said court in his discretion may hold as many sessions of court during any term of the court in any county as is deemed by him proper and expedient for the dispatch of business. The terms of the District Court in each county shall continue in session until the Saturday immediately preceding the Monday with the convening of the next regular term of court in that particular county.

Sec. 3. The district clerk of the 25th Judicial District shall be the clerk of the Second 25th Judicial District Court in each of the counties.

Sec. 4. The Judge of the Second 25th Judicial District Court or the Judge of the 25th Judicial District Court may hear and dispose of any suit or proceeding on the docket of either of said District Courts of the county in which the action or proceeding is instituted without the necessity of transferring the action or proceeding from one court to another, and the Judges may transfer cases from one court to the other by an order entered on the docket of the court from which the case is transferred. Pro-

vided, however, that no case shall be transferred without the consent of the Judge of the court to which transferred. Every judgment and order shall be entered in the minutes of the District Court of the county in which the proceedings are pending and the clerk of the District Court in said county shall keep the minutes of the court in which shall be recorded all the judgments and orders of the respective courts.

Sec. 5. At the expiration date of the Special 25th Judicial District Court on August 31, 1956, the Judge of such court shall continue in office as Judge of the said permanent Second 25th Judicial District Court until the next general election and until his successor shall qualify. The term of the Judge of said court shall thereafter be four (4) years, as provided by law for other District Judges.

Sec. 6. The compensation of the Judge of the Second 25th Judicial District Court shall be the same as the compensation paid to the Judges of other District Courts, including the expenses as provided by law for District Judges.

Sec. 7. The Judge of the Second 25th Judicial District Court shall appoint a shorthand reporter for such court, who shall hold office and be compensated as provided by law.

Sec. 8. Qualified jurors for service in both the said 25th Judicial District Court and the said Second 25th Judicial District Court in the Counties of Gonzales, Guadalupe, Colorado and Lavaca, Texas, shall be selected by Jury Commissioners in accordance with the provisions of Article 2104 of the Revised Civil Statutes of Texas, as amended, and succeeding Articles; and the provisions of Senate Bill No. 466, Chapter 467, Acts of the 51st Legislature of Texas (Article 2094 Revised Civil Statutes of Texas, as amended) or any other law providing for the selection of petit jurors by the jury wheel method shall not apply in said District Courts in said counties.

Jurors selected by Jury Commissioners as hereinabove provided for may be summoned and used for the trial of civil and criminal cases interchangeably in either of said courts. Acts 1955, 54th Leg., p. 689, ch. 249.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 9 of Acts 1955, 54th Leg., p.  
689, ch. 249, repealed conflicting laws.  
Section 10 was a severability clause.

### Special 25th Judicial District Court

#### Gonzales, Colorado, Lavaca and Guadalupe Counties

*The Temporary Special 25th Judicial District Court in and for Gonzales, Colorado, Lavaca and Guadalupe Counties, created by Acts 1954, 53rd Leg., 1st C.S., p. 118, ch. 54, as amended by Acts 1955, 54th Leg., p. 2, ch. 2, was established as a permanent district court to be known as the Second 25th Judicial District Court by Acts 1955, 54th Leg., p. 689, ch. 249.*

#### 33. Mason, Blanco, Menard, San Saba, Llano and Burnet

The Thirty-third Judicial District shall be composed of the Counties of Mason, Blanco, Menard, San Saba, Llano and Burnet, and the terms of the district court shall be held therein as follows:

In Mason County, beginning on the second Monday in January and June.

In Blanco County, beginning on the first Monday in February and September.

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

In Menard County, beginning on the fourth Monday in February and September.

In San Saba County, beginning on the second Monday in March and October.

In Llano County, beginning on the first Monday in April and November.

In Burnet County, beginning on the fourth Monday in April and November.

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business. As amended Acts 1955, 54th Leg., p. 882, ch. 337, § 4.

Effective 90 days after June 7, 1955, date of adjournment.

For sections 5-12 of the amendatory Act of 1955, see notes under 38th Judicial District, post

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

There is hereby created and established a Criminal Judicial District of Bexar County, Texas, and a Criminal Judicial District No. 2 of Bexar County, Texas, both composed of Bexar County, Texas, alone, and the Criminal District Court of Bexar County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District of Bexar County, Texas, and the Criminal District Court No. 2 of Bexar County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District No. 2 of Bexar County, Texas, as is now conferred or to be conferred by law on said Criminal District Courts.

Bexar County shall constitute the 37th, 45th, 57th, 73rd and Special 37th Judicial Districts, the Criminal Judicial District of Bexar County, Texas, and the Criminal Judicial District No. 2 of Bexar County, Texas. Each of the said seven (7) District Courts shall have and exercise civil and criminal jurisdiction in Bexar County. The said District Courts of the 37th, 45th, 57th, 73rd, and Special 37th Judicial Districts and the Criminal District Court of Bexar County, of the Criminal Judicial District of Bexar County, Texas, and the Criminal District Court No. 2 of Bexar County, Texas, of the Criminal Judicial District No. 2 of Bexar County, Texas, shall have and exercise, in addition to the jurisdiction now conferred or to be conferred by law on said Courts, concurrent jurisdiction co-extensive with the limits of Bexar County, Texas, in all actions, proceedings, matters and causes, both civil and criminal, of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas.

The present Judges of the 37th, 45th, 57th, 73rd, and the Criminal District Court of Bexar County, Texas, shall continue as Judges of the said Courts as constituted and defined by this Act, and the tenure of office of said Judges shall remain the same as is now provided by law.

The first term of said Special 37th Judicial District Court and the Criminal District Court No. 2 of Bexar County, Texas, shall begin on the first Monday in September, 1954, and thereafter shall continue as further provided herein.

There shall be two terms of the 37th, 45th, 57th, 73rd, and Special 37th District Courts in Bexar County in each year, and the first term,



which shall be known as the January-June term, shall begin on the first Monday in January each year and shall continue until and including Sunday next before the first Monday in July of each year; and the second term, which shall be known as the July-December term, shall begin on the first Monday of July of each year and shall continue until and including the Sunday next before the first Monday in the following January.

The Criminal District Court and the Criminal District Court No. 2 of Bexar County, Texas, shall hold six (6) terms of court each year for the trial of causes and the disposition of business coming before such Courts, one term beginning the first Monday in January; one the first Monday in March; one the first Monday in May; one the first Monday in July; one the first Monday in September; one the first Monday in November; each term to last for two (2) months. Each term shall continue until the business is disposed of.

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

All indictments shall be returned to the Criminal District Court of Bexar County, Texas, and the Criminal District Court No. 2 of Bexar County, Texas. The district clerk of Bexar County shall docket successively on the dockets of the District Courts of the 37th, 45th, 57th, 73rd, and Special 37th Judicial Districts in Bexar County all civil cases, actions, causes, petitions, applications, or other proceedings so that the first case or proceeding filed on or after September 1st, A. D., 1954, and every fifth case or proceeding thereafter filed shall be docketed in the 37th Judicial District; and the second case or proceeding filed and every fifth case or proceeding thereafter filed shall be docketed in the 45th Judicial District; and the third case or proceeding filed and every fifth case or proceeding thereafter filed shall be docketed in the 57th Judicial District; and the fourth case or proceeding and every fifth case or proceeding thereafter shall be docketed in the 73rd Judicial District; and the fifth case or proceeding and every fifth case or proceeding thereafter filed shall be docketed in the Special 37th Judicial District; and so on seriatim; and in this manner all cases or proceedings filed to be docketed in and divided equally among the 37th, 45th, 57th, 73rd, and Special 37th Judicial District Courts, one-fifth ( $\frac{1}{5}$ ) in each Court.

The District Judges of Bexar County, Texas, shall on or before the first day of January and the first day of July of each year elect one of the said District Judges as Presiding Judge of the Bexar County District Judges. The Presiding Judge of the Bexar County District Judges shall, when this Act becomes effective and from time to time as occasion may require in order to adjust the business and dockets of said courts, transfer, or cause to be transferred, upon the approval of the Judges of said Courts, causes for any of said Courts to any other of said Courts in order that the business of said Courts shall be continually equalized and distributed among them to the end that each Judge shall be at all times provided with cases or proceedings to try or otherwise consider and that the trial of no cause shall be delayed because of the disqualification of the Judge in whose Court it is pending. When a case is transferred, proper order shall be entered on the minutes of the Court as evidence thereof. The clerk shall properly docket all cases transferred. It is the intention of this Act that the Criminal District Court and the Criminal District Court No. 2 of Bexar County, Texas, give preference to criminal matters while the other District Courts shall give preference to civil cases, matters or proceedings. The Judges of the said District Court shall sign the

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

minutes of each term of said Court in Bexar County, Texas, within thirty (30) days after the end of the term, and also shall sign the minutes at the end of each volume of the minutes, and each Judge sitting in said Courts shall sign the minutes of such proceedings as were had before him.

In the absence, except as otherwise provided herein, sickness, or disqualification of a Judge of any of the District Courts of Bexar County, Texas, any of the other Judges of the said District Courts may act, and preside; or any regularly practicing lawyer of the Bar of Bexar County, who has all the qualifications of a District Judge, may be elected to act and preside over any of the said Courts during such absence, sickness, or inability of any of the regular Judges to act and preside therein; such special Judge to be elected according to Title 40 of the Revised Civil Statutes of the State of Texas, 1925, as amended.

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

Each Judge of the said District Courts and the said Criminal District Courts of Bexar County may take a vacation between the first day of July and the first day of October in each year, during which time the term of the Court of which he is Judge shall remain open and the Judge of any other District or Criminal District Courts may hold such Court during the vacation of the Judge thereof. During the period of such vacation, it shall not be lawful for a special Judge of such Court to be elected by the practicing lawyers of such Court because of the absence of the Judge on his vacation, unless no Judge of the said District Courts is in the county. The Judges of said District and Criminal District Courts shall by agreement among themselves take their vacations alternately so that there shall be at all times at least three (3) of said Judges in the county during such vacation period.

The Judge of each of the several District Courts and the Criminal District Courts shall appoint an official court reporter for his Court as provided by General Law to be compensated as provided by law.

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

The clerk of the District Courts of Bexar County shall be the clerk of the 37th, 45th, 57th, 73rd and Special 37th District Courts and the Criminal District Courts and shall be compensated as provided by law.

The Criminal District Attorney of Bexar County shall be the District Attorney of the 37th, 45th, 57th, 73rd, and Special 37th District Courts and the Criminal District Courts and shall be compensated as provided by law.

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

The District Judges of the Criminal District Courts shall alternately appoint grand jury commissioners and impanel grand juries; and further, they may appoint grand jury bailiffs, not to exceed seven (7). Each such judge may appoint three (3) of such bailiffs, and, if needed, may jointly appoint the seventh such bailiff. Bailiffs thus appointed are subject to removal at the will of the judge or judges so appointing them.

The procedure for drawing jurors for said Courts shall be the same as is now or may hereafter be provided by law. As amended Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 2, § 3; Acts 1955, 54th Leg., p. 730, ch. 262, § 4.

Effective 90 days after June 7, 1955, date of adjournment.

*The temporary Special 37th District Court and Special Criminal District Court for Bexar County created and established by Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 2, §§ 1, 2, and art. 3, § 1, were established as permanent district courts by Acts 1955, 54th Leg., p. 730, ch. 262, §§ 1-3, to be known as Special 37th District Court of Bexar County and Criminal District Court No. 2 of Bexar County.*

Acts 1955, 54th Leg., p. 730, ch. 262, §§ 1-3, 5-9 provided as follows:

"Section 1. The Special Criminal Court of Bexar County heretofore established as a temporary District Court under the terms and provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51 is hereby established as a permanent Criminal District Court, the limits of which district shall be co-extensive with the limits of Bexar County and said Court shall be known as Criminal District Court No. 2 of Bexar County.

"Sec. 2. The Special 37th District Court of Bexar County heretofore established as a temporary District Court under the terms and provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, is hereby established as a permanent District Court, the limits of which district shall be co-extensive with the limits of Bexar County, Texas, and said Court shall be known as the Special 37th District Court.

"Sec. 3. The present District Judge of the Special Criminal District Court of Bexar County duly elected and acting as such shall be the District Judge of the Criminal District Court No. 2 of Bexar County until the time for which he has been elected expires and until his successor is duly elected and qualified.

"The present District Judge of the Special 37th District Court of Bexar County duly elected and acting as such shall be the District Judge of the Special 37th District Court until the time for which he has been elected expires and until his successor is duly elected and qualified."

"Sec. 5. The compensation of each Judge shall be the same as the compensation paid the Judges of other District Courts including the expenses as provided by the laws of this State and the

compensation shall be paid in the manner in which other District Judges of the State are paid.

"Sec. 6. The unappropriated balances of moneys appropriated by the provisions of Section 6 of Article III of Senate Bill No. 21, Acts of 53rd Legislature, First Called Session, 1954, Chapter 51, is hereby appropriated for the payment of the salaries of the Judge of the Criminal District Court No. 2 of Bexar County and the Judge of the Special 37th District Court of Bexar County, for the current fiscal year; and the Judges of the Special District Courts of Dallas County created by the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51.

"Sec. 7. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only; as to all other laws or parts of laws, this Act shall be cumulative, it being the purpose of this Act to make permanent the Special Criminal District Court of Bexar County and the Special 37th District Court of Bexar County heretofore created by the provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51.

"Sec. 8. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and to this end the provisions of this Act are declared to be severable.

"Sec. 9. This Act shall take effect on September 1, 1955."

Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 3, §§ 1-6, contained miscellaneous provisions relating to the Special

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

Criminal District Court of Dallas County, County created by such Act, all of which the Special 37th District Court and the have been made permanent courts. Special Criminal District Court of Bexar

### 38.—Medina, Uvalde, Zavala and Real

The Thirty-eighth Judicial District shall be composed of the Counties of Medina, Uvalde, Zavala and Real, and the terms of the district court shall be held therein as follows:

In Medina County, beginning on the first Monday in January and June.

In Uvalde County, beginning on the first Monday in February and September.

In Zavala County, beginning on the first Monday in March and October.

In Real County, beginning on the first Monday in April and November.

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business. As amended Acts 1955, 54th Leg., p. 882, ch. 337, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

### Second 38th Judicial District

#### Kerr, Bandera, Kendall, Kimble and Gillespie Counties

The Second Thirty-eighth Judicial District of Texas is hereby created and shall be composed of the Counties of Kerr, Bandera, Kendall, Kimble, and Gillespie, and the terms of the district court shall be held therein as follows:

In Kerr County, beginning on the first Monday in January and June.

In Bandera County, beginning on the first Monday in February and September.

In Kendall County, beginning on the fourth Monday in February and September.

In Kimble County, beginning on the third Monday in March and October.

In Gillespie County, beginning on the second Monday in April and November.

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business. Acts 1955, 54th Leg., p. 882, ch. 337, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

Sections 5-12 of the amendatory Act of 1955 read as follows:

"Sec. 5. The present Judges and District Attorneys of the 33rd, 38th and 112th Judicial Districts shall continue as the Judges and District Attorneys of these districts as herein reorganized unless they are disqualified by the laws of this State to continue in such office, in which event a successor shall be appointed as provided by law. The Governor shall appoint quali-

fied attorneys to serve as the Judge and District Attorney of the Second Thirty-eighth Judicial District, who shall serve until the next general election, at which time a Judge and a District Attorney shall be elected to serve a term of four (4) years.

"Sec. 6. Whenever any county is by this Act removed from one (1) judicial district and placed in another judicial district, all cases and proceedings on the docket or dockets of the court of the district from which the county was removed

together with all records, documents, and instruments on file in connection therewith shall be transferred by the district clerk of such county to the district court of the judicial district in which such county is placed and there be by him properly docketed.

"Sec. 7. Whenever cases or other proceedings are transferred from any district court to another district court, the judge of the court to which they are transferred shall have full power and authority to perform all judicial acts relative thereto which the judge of the court from which they were transferred was empowered and authorized to perform had the transfer not been made, and all writs, processes, bonds, bail bonds, recognizances, complaints, informations, and indictments, and any other ancillary matters whether mentioned herein or not, returnable to the court from which such cases or proceedings were transferred shall be thereafter returnable to the first term of the court to which the same are transferred, and all of the same are hereby authorized and validated as if

they had been made returnable originally to that court.

"Sec. 8. All judges of the several district courts herein created or continued shall have authority to appoint official court reporters to serve their courts, who shall receive the fees and salaries provided by law for court reporters of district courts generally.

"Sec. 9. The Second Thirty-eighth District Court shall have a seal in like design as is provided by law for seals of such courts.

"Sec. 10. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. Otherwise this Act shall be cumulative of all other laws governing district courts.

"Sec. 11. If any section, subsection, or portion of this Act shall be held invalid, such invalidity shall not affect the remaining portions, and the Legislature hereby declares that it would have enacted such remaining portions of this Act despite such invalidity.

"Sec. 12. The effective date of this Act is September 1, 1955."

58, 60.—Jefferson

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(a) During each term of said Courts, said Courts may sit at any time in Port Arthur, Texas, to try, hear and determine any civil non-jury cases over which they have jurisdiction, and may hear and determine motions, arguments and such other non-jury civil matters which said Courts may have jurisdiction over; provided further, that nothing herein shall be construed to deprive the Courts of jurisdiction to try non-jury civil cases and hear and determine motions, arguments and such other non-jury civil matters at the county seat at Beaumont, Texas.

The District Clerk of Jefferson County or his deputy shall wait upon the said Courts when sitting at Port Arthur, Texas, and shall be permitted to transfer all necessary books, minutes, records, and papers to Port Arthur, Texas, while the Courts are in session there, and likewise to transfer all necessary books, minutes, records and papers from Port Arthur, Texas, to Beaumont, Texas, at the end of each session in Port Arthur, Texas.

The Sheriff of Jefferson County or his deputy shall be in attendance upon the Courts while sitting at Port Arthur, Texas, and perform such duties as he may be directed to perform, either as required by law or under the order of the Courts.

The official court reporter of said Courts shall be in attendance upon the Courts while sitting at Port Arthur, Texas, and perform such duties as he may be directed to perform, either as required by law or under the order of the Courts.

The Commissioners Court of Jefferson County, Texas, is hereby authorized to provide suitable quarters for said Courts while sitting at Port Arthur, Texas, which said quarters shall be located within the sub-courthouse in Port Arthur, Jefferson County, Texas. Added Acts 1955, 54th Leg., p. 601, ch. 208, § 1.

Emergency. Effective May 13, 1955.

Section 2 of the amendatory Act of 1955 repealed conflicting laws. Section 3 provided that "It is hereby declared to be

the legislative intent to enact a separate provision of Sub-section 58, 60, Article 199, Revised Civil Statutes of Texas, 1925, as

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

amended by Chapter 84, Acts 1929, 41st Legislature, Second Called Session, independent of all other provisions; and the fact that any phrase, sentence, clause or section of this Act shall be declared unconstitutional shall in no wise affect the

validity of any of the other provisions hereof."

Application of provisions of Vernon's Ann.C.C.P., art. 52—160a to district court for 58th Judicial District, see 136th Judicial District, § 10, post.

#### 60. See 58th District.

Application of provisions of Vernon's Ann. C.C.P. art. 52—160a to district court

of 60th Judicial District, see 136th Judicial District, § 10, post.

#### 62. Hunt, Lamar, Delta, Franklin, and Hopkins

(a) The Sixty-second Judicial District of Texas shall be composed of the Counties of Hunt, Lamar, Delta, Franklin, and Hopkins.

(b) There shall be two (2) terms of each District Court in each County of the district each year, one beginning on the first Monday in January and continuing until the convening of the next regular term, and the other beginning on the first Monday in July and continuing until the convening of the next regular term.

(c) In any of the above-named Counties in which there are two (2) or more District Courts, such District Courts shall have concurrent jurisdiction with each other in said Counties throughout the limits thereof, of all matters, civil and criminal of which jurisdiction is given to the District Court by the Constitution and Laws of this State.

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

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

hear, complete and determine the same or other matter or any part thereof and render final judgment thereon. Any of the judges of said Courts may issue restraining orders and injunctions returnable to any of the other judges of Courts.

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

(f) The judge of the Sixty-second Judicial District shall never impanel the grand jury in said Court in the Counties of Hunt, Lamar, Delta, Franklin, and Hopkins, unless in his judgment he thinks it necessary.

(g) The district clerk and the sheriff of each County shall perform all the duties and functions relative to all District Courts of their County as is required by law for the District Court thereof. As amended Acts 1955, 54th Leg., p. 1198, ch. 473, § 1.

Emergency. Effective June 15, 1955.

Sections 2-4 of the amendatory Act of 1955 read as follows:

"Sec. 2. All processes, writs issued out of, and bonds and recognizances entered into, and all grand and petit jurors drawn and selected before this Act shall take effect, shall be valid and returnable to the next succeeding term of the District Court in and for the several Counties, as herein fixed, as though issued and served for such terms, and returnable to and drawn for the same; and all such processes, writs, bonds and recognizances taken before or issued by the Courts and officers of the various Counties affected by this Act shall be as valid as though no change had been made in the length of the terms or the time of the holding thereof of the District Courts in the Counties affected by this Act.

"Sec. 3. Should any District Court of the Sixty-second Judicial District be in session in any of the Counties of said District under existing laws when this Act takes effect, such Court shall continue and end its term under existing laws as if no change in the time of holding Court in said District had been made; and all processes, writs, judgments and other proceedings in said Court during such time shall be valid to all intents and purposes and shall not be affected by the changes in the time of holding Court herein made by this Act. After the period provided in the above contingencies, the District Courts in said respective Counties herein mentioned shall be held in conformity with the terms as herein prescribed.

"Sec. 4. All laws and parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed."

## 70.—Midland and Ector.

*Jurisdiction, territorial limits, terms, etc., of the 70th District Court, see 142nd Judicial District, post*

### Special District Court of Midland County

*The Special District Court of Midland County created by Acts 1954, 53rd Leg., 1st C.S., p. 120, ch. 55, was established as a permanent district court at the expiration thereof, August 1, 1956, to be known as the 142nd District Court by Acts 1955, 54th Leg., p. 632, ch. 215, §§ 1, 2. For provisions of 1955 Act affecting the 70th District Court, see 142nd Judicial District, post.*

## 72.—Crosby, Lubbock, Hockley and Cochran

Lubbock County, see, also, 140th Judicial District, post.

## 75.—Liberty and Chambers

Section 1. The 75th Judicial District shall be composed of and confined to Liberty and Chambers Counties, and shall be known as the District Court of the 75th Judicial District. The District Court of the 75th Judicial District shall have and exercise civil and criminal jurisdiction

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

coextensive with the limits of Liberty and Chambers Counties in all actions, proceedings, matters and causes of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas.

Sec. 2. There shall be two (2) terms of the District Court of the 75th Judicial District, composed of the Counties of Liberty and Chambers, in each of said Counties each year, as follows:

In Liberty County beginning on the first Mondays of April and October of each year, each of said terms to continue until the beginning of the next succeeding term of said Court in Liberty County.

In Chambers County beginning on the first Mondays of June and December of each year, each of said terms to continue until the beginning of the next succeeding term of said Court in Chambers County.

Sec. 5. The Judge of the District Court of the 75th Judicial District now serving as such, shall continue to serve as Judge of the 75th Judicial District in and for Liberty and Chambers Counties until the term for which he has been elected expires and until his successor is duly elected and qualified.

Sec. 8. The District Attorney of the 75th Judicial District and the 88th Judicial District now serving as such, shall continue to serve as District Attorney of the 75th Judicial District in and for Liberty and Chambers Counties until the term for which he has been elected expires and until his successor is duly elected and qualified.

Sec. 9. The District Clerks of Liberty and Chambers Counties shall continue to serve as Clerks of the 75th Judicial District in and for Liberty and Chambers Counties, respectively, until the terms for which elected have expired and until their successors are duly elected and qualified. Such clerks shall be compensated as provided by law for District Clerks.

Sec. 11. The official shorthand reporter of the District Court of the 75th Judicial District, shall continue to serve as official shorthand reporter for the District Court of the 75th Judicial District in and for Liberty and Chambers Counties at the pleasure of the Judge of said Court, and shall be compensated as provided by law.

Sec. 13. All process and writs issued or served and recognizances, bonds and undertakings entered prior to the effective date of this Act, returnable to the District Court of Liberty or Chambers Counties shall be considered as returnable to the District Court of the 75th Judicial District in accordance with the provisions of this Act; and all process and writs issued or served and recognizances, bonds and undertakings entered prior to the effective date of this Act, returnable to the District Court of Hardin or Tyler Counties shall be considered as returnable to the District Court of the 88th Judicial District in accordance with the provisions of this Act; and all such processes are hereby validated and all grand and petit juries drawn and selected under existing law in the District Court of Liberty, Chambers, Hardin or Tyler Counties, shall be considered lawfully drawn or selected for the next term of the District Court of the respective Counties after this Act becomes effective; provided that if the District Court shall be in session in any of such Counties at the time this Act takes effect, such Court shall continue in session until the term thereof shall have expired under the provisions of the existing law, but thereafter, the District Court in and for such County or Counties, shall conform to the provisions of this Act.

Sec. 14. Upon the effective date of this Act, all cases, proceedings, and matters then pending on the docket of the District Court of the 88th Judicial District in Liberty and Chambers Counties, respectively, shall



be deemed as pending in the 75th Judicial District Court of said Counties, and the District Clerks of Liberty and Chambers Counties, respectively, shall make record transfers to effect this purpose. Upon the effective date of this Act, all cases, proceedings, and matters then pending on the docket of the District Court of the 75th Judicial District in Hardin and Tyler Counties, respectively, shall be deemed as pending in the 88th Judicial District Court of said Counties, and the District Clerks of Hardin and Tyler Counties, respectively, shall make record transfers to effect this purpose. Acts 1949, 51st Leg., p. 319, ch. 152, §§ 1-4; Acts 1955, 54th Leg., p. 1056, ch. 399.

Effective 90 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., p. 1056, ch. 399, reorganized the 75th Judicial District to be composed of Liberty and Chambers Counties, and reorganized the 88th Judicial District to be composed of Hardin and Tyler Counties. Sections 3, 4, 6, 7, 10 and 12 of the Act of 1955 affecting the 88th Judicial

District are set out under 88th Judicial District, post.

Section 15 of Acts 1955, 54th Leg., p. 1056, ch. 399, was a severability clause. Section 16 repealed conflicting laws to the extent of such conflict. Section 17 provided that the Act should become effective on September 1, 1955.

### 88.—Hardin and Tyler

Sec. 3. The 88th Judicial District shall be composed of and confined to Hardin and Tyler Counties, and shall be known as the District Court of the 88th Judicial District. The District Court of the 88th Judicial District shall have and exercise civil and criminal jurisdiction co-extensive with the limits of Hardin and Tyler Counties in all actions, proceedings, matters and causes of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas.

Sec. 4. There shall be two (2) terms of the District Court of the 88th Judicial District, composed of the Counties of Hardin and Tyler, in each of said Counties each year, as follows:

In Hardin County beginning on the first Mondays of April and October of each year, each of said terms to continue until the beginning of the next succeeding term of said Court in Hardin County.

In Tyler County beginning on the first Mondays of June and December of each year, each of said terms to continue until the beginning of the next succeeding term of said Court in Tyler County.

Sec. 6. The Judge of the District Court of the 88th Judicial District now serving as such, shall continue to serve as Judge of the 88th Judicial District in and for Hardin and Tyler Counties until the term for which he has been elected expires and until his successor is duly elected and qualified.

Sec. 7. The Governor of the State of Texas shall, with the advice and consent of the Senate of Texas, immediately at the time this Act takes effect, appoint a suitable person having the qualifications required of District Attorneys, as District Attorney for the 88th Judicial District, who shall hold office until the next general election and until his successor is duly elected and qualified, and shall be compensated as provided by law.

Sec. 10. The District Clerks of Hardin and Tyler Counties shall continue to serve as Clerks of the 88th Judicial District in and for Hardin and Tyler Counties, respectively, until the terms for which elected have expired and until their successors are duly elected and qualified. Such clerks shall be compensated as provided by law for District Clerks.

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

Sec. 12. The official shorthand reporter of the District Court of the 88th Judicial District shall continue to serve as official shorthand reporter for the District Court of the 88th Judicial District in and for Hardin and Tyler Counties at the pleasure of the Judge of said Court, and shall be compensated as provided by law. Acts 1951, 52nd Leg., p. 287, ch. 170; Acts 1955, 54th Leg., p. 1056, ch. 399.

Effective 90 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., p. 1056, ch. 399, reorganized the 88th Judicial District to be composed of Hardin and Tyler Counties, and reorganized the 75th Judicial District to be composed of Liberty and Chambers

Counties. Sections 1, 2, 5, 8, 9, 11, 13 and 14 of the Act of 1955 affecting the 75th Judicial District are set out under 75th Judicial District, ante.

## 102. — Bowie and Red River

The 102nd Judicial District of Texas shall be composed of the Counties of Bowie and Red River, Texas, and the terms of District Court in each of said Counties shall be held therein each year as follows:

**BEGINNING:** In Red River County on the first Monday in January, on the fourteenth Monday after the first Monday in January, on the thirtieth Monday after the first Monday in January, and on the forty-second Monday after the first Monday in January; and each term of court in Red River County shall continue until the date set herein for the beginning next succeeding term thereof.

In Bowie County on the sixth Monday after the first Monday in January and may continue in session eight (8) weeks; on the twentieth Monday after the first Monday in January and may continue in session ten (10) weeks; on the thirty-sixth Monday after the first Monday in January and may continue in session six (6) weeks; and on the forty-eighth Monday after the first Monday in January and may continue in session four (4) weeks.

The Judge of said Court may hold as many sessions in any term of court in any county as is deemed by him proper and expedient for the dispatch of business; provided that during each term of the Court in Bowie County, the Court may sit at any time in Texarkana, Texas, to try, hear and determine any civil nonjury case, and may hear and determine motions, arguments and such other nonjury civil matters as may come before the Court; provided further, that nothing herein shall be construed to deprive the Court of jurisdiction to try nonjury civil cases and hear and determine motions, arguments, and such other nonjury civil matters at the county seat at Boston, Texas.

The Clerk of the District Court in each of said Counties and his successors in office shall be the Clerk of the 102nd Judicial District Court in said Counties and shall perform all duties pertaining to the Clerkship of said Court; provided that the District Clerk of Bowie County or his deputy shall wait upon said Court when sitting at Texarkana, Texas, and shall be permitted to transfer all necessary books, minutes, records and papers to Texarkana, Texas, while the Court is in session there; and likewise to transfer all necessary books, minutes, records and papers from Texarkana, Texas, to Boston, Texas, at the end of each session in Texarkana, Texas.

The Sheriff of Bowie County or his deputy shall be in attendance upon the Court while sitting at Texarkana, Texas, and perform such duties as he may be directed to perform, either as required by law or under the order of the Court.

The 102nd Judicial District Court when sitting at Texarkana, Texas, as herein authorized, shall be authorized to use the facilities in Texarkana, Texas, furnished and provided for the use of the 5th Judicial District Court while sitting there.

The District Court of the 102nd Judicial District in Bowie and Red River Counties shall exercise general jurisdiction over civil and criminal matters as is now or may hereafter be conferred by law.

Said 102nd District Court shall also have concurrent jurisdiction in Bowie County with the 5th Judicial District Court, and all causes of action of a civil nature pending in either Court in said County shall, at the end of each term of such Court in which the same is pending, be transferred by operation of law to the other Court, except where the next succeeding term of the 5th District Court will convene before the next term of the 102nd District Court in said County; and said Courts, and the judges thereof, either in termtime or vacation, may transfer any civil or criminal cause pending in their respective Courts to the other District Court in said County by an order entered upon the minutes of their respective Courts.

All processes issued, bonds and recognizances made, and all grand and petit jurors drawn before this Act takes effect shall be valid and returnable to the next succeeding terms of the District Courts of the several Counties as herein fixed respectively as though issued and served for such terms and Courts and returnable to and drawn for the same.

The Judge and all District Officers of the 102nd Judicial District as heretofore constituted shall be the Judge and District Officers of the 102nd Judicial District as constituted and reorganized by this Section during the terms for which they each respectively were elected. As amended Acts 1953, 53rd Leg., p. 727, ch. 284, § 1; Acts 1955, 54th Leg., p. 505, ch. 147, § 1.

Emergency. Effective May 2, 1955.

Section 2 of the amendatory act of 1955 declared an emergency.

#### 109.—Andrews, Crane and Winkler

Section 1. From and after the effective date of this Act, the 109th Judicial District of Texas shall be composed and confined to the Counties of Andrews, Crane and Winkler.

Sec. 2. The terms of the 109th Judicial District Court shall be as follows:

In the County of Crane on the first Monday in March, June, September and December and may continue in session until 10:00 A.M. of the Monday for convening the next regular term of such Court in Crane County.

In the County of Winkler on the first Monday in January, April, July and October and may continue in session until 10:00 A.M. of the Monday for convening the next regular term of such Court in Winkler County.

In the County of Andrews on the first Monday in February, May, August and November and may continue in session until 10:00 A.M. of the Monday for convening the next regular term of such Court in Andrews County. As amended Acts 1955, 54th Leg., p. 974, ch. 379, § 7.

Effective 90 days after June 7, 1955, date of adjournment.

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

*Acts 1955, 54th Leg., p. 974, ch. 379, reorganized the 109th Judicial District to be composed of Andrews, Crane and Winkler Counties, and created the 143rd Judicial District to be composed of Ward, Reeves and Loving Counties.*

*Section 1 of the Act of 1955 provided that "The 109th Judicial District of Texas as hereby created shall be composed of the counties of Andrews, Crane and Winkler Counties."*

*For miscellaneous provisions of the 1955 Act affecting both the 109th Judicial District and the 143rd Judicial District, see 143rd Judicial District, post.*

#### 112. — Pecos, Upton, Sutton and Crockett

The One Hundred and Twelfth Judicial District shall be composed of the Counties of Pecos, Upton, Sutton and Crockett, and the terms of the district court shall be held therein as follows:

In Pecos County, beginning on the first Monday in January, May and November and second Monday in July.

In Upton County, beginning on the first Monday in February and the second Monday in June.

In Sutton County, beginning on the third Monday in March and the first Monday in September.

In Crockett County, beginning on the first Monday in April and the third Monday in September.

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business. As amended Acts 1955, 54th Leg., p. 882, ch. 337, § 3.

Effective 90 days after June 7, 1955, date of adjournment.

For sections 5-12 of the amendatory Act of 1955, see notes under 38th Judicial District, ante.

#### 132.—Scurry and Borden

Sec. 6. The 132nd Judicial District of Texas is hereby created and shall be composed of Scurry and Borden Counties and shall be known as the District Court of the 132nd Judicial District and shall be in existence from and after the effective date of this Act until the 30th day of April, 1961, unless hereafter extended by an Act of the Legislature. The District Court of the 132nd Judicial District shall have and exercise civil and criminal jurisdiction coextensive with the limits of Scurry and Borden Counties in all actions, proceedings, matters and causes of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas. All powers and duties imposed by this Act upon the District Court of the 132nd Judicial District shall expire on April 30, 1961, unless said Court shall be extended by an Act of the Legislature; and upon expiration of said Court all records, pleadings, documents and other matters then relating to or pending in the District Court of the 132nd Judicial District of Texas, including all cases on the docket of the District Court of the 132nd Judicial District, shall be transferred without prejudice to the District Court of the 32nd Judicial District and thereafter Scurry and Borden Counties shall be a part of the 32nd Judicial District

of Texas for all purposes. As amended Acts 1955, 54th Leg., p. 895, ch. 346, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

*Acts 1955, 54th Leg., p. 895, ch. 346, § 1 provides that "The 132nd Judicial District, composed of Borden and Scurry Counties, is hereby extended until the 30th day of April, 1961, at which time it will cease to exist unless extended by an Act of the Legislature."*

### 136.—Jefferson

Section 1. There is hereby created in and for Jefferson County, Texas, an additional District Court to be known as the District Court for the 136th Judicial District of Texas composed of the County of Jefferson.

Sec. 2. The District Court for the 136th Judicial District shall have and exercise concurrent jurisdiction with the 58th and 60th Districts Courts within the limits of Jefferson County in all civil cases or proceedings and matters over which District Courts are given jurisdiction by the Constitution and laws of this State.

Sec. 3. The terms of the District Court for the 136th Judicial District shall be as follows:

There shall be two terms of said District Court for the 136th Judicial District in Jefferson County in each year, and the first term, which shall be known as the January-June term, shall be begun in said court on the first Monday in January and shall continue until and including Sunday next before the first Monday in July; and the second term, which shall be known as the July-December term, shall begin in said court on the first Monday in July, and shall continue until and including Sunday next before the first Monday in the following January.

Sec. 4. The place of sitting of the District Court for the 136th Judicial District shall be as follows:

Said court, in the discretion of the judge presiding, may sit at Port Arthur, Texas, for the trial of non-jury cases. Nothing herein, however, shall be construed to prevent the trial of non-jury cases at Beaumont, Texas, or to deprive the court of jurisdiction to try non-jury cases at the county seat.

Sec. 5. Immediately on the effective date of this Act, the Governor shall appoint a suitable person having the qualifications provided by the Constitution and laws of this State as judge of the District Court for the 136th Judicial District, who shall hold office until the next general election, and until his successor shall be duly elected and qualified, as provided by the Constitution and laws of this State; and he shall receive such compensation as allowed other district judges under the laws of this State.

Sec. 6. The judge of the 136th District Court is authorized to appoint an official shorthand reporter of such court who shall have the qualifications now required by law of official shorthand reporters. Such reporter shall perform such duties as are required by law, and such duties as may be assigned to him by the judge of the District Court for the 136th Judicial District, and shall receive as compensation for his services the compensation now allowed to the official shorthand reporters under the laws of this State.

Sec. 7. The District Clerk of Jefferson County shall also act as the District Clerk for the 136th Judicial District in Jefferson County. District Clerk of Jefferson County shall docket alternately on the dockets of the

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

District Courts of the 58th, 60th and 136th Judicial Districts in Jefferson County all civil cases, actions, petitions, applications and other proceedings filed in the District Courts of Jefferson County, so that the first case or proceeding filed after the effective date of this Act and every third case or proceeding thereafter filed shall be docketed in the 58th Judicial District Court; and the second case or proceedings filed and every third case or proceedings thereafter filed shall be docketed in the 60th Judicial District Court; and so on seriatim; and all civil cases or proceedings in this manner shall be docketed in and divided and distributed among the 58th Judicial District Court, the 60th Judicial District Court and the 136th Judicial District Court, one-third of each of them when first filed. All civil suits and proceedings shall be filed by the Clerk in the order in which the petitions are presented to or deposited with him, and immediately after being so presented or deposited.

Any cases or proceedings pending on the dockets of the 58th, 60th or 136th District Courts may in the discretion of the judge thereof be transferred from one of said courts to either of the other, either in term time or in vacation, and the judges may in their discretion exchange benches or districts from time to time. In the case of the disqualification of the judge of any of said courts in any case or proceeding, such case or proceeding on the suggestion of such judge of the disqualification entered on the docket shall be transferred to another of said courts, and the order of transfer may be made by such disqualified judge or by any judge of another said courts; or instead of transferring the case or proceeding, the judge of any other of said courts may sit in the court in which the case or proceeding is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the Clerk accordingly.

Sec. 8. All process, writs, bonds, recognizances or other obligations issued out of District Courts of Jefferson County are hereby made returnable to the terms of the District Courts of Jefferson County, as said terms are fixed by law and by this Act, and all bonds executed and recognizances entered in said courts shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of such court as fixed by law and by this Act; and all process heretofore returned, as well as all bonds and recognizances heretofore taken in the District Courts of Jefferson County, shall be valid.

Sec. 9. The sheriff of Jefferson County shall attend, either in person or by deputy, the court as required by law in Jefferson County or when required by the judge thereof, and the sheriffs and constables of the several counties of this State when executing process out of said court shall receive fees provided by General Law for executing process out of District Courts.

Sec. 10. The provisions of Article 52-160a, Code of Criminal Procedure of Texas, shall be applicable to the court herein created as well as to the 58th and 60th Judicial District Courts, as well as to the Criminal District Court of Jefferson County, Texas. Acts 1955, 54th Leg., p. 634, ch. 216.

Emergency. Effective May 16, 1955.

Section 11 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict and provided that, as to all other laws, this Act should be cumulative. Section 13 provided that

partial invalidity should not affect the remaining portion of the Act.

Jefferson County, see, also, 58th and 60th Districts, ante.

## 138.—Willacy and Cameron

Section 1. An additional Judicial District is hereby created, the limits of which shall be co-extensive with the limits of the Counties of Willacy and Cameron, the District Court of which shall be known as the 138th District Court. Such court shall have the jurisdiction provided by the Constitution and laws of this State for District Courts, and it shall have concurrent jurisdiction with the 103rd and 107th District Courts, except that in Willacy County the 138th District Court shall not have the jurisdiction of the 107th District Court which is in addition to the jurisdiction vested by the Constitution in District Courts. The 138th District Court shall give preference to criminal cases in each of the said counties.

Sec. 2. The terms of such court shall be three (3) each year in each county as follows: (1) in the County of Willacy on the first Monday of January, May, and September; (2) in the County of Cameron on the first Monday of March, July, and November. Each term of court in each of the said counties shall continue until the convening of the next regular term of court therein. The judge of the 138th District Court may, in his discretion, hold as many sessions of court in any term of court in either county of his district as may be deemed by him proper and expedient for the disposition of the court's business; and the jurors therefor may be summoned to appear before such District Court at such times as may be designated by the judge thereof.

Sec. 3. All existing laws relative to juries and grand juries in the counties comprising the 138th Judicial District shall apply to juries and grand juries selected and impaneled by the 138th District Court; providing that the judge of the 138th District Court shall call grand juries at all times as required by law, but the judges of the 103rd and 107th District Courts need not call grand juries except in cases of emergency.

Sec. 4. The respective judges of the 103rd, the 107th, and the 138th District Courts may, from time to time, as occasion may require, transfer cases or other proceedings from one court to the other, of which such other court has jurisdiction, and the judges of each of the said courts in such respective counties may, in their discretion, exchange benches or districts from time to time; and any of them may, in his own courtroom, try and determine any case or proceeding pending in the other court without having the case transferred, or may sit in any other court and there hear and determine any case pending; and every judgment and order shall be entered on the minutes of the court in which the case is pending or order rendered as provided by law. The judge of any of said courts, in such respective counties, may issue restraining orders and injunctions returnable to the other judges or courts in such counties. It is provided, however, that in the County of Willacy the judges of the 103rd District Court and the 138th District Court shall not exchange benches with or sit for the judge of the 107th District Court in any case of which District Courts generally have no jurisdiction.

Sec. 5. The sheriffs and clerks of the District Courts of Willacy and Cameron Counties, as now provided by law shall be, respectively, the sheriffs and clerks of the 138th District Court in such counties. The County Attorneys of Willacy and Cameron Counties, each respectively, shall represent the State in said 138th District Court in Willacy and Cameron Counties.

Sec. 6. The judge of the 138th District Court shall appoint an official court reporter to serve said court in accordance with existing law, who shall receive the same fees and salary as is now provided by law for official court reporters.

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

Sec. 7. The 138th District Court shall have a seal in like design as is now prescribed by law for District Courts. Acts 1954, 53rd Leg., 1st C. S., p. 125, ch. 57, Art. I; Acts 1955, 54th Leg., p. 638, ch. 218, § 1.

Emergency. Effective May 16, 1955.

*The Temporary Special 138th District Court for Willacy and Cameron Counties created by Acts 1954, 53rd Leg., 1st C.S., p. 125, ch. 57, art. 1, §§ 1-7, and art. 3, §§ 1-6, was made a permanent district court known as the 138th District Court for Willacy and Cameron Counties by Acts 1955, 54th Leg., p. 638, ch. 218, §§ 1, 3.*

*Sections 1 and 2 of Article 3, Acts 1954, 53rd Leg., 1st C.S., p. 125, ch. 57, as amended by Acts 1955, 54 Leg., p. 638, ch. 218, § 3, read as follows:*

*"Section 1. The Special 138th District Court and the Special 139th District Court heretofore established as temporary courts are hereby established as permanent District Courts, to be known respectively as the 138th District Court and the 139th District Court.*

*"Sec. 2. The District Judge of the Special 138th District Court and the District Judge of the Special 139th District Court duly elected and acting as such shall be the District Judge of the 138th District Court and the District Judge of the 139th District Court, respectively, until the time for which each such judge has been elected expires and until his successor qualifies. The term of the judge of each of such courts shall thereafter be four years, commencing on the first day of January of 1957 and each four years thereafter. The compensation of each judge shall be the same as the compensation paid to the judges of other District Courts, including the expenses as provided by the laws of Texas; and the compensation herein provided for shall be paid in the same manner in which other district judges of the State are paid."*

Acts 1954, 53rd Leg., 1st C.S., p. 125, ch. 57, art. 3, § 3, was repealed by Acts 1955, 54th Leg., p. 638, ch. 218, § 3. Sections 4, 5 and 6 of article 3 of the 1954 Act were severability, repeal of conflicting laws and appropriation provisions.

Willacy and Cameron Counties, see, also, 103rd and 107th Judicial Districts, ante.

Acts 1955, 54th Leg., p. 638, ch. 218, §§ 4, 5 were appropriation and severability provisions.

### 139.—Hidalgo

Section 1. An additional Judicial District is hereby created, the limits of which shall be co-extensive with the limits of Hidalgo County, the District Court of which shall be known as the 139th District Court. Such court shall have the jurisdiction provided by the Constitution and laws of this State for District Courts, and it shall have concurrent jurisdiction with the 92nd and 93rd District Courts.

Sec. 2. The terms of such court shall be two (2) each year in such county as follows: upon the first Monday of January and the first Monday of July. Each term of court shall continue until the convening of the next regular term of court therein. The judge of the 139th District Court may, in his discretion, hold as many sessions of court in any term of court as may be deemed by him proper and expedient for the disposition of the court's business; and the jurors therefor may be summoned to appear before such District Court at such times as may be designated by the judge thereof.

Sec. 3. The respective judges of the 92nd, the 93rd, and the 139th District Court may, from time to time, as occasion may require, transfer cases or other proceedings from one court to the other, of which such other court has jurisdiction, and the judges may, in their discretion, ex-



change benches or districts from time to time; and any of them may, in his own courtroom, try and determine any case or proceeding pending in the other court without having the case transferred, or may sit in any other court and there hear and determine any case pending; and every judgment and order shall be entered on the minutes of the court in which the case is pending or order rendered as provided by law. The judge of any of said courts, in such respective counties, may issue restraining orders and injunctions returnable to the other judges or courts in said Hidalgo County.

Sec. 4. The sheriff and clerk of the District Courts of Hidalgo County, as now provided by law shall be, respectively, the sheriff and clerk of the 139th Judicial District Court. The Criminal District Attorney of Hidalgo County shall represent the State in said 139th District Court.

Sec. 5. The Judge of the 139th District Court shall appoint an official court reporter to serve said court in accordance with existing law, who shall receive the same fees and salary as is now provided by law for official court reporters.

Sec. 6. The 139th District Court shall have a seal in like design as is now prescribed by law for District Courts. Acts 1954, 53rd Leg., 1st C.S., p. 125, ch. 57, Art. II; Acts 1955, 54th Leg., p. 638, ch. 218, § 2.

Emergency. Effective May 16, 1955.

*The temporary Special 139th District Court for Hidalgo County created by Acts 1954, 53rd Leg., 1st C.S., p. 125, ch. 57, art. 2, §§ 1-6, and art. 3, §§ 1-6, was made a permanent district court known as the 139th District Court for Hidalgo County by Acts 1955, 54th Leg., p. 638, ch. 218, §§ 2, 3. Miscellaneous provisions of 1955 Act affecting 139 District Court are set out under 138th Judicial District, ante.*

#### 140.—Lubbock

Section 1. There is hereby created in and for Lubbock County, Texas, an additional District Court to be known as the District Court of the 140th Judicial District of Texas, composed of the County of Lubbock.

Sec. 2. The District Court for the 140th Judicial District of Texas shall have and exercise the jurisdiction prescribed by the Constitution and laws of this State for District Courts in general, and the Judge thereof shall have and exercise the powers conferred by the Constitution and laws of this State on the Judges of the District Courts. Its jurisdiction shall be concurrent with the District Court of the 72nd Judicial District of this State in the County of Lubbock and the District Court of the 99th Judicial District of Texas in Lubbock County. Either of the Judges of the said District Courts for Lubbock County may in his discretion in term-time or in vacation, transfer a case or cases, civil or criminal, to said other District Court with the consent of the Judge of said other District Court by order entered on the minutes of his Court from which said case is transferred, or minutes or orders made in chambers as the case may be, which orders when made shall be copied and certified to by the District Clerk of said Lubbock County, together with all orders made in said case; and such certified copies of such orders, together with the original papers, shall be filed among the papers of any case thus transferred and the fees thereof shall be taxed as a part of the costs of said suit; and the Clerk of said Court shall docket any such case in the Court to which it shall have been transferred and when so entered the Court to which same shall have been thus transferred shall have like jurisdiction therein as in cases originally filed in said Court and the same shall be dropped from the docket

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

of the said Court from which it was transferred; provided that all process and writs issued out of the District Court from which any such transfer is made shall be returnable to the term of Court to which said transfer is made according to the terms of the District Court of said respective Courts as fixed by this Act, and that all bonds executed and recognizances entered into in any District Court from which any such transfer is made shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said Court to which said transfer is made as said terms are fixed by this Act.

Sec. 3. The terms of the District Court of the 140th Judicial District in and for Lubbock County shall be held as follows:

On the first Monday in January and July of each calendar year, and shall continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of said 140th District Court in Lubbock County, Texas.

Sec. 4. The District Clerk of Lubbock County shall act as the District Clerk for the Court herein created. Immediately upon the effective date of this Act the Judge of the 72nd Judicial District Court and the Judge of the 99th Judicial District Court shall enter an order transferring a portion of the cases on the dockets in said Courts to the District Court of the 140th Judicial District herein created; and the District Clerk of Lubbock County shall thereupon transfer such cases accordingly and enter the same upon the docket of the Court created by this Act, together with all records and papers relating thereto.

Sec. 5. The District Attorney in and for the 72nd Judicial District shall act also as the District Attorney for the District Court herein created.

Sec. 6. The Sheriff of Lubbock County shall perform the duties in connection with the Court herein created as provided by law for sheriffs to perform in connection with District Courts.

Sec. 7. The Judge of the District Court of the 140th Judicial District herein created shall appoint an official shorthand reporter for such court who shall be well skilled in his profession, and who shall be a sworn officer of the court and hold office at the pleasure of the Judge of the Court and shall be compensated as provided by law.

Sec. 8. Upon the effective date of this Act, the Governor shall appoint a Judge of the District Court for the 140th Judicial District herein created, who shall have the qualifications required of Judges of District Courts of this State and who shall hold his office until the next general election and until his successor is duly elected and qualified; and he shall be compensated as provided by law.

Sec. 9. All grand and petit juries drawn and selected under existing laws in Lubbock County shall be considered lawfully drawn and selected for the next ensuing term of the 140th District Court. Acts 1955, 54th Leg., p. 630, ch. 214.

Effective 90 days after June 7, 1955, date of adjournment.

Section 10 of Acts 1955, 54th Leg., p. 630, ch. 214, was a severability clause.

Lubbock County, see, also, 72nd, 99th Districts, ante.

#### 142.—Midland

Section 1. The District Court of the 142nd Judicial District of Midland County shall have the jurisdiction provided by the Constitution and Laws of this State for District Courts.

Sec. 2. The 70th District Court shall exercise jurisdiction in Ector County only. The Judge of the 70th District Court shall have authority and power to approve any and all statements of facts and bills of exception, and to make any other order necessary in cases tried in the 70th District Court in Midland County and appealed.

Sec. 3. The terms of the 142nd District Court shall begin on the first Monday in March and on the first Monday in September; and each term of court may continue until the date herein fixed for the beginning of the next succeeding term therein.

Sec. 4. The terms of the 70th District Court in Ector County shall begin on the first Monday in March and the first Monday in September; and each term of court may continue until the date herein fixed for the beginning of the next succeeding term therein; provided, however, that the term of the District Court which is in progress on September 1, 1954 may continue until the beginning of a new term as fixed herein.

Sec. 5. The Judge of the 142nd District Court shall appoint an official shorthand reporter, who shall be compensated as provided by law. The District Clerk of Midland County shall be the clerk of the 142nd District Court of Midland County.

Sec. 6. The office of District Attorney of the 142nd Judicial District is hereby established and made permanent. The present District Attorney shall serve as District Attorney for the 142nd Judicial District and shall hold office until the time for which he was elected expires and until his successor qualifies. He shall possess the qualifications and receive the compensation provided by law for District Attorneys, and his compensation shall be paid in the same manner in which other District Attorneys are paid.

Sec. 7. The District Attorney of the 70th Judicial District shall perform the duties of his office in Ector County, only.

Sec. 8. The territorial limits of the 70th Judicial District shall hereinafter be composed of Ector County and the Judge and District Attorney of the 70th Judicial District shall hereafter be elected by the voters of Ector County, provided, however, that the present Judge and present District Attorney of the 70th Judicial District shall continue in office for the expiration of their present terms. Acts 1954, 53rd Leg., 1st C.S., p. 120, ch. 55; Acts 1955, 54th Leg., p. 632, ch. 215, § 3.

Effective 90 days after June 7, 1955, date of adjournment.

*The temporary Special District Court of Midland County created by Acts 1954, 53rd Leg., 1st C.S., p. 120, ch. 55, was established as a permanent district court to be known as the 142nd District Court by Acts 1955, 54th Leg., p. 632, ch. 215, §§ 1, 2, which read as follows:*

*"Section 1. The Special District Court of Midland County created by the provisions of Senate Bill No. 49, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 55, is hereby established and created as a permanent district court, the limits of which shall be co-extensive with the limits of Midland County, the District Court of which shall be known as the 142nd District Court. Such court shall have the jurisdiction provided by the Constitution and Laws of this State for district courts.*

*"Sec. 2. The Judge of the present Special District Court of Midland County shall serve as judge of the 142nd District Court, and shall hold office until the time for which he was elected expires and until his successor qualifies. The first regular four-year term of of-*

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

*fic of the Judge of the 142nd District Court shall commence on the first day of January of 1957. The compensation of such Judge shall be the same as the compensation paid to the Judges of other District Courts, including the expenses as provided by the laws of Texas, and the compensation herein provided for shall be paid in the same manner in which other District Judges in the State are paid."*

Section 6 of Acts 1955, 54th Leg., p. 632, ch. 215, was a severability clause. Sections 4 and 5 read as follows:

"Sec. 4. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of conflict only; as to all other laws or parts of laws this Act shall be cumulative, it being the purpose of this Act to make the Special District Court of Midland County, created by the provisions of Senate Bill 49, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 55, a permanent district court at the expiration [August 31, 1956] of the said Special District

Court of Midland County, and all laws heretofore applicable to the Special District Court of Midland County shall hereafter be applicable to the 142nd District Court.

"Sec. 5. All appropriations for the payment of the salaries and expenses of the Judge and District Attorney of the Special District Court of Midland County shall be available for payment of the salaries and expenses of the Judge and District Attorney of the 142nd District Court."

Midland County, see, also, 70th District, ante.

### 143.—Ward, Reeves and Loving

Section 1. From and after the effective date of this Act, the 143rd Judicial District of Texas shall be composed and confined to the Counties of Ward, Reeves and Loving.

Sec. 2. The terms of the 143rd Judicial District Court shall be as follows:

In the County of Ward on the third Monday in February, the first Monday in June, the third Monday in September and the first Monday in December, and may continue in session until 10:00 A.M. of the Monday for convening the next regular term of such Court in Ward County.

In the County of Reeves on the first Monday in January and third Mondays in May, August and October and may continue in session until 10:00 A.M. of the Monday for convening the next regular term of such Court in Reeves County.

In the County of Loving on the first Monday in April, the first Monday in August and the third Monday in December and may continue in session until 10:00 A.M. of the Monday for convening the next regular term of such Court in Loving County. Acts 1955, 54th Leg., p. 974, ch. 379, § 8.

Effective 90 days after June 7, 1955, date of adjournment.

*Acts 1955, 54th Leg., p. 974, ch. 379, created the 143rd Judicial District to be composed of Ward, Reeves and Loving Counties, and reorganized the 109 Judicial District to be composed of Andrews, Crane and Winkler Counties.*

*Section 2 of the Act of 1955 provided that "The 143rd Judicial District as hereby created shall be composed of the Counties of Ward, Reeves, and Loving."*

*Sections 3, 4, 5, 6, 9, 10 and 11 of Acts 1955, 54th Leg., p. 974, ch. 379, read as follows:*

*"Sec. 3. Upon the effective date of the Act, the present Judge of the 109th District Court shall continue as the Judge of the 109th District Court herein created. The Governor shall appoint qualified Attorneys to serve as the District Judge and as District Attorney of the 143rd Judicial District. Such appointed Judge and appointed District Attorney shall serve until the next general election at which time a Judge and a District Attorney shall be elected to serve a term of four (4) years.*

*"Sec. 4. Whenever any county by this Act is removed from one Judicial District and placed in another Judicial District all cases and proceedings on the docket or dockets of the Court of the District from which the county was removed together with all records, documents, and instruments on file in connection therewith shall be transferred by the District Clerk of such County to the District Court of the Judicial District in which such County is placed and there by him or her properly docketed; provided, however, that as to any suit already heard in any District Court which becomes a part of the Judicial District created by this Act, the District Judge who was the District Judge of such District Court at the time such suit was tried shall retain jurisdiction of such suit until final judgment is rendered and thereafter until all motions duly filed in such suit are acted upon.*

*"Sec. 5. Whenever cases or other proceedings are transferred from any District Court to another District Court the Judge of the Court to which they are transferred shall have full power and authority to perform all Judicial Acts relative thereto which the Judge from the Court from which they were transferred was empowered and authorized to perform had the transfer not been made, and all writs, processes, bonds, bail bonds, recognizances, complaints, information, and indictments and any other ancillary matters whether mentioned herein or not returnable to the Court from which such cases or proceedings were transferred shall be thereafter returnable to the first term of the Court to which the same are transferred and all of the same are hereby authorized and validated as if they had been returnable originally to that Court.*

*"Sec. 6. The terms of the 109th Judicial District Court and the 143rd Judicial District Court shall be as hereinafter enumerated and shall begin on the various Mondays in the various months as therein set forth and continuing until the convening of the next regular term thereof. Each Court may hold as many sessions of Court in each County each year as the Judge thereof may deem expedient.*

*"Sec. 9. All Judges of the several districts herein created and continued shall have authority to appoint official court reporters to serve their courts who shall receive the fees and salaries provided by law for court reporters of District Courts generally.*

*"Sec. 10. The 143rd District Court shall have a seal in like design as is provided by law for seals of such courts.*

*"Sec. 11. All laws and parts of laws in conflict herewith are expressly repealed to the extent of such conflict only. Otherwise this Act shall be cumulative of all other laws governing District Courts of this State."*

#### 145. Angelina, Cherokee and Nacogdoches

Section 1. From and after September 1, 1955, the Special Second District Court of Texas, composed of Angelina, Cherokee and Nacogdoches Counties, shall be abolished, and the District Court of the 145th Judicial District of Angelina, Cherokee and Nacogdoches Counties is created and is hereby constituted a permanent regular District Court.

Sec. 2. The Governor of the State of Texas shall appoint a person having the qualifications provided by the constitution and laws of Texas as Judge of the District Court of the 145th Judicial District, and he shall hold office until the next general election and until his successor shall be

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

duly elected and qualified. Thereafter such Judge shall be elected as provided by the constitution and laws of this State, and he shall receive such compensation as allowed other District Judges under the laws of Texas.

Sec. 3. There shall be two (2) terms of the District Court of the 145th Judicial District in each of the counties of Angelina, Cherokee and Nacogdoches, Texas, each year.

In Angelina County, the first term shall be known as the June–November term, and shall begin each year on the first Monday in June, and the second term of said court in Angelina County, Texas, which shall be known as the December–May term, shall begin each year on the first Monday in December.

In Cherokee County, the first term shall be known as the April–October term and shall begin each year on the first Monday of April, and the second term, which shall be known as the October–March term, shall begin each year on the first Monday in October.

In Nacogdoches County, the first term shall be known as the February–July term, and shall begin on the first Monday in February, and the second term shall be known as the August–January term and shall begin each year on the first Monday in August.

Each term of court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein.

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

Sec. 4. There shall be two (2) terms of the Second Judicial District Court in each of the counties of Angelina, Cherokee and Nacogdoches, Texas, each year.

In Angelina County, the first term shall be known as the March–August term and shall begin each year on the first Monday in March; and the second term of said Court in Angelina County, Texas, which shall be known as the September–February term, shall begin each year on the first Monday in September.

In Cherokee County, the first term shall be known as the January–June term, and shall begin each year on the first Monday of January; and the second term, which shall be known as the July–December term, shall begin each year on the first Monday in July.

In Nacogdoches County, the first term shall be known as the May–October term, and shall begin each year on the first Monday in May; and the second term shall be known as the November–April term and shall begin each year on the first Monday in November.

Each term of court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein.

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

Sec. 5. The said two (2) District Courts of Angelina, Cherokee, and Nacogdoches Counties shall have jurisdiction over all matters, both civil and criminal, of which jurisdiction is given or shall be given by the constitution and laws of Texas to District Courts; and said two (2) District Courts shall have concurrent civil and criminal jurisdiction of all matters, civil and criminal, of which jurisdiction is given to the District Court by the constitution and laws of the State of Texas.

Sec. 6. The Judge and all district officers of the Second Judicial District, as heretofore constituted, shall be the Judge and district officers of

the Second Judicial District as constituted and reorganized by this Act, during the terms for which each was respectively elected.

Sec. 7. The District Attorney for the Second Judicial District shall represent the State in all criminal cases in the District Court of the 145th Judicial District and perform such other duties as are or may be provided by law governing District Attorneys.

Sec. 8. The Clerk of the District Court of each of the Counties of Angelina, Cherokee and Nacogdoches, and his successors in office, shall be the Clerk of the District Court of the 145th Judicial District in his county, and shall perform all duties pertaining to the clerkship of each of said courts.

Sec. 9. There shall be one (1) general docket for the Second District and the 145th Judicial District in each of the Counties of Angelina, Cherokee and Nacogdoches. All suits and other proceedings instituted in any county in the district of which the District Court has jurisdiction shall be addressed to the District Court of the county in which the suit or other proceeding is instituted. The Judge of either the District Court of the Second District or the 145th Judicial District may hear and dispose of any suit or other proceeding on the general docket of the District Court of the county in which the suit or other proceeding is instituted, without the necessity of transferring the suit or other proceeding from one court to another. Every judgment and order shall be entered in the minutes of the District Court of the county in which the proceedings are pending, and the Clerk of the District Court of the county shall keep one (1) set of minutes in which shall be recorded all the judgments and orders of the Second District Court and the 145th Judicial District. All citations and other process issued by the District Clerk and all notices, restraining orders and other process authorized to be issued by the Judge of the Second District Court or the 145th Judicial District shall be returnable to the District Court of the county in which such suit or other proceeding is pending, without reference to the designation of the District Court, and on the return of such process, a hearing or trial shall be presided over by the Judge of either the Second District Court or the 145th Judicial District.

Sec. 10. On the effective date of this Act the District Clerks of each of the counties in the Special Second District Court shall transfer all civil and criminal cases pending in the Special Second District Court to the District Court of the 145th Judicial District.

Sec. 11. All processes and writs issued or served and recognizances, bonds and undertakings before this Act takes effect and made returnable to the Special Second District Court in the Counties of Angelina, Cherokee and Nacogdoches shall be considered as returnable to the next succeeding term of the District Court of the 145th Judicial District; and providing that all grand and petit juries drawn and selected under existing laws in Angelina, Cherokee and Nacogdoches Counties shall be considered as lawfully drawn and selected for the next ensuing term of the District Court of the 145th Judicial District in their respective counties.

Sec. 12. Nothing herein shall prevent the Judges of both the Second District Court and the District Court of the 145th Judicial District from legally sitting and hearing cases in the same county of such district at the same time.

Sec. 13. The Judges of each of said courts, each for his own court, shall have the right to appoint an official court reporter who shall have the qualifications and receive the same compensation as is now, or may hereafter be, fixed by law, for court reporters in District Courts.

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

Sec. 14. The Judges of the Second District Court and the District Court of the 145th Judicial District shall sign the minutes of each term of said respective courts in each of said counties within thirty (30) days after the end of each term, and each Judge shall also sign the minutes of the other court covering such proceedings as were had before him.

Sec. 15. Qualified jurors for service in both the Second District Court and the District Court of the 145th Judicial District in Angelina, Cherokee and Nacogdoches Counties shall be selected by jury commissions in accordance with the provisions of Article 2104 of the Revised Civil Statutes of Texas, as amended, and succeeding Articles; and the provisions of Senate Bill No. 466, Chapter 467, Acts of the 51st Legislature of Texas (Article 2094), or any other provisions of the law concerning selection of petit jurors by the jury wheel shall not apply in said District Courts in said counties.

Sec. 16. The Judges of the Second District Court and of the District Court of the 145th Judicial District may each take a vacation and not attend court for four (4) weeks in each year; the Judges of said courts shall by agreement between themselves, take their vacations alternately so that there shall at all times be at least one (1) of said Judges in the Judicial Districts composed of Angelina, Cherokee and Nacogdoches Counties.

Sec. 17. The respective Judges of the Second Judicial District Court, and the District Court of the 145th Judicial District may, from time to time, as occasion may require, transfer cases or other proceedings from one court to the other, of which such other court has jurisdiction, and the Judges of each of said courts in such respective counties, may, in their discretion, exchange benches or districts from time to time; and any of them may, in his own courtroom, try and determine any case or proceeding pending in the other court without having the case transferred, or may sit in any other court and there hear and determine any case pending, and every judgment and order shall be entered on the minutes of the court in which the case is pending or order rendered as provided by law. The Judge of any of said courts, in such respective counties, may issue restraining orders and injunctions returnable to the other Judges or courts in such counties. Acts 1955, 54th Leg., p. 1230, ch. 492.

Emergency. Effective Sept. 1, 1955.

### 153.—Tarrant

Section 1. There is hereby created in and for Tarrant County, Texas, effective September 1, 1955, an additional District Court to be known as the District Court of the 153rd Judicial District of Texas composed of the County of Tarrant.

Sec. 2. The District Court for the 153rd Judicial District shall have and exercise concurrent jurisdiction with the 17th, 48th, 67th and 96th District Courts within the limits of Tarrant County in all civil cases or proceedings and matters over which District Courts are given jurisdiction by the Constitution and laws of this State.

Sec. 3. The terms of the District Court of the 153rd Judicial District shall be as follows:

On the first Monday in February, May, August and November and may continue in session until the Saturday immediately preceding the Monday for the convening of the next regular term of such Court. Any term of the Court may be divided into as many sessions as the Judge thereof may deem expedient for the disposition of business.

Sec. 4. Immediately on the effective date of this Act, the Governor shall appoint a suitable person having the qualifications provided by the



Constitution and laws of this State as Judge of the District Court for the 153rd Judicial District who shall hold office until the next general election and until his successor shall be duly elected and qualified as provided by the Constitution and laws of this State, and he shall receive such compensation as allowed other District Judges under the laws of this State.

Sec. 5. The Judge of the 153rd District Court is authorized to appoint an official shorthand reporter of such Court who shall have the qualifications now required by law of official shorthand reporters. Such reporter shall perform such duties as are required by law and such duties as may be assigned to him by the Judge of the 153rd District Court and shall receive as compensation for his services the compensation now allowed other official shorthand reporters under the laws of this State.

Sec. 6. The District Clerk of Tarrant County shall also act as District Clerk for the 153rd Judicial District in Tarrant County.

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

Sec. 8. The Sheriff of Tarrant County shall attend either in person or by deputy the Court as required by law in Tarrant County or when required by the Judge thereof, and the Sheriffs and Constables of the several counties of this State when executing process out of said Court shall receive fees provided by General Law for executing process out of District Courts.

Sec. 9. All process, writs, bonds, recognizances or other obligations issued out of the District Courts of Tarrant County are hereby made returnable to the terms of the District Courts of Tarrant County as said terms are fixed by law and by this Act, and all bonds executed and recognizances entered in said Court shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of such Court as fixed by law and by this Act; and all process heretofore returned, as well as all bonds and recognizances heretofore taken in the District Courts of Tarrant County, shall be valid. Acts 1955, 54th Leg., p. 636, ch. 217.

Effective 90 days after June 7, 1955, date of adjournment.

Tarrant County, see, also, 17th, 48th, 67th, 96th Districts, ante

Section 10 of Acts 1955, 54th Leg., p. 636, ch. 217, was a severability clause.

#### Art. 200a. Administrative Judicial Districts

Additional compensation of judges assigned in certain counties, see art. 3883i, § 10.

## TITLE 10A—ARCHITECTS

## Article 249a. Regulation of practice of architecture

Oath; organization of Board; bond of Secretary-treasurer;  
powers and duties; rules and regulations

Sec. 3(a). The members of the Texas Board of Architectural Examiners shall, before entering upon the discharge of their duties, qualify by subscribing to, before a Notary Public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the Constitutional oath of office. They shall, as soon as organized, and biennially thereafter in the month of January, elect from their number a chairman, vice-chairman, and secretary-treasurer. The secretary-treasurer, before entering upon his duties, shall make and file a bond of not less than Five Thousand Dollars (\$5,000.00) with the State Comptroller. Said bond shall be payable to the Governor of this State for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer, and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the Texas Board of Architectural Examiners.

(b). The Board shall adopt all reasonable and necessary rules, regulations, and by-laws to govern its proceedings and activities, not inconsistent with this Act, the laws of this State, or of the United States, which it may deem advisable. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border shall contain the words, "Texas Board of Architectural Examiners". The secretary-treasurer of the Board shall keep a correct record of all the proceedings of the Board and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall reflect all renewals or refusals of certificates of registration; and they shall also contain the name, known place of residence, and the date and serial number of the registration certificate of every registered architect entitled to practice his or her profession in this State, and a record of all renewals of such certificates.

(c). The Board shall cause the prosecution of all persons violating any of the provisions of this Act, and may incur the expense reasonably necessary in that behalf.

**Fees, disposition of; salaries and expenses; Architects' Registration Fund**

Sec. 4(a). All fees collected which are provided to be charged by virtue of this Act shall be deposited in the State Treasury, to the credit of a special fund to be known as "Architects Registration Fund," and all expenditures from this fund shall be on order of the Texas Board of Architectural Examiners on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature of Texas. All disbursements from such fund shall be made only on the written approval or order of the chairman or acting chairman, and the secretary-treasurer of such Board, and such disbursements shall not in any way be a charge upon the General Revenue Fund of this State.

(b). The secretary-treasurer of the Board shall receive such monthly compensation for his services as shall be determined by the Legislature, exclusive of allowable expenses of office. The other members of the Board

shall each receive as compensation for their services, in addition to their necessary expenses, the sum of Ten Dollars (\$10.00) for each and every day actually spent by them in attending the business of the Board, going to, attending, and returning from regular and special meetings of said Board, in conducting examinations of applicants for registration certificates as provided for by this Act, and in prosecuting violations of this Act. To aid the Board in performing its duties, the Board shall maintain an office in Austin, Travis County, Texas, and is hereby authorized to employ a secretary who shall also make and file a surety bond in a like amount and in the same manner as required of the secretary-treasurer member of the Board. Said Board shall also employ such clerks and other employees as may be needed to assist the secretary in performing his duties and in carrying out the purposes of the laws of Texas pertaining to architects. The Board shall compensate all such employees and pay all of the Board's expenses from the Architects Registration Fund in the amounts and as provided by the Legislature of Texas. At the end of each fiscal year, there shall be transferred from the Architects Registration Fund to the General Fund of the State of Texas, ten per cent of the gross income as full compensation for all governmental services rendered the Texas Board of Architectural Examiners.

**Quorum; meetings; rules and regulations**

Sec. 5(a). A majority of the membership of the Board shall constitute a quorum. Regular meetings of the Board shall be held at such times as the Board may fix and determine. Special meetings of the Board shall be called by the chairman, or in his absence from the State, or inability to act, by the vice-chairman of the Board.

(b). The Board shall adopt rules and regulations for the examination and registration of applicants to practice architecture in accordance with the provisions of this Act, and may amend, modify, and repeal such rules and regulations from time to time. The Texas Board of Architectural Examiners is hereby empowered and authorized to adopt and enforce such rules and regulations necessary for the enforcement of this Act; however, all rules and regulations before adoption or change by the Board must be submitted to and approved in writing by the Attorney General before same shall become effective, and notice must be given by the Board at least ten days in advance of any meeting called to consider the adoption of any rule or regulation or change or repeal thereof; such notice as herein provided shall be accomplished by mailing same to each reputable school of architecture within this State, and by publication at least once in a daily newspaper published in and having general circulation in the State of Texas. The notice shall state the date, time and place of the meeting, and shall contain a summary statement of the rules and regulations to be considered by the Board.

**Meetings; examinations; fee; certificate of architecture; exemptions**

Sec. 6(a). It shall be the duty of the Texas Board of Architectural Examiners to hold meetings at least twice yearly at such times and places as the Board may in its discretion determine for the purpose of transacting its business and to examine all applicants for license to practice architecture in this State; and the Board shall report to each applicant within a reasonable time after such examination whether or not such applicant passed or failed such examination. Each person applying for examination shall pay to the Board a fee of Twenty-five Dollars (\$25.00) and shall be granted a certificate to practice architecture in this State upon his having

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

passed the examination given by the Board on such subjects and procedures pertaining to architecture as the Board in its discretion may require. The original certificate herein provided for shall be valid for the balance of the current registration year and must be renewed each year thereafter in the manner and time provided by law.

(b). The provisions of this Section requiring examination shall not apply to qualified applicants who graduated from a reputable and approved architectural school prior to June 15, 1957 and who shall have filed with the Board on or before ninety days after the effective date of this Act his intention to qualify for such examination exemption herein provided for or to apply for and take the regularly required examination during the period of his accumulation of experience in an architect's office as provided in this Act. In the event any person otherwise eligible for a license without examination as herein provided is in active service in the Armed Forces of the United States of America at the time this bill becomes effective, any such person shall have ninety days from and after the date of the severance of such active duty in which to file his application for exemption herein provided.

#### Qualifications of applicants for registration

Sec. 7(a). An applicant for examination for registration as an architect in this State shall be a person of good moral character, not less than 21 years of age, a citizen of the United States of America, and shall present a diploma from and be a graduate of a reputable school or college of architecture, and shall also present evidence acceptable to the Board of such applicant's having had satisfactory experience in architecture, in the office or offices of one or more legally practicing architects in the United States of America, as prescribed in the rules and regulations adopted by the Board.

(b). A school or college shall be considered reputable wherein the course of instruction offered is as high as, and equivalent to, that adopted by the better class of schools of architecture in the United States and where such school or college has been approved by the Texas Board of Architectural Examiners.

(c). Provided, however, the Board may accept for examination an applicant, although not a graduate as above required, who possesses all of the other qualifications and furnishes evidence acceptable to the Board of his having completed not less than eight years satisfactory experience in architecture in the office or offices of one or more legally practicing architects in the United States of America, or any combination of architectural schooling and experience totaling eight years.

#### Licensees from other states or countries; fees

Sec. 8(a). The Texas Board of Architectural Examiners may, in its discretion in each instance, grant a certificate to practice architecture in this State to an architect who possesses a valid and current certificate or license to practice architecture in another State or territory of the United States of America or of another country, where the requirements and qualifications of such other jurisdiction were, at the time of the granting of such certificate or license to practice architecture in such other jurisdiction, equal to or the equivalent of the requirements of the Texas Board of Architectural Examiners at the time of the filing of such application for a reciprocal certificate. An applicant for a certificate under this section shall possess all of the other qualifications prescribed in this Act for other applicants and shall make application in the same manner and form as any other applicant; and such applicant shall fur-

nish the Board such documents and other evidence concerning his application and qualifications as will substantiate his qualifications.

(b). All applications under this Section shall be accompanied by a fee of Fifty Dollars (\$50.00) payable to the Texas Board of Architectural Examiners for the processing and investigating of the application so filed and for the issuance of the certificate herein provided for. The provisions of this section shall apply only where the laws, legal requirements and regulations of such other jurisdiction extend like or similar privileges to practice architecture in such other jurisdiction to registered architects of this State.

#### Seal to be used by architect

Sec. 9. Every registered architect shall obtain and keep a seal, such as is authorized, prescribed, and approved by the Texas Board of Architectural Examiners, with which he or she shall stamp or impress all drawings or specifications issued from his or her office for use in this State. The design of the seal shall be the same as that to be used by the Texas Board of Architectural Examiners, except that it shall bear the words "Registered Architect, State of Texas" instead of "Texas Board of Architectural Examiners".

#### Practicing architecture; defined; requirements; exceptions

Sec. 10(a). Any person, or firm, who for a fee or other direct compensation therefor, shall engage in the planning, or designing, or supervising the construction of buildings to be erected or altered in this State, by or for other persons than themselves, as a profession or business, and shall represent or advertise themselves as architects, architectural designers, or other title of profession or business using some form of the word "architect" shall be considered as practicing the profession of architecture in this State, and shall be required to comply with the provisions of this Act; and no person or firm shall engage in or conduct the practice of architecture as aforesaid in this State unless a registration certificate or certificates therefor have been duly issued to such person or the members of such firm as provided for by this Act, and no firm or partnership shall engage in, or conduct, the practice of architecture as aforesaid within this State except by and through persons to whom registration certificates have been duly issued, and which certificates are in full effect; but nothing in this Act shall prevent draftsmen, students, clerks of works, superintendents, or other employees or assistants of those legally practicing architecture under registration certificates as herein provided for from acting under the instructions, control, or supervision of such registered architects.

(b). Nothing in this Act shall prevent qualified professional engineers from planning and supervising work, such as railroads, hydroelectric work, industrial plants, or other construction primarily intended for engineering use or structures incidental thereto, nor prevent said engineers from planning, designing, or supervising the structural features of any building, but such engineers shall not employ the title "architect" in any way, nor represent themselves as such, nor shall any engineer practice the profession of architecture as defined herein, unless he or she be registered as an architect under the provisions of this Act.

#### Revocation or cancellation of certificates

Sec. 11. Registration certificates of architects issued in accordance with this Act shall remain in full force and effect until expiration date

unless revoked or suspended for cause as herein provided. The registration certificate and right of any person to practice architecture in this State may be revoked and cancelled by any District Court of this State in a suit by the State upon the relation of the Texas Board of Architectural Examiners, upon the proof of the violation of the law in any respect in regard thereto, or for any cause for which the Texas Board of Architectural Examiners is authorized to refuse to grant registration certificates, or for proof of gross incompetency, or for recklessness in the construction of buildings on the part of the architect designing, planning, or supervising the construction or alteration of same, or for dishonest practice on the part of the holder of such registration certificate; and when requested by the Board, the several District and County Attorneys of this State shall have the authority, and it shall be their duty, to file and prosecute appropriate judicial proceedings in the name of the State against such persons. The venue of each suit shall be in the county of the residence of the holder of such registration certificate.

**Annual registration and fee; certificate of renewal; failure to obtain renewal; architects in armed forces; copartnerships**

Sec. 12(a). It shall be the duty of all persons now or hereafter engaged in the practice of architecture in this State who desire to continue in such practice to register annually with the Texas Board of Architectural Examiners on or before the 30th day of September of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided a fee of not less than Five Dollars (\$5.00) nor more than Twenty Dollars (\$20.00) as determined by said Board according to the needs of the Board. Upon receipt of the required fee within the time and in the manner prescribed by the Board the designated officer or employee of the Board shall thereupon issue to such registered architect a certificate of renewal of his or her registration certificate for the term of one year.

(b). Any registered architect who shall fail to have his or her registration certificate renewed before September 30th of each and every year shall have his or her registration certificate suspended; and it shall be the duty of the secretary-treasurer of the Board to mail a notice of such suspension to such architect at his last known address. But the failure to renew such registration certificate in the time stated shall not deprive such architect of the right of reinstatement and renewal thereafter; but the fee to be paid upon the renewal of a registration certificate after the month of September and before the first of January of the year following shall be an additional Five Dollars (\$5.00) to cover the additional expense incurred by the Board in effecting the renewal; and in the event that the renewal is not made before the first day of January of the year following, such certificate to practice architecture in this State may be revoked and an entry of such revocation made in the official records of the Board; and thereafter the applicant may be required in the discretion of the Board in each case to take and satisfactorily pass such examination as may be prescribed by the Board, and if the applicant passes such examination successfully the fee to be paid upon the renewal of the registration certificate shall be, in such case, the sum of Thirty Dollars (\$30.00); and provided that a registered architect, as herein defined, who is on active duty as a member of the Armed Forces of the United States of America subsequent to October 1, 1940, and who was at the time of his entry into said service or is now in good standing as a registered architect in this State, shall have his name continued on the list of registered architects and shall be exempt from the payment of any further fee dur-

ing his service, as aforesaid, and until separated from the service; and when his active duty status ceases and he is separated from the service, he shall be exempt from payment of such fee for the then current fiscal year.

(c). In the case of co-partnership of architects, each architect partner must be registered to practice architecture. No firm or partnership shall be registered to practice architecture, but may practice as such provided each architect member of such firm or partnership is a registered architect in accordance with the provisions of this Act.

#### Exceptions from Act

Sec. 13. If any person or firm shall, for a fee or other direct compensation, pursue the practice of the profession of architecture in this State as herein defined, or shall engage in this State in the profession or business of planning, designing, or supervising the construction of buildings to be erected or altered by or for other persons than himself, herself, or themselves, and shall advertise, or put out any sign, card, or drawings in this State designating himself, herself, or themselves as an architect, architectural designer, or other title of profession or business using some form of the word 'Architect' without first having complied with the provisions of this Act, such person, or the members of such firm, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25.00) and not more than Two Hundred Dollars (\$200.00) for each offense; and each and every day of violation of this Act as above set forth shall constitute a separate offense.

**Application of Act; United States employees; foreign architects; preparing plans; construction supervisor**

Sec. 14. This Act shall not apply:

1. To the practice of architecture solely as an officer or employee of the United States, but persons so engaged or employed shall not engage in the private practice of architecture in this State without first having a registration certificate as herein provided;

2. To legally qualified architects residing in another State or county outside the border of the United States, who do not maintain nor open offices in this State, provided that such architects, when undertaking or conducting the practice of architecture as herein set forth in this State, shall employ a registered architect of this State as a consultant, or shall act as a consultant of a registered architect in this State;

3. To any person or firm who prepares plans and specifications for the erection or alteration of a building, or supervises the erection or alteration of a building by or for other persons than himself, or themselves, but does not in any manner represent himself, herself, or themselves to be an architect, architectural designer, or other title of profession or business using some form of the word "Architect". As amended Acts 1951, 52nd Leg., p. 413, ch. 259, § 1; Acts 1951, 52nd Leg., p. 835, ch. 473, §§ 2-11; Acts 1955, 54th Leg., p. 1303, ch. 515, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 2 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**TITLE 11A—ASSIGNMENTS, IN GENERAL****Art. 260—1. Accounts and accounts receivable; notices; records**

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

(1) "Account" or "Account Receivable" means an existing or future right to the payment of money presently due, or to become due (a) under an existing contract or under a future contract entered into during the effective period of the notice of assignment hereinafter provided for; (b) which right to payment is not secured by a chattel mortgage, a conditional sale contract, or other instrument which may be filed for record in a public office of this or another state or of the United States and which instrument was given at or before the time the account was assigned and reserves the title to, or creates a lien upon, goods, the sale of which gave rise to the account; and (c) which right to payment is not represented by (A) a judgment, (B) a negotiable instrument, or (C) a non-negotiable instrument which so represents the obligation that an assignee who takes possession of it takes rights superior to those of a prior assignee of the obligation who did not take possession of the instrument; and (d) the assignment of which right is not subject to special statutory provisions of the state or of the Federal Government relative to the rights of creditors of the assignor or to successive assignees from the assignor. "Account" or "account receivable" however shall not include any sums of money accruing to a contractor for labor and/or material performed and/or furnished on any public or private construction contract where such assignor (contractor) has furnished a surety bond guaranteeing the performance of the contract and/or the payment of labor and/or material bills incurred thereon. As amended Acts 1955, 54th Leg., p. 822, ch. 305, § 1.

Sec. 2. The assignment of any existing or future account or accounts may be protected by the execution and delivery by the assignor to the assignee of an instrument or instruments in writing, assigning such account or accounts and describing the account or accounts assigned with sufficient particularity to identify the same, and by the filing for record the "Notice of Assignment" as hereinafter provided for. As amended Acts 1955, 54th Leg., p. 822, ch. 305, § 2.

Sec. 4. The place for filing the notice of assignment shall be the office of the County Clerk of the county of the assignor's residence within this state; or if not a resident of this state, the office of the County Clerk of the county wherein the principal office of the assignor is maintained; or, if neither a resident of this state nor maintaining a principal office within this state, in the office of the County Clerk of Travis County, Texas. Such notice of assignment shall be effective for a definite period of time to be stated therein, not to exceed a period of three (3) years, and such notice shall protect the assignment of accounts which arise during such effective period and which originate out of existing or future contracts, and are assigned by assignor to assignee at any time during such three (3) year period, regardless of whether such account was in the contemplation of the assignor and assignee when such notice was executed. The County Clerk shall on request, for a charge of Fifty Cents (50¢), issue a certificate with respect to any specified person either stating that the specified person is not a filing assignor, or if the specified person is a filing assignor, stating the contents of the filed notice of assignment. As amended Acts 1955, 54th Leg., p. 822, ch. 305, § 1.

Emergency. Effective May 21, 1955.



## TITLE 14—ATTORNEYS AT LAW

## Art. 306. Authority of Supreme Court

The Supreme Court is hereby authorized to make such rules as in its judgment may be proper to govern eligibility for such examination and the manner of conducting the same, covering, among other points, proper guarantee to insure:

1. Good moral character on the part of each candidate for license;
2. Adequate pre-legal study and attainment;
3. Adequate study of the law for at least two years, covering the course of study prescribed by the Supreme Court, or the equivalent of such course;
4. The legal topics to be covered by such study and by the examination given;
5. The time and place for holding the examination, the manner of conducting same, and the grades to be made by the candidates to entitle them to be licensed.

Whenever as many as five applicants shall request the Board to conduct an examination in any particular town or city convenient to their place of residence, the examination of such applicants shall be conducted at such town or city at some suitable time, to be determined by the Board;

6. Any other such matters as shall be desirable in order to make the issuance of a license to practice law evidence of good character, and fair capacity and real attainment and proficiency in the knowledge of law.

The completion of prescribed study in an approved law school as herein defined shall satisfy the law study requirements for taking the aforesaid examination. An approved law school is hereby defined as one which is approved by the Supreme Court as offering the course of study prescribed by the Supreme Court for the period of time designated by such Court, and as maintaining the additional standards prescribed by the Court. No license to practice law in this state shall be issued by any court or authority except by the Supreme Court of this state, under the provisions of this title. The power granted to the Supreme Court by this Act shall not be delegated. As amended Acts 1955, 54th Leg., p. 350, ch. 70, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

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

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| <p>Art.<br/>326k—27. Investigator and adult probation officer for Howard County [New].</p> <p>326k—28. Criminal District Attorney for Galveston County [New].</p> <p>326k—29. One hundred and fifth judicial district; compensation of district attorney [New].</p> <p>326k—30. Special judicial district of Midland County; investigator and stenographer [New].</p> <p>326k—31. One hundred and ninth judicial district; investigators or assistants [New].</p> <p>326k—32. Criminal district attorney for Cass County [New].</p> | <p>Art.<br/>326k—33. Criminal district attorney for Harrison County created [New].</p> <p>326k—34. Criminal district attorney for Polk County [New].</p> <p>326k—35. Seventh Judicial District and Special Judicial District and Special District of Midland County; Compensation of district attorney [New].</p> <p>326k—36. Criminal district attorney for Randall County; office of county attorney abolished [New].</p> |
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**2. COUNTY ATTORNEYS**

- 331g—1. Investigators in counties of over 37,000 [New].

**1. DISTRICT ATTORNEYS**

**Art. 326k—27. Investigator and adult probation officer for Howard County**

Section 1. The District Attorney of the 118th Judicial District is hereby authorized to appoint an investigator for Howard County to perform such duties as may be assigned to him by the District Attorney. The investigator need not be licensed to practice law. He shall have authority to make arrests and execute process in criminal cases and shall have all the rights and duties of a peace officer in criminal cases and in cases growing out of the enforcement of all laws. He may be required to make a bond in an amount to be fixed by the District Attorney.

The investigator shall receive an annual salary of not less than Three Thousand Dollars (\$3,000) and not more than Four Thousand, Two Hundred Dollars (\$4,200), payable monthly, the amount of such salary to be fixed by the District Attorney of the 118th Judicial District, subject to the approval of the Commissioners Court of Howard County. In addition to his salary, the investigator shall be allowed the actual and necessary travel expense incurred in the proper discharge of his duties, not to exceed One Thousand, Two Hundred Dollars (\$1,200) a year. All claims for travel expense shall be approved by the District Attorney. The salary and travel expense shall be paid from the General Fund, the Officers' Salary Fund, or any other available fund of Howard County.

Sec. 2. The investigator shall also serve as adult probation officer in Howard County under the direction of the District Judge of the 118th Judicial District. For these services he may receive an additional annual salary not to exceed Three Hundred Dollars (\$300), subject to the approval of the Commissioners Court of Howard County, which shall be payable monthly and which shall be paid out of the General Fund, the Officers' Salary Fund, or any other available fund of Howard County. Acts 1955, 54th Leg., p. 367, ch. 85.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act authorizing the appointment of an investigator by the District Attorney of the 118th Judicial District, to serve as investigator for Howard County and as

adult probation officer in Howard County; prescribing his powers and duties and providing for his compensation and expenses; and declaring an emergency. Acts 1955, 54th Leg., p. 367, ch. 85.

**Art. 326k—28. Criminal District Attorney for Galveston County****Creation of office; qualifications; oath; bond**

Section 1. The Constitutional office of Criminal District Attorney for Galveston County is hereby created and said Criminal District Attorney of Galveston County shall possess all the qualifications and take the oath of office and give the bond required by the Constitution and laws of this State of other District Attorneys.

**Election; tenure**

Sec. 2. There shall be elected by the qualified electors of the 10th and 56th Judicial Districts of Galveston County at the general election in November, 1956, an attorney for said Judicial Districts and county who shall be styled the Criminal District Attorney of Galveston County and who shall hold office for the remainder of the Constitutional term of office of Criminal District Attorney of Galveston County. Thereafter, the qualified electors of said Judicial District and Galveston County shall elect a Criminal District Attorney at the general election in November, 1958, and every four years thereafter.

**Powers and duties**

Sec. 3. It shall be the duty of the Criminal District Attorney of Galveston County or his assistants as herein provided to be in attendance upon each term and all sessions of the district courts of Galveston County and all of the sessions and terms of the inferior courts of Galveston County held for the transaction of criminal business, and to exclusively represent the State of Texas in all criminal matters pending before said courts and to represent Galveston County in all matters pending before such courts and any other court where Galveston County has pending business of any kind, matter or interest, and in addition to the specified powers given and the duties imposed upon him by this Act all such powers, duties, and privileges within Galveston County as are by law now conferred, or which may hereafter be conferred upon the district and county attorneys in the various counties and judicial districts of this State. He shall collect such fees, commissions and perquisites as are now, or may hereafter be provided by law for similar services rendered by district and county attorneys of this State.

**Commission; compensation**

Sec. 4. The Criminal District Attorney of Galveston County, Texas, shall be commissioned by the Governor and shall receive as salary and compensation the following, and no more: A salary of Five Hundred Dollars (\$500) from the State of Texas as provided in the Constitution of the State of Texas for the salary of District Attorneys, and the sum of not less than Eight Thousand, Five Hundred Dollars (\$8,500) per annum nor more than Ten Thousand, Five Hundred Dollars (\$10,500) to be paid out of the officers salary fund of Galveston County, if adequate; if inadequate the Commissioners Court shall transfer the necessary funds from the general fund of the county to the officers salary fund.

**Assistants, investigators, investigators and stenographers**

Sec. 5. The Criminal District Attorney of Galveston County, for the purpose of conducting the affairs of his office, and with the approval of the Commissioners Court shall be and is hereby authorized to appoint one first assistant and one second assistant and fix their salaries as follows: Said assistants shall receive not less than Six Thousand Dollars

(\$6,000) per annum nor more than Six Thousand, Five Hundred Dollars (\$6,500) and two assistants in addition to his first and second assistants and fix their salaries as follows: Said assistants shall receive not less than Five Thousand, Five Hundred Dollars (\$5,500) nor more than Six Thousand Dollars (\$6,000) per annum.

The Criminal District Attorney of Galveston County may employ one investigator and he may employ two stenographers and pay said employees such compensation as may be fixed by the Commissioners Court of Galveston County, Texas. All of the salaries mentioned in this Section shall be payable from the officers salary fund, if adequate; if inadequate the Commissioners Court shall transfer the necessary funds from the general fund of the county to the officers salary fund.

In addition to the salaries provided the Criminal District Attorney, his assistants and investigators, the Commissioners Court of Galveston County may allow such Criminal District Attorney, his assistants and investigators, such necessary expenses as within the discretion of the court seems reasonable and said expenses shall be paid as provided by law for such other claims of expenses.

#### **Additional assistants, investigators, etc.**

Sec. 6. Should the Criminal District Attorney be of the opinion that the number of assistants, investigators, stenographers, or clerks, as provided above, is not adequate for the proper investigation and prosecution of crime and the effective performance of the duties of his office, he may with the approval of the Commissioners Court appoint additional assistants, investigators, clerks or stenographers and pay said employees such compensation as may be fixed by the Commissioners Court of Galveston County, Texas.

#### **Oath and powers of assistant criminal district attorneys**

Sec. 7. The Assistant Criminal District Attorneys of Galveston County and the investigator, when so appointed shall take the Constitutional oath of office, and said Criminal District Attorney of Galveston County and his assistants shall have the exclusive right and it shall be their duty to represent the State of Texas in all criminal cases pending in any and all of the courts of Galveston County, Texas, and any and all civil matters in any court anywhere involving interest, crime or right of Galveston County as well as perform the other statutory or Constitutional duties of district and county attorneys.

Said Assistant Criminal District Attorneys of Galveston County are authorized to administer oaths, file information, examine witnesses before the grand jury and generally perform any duty devolving upon the Criminal District Attorney and exercise any power and perform any duty conferred by law upon the Criminal District Attorney of Galveston County.

#### **Temporary appointment; office of county attorney abolished**

Sec. 8. Upon the effective date of this Act the Governor of Texas shall immediately appoint a Criminal District Attorney of Galveston County who shall hold office until the next general election and until his successor is duly elected and qualified. The office of County Attorney of Galveston County is abolished from and after the effective date of this Act. Acts 1955, 54th Leg., p. 454, ch. 124.

Emergency. Effective April 29, 1955.

Section 9 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act. Sec-

tion 10 repealed all conflicting laws and parts of laws.

**Art. 326k—29. One hundred and fifth judicial district; compensation of district attorney**

Section 1. The District Attorney of the 105th Judicial District of Texas may be compensated for his services by an annual salary in an amount not to exceed the salary paid to the highest paid County Attorney of any county in the said 105th Judicial District of Texas.

Sec. 2. The Commissioners Courts of the Counties comprising the 105th Judicial District are hereby authorized to pay the supplement to the salary paid the District Attorney by the State of Texas in such amounts that the total salary paid the District Attorney shall not exceed the maximum prescribed in Section 1 of this Act.

Sec. 3. The supplemental salary to be paid the District Attorney of the 105th Judicial District by the Commissioners Courts of the Counties comprising said District shall be paid on a pro rata basis according to the population of each county listed in the last preceding Federal Census. Acts 1955, 54th Leg., p. 528, ch. 161.

Emergency. Effective May 6, 1955.

**Title of Act:**

An Act fixing the salary of the District Attorney of the 105th Judicial District of Texas; authorizing the Commissioners Courts of the Counties comprising the

105th Judicial District of Texas to supplement the salary of the District Attorney and providing the method of supplementation; and declaring an emergency. Acts 1955, 54th, Leg., p. 528, ch. 161.

**Art. 326k—30. Special judicial district of Midland County; investigator and stenographer**

Section 1. The District Attorney of the Special Judicial District of Midland County, with the approval of the Commissioners Court of Midland County, is hereby authorized to appoint an investigator to perform such duties as may be assigned to him by the District Attorney. The investigator need not be licensed to practice law. He shall have authority to make arrests and execute process in criminal cases and shall have all the rights and duties of a peace officer in criminal cases and in cases growing out of the enforcement of all laws. He may be required to make a bond in an amount to be fixed by the District Attorney.

Sec. 2. The investigator shall receive an annual salary, payable monthly, in an amount to be fixed by the District Attorney of the Special Judicial District of Midland County with the approval of the Commissioners Court of Midland County. In addition to his salary, the investigator may be allowed the actual and necessary travel expense incurred in the proper discharge of his duties, not to exceed the amount fixed by the Commissioners Court of Midland County. All claims for travel expense shall be approved by the District Attorney. The salary and travel expense of the investigator shall be paid from the General Fund, the Officers' Salary Fund, or any other available fund of Midland County.

Sec. 3. The District Attorney of the Special Judicial District of Midland County is hereby authorized to appoint a stenographer, with the approval of the Commissioners Court of Midland County, who shall receive an annual salary, payable monthly, in an amount to be fixed by the District Attorney with the approval of the Commissioners Court. The salary of the stenographer shall be paid from the General Fund, the Officers' Salary Fund, or any other available fund of Midland County.

Sec. 4. In the event the Special Judicial District of Midland County is abolished or expires by operation of law, the District Attorney of the Judicial District exercising jurisdiction in Midland County shall be authorized to appoint an investigator and a stenographer to serve in Midland

County under the same terms as provided in Sections 1, 2 and 3 of this Act. Acts 1955, 54th Leg., p. 529, ch. 162.

Emergency. Effective May 6, 1955.

**Art. 326k—31. One hundred and ninth judicial district; investigators or assistants**

Section 1. The District Attorney of the 109th Judicial District is hereby authorized to appoint not more than two (2) investigators or assistants to serve in the counties of the district in which the Commissioners Courts of the respective counties approve the appointment. Each of such investigators or assistants shall receive a salary of not less than Three Thousand, Six Hundred Dollars (\$3,600) and not more than Five Thousand, Two Hundred Dollars (\$5,200) per annum. The Commissioners Court of each county approving the appointment shall pay to each investigator or assistant approved by it an amount annually of not less than its pro rata part of Three Thousand, Six Hundred Dollars (\$3,600), prorated among the counties which approve the appointment on the basis of the total number of criminal cases filed in the 109th District Court in the respective counties during the preceding Calendar year.

Sec. 2. The assistants to the District Attorney must be duly and legally licensed to practice law in the State of Texas; however, the investigators need not be licensed to practice law.

Sec. 3. Each investigator or assistant provided for in this Act shall be allowed a reasonable amount for expenses not to exceed One Thousand, Two Hundred Dollars (\$1,200) per annum, prorated among the counties approving his appointment on the basis of the total number of criminal cases filed in the 109th District Court in the respective counties during the preceding Calendar year.

Sec. 4. The salary and expenses of the investigators or assistants provided for in this Act shall be paid monthly by the Commissioners Court of each county approving such appointment, out of the Officers' Salary Fund of the county.

Sec. 5. The investigators or assistants provided for in this Act may be required to give bond and shall have authority under the direction of the District Attorney to make arrests and execute process in criminal cases and in cases growing out of the enforcement of all laws. Acts 1955, 54th Leg., p. 589, ch. 198.

Emergency. Effective May 12, 1955.

**Title of Act:**

An Act authorizing the appointment by the District Attorney of the 109th Judicial District of not more than two (2) investigators or assistants to serve in the counties in which the county Commissioners Courts approve the appointment; fixing the compensation and expenses of

the investigators and assistants and providing the method of payment; making other provisions relative to the qualifications, powers and duties of the investigators and assistants; repealing all laws in conflict; and declaring an emergency. Acts 1955, 54th Leg., p. 589, ch. 198.

**Art. 326k—32. Criminal district attorney for Cass County**

**Office created; qualifications; oath; bond**

Section 1. The constitutional office of Criminal District Attorney of Cass County, Texas, is hereby created and said Criminal District Attorney of Cass County shall possess all the qualifications and take the oath of office and give the bond required by the Constitution and laws of this State of other district attorneys.

**Election and term of office**

Sec. 2. There shall be elected by the qualified electors of Cass County at the General Election in November, 1956, an attorney for said County who shall be styled the Criminal District Attorney of Cass County and who shall hold office for the remainder of the constitutional term of office of Criminal District Attorney of Cass County. Thereafter, the qualified electors of Cass County shall elect a Criminal District Attorney at the General Election in November, 1958, and every four (4) years thereafter.

**Powers and duties**

Sec. 3. It shall be the duty of the Criminal District Attorney of Cass County, as herein provided, to be in attendance upon each term and all sessions of the District Court of Cass County and all of the sessions and terms of the inferior courts of Cass County held for the transaction of criminal business, and to exclusively represent the State of Texas in all criminal matters pending before said courts and to represent Cass County in all matters pending before such courts and any other court where Cass County has pending business of any kind, nature or interest and in addition to the specified powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within Cass County as are now by law conferred or which may hereafter be conferred upon the district and county attorneys in the various counties and judicial districts of this State. He shall collect such fees, commissions and perquisites as are now or hereafter may be provided by law for similar services rendered by district and county attorneys of this State.

**Commission; salary**

Sec. 4. The Criminal District Attorney of Cass County, Texas, shall be commissioned by the Governor and shall receive as salary and compensation the following: The salary of the Criminal District Attorney of Cass County shall be set by the Commissioners Court at a sum of not less than Five Thousand Dollars (\$5,000) nor more than Seven Thousand Five Hundred Dollars (\$7,500) per annum to be paid out of the Officers Salary Fund of Cass County, if adequate; if inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the County to the Officers Salary Fund.

**Secretary**

Sec. 5. The Criminal District Attorney of Cass County, for the purpose of conducting the affairs of his office and with the approval of the Commissioners Court, shall be and is hereby authorized to appoint one (1) secretary and fix her salary at not less than Twelve Hundred Dollars (\$1200) per annum to be paid out of the General Fund of Cass County.

**Temporary appointment; office of county attorney abolished**

Sec. 6. Upon the effective date of this Act the Governor of Texas shall immediately appoint a Criminal District Attorney of Cass County who shall hold office until the next General Election and until his successor is duly elected and qualified. The office of County Attorney of Cass County is abolished from and after the effective date of this Act.

**District attorney of Fifth Judicial District**

Sec. 7. Upon the effective date of this Act the District Attorney of the Fifth Judicial District of Texas shall only represent the State of Texas in

the County of Bowie. The provisions of this Act shall not affect the office of District Attorney or the duties and powers of such District Attorney in the County of Bowie and the District Attorney shall continue to perform his duties in the County of Bowie as before, and it is specifically understood that this Act only applies to Cass County and not to the County of Bowie.

From the effective date of this Act the District Attorney of the Fifth Judicial District shall continue to fulfill the duties of District Attorney in the County of Bowie but his duties in the County of Cass shall be divested from him and invested in the resident Criminal District Attorney of Cass County, Texas, as created by this Act.

The District Attorney of the Fifth Judicial District shall only stand for election and be elected in the County of Bowie at the next General Election in 1956 and every four (4) years thereafter, but it is specifically understood that the present District Attorney of the Fifth Judicial District shall continue in office as such District Attorney in the County of Bowie until the next General Election and until his successor is elected and qualified. Acts 1955, 54th Leg., p. 824, ch. 306.

Emergency. Effective May 21, 1955.

Section 8 of the Act of 1955 provided 9 repealed all conflicting laws and parts that partial invalidity should not affect of laws. the remaining portions of the Act. Sec.

**Art. 326k—33. Criminal district attorney for Harrison County created**

**Office created; qualifications; oath; bond**

Section 1. The Constitutional office of Criminal District Attorney for Harrison County is hereby created and said Criminal District Attorney of Harrison County shall possess all the qualifications and take the oath of office and give the bond required by the Constitution and laws of this State of other District Attorneys.

**Election; term of office**

Sec. 2. There shall be elected by the qualified electors of the 71st Judicial Districts of Harrison County at its general election in November, 1956, and at the general election every four (4) years thereafter an attorney for said Judicial District and County who shall be styled the Criminal District Attorney of Harrison County and who shall hold office for a period of four (4) years and until his successor is elected and qualified.

**Duties and powers**

Sec. 3. It shall be the duty of the Criminal District Attorney of Harrison County or his assistants as herein provided to be in attendance upon each term and all sessions of the District Courts of Harrison County and all of the sessions and terms of the inferior Courts of Harrison County held for the transaction of criminal business, and to exclusively represent the State of Texas in all criminal matters pending before said Courts and to represent Harrison County in all matters pending before such Courts and any other Court where Harrison County has pending business of any kind, matter or interest, and in addition to the specified powers given and the duties imposed upon him by this Act all such powers, duties, and privileges within Harrison County as are by law now conferred, or which may hereafter be conferred upon the District and County Attorneys in the various Counties and Judicial Districts of this State. He shall collect such fees, commissions and perquisites as are now, or may hereafter



be provided by law for similar services rendered by District and County Attorneys of this State.

**Commission; compensation**

Sec. 4. The Criminal District Attorney of Harrison County, Texas, shall be commissioned by the Governor and shall receive as salary and compensation the following, and no more: The sum of not less than Seven Thousand, Six Hundred and Seventy-five Dollars (\$7,675) per annum nor more than Eight Thousand, Five Hundred Dollars (\$8,500) to be paid out of the officers salary fund of Harrison County, if adequate; if inadequate the Commissioners Court shall transfer the necessary funds from the general fund of the County to the officers salary fund.

**Assistants; investigator; stenographers; compensation**

Sec. 5. The Criminal District Attorney of Harrison County, for the purpose of conducting the affairs of his office, and with the approval of the Commissioners Court shall be and is hereby authorized to appoint one first assistant and fix his salary as follows: Said assistant shall receive not less than Four Thousand, Five Hundred Dollars (\$4,500) per annum nor more than Six Thousand Dollars (\$6,000) and one assistant in addition to his first assistant and fix his salary as follows: Said assistant shall receive not less than Two Thousand, Eight Hundred and Fifty Dollars (\$2,850) nor more than Four Thousand Dollars (\$4,000) per annum.

The Criminal District Attorney of Harrison County may employ one investigator and he may employ two (2) stenographers and pay said employees such compensation as may be fixed by the Commissioners Court of Harrison County, Texas. All of the salaries mentioned in this section shall be payable from the officers salary fund, if adequate; if inadequate the Commissioners Court shall transfer the necessary funds from the general fund of the County to the officers salary fund.

In addition to the salaries provided the Criminal District Attorney, his assistants and investigators, the Commissioners Court of Harrison County may allow such Criminal District Attorney, his assistants and investigators, such necessary expenses as within the discretion of the Court seems reasonable and said expenses shall be paid as provided by law for such other claims of expenses.

**Additional assistants and employees**

Sec. 6. Should the Criminal District Attorney be of the opinion that the number of assistants, investigators, stenographers, or clerks, as provided above, is not adequate for the proper investigation and prosecution of crime and the effective performance of the duties of his office, he may with the approval of the Commissioners Court appoint additional assistants, investigators, clerks or stenographers and pay said employees such compensation as may be fixed by the Commissioners Court of Harrison County, Texas.

**Oath of assistant and investigator; powers and duties**

Sec. 7. The Assistant Criminal District Attorneys of Harrison County and the investigator, when so appointed shall take the Constitutional oath of office, and said Criminal District Attorney of Harrison County and his assistants shall have the exclusive right and it shall be their duty to represent the State of Texas in all criminal cases pending in any and all of the Courts of Harrison County, Texas, and any and all civil matters in any Court anywhere involving interest, crime or right of Harrison

County as well as perform the other statutory or Constitutional duties of District and County Attorneys.

Said Assistant Criminal District Attorneys of Harrison County are authorized to administer oaths, file information, examine witnesses before the grand jury and generally perform any duty devolving upon the Criminal District Attorney and exercise any power and perform any duty conferred by law upon the Criminal District Attorney of Harrison County.

**Appointment by Governor; office of county attorney abolished**

Sec. 8. Upon the effective date of this Act the Governor of Texas shall immediately appoint a Criminal District Attorney of Harrison County who shall hold office until the next general election and until his successor is duly elected and qualified. The office of County Attorney of Harrison County is abolished from and after the effective date of this Act. Acts 1955, 54th Leg., p. 964, ch. 375.

Emergency. Effective May 28, 1955.

Section 9 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act. Section 10 repealed all conflicting laws and parts of laws.

**Art. 326k—34. Criminal district attorney for Polk County**

**Creation of office; qualifications; oath; bond**

Section 1. The constitutional office of Criminal District Attorney of Polk County, Texas, is hereby created and said Criminal District Attorney of Polk County shall possess all the qualifications and take the oath of office and give the bond required by the Constitution and laws of this State of other District Attorneys.

**Election; term of office**

Sec. 2. There shall be elected by the qualified electors of Polk County at the General Election in November, 1956, an attorney for said county who shall be styled the Criminal District Attorney of Polk County and who shall hold office for the remainder of the constitutional term of office of Criminal District Attorney of Polk County. Thereafter, the qualified electors of Polk County shall elect a Criminal District Attorney at the General Election in November, 1958, and every four (4) years thereafter.

**Powers, duties and privileges; fees, commissions and perquisites**

Sec. 3. It shall be the duty of the Criminal District Attorney of Polk County or his assistants, as herein provided, to be in attendance upon each term and all sessions of the district courts of Polk County and all of the sessions and terms of the inferior courts of Polk County held for the transaction of criminal business and to exclusively represent the State of Texas in all criminal matters pending before said courts and to represent Polk County in all matters pending before said courts, and any other court where Polk County has pending business of any kind, nature or interest and in addition to the specified powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within Polk County as are now by law conferred or which may be hereafter conferred upon the district and county attorneys in the various counties and judicial districts of this State. He shall collect such fees, commissions and perquisites as are now or may be hereafter provided by law for similar services rendered by district and county attorneys of this State.

**Commission; salary**

Sec. 4. The Criminal District Attorney of Polk County, Texas, shall be commissioned by the Governor and shall receive as salary and compensation the following:

A salary of not less than Three Thousand, Nine Hundred and Sixty Dollars (\$3,960) nor more than Six Thousand Dollars (\$6,000) per annum to be paid out of the Officers Salary Fund of Polk County, if adequate; if inadequate, the commissioners court shall transfer the necessary funds from the General Fund of the county to the Officers Salary Fund.

**Stenographer; assistants; investigators and other employees**

Sec. 5. The Criminal District Attorney of Polk County, Texas, for the purpose of conducting the affairs of his office and with the approval of the commissioners court, shall be and is hereby authorized to appoint one (1) stenographer and fix the annual salary of such stenographer at not less than the sum of One Thousand, Five Hundred Dollars (\$1,500) per annum. Should the Criminal District Attorney be of the opinion that the proper conduct of his office requires assistants, investigators, clerks or additional stenographers, he may with the approval of the commissioners court appoint such assistants, investigators, clerks or additional stenographers and pay them such compensation as may be fixed by the Commissioners Court of Polk County. In addition to the salaries provided for the Criminal District Attorney, his assistants, investigators, clerks and stenographers, the Commissioners Court of Polk County may allow such Criminal District Attorney, his assistants, investigators, clerks and stenographers such necessary expenses as within the discretion of the Court seems reasonable and said expenses shall be paid as provided by law for other such claims or expenses.

**Oath of assistant; powers and duties**

Sec. 6. The Assistant Criminal District Attorneys of Polk County, when so appointed, shall take the constitutional oath of office and said Criminal District Attorney of Polk County and his assistants shall have exclusive right and it shall be their duty to represent the State of Texas in all criminal cases pending in any and all of the courts of Polk County and any and all civil matters in any court anywhere involving the interest or right of Polk County as well as the performance of the other statutory and constitutional duties imposed upon district and county attorneys. Said Assistant Criminal District Attorneys of Polk County are authorized to administer oaths, file informations, examine witnesses before the grand jury and generally perform any duty devolving upon the Criminal District Attorney of Polk County and exercise any power and perform any duty conferred by law upon the Criminal District Attorney of Polk County.

**Appointment by Governor; office of county attorney abolished**

Sec. 7. Upon the effective date of this Act the Governor of Texas shall immediately appoint a Criminal District Attorney of Polk County who shall hold office until the next general election and until his successor is duly elected and qualified. The office of County Attorney of Polk County is abolished from and after the effective date of this Act.

**District attorney of 9th judicial district**

Sec. 8. Upon the effective date of this Act the District Attorney of the 9th Judicial District of Texas shall represent the State of Texas only

in the counties of Waller, Montgomery and San Jacinto. The provisions of this Act shall not affect the office of District Attorney or the duties and powers of such District Attorney in the counties of Waller, Montgomery and San Jacinto and the District Attorney of the 9th Judicial District of Texas shall continue to perform his duties in the 9th Judicial District Court of Texas and in the Special 9th Judicial District Court of Texas in the counties of Waller, Montgomery and San Jacinto as before, and it is specifically understood that this Act only applies to Polk County and not to the counties of Waller, Montgomery and San Jacinto.

From the effective date of this Act the District Attorney of the 9th Judicial District shall continue to fulfill the duties of District Attorney in the counties of Waller, Montgomery and San Jacinto but his duties in the county of Polk shall be divested from him and invested in the Resident Criminal District Attorney of Polk County as created by this Act.

The District Attorney of the 9th Judicial District of Texas shall stand for election and be elected for only the counties of Waller, Montgomery and San Jacinto at the next general election in 1956 and every four (4) years thereafter, but it is specifically understood that the present District Attorney of the 9th Judicial District shall continue in office as District Attorney in the counties of Waller, Montgomery and San Jacinto until the next general election and until his successor is elected and qualified. Acts 1955, 54th Leg., p. 980, ch. 381.

Emergency. Effective May 31, 1955.

Section 10 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act. Sec-

tion 11 repealed all conflicting laws and parts of laws.

**Art. 326k—35. Seventieth Judicial District and Special Judicial District of Midland County; compensation of district attorney**

Section 1. The District Attorney of the 70th Judicial District shall be compensated for his services by the State of Texas in such amount as may be fixed by the General Law relating to the salary to be paid to District Attorneys by the State, and in addition his salary may be supplemented by the Commissioners Courts of the counties comprising the 70th Judicial District; but his total salary shall not be supplemented to exceed the salary of the highest paid County Attorney of any county in the 70th Judicial District.

The Commissioners Court of each county in the 70th Judicial District in its discretion is authorized to pay the supplemental salary herein authorized. The supplemental salary paid by each county shall be in such amount as the Commissioners Court may determine, but shall not exceed the pro rata part of the difference between the salary of the highest paid County Attorney in the 70th Judicial District and the salary paid by the State, prorated among the counties of the District on the basis of the total number of criminal causes filed in the 70th District Court in the respective counties during the year preceding the year for which the supplemental salary is to be fixed and paid.

Sec. 2. The District Attorney of the Special Judicial District of Midland County shall be compensated for his services by the State of Texas in such amount as may be fixed by the General Law relating to the salary to be paid to District Attorneys by the State, and in addition his salary may be supplemented by the Commissioners Court of Midland County; but his total salary shall not be supplemented to exceed the salary paid to the County Attorney of Midland County.

The Commissioners Court of Midland County in its discretion is authorized to pay the supplemental salary herein authorized, in such amount as it may determine within the limit fixed by this Section. Acts 1955, 54th Leg., p. 1055, ch. 398.

Emergency. Effective June 6, 1955.

**Title of Act:**

An Act relating to salaries of District Attorneys; authorizing the Commissioners Courts of the counties comprising the 70th Judicial District to supplement the salary of the District Attorney of that

District; authorizing the Commissioners Court of Midland County to supplement the salary of the District Attorney of the Special Judicial District of Midland County; and declaring an emergency. Acts 1955, 54th Leg., p. 1055, ch. 398.

**Art. 326k—36. Criminal district attorney for Randall County; office of county attorney abolished**

**Creation of office; qualifications; oath; bond**

Section 1. The constitutional office of Criminal District Attorney of Randall County, Texas, is hereby created and said Criminal District Attorney of Randall County shall possess all the qualifications and take the oath of office and give the bond required by the Constitution and laws of this State of other District Attorneys.

**Election and term of office**

Sec. 2. There shall be elected by the qualified electors of Randall County at the general election in November, 1956, an attorney for said county who shall be styled the Criminal District Attorney of Randall County and who shall hold office for the remainder of the constitutional term of office of Criminal District Attorney of Randall County. Thereafter, the qualified electors of Randall County shall elect a Criminal District Attorney at the general election in November, 1958, and every four years thereafter.

**Powers, duties and privileges; fees, commissions and perquisites**

Sec. 3. It shall be the duty of the Criminal District Attorney of Randall County or his assistant, as herein provided, to be in attendance upon each term and all sessions of the district courts of Randall County and all of the sessions and terms of the inferior courts of Randall County held for the transaction of criminal business, and to exclusively represent the State of Texas in all criminal matters pending before said courts and to represent Randall County in all matters pending before such courts and any other court where Randall County has pending business of any kind, nature or interest and in addition to the specified powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within Randall County as are now by law conferred or which may hereafter be conferred upon the District and County Attorneys in the various counties and judicial districts of this State. He shall collect such fees, commissions and perquisites as are now or hereafter may be provided by law for similar services rendered by District and County Attorneys of this State.

**Commission; salary**

Sec. 4. The Criminal District Attorney of Randall County, Texas shall be commissioned by the Governor and shall receive as salary and compensation the following: A salary of Five Hundred (\$500.00) Dollars from the State of Texas as provided in the Constitution of the State of Texas for the salary of District Attorneys and the sum of not less than Five Thousand (\$5,000.00) Dollars nor more than Seven Thousand, Five Hundred

(\$7,500.00) Dollars per annum to be paid out of the Officers Salary Fund of Randall County, if adequate; if inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the county to the Officers Salary Fund.

**Assistant; secretary; appointment and salary; expenses**

Sec. 5. The Criminal District Attorney of Randall County, for the purpose of conducting the affairs of his office and with the approval of the Commissioners Court, shall be and is hereby authorized to appoint one assistant, when needed, the salary of whom shall be fixed at a reasonable sum by the Commissioners Court of Randall County. The Criminal District Attorney of Randall County, with the approval of the Commissioners Court, is hereby authorized to appoint one secretary, when needed, the salary of whom shall be fixed at a reasonable sum by the Commissioners Court of Randall County. In addition to the salaries provided for the Criminal District Attorney, his assistant and secretary, the Commissioners Court of Randall County may allow such Criminal District Attorney, his assistant and secretary such necessary expenses as within the discretion of the court seem reasonable, and said expenses shall be paid as provided by law for other such claims or expenses.

**Oath of assistant; powers and duties**

Sec. 6. The Assistant Criminal District Attorney of Randall County, when so appointed, shall take the Constitutional oath of office and said Criminal District Attorney of Randall County and his assistant shall have the exclusive right and it shall be their duty to represent the State of Texas in all criminal cases pending in any and all of the courts of Randall County, Texas and any and all civil matters in any court anywhere involving interest or right of Randall County as well as the performance of the other Statutory and Constitutional duties imposed upon District and County Attorneys. Said Assistant Criminal District Attorney of Randall County is authorized to administer oaths, file informations, examine witnesses before the grand jury, and generally perform any duty devolving upon the Criminal District Attorney of Randall County and exercise any power and perform any duty conferred by law upon the Criminal District Attorney of Randall County.

**Appointment by Governor; office of county attorney abolished**

Sec. 7. Upon the effective date of this Act the Governor of Texas shall immediately appoint a Criminal District Attorney of Randall County who shall hold office until the next general election and until his successor is duly elected and qualified. The office of County Attorney of Randall County is abolished from and after the effective date of this Act.

**District attorney of 47th judicial district**

Sec. 8. Upon the effective date of this Act the District Attorney of the 47th Judicial District of Texas shall only represent the State of Texas in the Counties of Potter and Armstrong. The provisions of this Act shall not affect the office of District Attorney or the duties and powers of such District Attorney in the Counties of Potter and Armstrong and the District Attorney shall continue to perform his duties in the Counties of Potter and Armstrong as before, and it is specifically understood that this Act only applies to Randall County and not to the Counties of Potter and Armstrong.

From the effective date of this Act the District Attorney of the 47th Judicial District shall continue to fulfill the duties of District Attorney in the Counties of Potter and Armstrong, but his duties in the County of Randall shall be divested from him and invested in the resident Criminal District Attorney of Randall County, Texas as created by this Act.

The District Attorney of the 47th Judicial District shall only stand for election and be elected in the Counties of Potter and Armstrong at the next general election in 1956 and every four years thereafter, but it is specifically understood that the present District Attorney of the 47th Judicial District shall continue in office as such District Attorney in the Counties of Potter and Armstrong until the next general election and until his successor is elected and qualified. Acts 1955, 54th Leg., p. 1213, ch. 485.

Emergency. Effective June 22, 1955.

Section 9 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act. Section 10 repealed all conflicting laws and parts of laws.

## 2. COUNTY ATTORNEYS

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

Section 1. In each county of this State which has a population of more than thirty-seven thousand (37,000) inhabitants, according to the preceding Federal Census, the county attorney may appoint an investigator, with the approval of the Commissioners Court. He may be required to make a bond in an amount to be fixed by the county attorney. He shall receive a salary in an amount to be fixed by the Commissioners Court, not to exceed Two Hundred and Fifty Dollars (\$250) per month, and he may also receive an expense allowance to be fixed by the Commissioners Court in an amount not to exceed Fifty Dollars (\$50) per month.

Sec. 2. This Act is cumulative of all other laws authorizing the appointment of investigators by county attorneys, and is also cumulative of all laws authorizing the appointment of other employees for the county attorney's office; but this Act shall not authorize the appointment of an additional investigator in any county in which an investigator with similar powers may be appointed under existing law. Acts 1955, 54th Leg., p. 1201, ch. 475.

Effective 90 days after June 7, 1955, date of adjournment.

#### Title of Act:

An Act authorizing the appointment of an investigator by the county attorney upon approval of the Commissioners Court, in counties of more than thirty-seven thousand (37,000) population; pro-

viding for the giving of bond; providing for his compensation and expenses; stating the effect of this Act on other laws; and declaring an emergency. Acts 1955, 54th Leg., p. 1201, ch. 475.

## TITLE 16—BANKS AND BANKING

### TEXAS BANKING CODE OF 1943

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

Art.

342—314. Conversion of National Bank in-  
 to State Bank [New].

#### Art. 342—314. Conversion of National Bank into State Bank

A national bank or association located in this state which follows the procedures prescribed by the laws of the United States to convert into a state bank, shall be granted a certificate of incorporation in the state when the State Banking Board finds that the bank meets the standards as to location of office, capital structure and business experience of officers and directors for the incorporation of a state bank. In considering the application for conversion from a national bank into a state bank the Board shall consider and determine that the new bank meets with all the requirements of a new state bank applicant. Included also in the application for conversion and to be considered along with the other information submitted shall be the terms of the transition from a national bank into a state bank which shall also show that the provisions of Public Law 706 of the 81st Congress of the United States have been fully satisfied. Such conversion shall be governed by the provisions of this Article and shall not be governed by Article 9, now codified as Article 342—309, Vernon's Texas Civil Statutes. Acts 1943, 48th Leg., p. 137, ch. 97, Subch. III, § 13a, added Acts 1955, 54th Leg., p. 663, ch. 234, § 1.

Emergency. Effective May 16, 1955.

#### CHAPTER FIVE—LOANS AND INVESTMENTS

Art.

342—505a. Federal National Mortgage As-  
 sociation; Subscription for

Stock in Connection with Sale  
 of Mortgage Loans [New].

#### Art. 342—505a. Federal National Mortgage Association; Subscription for Stock in Connection with Sale of Mortgage Loans

Notwithstanding any other provisions of law, any bank or trust company organized under the laws of this State which has as one of its principal purposes the making or purchasing of loans secured by real estate mortgages, is authorized to sell such mortgage loans to the Federal National Mortgage Association, a corporation chartered by an Act of Congress, or any successor thereof, and in connection therewith to make payments of any capital contributions required pursuant to law, in the nature of subscriptions for stock of the Federal National Mortgage Association or any successor thereof, to receive stock evidencing such capital contributions, and to hold or dispose of such stock. Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 5a, added Acts 1955, 54th Leg., p. 676, ch. 244, § 1.

Emergency. Effective May 16, 1955.



**PREPAID FUNERAL SERVICES OR MERCHANDISE****PREPAID FUNERAL SERVICES  
OR MERCHANDISE**

Art.

548b. Sale of prepaid funeral services or  
funeral merchandise [New].**Art. 548b. Sale of prepaid funeral services or funeral merchandise****Permit from State Banking Department authorizing contracts**

Section 1. Any individual, firm, partnership, corporation, or association (hereinafter called "organization") desiring to sell prearranged or prepaid funeral services or funeral merchandise (including caskets, grave vaults, and all other articles of merchandise incidental to a funeral service) in this State under a sales contract providing for prepaid burial or funeral benefits or merchandise to be delivered at an undetermined future date dependent upon the death of the contracting party (hereinafter called "prepaid funeral benefits") shall obtain a permit from the State Banking Department authorizing the transaction of this type of business before entering into any such contract. After thirty days from the effective date of this Act, it shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid current permit at the time the contract is made. The seller shall not be entitled to enforce a contract made in violation of this Act, but the purchaser or his heirs or legal representative shall be entitled to recover all amounts paid to the seller under any contract made in violation hereof.

**Exemptions from Act**

Sec. 1a. Nothing in this Act shall apply to religious or benevolent organizations or associations operating in this State as a non-profit association or organization.

**Administration of Act by Banking Department; rules and regulations; contracts**

Sec. 2. This law shall be administered by the State Banking Department. The State Banking Department is authorized to prescribe reasonable rules and regulations concerning the keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this law; and he shall approve forms for sales contracts for prepaid funeral benefits. All such contracts must be in writing and no contract form shall be used without prior approval of the State Banking Department.

**Application for and issuance of permit; filing fee; duration of permit**

Sec. 3. Each organization desiring to sell prepaid funeral benefits shall file an application for a permit with the State Banking Department and shall pay a filing fee of Twenty-five Dollars (\$25.00). The Secretary of State shall issue a permit upon receipt of the application and payment of the filing fee. Permits shall expire on March 1st of each year, and may be renewed for a period of one year upon payment of a fee of Ten Dollars (\$10.00).

**Cancellation of permit; refusal to renew; appeal**

Sec. 4. The State Banking Department may cancel a permit or refuse to renew a permit for failure to comply with any provision of this Act or

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

any valid rule or regulation which he has prescribed, after reasonable notice to the permittee and after a hearing if the permittee requests a hearing.

No organization shall be entitled to a new permit for a period of one year after cancellation or refusal by the State Banking Department to renew its permit, but shall thereafter be entitled to a new permit upon satisfactory proof of compliance with this law.

Any person aggrieved by the action of the State Banking Department may appeal therefrom to a District Court in Travis County, Texas.

#### **Deposit of funds collected under contracts in trust fund; withdrawals**

Sec. 5. After the effective date of this Act, all funds collected under contracts for prepaid funeral benefits, including funds collected under contracts made before the effective date of this Act, shall be placed in a state or national bank, or building and loan association in this State and so deposited not less than thirty (30) days after collection, to be held in a trust fund in this State for the use, benefit and protection of purchasers of such contracts. Any withdrawals from such trust fund shall be accompanied by a certified copy of the death certificate, together with proper affidavits as may be required by the State Banking Department, before such funds shall be released in fulfillment of the contract. In no event shall more funds be withdrawn from the trust account than are originally placed into the fund under any one contract, other than through the payment of accrued interest thereon.

#### **Agents responsible for funds collected; designation; violation a misdemeanor**

Sec. 6. Each organization subject to this Act shall designate an agent or agents, either by names of the individuals or by titles of their offices or positions, who shall be responsible for deposit of funds collected under contracts for prepaid funeral benefits. The organization shall notify the State Banking Department of such designation within ten (10) days after it becomes subject to this Act, and shall also notify the State Banking Department of any change in such designation within ten (10) days after such change occurs. If any person acting on behalf of the seller collects any money under such a contract and fails to deliver it, within thirty (30) days after collection, to a designated agent, or if any designated agent fails to deposit the money within thirty (30) days after he receives it, he shall be guilty of a misdemeanor and shall be punished as prescribed in Section 9 of this Act.

#### **Annual report**

Sec. 7. Each organization shall file an annual report with the State Banking Department on or before February 15th of each year, in such form as the State Banking Department may require, showing the names and addresses of all persons with whom contracts for prepaid funeral benefits had been made prior to January 1st of that year which had not been fully discharged on January 1st and also showing the date of the contract, the name of the bank holding the trust fund and the amount in the trust fund under each contract on the preceding December 31st. Any organization which has discontinued the sale of prepaid funeral benefits but which still has outstanding contracts shall not be required to obtain a renewal of its permit, but it shall continue to make annual reports to the State Banking Department until all such contracts have been fully discharged. If any officer of any organization fails or refuses to file an annual report or to cause it to be filed within thirty days after he has been

notified by the State Banking Department that the report is due and has not been received, he shall be guilty of a misdemeanor and shall be punished as prescribed in Section 9 of this Act.

**Records required; examination by Banking Department**

Sec. 8. Each organization which has outstanding contracts for pre-paid funeral benefits shall maintain within this State such records as the State Banking Department may require to enable him to determine whether the organization is complying with the provisions of this Act. Such records shall be subject to annual examination by the State Banking Department or their agent and to such additional examinations as he deems necessary. The organization shall pay for the cost of the examination, including the salary and traveling expenses paid to the person making the examination during the time spent in making the examination and in traveling to and returning from the point where the records are kept, and all other expenses necessarily incurred in the examination; but the total cost to the organization shall not exceed Twenty-five Dollars (\$25.00) per day.

**Violations of Act; punishment**

Sec. 9. Any officer, director, agent, or employee of any organization subject to the terms of this Act who makes or attempts to make any contract in violation of this Act, or who refuses to allow an inspection of the organization's records, or who violates any other provision of this Act, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not less than one month and not more than six months, or by both such fine and imprisonment. Each violation of any provision of this Act shall be deemed a separate offense and prosecuted individually.

**Filing fees and examination costs; disposition; Prepaid Funeral Contract Fund**

Sec. 10. All filing fees and examination costs collected under this Act shall be credited to a separate fund in the State Treasury, to be known as the Prepaid Funeral Contract Fund, which shall be used for administering this Act. The State Banking Department is authorized to employ such personnel as may be necessary to carry out the provisions of this Act and to fix their compensation within the amounts made available by appropriation.

**Insurance Code not affected**

Sec. 10a. Nothing in this Act shall alter or affect any provisions of the Insurance Code of the State of Texas.

**Partial invalidity**

Sec. 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and to this end the provisions of this Act are declared to be severable.

**Administration expenses and salaries; appropriation to pay**

Sec. 12. All moneys in the Prepaid Funeral Contract Fund are hereby appropriated for the purpose of paying salaries and all other necessary expenses in the administration of this Act. Acts 1955, 54th Leg., p. 1292, ch. 512.

Effective 90 days after June 7, 1955,  
date of adjournment.

## TITLE 19—BLUE SKY LAW—SECURITIES

Ch.	Art.
1. Securities Act [New] .....	579—1
2. Insurance Securities Act [New] .....	580—1

## CHAPTER 1. SECURITIES ACT [NEW]

Art.	Art.
579—1. Short title of act.	579—23. Advertising.
579—2. Definitions.	579—24. List of securities filed with the Secretary of State on request; notice and hearing as to questioned securities.
579—3. Exempt transactions.	579—25. Revocation of registration of dealers on hearing.
579—4. Exempt securities.	579—26. Revocation of registration of agents or salesmen.
579—5. Permit or registration for issue by Secretary of State; information for issuance of permit or registration.	579—27. Notices by registered mail.
579—6. Consent to service and certificate of good standing.	579—28. Petition to district court of Travis county on complaint of decision of Secretary of State.
579—7. Protection to purchasers of securities.	579—29. Subpoenas or other process in investigations by Secretary of State.
579—8. Secretary of State to examine application; grant or deny.	579—30. Penal provisions.
579—9. Permit, form and contents; term and renewals.	579—31. Certified copies of papers filed with Secretary of State as evidence.
579—10. Use of permit to aid sale of securities forbidden.	579—32. Construction.
579—11. Papers filed with Secretary of State; records open to inspection.	579—33. Injunctions.
579—12. Registration of persons selling.	579—34. Sales in violation of law voidable; action by purchaser; limitations.
579—13. Method of registration.	579—35. Actions for commission; allegations and proof of compliance.
579—14. Registration certificates.	579—36. Administration and enforcement by Secretary of State and Attorney General.
579—15. Consent of foreign company or non-resident dealers to suit in this state.	579—37. Fees.
579—16. Hearing by Secretary of State after notice refusing registration.	579—38. Deposit to General Revenue Fund.
579—17. Form of certificates.	579—39. Pleading Exemptions.
579—18. Registration of agents or salesmen of dealers.	579—40. Partial invalidity.
579—19. Annual registration, renewals.	579—41. Repeal; savings clause as to existing proceedings.
579—20. Sales by authorized persons.	579—42. Declaration of purposes and effective date of act.
579—21. Display or advertisement of fact of registration unlawful.	
579—22. Posting certificate of authority.	

**Art. 579—1. Short title of act**

This Act<sup>1</sup> shall be known and may be cited as "The Securities Act". Acts 1955, 54th Leg., p. 322, ch. 67, § 1.

<sup>1</sup> Articles 579—1 to 579—42.

**Emergency.** Effective Sept. 6, 1955.

**Federal laws,**

Investment companies and advisers, see 15 U.S.C.A. § 80a—1 et seq.

Public utility holding companies, see 15 U.S.C.A. § 79 et seq.

Securities exchanges, see 15 U.S.C.A. § 78a et seq.

Securities law, see 15 U.S.C.A. § 77a et seq.

**Art. 579—2. Definitions**

The following terms shall, unless the context otherwise indicates, have the following respective meanings:

(a) The term "security" or "securities" shall include any share, stock, treasury stock, stock certificate under a voting trust agree-

ment, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or re-organization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not.

(b) The term "company" shall include a corporation, person, joint stock company, partnership, association, company, firm, syndicate trust, incorporated or unincorporated, heretofore or hereafter formed under the laws of this or any other state, country, sovereignty or political subdivision thereof. As used herein, the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity.

(c) The term "dealer" shall include every person or company, other than a salesman, who engages in this state, either for all or part of his or its time, directly or through an agent, in selling, offering for sale or delivery or soliciting subscriptions to or orders for, or undertaking to dispose of, or to invite offers for, or rendering services as an investment adviser, or dealing in any other manner in any security or securities within this state. Any issuer other than a registered dealer, of a security or securities, who, directly or through any person or company, other than a registered dealer, offers for sale, sells or makes sales of its own security or securities shall be deemed a dealer and shall be required to comply with the provisions hereof; provided, however, this Section or provision shall not apply to such issuer when such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; and provided further, this Section or provision shall not apply to such issuer if the transaction is within the exemptions contained in the provisions of Section 3 of this Act.<sup>1</sup>

(d) The term "salesman" shall include every person or company employed or appointed or authorized by a dealer to sell, offer for sale or delivery, or solicit subscriptions to or orders for, or deal in any other manner, in securities within this state, whether by direct act or through sub-agents; provided, that the officers of a corporation or partners of a partnership shall not be deemed salesmen, where such corporation or partnership is registered as a dealer hereunder.

(e) The terms "sale" or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent or salesman, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the

United States mails within this state of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in courts of law or equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act,<sup>2</sup> if not exempt hereunder, or by other provisions of law. Provided, however, advertising when made in compliance with Section 23<sup>3</sup> shall not be deemed a sale.

(f) The terms "fraud," "fraudulent practice," shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

(g) "Issuer" shall mean and include every company or person who proposes to issue, has issued, or shall hereafter issue any security.

(h) "Broker" shall mean dealer as herein defined.

(i) "Mortgage" shall be deemed to include a deed of trust to secure a debt.

(j) If the sense requires it, words in the present tense include the future tense, in the masculine gender include the feminine and neuter gender, in the singular number include the plural number, and in the plural number include the singular number; "and" may be read "or" and "or" may be read "and".

(k) "No par value" or "non-par" as applied to shares of stock or other securities shall mean that such shares of stock or other securities are without a given or specified par value. Whenever any classification or computation in this Act mentioned is based upon "par value" as applied to shares of stock or other securities of no par value, the amount for which such securities are sold or offered for sale to the public shall be used as a basis of such classification or computation.

(l) The term "include" when used in a definition contained in this Act shall not be deemed to exclude other things or persons otherwise within the meaning of the term defined.

(m) "Registered dealer" shall mean a dealer as hereinabove defined who has been duly registered by the Secretary of State as in Sections 13 and 14 of this Act<sup>4</sup> provided. Acts 1955, 54th Leg., p. 322, ch. 67, § 2.

<sup>1</sup> Article 579—3.

<sup>2</sup> Articles 579—1 to 579—42.

<sup>3</sup> Article 579—23.

<sup>4</sup> Articles 579—13 and 579—14.

### Art. 579—3. Exempt transactions

Except as hereinafter in this Act<sup>1</sup> specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any

of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

(a) At any judicial, executor's, administrator's, guardian's or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy;

(b) The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business to liquidate a bona fide debt, of a security pledged in good faith as security for such debt;

(c) Sales of securities made by or in behalf of a vendor, whether by dealer or other agent, in the ordinary course of bona fide personal investment of the personal holdings of such vendor, or change in such investment, if such vendor is not otherwise engaged either permanently or temporarily in selling securities; provided, that in no event shall such sales or offerings be exempt from the provisions of this Act when made or intended by the vendor or his agent, for the benefit, either directly or indirectly, of any company or corporation except the individual vendor (other than a usual commission to said agent);

(d) The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus;

(e) The sale of an increase of capital stock of a corporation only to its stockholders and without payment of any commission or expense to any officer, employee, broker or agent, and without incurring any liability for any expenses whatsoever in connection with such distribution;

(f) The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them;

(g) The transfer or exchange by, or on account of, one corporation to another or to its stockholders of their or its own securities in connection with a proposed consolidation or merger of such corporation or in connection with the change of par value stock to non par value stock or vice versa, or the exchange of outstanding shares for a greater or smaller number of shares, provided that in such case such stockholders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so transferred or exchanged other than the securities of said corporation then held by them;

(h) The sale by a domestic corporation of its stock forfeited for a delinquent assessment, according to law;

(i) The sale to any bank, trust company, loan and brokerage corporation, building and loan association, insurance company, surety or guaranty

company, savings institution or to any registered dealer, provided such dealer is actually engaged in buying and selling securities;

(j) The sale by any domestic corporation of its stock or other securities issued in good faith and not for the purpose of avoiding the provisions of this Act, so long as the total number of stockholders and security holders of said corporation does not and will not after such sale exceed twenty-five (25) and the securities are issued and disposed of without the use of advertisements, circulars, or any form of public solicitation;

(k) The sale of an interest in any partnership, pool, or other company, not a corporation, the total membership of which does not and will not after such sale exceed ten (10), and the organization expenses of which do not or will not exceed two (2%) per cent of the total invested capital of such company;

(l) Subscriptions to capital stock necessary to qualify for incorporation when subscribed by not more than fifteen (15) subscribers in a proposed Texas corporation;

(m) Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction;

(n) Any security or membership issued by a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual members, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof;

(o) The sale by the issuer itself, of any securities that are issued by a state or national bank, or building and loan association organized and operating under the laws of the State of Texas and subject to the supervision of the Commissioner of Banking of the State of Texas, or a federal loan and savings association;

(p) The sale, by the issuer itself, of any securities that are issued by the United States, any political subdivision or agency thereof, any territory or insular possession of the United States, the State of Texas, any State of the United States, the District of Columbia, or by any county, city, municipal corporation, district or political subdivision of the State of Texas or any authorized agency of the State of Texas;

(q) The sale and issuance of any securities issued by any farmers cooperative association organized under Chapter 8 of Title 93, Articles 5737-5764, inclusive, Revised Civil Statutes of Texas as amended; and the sale of any securities issued by any farmers cooperative society organized under Chapter 5 of Title 46, Articles 2514-2525, inclusive, Revised Civil Statutes of Texas. Provided, however, this exemption shall not be applicable to agents and salesmen of any farmers cooperative association or farmers cooperative society when the sale of such securities is made to nonmembers, or when the sale of such securities is made to members or nonmembers and a commission is paid or contracted to be paid to the said agent or salesmen;

(r) The sale by a registered dealer of securities which have theretofore been issued to the public in this or in any other state by an entity domiciled in the United States and which securities then form no part of an unsold allotment to or subscription by such dealer as a participant in



the distribution of such securities by the issuer thereof or by or through an underwriter thereof when such securities are offered for sale, in good faith, at prices reasonably related to current market price of such securities at the time of such sale; provided that:

(1) No part of the proceeds of such sale are intended to inure either directly or indirectly, to the benefit of the issuer of such securities; and

(2) Such sale is neither directly nor indirectly for the purpose of promoting any scheme or enterprise having the effect of violating or evading any of the provisions of this Act; and

(3) The right to sell or re-sell such securities has not been enjoined by any court of competent jurisdiction in this state by proceedings instituted by an officer or agency of this state charged with enforcement of this Act; and

(4) The right to sell such securities has not been revoked or suspended by the Secretary of State under any of the provisions of this Act or, if so, such revocation or suspension is not in force and effect; and

(5) At the time of such sale information as to the issuer of such securities shall appear in either Moody's, Standard and Poors, or Fitch, or in a nationally distributed manual of securities approved for use hereunder by the Secretary of State; or the information is furnished in writing to the Secretary of State in form and extent acceptable to the Secretary of State, such information either in the manual, or other form, shall include at least a statement of the issuer's principal business, a statement of the assets and liabilities of such issuer as of a date not more than eighteen (18) months prior to the date of such sale and a net income and dividend record of such issuer for a period of not less than three (3) complete fiscal years ended not more than eighteen (18) months next prior to the date of such sale or for the period that the issuer has actually been engaged in business if the issuer has been in business for less than three (3) years; and

(6) At the time of such sale the issuer of such securities shall be a going concern actually engaged in business and shall not then be in an organization stage nor in receivership or bankruptcy.

The Secretary of State may by order revoke or suspend the exemption under this subsection (r) with respect to any security if he has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof, would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to judicial review in the manner provided generally for similar appeals by Section 24 of this Act.<sup>2</sup> Notices of any court injunction enjoining the sale, or re-sale, of any such security, or of any order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by ordinary mail, or by registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (3) and (4) above of this subsection shall be inapplicable to any dealer until he has received actual notice from the Secretary of State of such revocation or suspension.

(s) The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compen-

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

sation from any source other than the purchaser. Acts 1955, 54th Leg., p. 322, ch. 67, § 3.

<sup>1</sup> Articles 579—1 to 579—42.

<sup>2</sup> Article 579—24.

Electric cooperative corporations, securities exempt, see art. 1528b, § 31.

No par stock not exempt from Act, see 1538I.

Telephone cooperative corporations, securities exempt, see art. 1528c, § 31.

#### Art. 579—4. Exempt Securities

Except as hereinafter in this Act<sup>1</sup> expressly provided, the provisions of this Act shall not apply to any of the following securities when offered for sale, or sold, or dealt in by a registered dealer or salesman of a registered dealer:

(a) Any security issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state or municipal corporation or political subdivision thereof or by any public agency or instrumentality of any of the foregoing;

(b) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale, or offer of sale thereof, maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this state as a valid obligation by such foreign government or by such state, province, or political subdivision thereof issuing the same; provided however, such securities must be on the list approved by the Securities and Exchange Commission of the United States;

(c) Any security issued by and representing an interest in or a direct obligation of a national bank, or of a governmental agency created or existing by an Act of the Congress of the United States other than corporations created or existing under the Code of Laws for the District of Columbia or under the Code of Laws for any territory or possession of the United States;

(d) Any security issued or guaranteed either as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided, that such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by the Railroad Commission of Texas, or by a public commission, agency, board or officers, of the Government of the United States, or of any territory or insular possession thereof, or of any state or municipal corporation, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment trust certificates or equipment notes or bonds based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, provided that such corporation is subject to regulation or supervision as above; or equipment trust certificates, or equipment notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any state, territory or insular possession thereof, or of the District of Columbia, or the Dominion of Canada, or any province thereof, to secure the payment of such equipment trust certificates, bonds or notes;

(e) Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit;

(f) Securities which at the time of sale have been fully listed upon the American Stock Exchange, the Boston Stock Exchange, the Midwest

Stock Exchange or the New York Stock Exchange, or upon any recognized and responsible stock exchange approved by the Secretary of State as hereinafter in this Section provided, and also all securities senior to, or if of the same issues, upon a parity with, any securities so listed or represented by subscription rights which have been so listed, or evidence of indebtedness guaranteed by any company, any stock of which is so listed, such securities to be exempt only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section. Application for approval by the Secretary of State may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Secretary of State, but no approval of any exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect reasonable protection to the public;

(2) That the governing constitution, by-laws and/or regulations of such exchange shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein;

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income, and profit and loss statements;

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset and/or income value;

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend and/or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial of the rights and interests of his customers.

The approval of any such exchange by the Secretary of State shall be made only after a reasonable investigation and hearing, and shall be by a written order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided. The Secretary of State, upon ten (10) days notice and hearing, shall have power at any time to withdraw approval theretofore granted by him to any such stock exchange, which does not at the time of hearing meet the standards of approval under this Act, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Secretary of State again approving such exchange.

(g) Any security issued or guaranteed by and/or representing an interest in or a direct obligation of a state bank incorporated under the laws of and subject to the examination, supervision and control of any state or territory of the United States or any insular possession thereof; or issued or guaranteed by any building and loan association or savings institution or by any insurance company under the supervision or control of the Banking or Insurance Department of this state;

(h) Negotiable promissory notes or commercial paper issued in good faith and in the usual course of carrying on and conducting the business of the issuer, provided that such notes or commercial paper mature in not more than twenty-four (24) months from the date of issue;

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

(i) Notes, bonds, or other evidence of indebtedness or certificates of ownership which are equally and proportionately secured without reference of priority of one over another, and which, by the terms of the instrument creating the lien, shall continue to be so secured by the deposit with a trustee of recognized responsibility approved by the Secretary of State of any of the securities specified in subsections (a) and (b), or of any of the securities, other than stock, specified in subsection (b) of this Section 4;<sup>2</sup> such deposited securities, if of the classes described in subsections (a) and (b) hereof, having an aggregate par value of not less than one hundred and ten (110%) per cent of the par value of the securities thereby secured, and if of class specified in subsection (d) hereof, having an aggregate par value of not less than one hundred and twenty-five (125%) per cent of the par value of the securities thereby secured;

(j) Notes, bonds or other evidence of indebtedness of religious, charitable or benevolent corporations.

(k) Any security collateralized pursuant to the provisions of Chapter 165, Acts of the 42nd Legislature, 1931, as amended, (Article 1524a, Vernon's Annotated Civil Statutes of Texas). Acts 1955, 54th Leg., p. 322, ch. 67, § 4.

<sup>1</sup> Articles 579—1 to 579—42.

<sup>2</sup> Article 579—4.

**Art. 579—5. Permit or registration for issue by secretary of state; information for issuance of permit or registration**

(a) Qualification of Securities.

(1) No dealer, agent or salesman shall sell or offer for sale any securities issued after the passage of this Act, except those which shall have been registered by notification under Subdivision (b) of this Section 5 and except those which come within the classes enumerated in Subdivisions (a) to (s), both inclusive, of Section 3 of this Act,<sup>1</sup> or Subdivisions (a) to (k), both inclusive, of Section 4 of this Act,<sup>2</sup> until the issuer of such securities or a dealer registered under the provisions of this Act<sup>3</sup> shall have been granted a permit by the Secretary of State; and no such permit shall be granted by the Secretary of State until the issuer of such securities or a dealer registered under the provisions of this Act shall have filed with the Secretary of State a sworn statement, verified under the oath of an executive officer or partner of the issuer, or of such registered dealer, and attested by the secretary or partner thereof, setting forth the following information:

a. The names, residences and post office addresses of the officers and directors of the company;

b. The location of its principal office and of all branch offices in this state, if any;

c. A copy of its articles of incorporation or partnership or association, as the case may be, and of any amendments thereto, if any; if a corporation, a copy of all minutes of any proceeding of its directors, stockholders or members relating to or affecting the issue of said security; if a corporation, a copy of its by-laws and of any amendments thereof; if a trustee, a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared;

d. A statement showing the amount of capital stock, if any, and if no capital stock, the amount of capital of the issuer that is contemplated to be employed; the number of shares into which such stock is divided, or if not divided into shares of stock, what division is to

be made or is contemplated; the par value of each share, or if no par stock, the price at which such security is proposed to be sold; the promotional fees or commissions to be paid for the sale of same, including any and all compensations of every nature that are in any way to be allowed the promoters or allowed for the sale of same; and how such compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both; also, the amount of cash to be paid, or securities to be issued, given, transferred or sold to promoters for promotion and/or organization services and expenses, and the amount of promotion and/or organization services and expenses which will be assumed or in any way paid by the issuer;

e. Copies of certificates of the stock and all other securities to be sold, or offered for sale, together with application blanks therefor; a copy of any contract it proposes to make concerning such security; a copy of any prospectus or advertisement or other description of security prepared by or for it for distribution or publication;

f. A detailed statement showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for state and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Secretary of State the fullest possible information concerning same, and the Secretary of State shall have the power to require the filing of such additional information as he may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any re-purchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within six (6) months from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed profit and loss statement, which shall cover the last three (3) years operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said profit and loss statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, then a financial and profit and loss statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said con-

cern shall be included in said statement; said profit and loss statement shall clearly reflect the amount of net profit or net loss incurred during each of the years shown.

(b) Registration by Notification.

(1) Securities may be registered by notification under this subsection (b) if they are issued by an issuer which has been in continuous operation for not less than three (3) years and which has shown, during the period of not less than three (3) years next prior to the date of registration under this section, average annual net earnings after deducting all prior charges including income taxes except charges upon securities to be retired out of the proceeds of sale, as follows:

a. In the case of interest-bearing securities, not less than one and one-half times the annual interest charges on such securities and on all other outstanding interest-bearing securities of equal rank;

b. In the case of securities having a specified dividend rate, not less than one and one-half times the annual dividend requirements on such securities and on all outstanding securities of equal rank;

c. In the case of securities wherein no dividend rate is specified, not less than five (5%) per cent on all outstanding securities of equal rank, together with the amount of such securities then offered for sale, based upon the maximum price at which such securities are to be offered for sale. The ownership by an issuer of more than fifty (50%) per cent of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of such corporation and shall permit the inclusion of the earnings of such corporation applicable to the payment of dividends upon the stock so owned in the earnings of the issuer of the securities being registered by notification.

(2) Securities entitled to registration by notification shall be registered by the filing with the Secretary of State by the issuer or by a registered dealer of a registration statement as required by subsection a and completion of the procedures outlined in subsection b hereof:

a. A registration statement in a form prescribed by the Secretary of State signed by the applicant filing such statement and containing the following information:

1. Name and business address of main office of issuer and address of issuer's principal office, if any, in this state;

2. Title of securities being registered and total amount of securities to be offered;

3. Price at which securities are to be offered for sale to the public, amount of securities to be offered in this state, and amount of registration fee, computed as hereinafter provided;

4. A brief statement of the facts which show that the securities are entitled to be registered by notification;

5. Name and business address of the applicant filing statement;

6. Financial statements to include a certified profit and loss statement, a certified balance sheet, and certified statements of surplus, each to be for a period of not less than three (3) years prior to the date of registration. These financial statements shall reflect the financial condition of the issuer as of a date not more than ninety (90) days prior to the date of such filing with the Secretary of State;

7. A copy of the prospectus, if any, describing such securities;

8. Payment of a filing fee of Five (\$5.00) Dollars and a registration fee of one-tenth (1/10) of one (1%) per cent of the aggregate amount of

securities proposed to be sold in this state based upon the price at which such securities are to be offered to the public;

9. Filing of a consent to service of process conforming to the requirements of Section 6 of this Act,<sup>4</sup> if the issuer is registering the securities and is not a resident of this state or is not incorporated under the laws of this state.

b. Such filing with the Secretary of State shall constitute the registration of securities by notification and such registration shall become effective five (5) days after receipt of the registration statement and all accompanying papers by the Secretary of State; provided that the Secretary of State may in his discretion waive or reduce the five (5) days waiting period in any case where he finds no injury to the public will result therefrom. Upon such registration by notification, securities may be sold in this state by registered dealers and registered salesmen. Upon the receipt of a registration statement, prospectus, if any, payment of the filing fee and registration fee, and, if required, a consent to service of process, the Secretary of State shall record the registration by notification of the securities described. Such registration shall be effective for a period of one (1) year and may be renewed for additional periods of one (1) year, if the securities are entitled to registration under this subsection at the time of renewal, by a new filing under this section together with the payment of the renewal fee of Ten (\$10.00) Dollars.

c. If at any time, before or after registration of securities under this section, in the opinion of the Secretary of State, the information in a registration statement filed with him is insufficient to establish the fact that the securities described therein are, or were, entitled to registration by notification under this section, or that the registration information contains, or contained, false, misleading or fraudulent facts, he may order the applicant who filed such statement to cease and desist from selling, or offering for sale, such securities registered, or proposed to be registered, under provisions of this section until there is filed with the Secretary of State such further information as may in his judgment be necessary to establish the fact that such securities are, or were, entitled to registration under this section. The provisions of Section 24 of this Act<sup>5</sup> as to hearing and appeal shall be applicable to an order issued hereunder. Acts 1955, 54th Leg., p. 322, ch. 67, § 5.

<sup>1</sup> Article 579—3.

<sup>2</sup> Article 579—4.

<sup>3</sup> Articles 579—1 to 579—42.

<sup>4</sup> Article 579—6.

<sup>5</sup> Article 579—24.

#### Art. 579—6. Consent to service and certificate of good standing

If the application for a permit to sell securities be filed by an issuer, or by a dealer who will offer such securities for sale as the agent of the issuer, and the issuer is organized under the laws of any other state, territory, or government, or domiciled in any other state than Texas, such application shall also contain a certificate executed by the proper officer of such state, territory or government dated not more than thirty (30) days prior to the date of filing of the application showing that such issuer is authorized to transact business in such state, territory or government, and is not delinquent in any taxes or assessments required to be paid to such state, territory or government. Such application shall also contain a written instrument duly executed by an executive officer of such issuer, under proper resolution of its board of directors, and authenticated and attested by the seal of said issuer, appointing the Secretary of State irrev-

ocably its true and lawful attorney upon whom all process in any action or proceedings against such issuer arising out of any transaction subject to this Act<sup>1</sup> may be served with the same effect as if such issuer were organized or created under the laws of this state and had been lawfully served with process therein. It shall be the duty of the Secretary of State, whenever he shall have been served with any process as is herein provided; to forward same by United States mail to the home office of such issuer. Acts 1955, 54th Leg., p. 322, ch. 67, § 6.

<sup>1</sup> Articles 579—1 to 579—42.

#### **Art. 579—7. Protection to purchasers of securities**

In the event any company, as defined herein, shall sell, or offer for sale, any securities, as defined in this Act,<sup>1</sup> the Secretary of State, if he deems it necessary to protect the interests of prospective purchasers of such securities, may require the company so offering such securities for sale to deposit all, or any part, of the proposed securities, or all, or any part, of the moneys and funds received from the sale thereof, except such amounts thereof as the Secretary of State deems necessary to be used, and not to exceed the amount allowed, as expenses and commissions for the sale of such securities, to be deposited in a trust account in some bank or trust company approved by the Secretary of State and doing business in the State of Texas, until such time as such proposed company or existing company shall have sold a specified monetary amount or number of shares of such securities as in his opinion will reasonably assure protection of the public. When the Secretary of State makes a written finding that the terms of the escrow agreement have been fully met, the bank or trust company shall transfer such funds to the proposed or existing corporation and its executive officers for the purpose of permitting it to use such securities or money in its business. In the event such proposed or existing company shall fail within two (2) years to sell the minimum amount of capital necessary under the escrow agreement, the Secretary of State may authorize, and the bank or trust company shall return to the subscribers, upon receipt of such authority from the Secretary of State, that portion of the funds which were deposited or escrowed under such escrow agreement; provided, however, that any securities held by such bank or trust company under the escrow agreement, shall be returned to the corporation only after the bank or trust company has received evidence of cancellation thereof from the issuer. At the time of making the deposits, as herein provided for, the dealer or issuer shall furnish to such bank or trust company, and to the Secretary of State, the names of the persons purchasing or subscribing for such securities, and the amount of money paid in by each.

The total expenses for marketing any securities, including organization expenses, all commissions for the sale of stock or securities, and all other incidental selling expenses, shall not, in the aggregate, exceed twenty (20%) per cent of the price at which the stock or other securities of any proposed or existing company are to be sold, or offered for sale, to the public of this state; and this amount may be limited by the Secretary of State to a less percentage which is in his opinion fair, just and equitable under the facts of the particular case. Acts 1955, 54th Leg., p. 322, ch. 67, § 7.

<sup>1</sup> Articles 579—1 to 579—42.

#### **Art. 579—8. Secretary of State to examine application; grant or deny**

Upon the filing of an application for qualifying securities under Section 5(a),<sup>1</sup> it shall be the duty of the Secretary of State to examine



the same and the papers and documents filed therewith. If he finds that the proposed plan of business of the applicant appears to be fair, just and equitable, and also that any consideration paid, or to be paid, for such securities by promoters is fair, just and equitable when such consideration for such securities is less than the proposed offering price to the public, and that the securities which it proposes to issue and the methods to be used by it in issuing and disposing of the same are not such as will work a fraud upon the purchaser thereof, the Secretary of State shall issue to the applicant a permit authorizing it to issue and dispose of such securities. Should the Secretary of State find that the proposed plan of business of the applicant appears to be unfair, unjust or inequitable, he shall deny the application for a permit and notify the applicant in writing of his decision. Any issuer, as the same is defined herein, who is dissatisfied with any ruling or decision of the Secretary of State, may file within ten (10) days thereafter, an application for a hearing before the Secretary of State, who shall, within ten (10) days after the receipt of such application, set said hearing at such time and place as he may fix, and shall give said applicant ten (10) days notice of such hearing. Such applicant may appeal from any ruling or decision made at such hearing in the same manner and in the same form as is hereinafter provided for appeals by or on behalf of dealers, and the rules applicable thereto and the relief to be had shall be the same. Acts 1955, 54th Leg., p. 322, ch. 67, § 8.

<sup>1</sup> Article 579—5.

**Art. 579—9. Permit, form and contents; term and renewals**

Every permit qualifying securities shall be in such form as the Secretary of State may prescribe, and shall recite in bold type that the issuance thereof is permissive only, and does not constitute a recommendation or endorsement of the securities permitted to be issued. Such permit shall be for a period of one (1) year only; provided, however, that if the securities authorized to be sold are not sold within one (1) year from the date of issuance, a renewal application shall be filed with the Secretary of State. Such renewal application shall recite the total number of shares sold in Texas, the total number of shares sold elsewhere, total number of shares outstanding, and shall contain a detailed balance sheet, an operating statement, and such other information as the Secretary of State may require. If satisfied that the business of the issuer has been conducted fairly, justly, and equitably, and in accordance with the previously approved method and plan of business of applicant, the Secretary of State shall issue to the applicant renewal permits, each of which shall be for a period of one (1) year and shall be in such form as the Secretary of State may prescribe. All applications for renewals must be made before the expiration date of the permit under which the issuer is operating; otherwise, all the terms and conditions required for the issuance of an original permit must be met. The Secretary of State shall charge such fees for the issuance of permits to sell securities as are hereinafter provided. No permit instrument will be issued if securities are registered under Section 5(b) of this Act,<sup>1</sup> but the Secretary of State will examine the registration papers to determine their sufficiency under the requirements of Section 5(b). Acts 1955, 54th Leg., p. 322, ch. 67, § 9.

<sup>1</sup> Article 579—5.

**Art. 579—10. Use of permit to aid sale of securities forbidden**

It shall be unlawful for any dealer or issuer, agent or salesman, to use a permit authorizing the issuance of securities in connection with any sale or effort to sell any security. Acts 1955, 54th Leg., p. 322, ch. 67, § 10.

**Art. 579—11. Papers filed with Secretary of State; records open to inspection**

All information, papers, documents, instruments and affidavits required by this Act<sup>1</sup> to be filed with the Secretary of State shall be deemed public records of this state, and shall be open to the inspection and examination of any purchaser or prospective purchaser of said securities or the agent or representative of such purchaser or prospective purchaser; and the Secretary of State shall give out to any such purchaser or prospective purchaser or his agent or representative any information required to be filed with him under the provisions of this Section, or any other part of this Act, and shall furnish any such purchaser, prospective purchaser, or his agent or representative, requesting it, certified copies of any and all papers, documents, instruments and affidavits filed with him under the provisions of this Section or of any part of this Act. No action at law for damages shall lie against the Secretary of State or any employee thereof on account of any information herein required or permitted to be given. Acts 1955, 54th Leg., p. 322, ch. 67, § 11.

<sup>1</sup> Articles 579—1 to 579—42.

**Art. 579—12. Registration of persons selling**

Except as provided in Section 3<sup>1</sup> of this Act, no person, firm, corporation or dealer shall, directly or through agents or salesmen, offer for sale, sell or make a sale of, any securities in this state without first being registered as in this Act<sup>2</sup> provided. No salesman or agent shall, in behalf of any dealer, sell, offer for sale, or make sale of, any securities within the state unless registered as a salesman or agent of a registered dealer under the provisions of this Act. A list of dealers, agents and salesmen registered under the provisions of this Act shall, at all times, be kept by the Secretary of State and be open to the public. Acts 1955, 54th Leg., p. 322, ch. 67, § 12.

<sup>1</sup> Article 579—3.

<sup>2</sup> Articles 579—1 to 579—42.

**Art. 579—13. Method of registration**

A dealer to be registered must submit sworn application therefor to the Secretary of State, which shall be in such form as the Secretary of State may determine and which shall state the principal place of business of the applicant wherever situated; the location of the principal place of business, and all branch offices in this State, if any; the name or style of doing business and the address of the dealer; the names, residences, and business addresses of all persons interested in the business as principals, officers, directors, or managing agents, specifying as to each his capacity and title; the general plan and character of business of such applicant and the length of time during and the places at which the dealer has been engaged in business. Such application shall also contain such additional information as to applicant's previous history, record, associations and present condition as may be required by the Secretary of State, or as is necessary to enable the Secretary of State to determine whether the sale of any security proposed to be issued or dealt in by such applicant would be fraudulent or would result in fraud. Each application shall be accompanied by certificates or other evidences satisfactory to the Secretary of State, establishing the good repute in business of the applicant, his directors, officers, co-partners, or principals. If the applicant is a corporation organized under the laws of any other state or territory or government or shall have its principal place of business therein, it shall accompany the

application with a copy of its articles of incorporation and all amendments thereto, certified by the proper officer of such state, or government, and of its regulations and by-laws; if a limited partnership, either a copy of its articles of co-partnership or a verified statement of its plan of doing business; and if an unincorporated association or organization under the laws of any other state, territory or government, or having its principal place of business therein, a copy of its articles of association, trust agreement or other form of organization. It shall be the duty of the Secretary of State to prepare, immediately, proper forms to be used by applicants under the terms of this Section, and the Secretary of State shall furnish copies thereof to all persons desiring to make application to be registered as a dealer. Acts 1955, 54th Leg., p. 322, ch. 67, § 13.

**Art. 579—14. Registration certificates**

If the Secretary of State is satisfied that the applicant is of good business repute, and that the proposed plan of business of the applicant is not unfair, unjust or inequitable, and upon the applicant filing a written consent to service as and when required by Section 15<sup>1</sup> of this Act, and upon the payment of the fees required by Section 37<sup>2</sup> of this Act, the Secretary of State shall register the applicant and issue to it or him a registry certificate, stating the principal place of business and address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer has been registered for a current calendar year as a dealer in securities. Pending final disposition of an application, the Secretary of State may, for special cause shown, grant temporary permission, revocable at any time and subject to such terms and conditions as the Secretary of State may prescribe, to transact business as a dealer under this Act.<sup>3</sup> Any dealer acting under such a temporary permission, shall be considered a registered dealer for all purposes of this Act. Acts 1955, 54th Leg., p. 322, ch. 67, § 14.

<sup>1</sup> Article 579—15.

<sup>2</sup> Article 579—37.

<sup>3</sup> Articles 579—1 to 6839m—42.

**Art. 579—15. Consent of foreign company or non-resident dealers to suit in this state**

Every company organized under the laws of any other state, or having its principal office therein, and every non-resident individual, shall file with its or his application for registration as a dealer a written consent, irrevocable, that actions growing out of any transaction subject to this Act<sup>1</sup> may be commenced against it or him, in the proper court of any county of this state in which the cause of action may arise, or in which the plaintiff may reside, by a service of process upon the Secretary of State as its or his agent, and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service had been made upon the person or company itself according to the laws of this or any other state, and such instrument shall be authorized by the seal of such corporation, or by the signature of all the members of such co-partnership, or by the signature of the president and secretary of the association, if it is a corporation or association, and shall be accompanied by a duly certified copy of the resolutions of the board of directors, trustees, or managers of the corporation authorizing the said secretary and president to execute the same. Acts 1955, 54th Leg., p. 322, ch. 67, § 15.

<sup>1</sup> Articles 579—1 to 579—42.

**Art. 579—16. Hearing by Secretary of State after notice refusing registration**

If the Secretary of State declines or fails to so register an applicant, he shall immediately give notice of the fact to the applicant, and upon request from such applicant filed within ten (10) days after receipt of such notice, shall fix a time and place of hearing of which ten (10) days notice shall be given to such applicant and to other persons interested or protesting to offer evidence relating to the dealer's application. In each such case, the Secretary of State shall fix the time for such hearing on a date within thirty (30) days from receipt of the request for the particular hearing provided the time of hearing may be continued from time to time on consent of the applicant. If satisfied, as aforesaid as a result of said hearing, the Secretary of State shall thereupon register the dealer. Acts 1955, 54th Leg., p. 322, ch. 67, § 16.

**Art. 579—17. Form of certificates**

The certificate shall be in such form as the Secretary of State may determine. Any changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer shall be immediately certified under oath to the Secretary of State and any change in the certificate necessitated thereby may be made at any time, upon written application setting forth the fact necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the Secretary of State. Acts 1955, 54th Leg., p. 322, ch. 67, § 17.

**Art. 579—18. Registration of agents or salesmen of dealers**

Upon written application by a registered dealer, and upon satisfactory evidence as to the good repute of the proposed agents or salesmen and qualification, the Secretary of State shall register as agents or salesmen of such dealer, such persons as the dealer may request. The application shall be in such form as the Secretary of State may prescribe and shall state the residences and addresses of the persons whose registration is requested, together with such information as to such agent's or salesman's previous history, record and association as may be required by the Secretary of State. Such application shall also be signed and sworn to by the agent or salesman for whom registration is requested. The Secretary of State shall issue to such dealer, to be retained by such dealer for each person so registered, a registration certificate, stating his name and residence, the address of the dealer and the fact that he is registered for the current calendar year as an agent or salesman of the dealer. The certificate shall be in such form as the Secretary of State shall determine. Upon application by the dealer, the registration of any agent or salesman shall be cancelled. Acts 1955, 54th Leg., p. 322, ch. 67, § 18.

**Art. 579—19. Annual registration, renewals**

All registrations shall expire at the close of the calendar year, but new registrations for the succeeding year shall be issued upon written application and upon payment of the fees as hereinafter provided, without filing of further statements or furnishing any further information unless specifically requested by the Secretary of State. Applications for renewals must be made not less than thirty (30) nor more than sixty (60) days before the 1st of January of the ensuing year. All applications for renewals received otherwise shall be treated as original applications; pro-

vided, that if any applicant is registered after December 1st of any year, he may immediately apply for a renewal of his registration for the ensuing year. Acts 1955, 54th Leg., p. 322, ch. 67, § 19.

**Art. 579—20. Sales by authorized persons**

Any registered dealer, and any registered agent or salesman of a registered dealer, and any person or company named in the registration certificate, may sell, offer for sale or delivery, or solicit subscriptions to or orders for, or dispose of or undertake to dispose of, or invite offers for, securities in this state. Acts 1955, 54th Leg., p. 322, ch. 67, § 20.

**Art. 579—21. Display or advertisement of fact of registration unlawful**

It shall be unlawful for any dealer, agent or salesman to use the fact of his registry, by public display or advertisement, except as hereinafter expressly provided, or the registry certificate or any certified copy thereof, in connection with any sale or effort to sell any security. Acts 1955, 54th Leg., p. 322, ch. 67, § 21.

**Art. 579—22. Posting certificate of authority**

Immediately upon receipt of the dealer's registry certificate, issued pursuant to the authority of this Act,<sup>1</sup> the dealer named therein shall cause such certificate to be posted and at all times conspicuously displayed in such dealer's principal place of business, if one is maintained in this state, and shall likewise forthwith cause a duplicate of such certificate to be posted and at all times conspicuously displayed in each branch office located within this state. Acts 1955, 54th Leg., p. 322, ch. 67, § 22.

<sup>1</sup> Articles 579—1 to 579—42.

**Art. 579—23. Advertising**

(a) It shall be unlawful and punishable with the penalties set forth in Section 30<sup>1</sup> of this Act for any person, company, dealer, agent or salesman to issue, distribute, or publish, within this state, any circular, advertisement, pamphlet, prospectus, program or other matter, as to any security, unless such advertising complies with the requirements hereinafter set forth in this Section 23;<sup>2</sup> in addition, the state and purchasers shall have all other remedies provided for where unlawful sales are made under this Act.<sup>3</sup>

(b) After a securities permit is issued by the Secretary of State, or registration by notification with the Secretary of State is completed under Section 5(b), any advertising may be issued, distributed, or published, until notice to cease publication has been given under Section 24:<sup>4</sup>

(1) If such person, company, dealer, agent or salesman shall have been registered as in this Act provided; and

(2) If such securities shall have been qualified under a securities permit granted by the Secretary of State, or shall have been registered under Section 5(b),<sup>5</sup> as in this Act provided; and

(3) If a true copy of such circular, advertisement, pamphlet, prospectus, program or other matter with the name of the dealer, or dealers, subscribed thereto, or printed thereon, shall have been filed with the Secretary of State.

(c) Advertising issued, distributed, or published in compliance with the provisions of Section 23(b), or used in compliance with subsection 23(d), may include the names of non-registered dealers who have partici-

pated with registered dealers of Texas in the original purchase, or underwriting, of securities, and inclusion of such names of non-registered dealers on any circular, advertisement, pamphlet, prospectus, program or other matter with names of such registered dealers shall not be a violation of this Act if the circular, advertisement, pamphlet, prospectus, program or other matter bears a legend thereon in plain and legible type stating that such securities are being offered within the State of Texas only by registered dealers within the State of Texas whose names are subscribed thereto, or printed thereon.

(d) The whole, or any part, of any written, typed, or printed documents theretofore filed under the Federal Securities Act of 1933<sup>6</sup> with the Securities and Exchange Commission of the United States may be used as advertising, if not printed in newspapers, used on television, or broadcast over radio. With the above exceptions, and if a copy of such advertising matter is first sent to the Secretary of State, same may be used prior to and during the time an application for a securities permit, or application for registration by notification, of securities is under consideration by the Secretary of State, and thereafter until notice is given under Section 24 by the Secretary of State to cease advertising. Any advertising matter used under this sub-section (d) shall have the following legend printed or securely pasted on the first page thereof:

“INFORMATIONAL ADVERTISING ONLY  
THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATIONS TO THE CONTRARY, OR SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE.”

If any advertising matter used under this subsection (d) does not bear the above legend, or if such information is televised, broadcast over radio, or printed in a newspaper, prior to issue of a permit, or prior to completion of the notification procedure, or if a copy is not first sent to the Secretary of State, such use is declared unlawful and shall be deemed a sale punishable under the penalties set out in Section 30 of this Act.

(e) Section 23 shall not apply to exempt transactions listed in Section 3<sup>7</sup> of this Act, or to exempt securities listed in Section 4<sup>8</sup> of this Act, unless such advertising violates the provisions of Section 24 of this Act.

(f) Appeals from decisions of the Secretary of State under this Section 23 shall be made in accordance with Section 24 of this Act. Acts 1955, 54th Leg., p. 322, ch. 67, § 23.

<sup>1</sup> Article 579—30.

<sup>2</sup> Article 579—23.

<sup>3</sup> Articles 579—1 to 579—42.

<sup>4</sup> Article 579—24.

<sup>5</sup> Article 579—5.

<sup>6</sup> 15 U.S.C.A. §§ 77b et seq., 78 et seq.

<sup>7</sup> Article 579—3.

<sup>8</sup> Article 579—4.

**Art. 579—24. List of securities filed with the Secretary of State on request; notice and hearing as to questioned securities**

The Secretary of State may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the Secretary of State a list of securities which he has offered for sale or has advertised for sale within this state during the preceding six (6) months, or

which he is at the time offering for sale or advertising, or any portion thereof. No dealer, agent or salesman shall knowingly sell or offer for sale any security or securities named or listed in a notice in writing given him by the Secretary of State that, in the opinion of the Secretary of State, the further sale or offer for sale of the security or securities named or listed in such notice would not be in compliance with this Act<sup>1</sup> or would tend to work a fraud on any purchaser thereof or that the plan of business of the issuer of such security or securities is not fair, just and equitable; and no dealer, agent or salesman shall publish within this state any circular, advertisement, prospectus, program or other matter in the nature thereof, after notice in writing has been given him by the Secretary of State that, in the Secretary of State's opinion, the same contains any statement that is false or misleading or otherwise likely to deceive a reader thereof. The dealer, agent or salesman to whom any such notice is given shall be entitled to a hearing and an appeal as provided for in this Act. The fact that the Secretary of State may give such notice in writing with reference to any specified security or securities shall not affect, limit or impair the right of any dealer, agent or salesman to whom any such notice is given to continue to issue, offer for sale and sell other securities in accordance with the provisions of this Act. Upon receipt of any such notice in writing the dealer, agent or salesman to whom such notice is given shall have the right to demand an immediate hearing with reference thereto, and the Secretary of State shall, upon request, set a time within thirty (30) days from receipt of such request and fix the place for such hearing and give notice thereof not less than seven (7) days in advance to the dealer, agent or salesman making the request for the hearing. Should the final decision of the Secretary of State, as a result of such hearing and given at the conclusion thereof, reverse the former opinion of the Secretary of State, forming the basis for such notice in writing, then the dealer, agent or salesman may proceed to offer for sale, sell and deal in the security or securities involved and to use the advertisement, prospectus, circular, program or other matter in the same manner as if such notice had not been given. Should the final decision of the Secretary of State, as a result of such hearing and given at the conclusion thereof, confirm the former opinion of the Secretary of State, forming the basis for such notice in writing, then the dealer, agent or salesman may proceed to effect an appeal to the courts in the manner provided generally in this Act for similar appeals. Acts 1955; 54th Leg., p. 322, ch. 67, § 24.

<sup>1</sup> Articles 579—1 to 579—42.

#### Art. 579—25. Revocation of registration of dealers on hearing

If the Secretary of State at any time has reason to believe any dealer has in any way violated, or is violating or about to violate any of the provisions of this Act,<sup>1</sup> or has been guilty of any fraud or fraudulent practice, then the Secretary of State may, after hearing, and having reasonable cause to believe the dealer has been guilty of such offense, revoke said dealer's registration. Notice of the time and place of any such hearing shall be sent to such dealer at least seven (7) days prior thereto. The dealer shall not be regarded as registered under the provisions hereof until restored to registration by the Secretary of State, either on the Secretary of State's own initiative or upon the order of the court, as in this Act hereinafter provided. In case of revocation, all registration certificates shall at once be surrendered to the Secretary of State upon request. The revocation of the dealer's registration shall constitute a revocation of the registration of any agent or salesman of the dealer's and notice of its operation on such agent's or salesman's registration shall be forthwith

sent by the Secretary of State to each of such agents and salesmen. Acts 1955, 54th Leg., p. 322, ch. 67, § 25.

<sup>1</sup> Articles 579—1 to 579—42.

#### Art. 579—26. Revocation of registration of agents or salesmen

If the Secretary of State at any time has reason to believe any salesman or agent of any dealer has in any way violated or is violating, or is about to violate any of the provisions of this Act,<sup>1</sup> or has been guilty of any fraud or fraudulent practice, then the Secretary of State may, after hearing, and having reasonable cause to believe that the agent or salesman has been guilty of such offense, revoke said agent's or salesman's registration. Notice of the time and place of such hearing shall be sent to such dealer and to such agent or salesman at least seven (7) days prior thereto. The agent or salesman shall not be regarded as registered under the provisions hereof until restored to registration by the Secretary of State, either on the Secretary of State's own initiative or upon the order of the court as in this Act hereinafter provided. In case of revocation as a result of proceedings under this Section, or in case of the revocation of an agent's or salesman's registration as a result of proceeding against a dealer under Section 25<sup>2</sup> hereof, in either such event, all agents' or salesmen's registration certificates shall at once be surrendered to the Secretary of State upon request. Acts 1955, 54th Leg., p. 322, ch. 67, § 26.

<sup>1</sup> Articles 579—1 to 579—42.

<sup>2</sup> Article 579—25.

#### Art. 579—27. Notices by registered mail

Any notice required by this Act<sup>1</sup> shall be sufficient if sent by registered mail unless otherwise specified in this Act, addressed to the dealer, agent or salesman, as the case may be, at the address designated in the application for registration. All testimony taken at any hearing before the Secretary of State shall be reported stenographically and a full and complete record shall be kept of all proceedings had before the Secretary of State on any hearing or investigation. Acts 1955, 54th Leg., p. 322, ch. 67, § 27.

<sup>1</sup> Articles 579—1 to 579—42.

#### Art. 579—28. Petition to district court of Travis county on complaint of decision of Secretary of State

Any dealer, salesman or agent aggrieved by any decision of the Secretary of State may file within thirty (30) days thereafter in the District Court of Travis County, Texas, a petition against the Secretary of State, officially as defendant, alleging therein in brief detail the action and decision complained of and praying for a reversal thereof and for an order directing the Secretary of State to register the applicant. Upon service of a summons upon the Secretary of State, returnable within ten (10) days from its date, the Secretary of State shall, on or before the return day, file an answer in which he shall allege, by way of defense, the ground for his decision. The Secretary of State shall also, on or before the return day of such summons, certify to said District Court the record of the proceedings to which the petition refers. Such records shall include the testimony taken therein, the finding of fact, if any, of the Secretary of State, based upon such testimony, a copy of all orders made by the Secretary of State in the proceedings, and a copy of the action or decision of the Secretary of State which the petition calls upon the court to reverse. The cost of preparing and certifying such record shall be paid to the Secretary



of State by the petitioner and taxed as a part of the cost in the case, to be paid as directed by the court upon the final determination of the case.

Upon the filing of the Secretary of State's answer, the case before the District Court of Travis County shall be at issue, without further pleadings, and upon application of either party and upon due notice given, the case shall be advanced and heard without further delay. Mere technical irregularities in the procedure of the Secretary of State shall be disregarded.

The case shall be heard upon the record certified to the court by the Secretary of State, and the court may consider such other evidence as in its discretion may be necessary to properly determine the issues involved. If the court reverses the decision of the Secretary of State, it may require that officer to register an applicant. The substantial evidence rule as interpreted by the courts of Texas shall not apply in the District Court.

From the decision of the District Court an appeal may be taken to the Court of Civil Appeals by either party as in other cases, and no bond shall be required by the Secretary of State.

A judgment sustaining the refusal of the Secretary of State to grant or renew a registration shall not bar, after one (1) year, a new application by the plaintiff for registration, nor shall a judgment in favor of the plaintiff prevent the Secretary of State from thereafter revoking or refusing to renew such registration for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs. Acts 1955, 54th Leg., p. 322, ch. 67, § 28.

**Art. 579—29. Subpoenas or other process in investigations by Secretary of State**

The Secretary of State may require, by subpoena or summons issued by the Secretary of State, addressed to the sheriff or any constable, the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence or other records or indices showing the names and addresses of the stockholders (except such books of account as are necessary to the continued conduct of the business, which books the Secretary of State shall have the right to examine or cause to be examined at the office of the concern and to require copies of such portion thereof as may deemed necessary touching the matter in question, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 31<sup>1</sup> hereof), relating to any matter which the Secretary of State has authority by this Act<sup>2</sup> to consider or investigate, and for this purpose the Secretary of State may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature contained therein shall be treated as confidential by the Secretary of State and shall not be disclosed to the public except under order of court, but nothing in this Section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Secretary of State. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the Secretary of State, the Secretary of State may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof.

The Secretary of State may in any investigation cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions under the laws of Texas.

Each witness required to attend before the Secretary of State shall receive, for each day's attendance, the sum of Two (\$2.00) Dollars, and shall receive in addition the sum of Ten (10¢) Cents for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act as hereinafter provided.

The fee for serving the subpoena shall be the same as those paid the sheriff for similar services. The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Secretary of State upon any party to the record, or may be divided between any and all parties to the record in such proportions as the Secretary of State may determine. Acts 1955, 54th Leg., p. 322, ch. 67, § 29.

<sup>1</sup> Article 579—31.

<sup>2</sup> Articles 579—1 to 579—42.

#### Art. 579—30. Penal provisions

Any dealer, agent, salesman, principal officer, or employee who shall, within this state, sell, offer for sale or delivery, solicit subscriptions to or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities, without being registered as in this Act<sup>1</sup> provided, or who shall within this state sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after the effective date of this Act, except for advertising made in compliance with Section 23<sup>2</sup> of this Act, without having secured a permit, or having complied with Section 5(b)<sup>3</sup> of this Act, as herein provided, or who knowingly sells or offers for sale any security or securities named or listed in a notice in writing given him by the Secretary of State that, in the opinion of the Secretary of State, the further sale or offer for sale of the security or securities named or listed in such notice would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or that the plan of business of the issuer of such security or securities is not fair, just and equitable, or who knowingly makes any false statement of fact in any statement or matter of information required by this Act to be filed with the Secretary of State, or in any advertisement, prospectus, letter, telegram, circular, or any other document containing an offer to sell or dispose of, or in or by verbal or written solicitation to purchase, or in any commendatory matter concerning any securities, with intent to aid in the disposal or purchase of the same, or who knowingly makes any false statement or representation concerning any registration made under the provisions of this Act, or who is guilty of any fraud or fraudulent practice in the sale of, offering for sale or delivery of, invitation of offers for, or dealing in any manner in any security or securities, or who shall knowingly participate in declaring, issuing or paying any cash dividend by or for any person or company out of any funds other than the actual earnings of such person or company or from the lawful liquidation of the business thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than One Thousand (\$1000.00) Dollars, or imprisoned in

the penitentiary for not more than two (2) years, or by both such fine and imprisonment. Acts 1955, 54th Leg., p. 322, ch. 67, § 30.

<sup>1</sup> Articles 579—1 to 579—42.

<sup>2</sup> Article 579—23.

<sup>3</sup> Article 579—5.

**Art. 579—31. Certified copies of papers filed with Secretary of State as evidence**

Copies of all papers, instruments, or documents filed in the office of the Secretary of State certified under the seal of the Secretary of State, shall be admitted to be read in evidence in all courts of law and elsewhere in this state in all cases where the original would be admitted in evidence; provided, that in any proceeding in the court having jurisdiction, the court may, on cause shown, require the production of the originals.

In any prosecution, action, suit or proceeding before any of the several courts of this state based upon or arising out of or under the provisions of this Act,<sup>1</sup> a certificate under the seal of the state, duly signed by the Secretary of State, showing compliance or non-compliance with the provisions of this Act respecting compliance, or non-compliance with the provisions of this Act by any dealer or salesman, shall constitute prima facie evidence of such compliance or of such non-compliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act. Acts 1955, 54th Leg., p. 322, ch. 67, § 31.

<sup>1</sup> Articles 579—1 to 579—42.

**Art. 579—32. Construction**

Nothing herein contained shall limit or diminish the liability of any person or company, or of its officers or agents thereof, now imposed by law to prevent the prosecution of any person or company, or of its officers or agents thereof, for the violation of the provisions of any other statute. Acts 1955, 54th Leg., p. 322, ch. 67, § 32.

**Art. 579—33. Injunctions**

Whenever it shall appear to the Secretary of State either upon complaint or otherwise, that in the issuance, sale, promotion, negotiations, advertisement or distribution of any securities within this state, including any security embraced in the subsections of Section 4,<sup>1</sup> and including any transaction exempted under the provisions of Section 3,<sup>2</sup> any person or company shall have employed or employs, or is about to employ any device, scheme or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or that any such person or company shall have made, makes, or attempts to make in this state fictitious or pretended purchases or sales of securities or shall have engaged in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities which is in violation of law or which is fraudulent or which has operated or which would operate as a fraud upon the purchaser, any one or all of which devices, schemes, artifices, fictitious or pretended purchases, or sales of securities, practices, transactions and courses of business are hereby declared to be and are hereafter referred to as fraudulent practices; or that any person or company is acting as dealer or salesman within this state without being duly registered as such dealer or salesman as provided in this Act,<sup>3</sup> the Secretary of State and Attorney General may investigate,

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

and whenever he shall believe from evidence satisfactory to him that any such person or company has engaged in, is engaged in, or is about to be engaged in any of the practices or transactions heretofore referred to as and declared to be fraudulent practices, or is selling or offering for sale any securities in violation of this Act or is acting as a dealer or salesman without being duly registered as provided in this Act, the Attorney General may, on request by the Secretary of State, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any other person or persons heretofore concerned in or in any way participating in or about to participate in such fraudulent practices or acting in such violation of this Act, to enjoin such person or company and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this Act. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and his employees, salesmen or agents and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county, wherein it is shown that the acts complained of have been or are about to be committed, shall have jurisdiction of any action brought under this Section, and this provision shall be superior to any provision fixing the jurisdiction and/or venue with regard to suits for injunction. No bond for injunction shall be required of the Secretary of State or Attorney General in any such proceeding. Acts 1955, 54th Leg., p. 322, ch. 67, § 33.

<sup>1</sup> Article 579—4.

<sup>2</sup> Article 579—3.

<sup>3</sup> Articles 579—1 to 579—42.

**Art. 579—34. Sales in violation of law voidable; action by purchaser; limitations**

Every sale or contract of sale of any security made in violation of any provision of this Chapter shall be voidable at the election of the purchaser, who shall be entitled to recover from the seller in an action at law, upon tender to the seller of the security sold, in proper form for transfer, together with the amount of all dividends, interest, and other income and distributions received by the purchaser from or upon such security, the full amount paid by such purchaser for such security, with interest from the date of purchase; provided that any action by a purchaser to enforce any right or liability based upon any sale made in violation of any provision of this Chapter or any Acts predecessor thereto or amendatory thereof or upon any misrepresentation made in connection with such sale, shall be commenced within two (2) years after the purchaser thereof has knowledge that such sale was made in violation of any provision of this Chapter or Acts predecessor thereto or amendatory thereof or upon a misrepresentation, or within two (2) years after such purchaser, by the exercise of ordinary care, should have discovered that such sale was made in violation of this Act<sup>1</sup> or Acts predecessor thereto or amendatory thereof, or upon a misrepresentation, and not thereafter; and provided further, that no purchaser shall bring any action under this Act against the seller unless (1) at least fifteen (15) days before filing suit, he shall have made a written demand on the seller for a refund of the full amount paid by the purchaser for the security, with interest from the date of purchase, less the amount of any income from

such security that may have been received by the purchaser, and he shall have tendered to the seller the securities sold in proper form for transfer, and (2) the seller shall not have made such refund and accepted such tender within the said fifteen (15) days. Acts 1955, 54th Leg., p. 322, ch. 67, § 34.

<sup>1</sup> Articles 579—1 to 579—42.

#### **Art. 579—35. Actions for commission; allegations and proof of compliance**

No person or company shall bring or maintain any action in the courts of this state for the collection of a commission or compensation for services rendered in the sale or purchase of securities, as that term is herein defined, without alleging and proving that such person or company was duly licensed under the provisions hereof and the securities so sold were duly registered under the provisions hereof at the time the alleged cause of action arose; provided however, that this Section or provision of this Act<sup>1</sup> shall not apply to the exempt transactions set forth in Section 3<sup>2</sup> of this Act or to the sale and purchase of exempt securities listed in Section 4<sup>3</sup> of this Act, when sold by a registered dealer. Acts 1955, 54th Leg., p. 322, ch. 67, § 35.

<sup>1</sup> Articles 579—1 to 579—42.

<sup>2</sup> Article 579—3.

<sup>3</sup> Article 579—4.

#### **Art. 579—36. Administration and enforcement by Secretary of State and Attorney General**

The administration of the provisions of this Act shall be vested in the Secretary of State. It shall be the duty of the Secretary of State and the Attorney General to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The Secretary of State shall at once lay before the District or County Attorney of the proper county any evidence which shall come to his knowledge of criminality under this Act.<sup>1</sup> In the event of the neglect or refusal of such attorney to institute and prosecute such violation, the Secretary of State shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon district or county attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries. To aid the Secretary of State in carrying out the provisions of this Act, there is hereby created the office of the Securities Commissioner of Texas, who shall be appointed by the Secretary of State for a term co-extensive with the term of the office of the Secretary of State. Acts 1955, 54th Leg., p. 322, ch. 67, § 36.

<sup>1</sup> Articles 579—1 to 579—42.

#### **Art. 579—37. Fees**

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

(a) For the filing of any original or renewal application of a dealer, Twenty-five (\$25.00) Dollars;

(b) For each and every registration certificate issued to a dealer, whether on an original or renewal application, Ten (\$10.00) Dollars;

(c) For the filing of any original or renewal application for each salesman, Ten (\$10.00) Dollars;

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

(d) For each and every registration certificate issued to each salesman, Five (\$5.00) Dollars;

(e) For each and every registration certificate issued to a dealer or salesman after the first day of July of any year, one-half of the fee provided in subsections (b) and (d) herein, whichever is applicable;

(f) For the filing of any original, amended, or renewal application of an issuer to sell or dispose of stock, Five (\$5.00) Dollars;

(g) For each and every permit or amended permit issued to an issuer, or dealer, a fee of one-tenth (1/10) of one (1%) per cent of the aggregate amount of securities described and proposed to be sold in this state based upon the price at which such security is to be offered to the public;

(h) For each and every renewal or amended permit issued to an issuer, Five (\$5.00) Dollars;

(i) For copies of any papers filed in the office of the Secretary of State, or for the certification thereof, the Secretary of State shall charge such fees as the Secretary of State is now authorized to charge in similar cases;

(j) For the filing of any original or renewal application of a dealer of any instrument representing any interest in or under an oil, gas, or mining lease, fee or title, a fee of Twelve (\$12.00) Dollars;

(k) For each and every registration certificate issued to a dealer under the terms of subsection (j), a fee of Five (\$5.00) Dollars;

(l) For the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of Two Hundred Fifty (\$250.00) Dollars;

(m) For securities registered by notification, the fees prescribed in Section 5(b)<sup>1</sup> of this Act. Acts 1955, 54th Leg., p. 322, ch. 67, § 37.

<sup>1</sup> Article 579—37.

#### Art. 579—38. Deposit to General Revenue Fund

Upon and after the effective date of this Act<sup>1</sup> all monies received from fees, assessments, or charges under this Act shall be paid by the Secretary of State into the General Revenue Fund. Acts 1955, 54th Leg., p. 322, ch. 67, § 38.

<sup>1</sup> Articles 579—1 to 579—42.

#### Art. 579—39. Pleading exemptions

It shall not be necessary to negative any of the exemptions in this Act<sup>1</sup> in any complaint, information or indictment, or any writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the party claiming the same. Acts 1955, 54th Leg., p. 322, ch. 67, § 39.

<sup>1</sup> Articles 579—1 to 579—42.

#### Art. 579—40. Partial invalidity

The provisions of this Act<sup>1</sup> are severable, and in the event that any provision thereof should be declared void or unconstitutional, it is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the invalidity of any particular provision or provisions in any respect, and said Sections shall remain in full force and effect. Acts 1955, 54th Leg., p. 322, ch. 67, § 40.

<sup>1</sup> Articles 579—1 to 579—42.

Tex.St.Supp. '56—8

Art. 579—41. Repeal; savings clause as to existing proceedings

All Acts now in effect being those currently known as the Securities Act of Texas and as embraced in Article 600a<sup>1</sup> of Vernon's Civil Statutes of Texas, as amended; and Article 1083a<sup>2</sup> of the Vernon's Penal Code of Texas, as amended, be and the same are hereby repealed; provided, however, that all permits, orders, and licenses issued by the Secretary of State pursuant to said law prior to the effective date of this Act<sup>3</sup> shall be valid during the period for which they were issued unless sooner revoked by the Secretary of State for any cause for which the Secretary of State is authorized by this Act to revoke hereunder; provided further, that all prosecutions and legal or other proceedings begun and not completed and any cause of action existing under the provisions of that law now in effect shall continue in effect and remain in full force and effect until terminated as under the terms of the law now in force, notwithstanding the passage of this Act. All moneys appropriated for the administration of the law now in effect and remaining in the treasury at the time of taking effect of this Act are hereby appropriated to the Secretary of State to be used by the Secretary of State for the purposes permitted by the provisions of this Act. Acts 1955, 54th Leg., p. 322, ch. 67, § 41.

<sup>1</sup> Article 600a.

<sup>2</sup> Vernon's Ann.P.C. art. 1083a.

<sup>3</sup> Articles 579—1 to 579—42.

Art. 579—42. Declaration of purposes and effective date of act

The fact that existing laws known as The Securities Act<sup>1</sup> have been amended six times since enactment of the law in 1935, and that there is now imperative need for clarification of certain sections of the existing law; the fact that The Securities Act must be made current in order to prevent fraud on the Texas public and in order to prevent illegal sales to the public of worthless securities which represent nothing substantial; and the fact that the summary action is needed under the police powers of the State in order that the Secretary of State may prevent contemplated sales or stop further sales of securities which are in his opinion fraudulent or illegal under this Act,<sup>2</sup> requires passage of this Act, and it shall be and become effective on September 1, 1955. Acts 1955, 54th Leg., p. 322, ch. 67, § 42.

<sup>1</sup> Article 600a, Vernon's Ann.P.C. art. 1083a.

<sup>2</sup> Articles 579—1 to 579—42.

CHAPTER 2. INSURANCE SECURITIES ACT [NEW]

Art.		Art.	
580—1.	Short title of Act.	580—9.	Permit, form and contents; term and renewals.
580—2.	Definitions.	580—10.	Use of permit to aid sale of securities forbidden.
580—3.	Exempt transactions.	580—11.	Papers filed with the Board of Insurance Commissioners; records open to inspection.
580—4.	Exempt securities.	580—12.	Registration of persons selling.
580—5.	Permit or registration for issue by Board of Insurance Commissioners; information for issuance of permit or registration.	580—13.	Method of registration.
580—6.	Consent to service and certificate of good standing.	580—14.	Registration certificates.
580—7.	Protection to purchasers of securities.	580—15.	Consent of foreign company or non-resident dealers to suit in this state.
580—8.	The Board of Insurance Commissioners to examine application; grant or deny.	580—16.	Hearing by the Board of Insurance Commissioners after notice refusing registration.

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

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| <p>Art.<br/>580—17. Form of certificates.<br/>580—18. Registration of agents or salesmen of dealers.<br/>580—19. Annual registration; renewals.<br/>580—20. Sales by authorized persons.<br/>580—21. Display or advertisement of fact of registration unlawful.<br/>580—22. Posting certificate of authority.<br/>580—23. Advertising.<br/>580—24. List of securities filed with the Board of Insurance Commissioners on request; notice and hearing as to questioned securities.<br/>580—25. Revocation of registration of dealers on hearing.<br/>580—26. Revocation of registration of agents or salesmen.<br/>580—27. Notices by registered mail.<br/>580—28. Petition to district court of Travis county on complaint of decision of Board of Insurance Commissioners.</p> | <p>Art.<br/>580—29. Subpoenas or other process in investigations by the Board of Insurance Commissioners.<br/>580—30. Penal provisions.<br/>580—31. Certified copies of papers filed with Board of Insurance Commissioners as evidence.<br/>580—32. Construction.<br/>580—33. Injunctions.<br/>580—34. Sales in violation of law voidable; action by purchaser; limitations.<br/>580—35. Actions for commission; allegations and proof of compliance.<br/>580—36. Administration and enforcement by Board of Insurance Commissioners and Attorney General.<br/>580—37. Fees.<br/>580—38. Deposit to Insurance Securities Act Fund.<br/>580—39. Pleading exemptions.</p> |
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#### Art. 580—1. Short Title of Act

This Act<sup>1</sup> shall be known and may be cited as "The Insurance Securities Act." Acts 1955, 54th Leg., p. 1002, ch. 384, § 1.

<sup>1</sup> Article 580—1 et seq.

Effective 90 days after June 7, 1955, date of adjournment.

Section 40 of the Act of 1955 provided that partial invalidity should not affect

the remaining portions of the Act. Section 41 repealed all conflicting laws and parts of laws to the extent of such conflict.

#### Art. 580—2. Definitions

The following terms as used in this Act<sup>1</sup> shall, unless the context otherwise indicates, have the following respective meanings:

(a) The term "security" or "securities" shall include any share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not, issued or guaranteed by any insurance company or other insurer, by whatever name such organization or person may be called; provided, however, that this definition shall not apply to any insurance policy, endowment policy, annuity contract, optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Board of Insurance Commissioners when the form of such policy or contract has been duly filed with the Board as now or hereafter required by law; provided, however, that neither the provisions of this Act nor House Bill No. 521, Acts, 1935, Forty-fourth Legislature, Page 255, Chapter 100,<sup>2</sup> as heretofore or hereafter amended, shall apply to the sale by or on behalf of any insurance company subject to the



supervision or control of the Board of Insurance Commissioners of any security owned by such company as a legal and bona fide investment, provided, that in no event shall any such sale or offering be exempt from the provisions of this Act or House Bill No. 521, Acts, 1935, Forty-fourth Legislature, Page 255, Chapter 100, as heretofore or hereafter amended, when made or intended, either directly or indirectly, for the benefit of any other company, corporation, person, joint stock company, partnership, association, firm syndicate trust, incorporated or unincorporated, or trust as the term trust is defined in House Bill No. 521, Acts, 1935, Forty-fourth Legislature, Page 255, Chapter 100, as heretofore or hereafter amended.

(b) The term "company" shall include a corporation, person, joint stock company, partnership, association, company, firm, syndicate trust, incorporated or unincorporated, heretofore or hereafter formed under the laws of this or any other state, country, sovereignty or political subdivision thereof. As used herein, the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity.

(c) The term "dealer" shall include every person or company, other than a salesman, who engages in this state, either for all or part of his or its time, directly or through an agent, in selling, offering for sale or delivery or soliciting subscriptions to or orders for, or undertaking to dispose of, or to invite offers for, or rendering services as an investment adviser, or dealing in any other manner in any security or securities within this state. Any issuer other than a registered dealer, of a security or securities, who, directly or through any person or company, other than a registered dealer, offers for sale, sells or makes sales of its own security or securities shall be deemed a dealer and shall be required to comply with the provisions hereof; provided, however, this Section or provision shall not apply to such issuer when such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; and provided further, this Section or provision shall not apply to such issuer if the transaction is within the exemptions contained in the provisions of Section 3 of this Act.<sup>3</sup>

(d) The term "salesman" shall include every person or company employed or appointed or authorized by a dealer to sell, offer for sale or delivery, or solicit subscriptions to or orders for, or deal in any other manner, in securities within this state, whether by direct act or through sub-agents; provided, that the officers of a corporation or partners of a partnership shall not be deemed salesmen, where such corporation or partnership is registered as a dealer hereunder.

(e) The terms "sale" or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent or salesman, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "of-

fer for sale" as used by or accepted in courts of law or equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed a sale or offer for sale of such other security, but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act, if not exempt hereunder, or by other provisions of law. Provided, however, advertising when made in compliance with Section 23<sup>4</sup> shall not be deemed a sale.

(f) The terms "fraud," "fraudulent practice," shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

(g) "Issuer" shall mean and include every company or person who proposes to issue, has issued, or shall hereafter issue any security.

(h) "Broker" shall mean dealer as herein defined.

(i) "Mortgage" shall be deemed to include a deed of trust to secure a debt.

(j) If the sense requires it, words in the present tense include the future tense, in the masculine gender include the feminine and neuter gender, in the singular number include the plural number, and in the plural number include the singular number; "and" may be read "or" and "or" may be read "and."

(k) "No par value" or "non-par" as applied to shares of stock or other securities shall mean that such shares of stock or other securities are without a given or specified par value. Whenever any classification or computation in this Act mentioned is based upon "par value" as applied to shares of stock or other securities of no par value, the amount for which such securities are sold or offered for sale to the public shall be used as a basis of such classification or computation.

(l) The term "include" when used in a definition contained in this Act shall not be deemed to exclude other things or persons otherwise within the meaning of the term defined.

(m) "Registered dealer" shall mean a dealer as hereinabove defined who has been duly registered by the Board of Insurance Commissioners as in Sections 13 and 14 of this Act<sup>5</sup> provided. Acts 1955, 54th Leg., p. 1002, ch. 384, § 2.

<sup>1</sup> Article 580—1 et seq.

<sup>2</sup> Article 600a.

<sup>3</sup> Article 580—3.

<sup>4</sup> Article 580—23.

<sup>5</sup> Articles 580—13 and 580—14.

### Art. 580—3. Exempt Transactions

Except as hereinafter in this Act<sup>1</sup> specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer

within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

(a) At any judicial, executor's, administrator's, guardian's or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy;

(b) The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business to liquidate a bona fide debt, of a security pledged in good faith as security for such debt;

(c) Sales of securities made by or in behalf of a vendor, whether by dealer or other agent, in the ordinary course of bona fide personal investment of the personal holdings of such vendor, or change in such investment, if such vendor is not otherwise engaged either permanently or temporarily in selling securities; provided, that in no event shall such sales or offerings be exempt from the provisions of this Act when made or intended by the vendor or his agent, for the benefit, either directly or indirectly, of any company or corporation except the individual vendor (other than a usual commission to said agent);

(d) The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus;

(e) The sale of an increase of capital stock of a corporation only to its stockholders and without payment of any commission or expense to any officer, employee, broker or agent, and without incurring any liability for any expenses whatsoever in connection with such distribution;

(f) The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them;

(g) The transfer or exchange by, or on account of, one corporation to another or to its stockholders of their or its own securities in connection with a proposed consolidation or merger of such corporation or in connection with the change of par value stock to non-par value stock or vice versa, or the exchange of outstanding shares for a greater or smaller number of shares, provided that in such case such stockholders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so transferred or exchanged other than the securities of said corporation then held by them;

(h) The sale by a domestic corporation of its stock forfeited for a delinquent assessment, according to law;

(i) The sale to any bank, trust company, loan and brokerage corporation, building and loan association, insurance company, surety or guaranty company, savings institution or to any registered dealer, provided such dealer is actually engaged in buying and selling securities;

(j) The sale by any domestic corporation of its stock or other securities issued in good faith and not for the purpose of avoiding the provisions of this Act, so long as the total number of stockholders and security holders of said corporation does not and will not after such sale exceed twenty-five (25) and the securities are issued and disposed of without the use of advertisements, circulars, or any form of public solicitation;

(k) The sale of an interest in any partnership, pool, or other company, not a corporation, the total membership of which does not and will not after such sale exceed ten (10), and the organization expenses of which do not or will not exceed two per cent (2%) of the total invested capital of such company;

(l) Subscriptions to capital stock necessary to qualify for incorporation when subscribed by not more than fifteen (15) subscribers in a proposed Texas corporation;

(m) Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction;

(n) Any security or membership issued by a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual members, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof;

(o) The sale by a registered dealer of securities which have theretofore been issued to the public in this or in any other state by an entity domiciled in the United States and which securities then form no part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer thereof or by or through an underwriter thereof when such securities are offered for sale, in good faith, at prices reasonably related to current market price of such securities at the time of such sale; provided that:

(1) No part of the proceeds of such sale are intended to inure either directly or indirectly, to the benefit of the issuer of such securities; and

(2) Such sale is neither directly nor indirectly for the purpose of promoting any scheme or enterprise having the effect of violating or evading any of the provisions of this Act; and

(3) The right to sell or re-sell such securities has not been enjoined by any court of competent jurisdiction in this State by proceedings instituted by an officer or agency of this State charged with enforcement of this Act; and

(4) The right to sell such securities has not been revoked or suspended by the Board of Insurance Commissioners under any of the provisions of this Act or, if so, such revocation or suspension is not in force and effect; and

(5) At the time of such sale information as to the issuer of such securities shall appear in either Moody's, Standard and Poors, or Fitch, or in a nationally distributed manual of securities approved for use hereunder by the Board of Insurance Commissioners; or the information is furnished in writing to the Board of Insurance Commissioners in form and extent acceptable to the Board of Insurance Commissioners, such information either in the manual, or other form, shall include at least a statement of the issuer's principal business, a statement of the assets and lia-

bilities of such issuer as of a date not more than eighteen (18) months prior to the date of such sale and a net income and dividend record of such issuer for a period of not less than three (3) complete fiscal years ended not more than eighteen (18) months next prior to the date of such sale or for the period that the issuer has actually been engaged in business if the issuer has been in business for less than three (3) years; and

(6) At the time of such sale the issuer of such securities shall be a going concern actually engaged in business and shall not then be in an organization stage nor in receivership or bankruptcy.

The Board of Insurance Commissioners may by order revoke or suspend the exemption under this subsection (o) with respect to any security if it has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof, would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to judicial review in the manner provided generally for similar appeals by Section 24 of this Act.<sup>2</sup> Notices of any court injunction enjoining the sale, or re-sale, of any such security, or of any order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by ordinary mail, or by registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (3) and (4) above of this subsection shall be inapplicable to any dealer until he has received actual notice from the Board of Insurance Commissioners of such revocation or suspension.

(p) The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compensation from any source other than the purchaser. Acts 1955, 54th Leg., p. 1002, ch. 384, § 3.

<sup>1</sup> Article 580—1 et seq.

<sup>2</sup> Article 580—24.

#### Art. 580—4. Exempt Securities

Except as hereinafter in this Act<sup>1</sup> expressly provided, the provisions of this Act shall not apply to any of the following securities when offered for sale, or sold, or dealt in by a registered dealer or salesman of a registered dealer:

(a) Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit;

(b) Securities which at the time of sale have been fully listed upon the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange or the New York Stock Exchange, or upon any recognized and responsible stock exchange approved by the Board of Insurance Commissioners as hereinafter in this Section provided, and also all securities senior to, or if of the same issues, upon a parity with, any securities so listed or represented by subscription rights which have been so listed, or evidence of indebtedness guaranteed by any company, any stock of which is so listed, such securities to be exempt only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section. Application for approval by the Board of Insurance Commissioners may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Board of Insurance

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

Commissioners but no approval of any exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect reasonable protection to the public;

(2) That the governing constitution, by-laws and/or regulations of such exchange shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein;

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income, and profit and loss statements;

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset and/or income value.

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend and/or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial of the rights and interest of his customers.

The approval of any such exchange by the Board of Insurance Commissioners shall be made only after a reasonable investigation and hearing, and shall be by a written order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided. The Board of Insurance Commissioners, upon ten (10) days notice and hearing, shall have power at any time to withdraw approval theretofore granted by it to any such stock exchange, which does not at the time of hearing meet the standards of approval under this Act, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Board of Insurance Commissioners again approving such exchange.

(c) Negotiable promissory notes or commercial paper issued in good faith and in the usual course of carrying on and conducting the business of the issuer, provided that such notes or commercial paper mature in not more than twenty-four (24) months from the date of issue. Acts 1955, 54th Leg., p. 1002, ch. 384, § 4.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—5. Permit or Registration for Issue by Board of Insurance Commissioners: Information for Issuance of Permit or Registration**

##### **(a) Qualification of Securities.**

(1) No dealer, agent or salesman shall after the passage of this Act,<sup>1</sup> sell or offer for sale any securities defined by this Act, except those which shall have been registered by notification under Subdivision (b) of this Section 5 and except those which come within the classes enumerated in Subdivisions (a) to (p), both inclusive, of Section 3 of this Act,<sup>2</sup> or Subdivisions (a) to (c), both inclusive, of Section 4 of this Act,<sup>3</sup> until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Board of Insurance Commissioners; and no such permit shall be granted by the Board of Insurance Commissioners until the issuer of such securities or a dealer registered under the provisions of this Act shall have filed with the Board of In-

insurance Commissioners a sworn statement, verified under the oath of an executive officer or partner of the issuer, or of such registered dealer, and attested by the secretary or partner thereof, setting forth the following information:

a. The names, residences and post office addresses of the officers and directors of the company;

b. The location of its principal office and of all branch offices in this State, if any;

c. A copy of its articles of incorporation or partnership or association, as the case may be, and of any amendments thereto, if any; if a corporation, a copy of all minutes of any proceeding of its directors, stockholders or members relating to or affecting the issue of said security; if a corporation, a copy of its by-laws and of any amendments thereof; if a trustee, a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared;

d. A statement showing the amount of capital stock, if any, and if no capital stock, the amount of capital of the issuer that is contemplated to be employed; the number of shares into which such stock is divided, or if not divided into shares of stock, what division is to be made or is contemplated; the par value of each share, or if no par stock, the price at which such security is proposed to be sold; the promotional fees or commissions to be paid for the sale of same, including any and all compensations of every nature that are in any way to be allowed the promoters or allowed for the sale of same; and how such compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both; also, the amount of cash to be paid, or securities to be issued, given, transferred or sold to promoters for promotion and/or organization services and expenses, and the amount of promotion and/or organization services and expenses which will be assumed or in any way paid by the issuer;

e. Copies of certificates of the stock and all other securities to be sold, or offered for sale, together with application blanks therefor; a copy of any contract it proposes to make concerning such security; a copy of any prospectus or advertisement or other description of security prepared by or for it for distribution or publication;

f. A detailed statement showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for state and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Board of Insurance Commissioners the fullest possible information concerning same, and the Board of Insurance Commissioners shall have the power to require the filing of such additional information as it may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any re-purchase agreement, or any other agreement of like

character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within six (6) months from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed profit and loss statement, which shall cover the last three (3) years operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said profit and loss statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, then a financial and profit and loss statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said profit and loss statement shall clearly reflect the amount of net profit or net loss incurred during each of the years shown.

(b) Registration by Notification.

(1) Securities may be registered by notification under this subsection (b) if they are issued by an issuer which has been in continuous operation for not less than three (3) years and which has shown, during the period of not less than three (3) years next prior to the date of registration under this Section, average annual net earnings after deducting all prior charges including income taxes except charges upon securities to be retired out of the proceeds of sale, as follows:

a. In the case of interest-bearing securities, not less than one and one-half times the annual interest charges on such securities and on all other outstanding interest-bearing securities of equal rank;

b. In the case of securities having a specified dividend rate, not less than one and one-half times the annual dividend requirements on such securities and on all outstanding securities of equal rank;

c. In the case of securities wherein no dividend rate is specified, not less than five per cent (5%) on all outstanding securities of equal rank, together with the amount of such securities then offered for sale, based upon the maximum price at which such securities are to be offered for sale. The ownership by an issuer of more than fifty per cent (50%) of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of such corporation and shall permit the inclusion of the earnings of such corporation applicable to the payment of dividends upon the stock so owned in the earnings of the issuer of the securities being registered by notification.

(2) Securities entitled to registration by notification shall be registered by the filing with the Board of Insurance Commissioners by the issuer or by a registered dealer of a registration statement as required by subsection "a" and completion of the procedures outlined in subsection "b" hereof:

a. A registration statement in a form prescribed by the Board of Insurance Commissioners signed by the applicant filing such statement and containing the following information:

1. Name and business address of main office of issuer and address of issuer's principal office, if any, in this State;



2. Title of securities being registered and total amount of securities to be offered;

3. Price at which securities are to be offered for sale to the public, amount of securities to be offered in this State, and amount of registration fee, computed as hereinafter provided;

4. A brief statement of the facts which show that the securities are entitled to be registered by notification;

5. Name and business address of the applicant filing statement;

6. Financial statements to include a certified profit and loss statement, a certified balance sheet, and certified statements of surplus, each to be for a period of not less than three (3) years prior to the date of registration. These financial statements shall reflect the financial condition of the issuer as of a date not more than ninety (90) days prior to the date of such filing with the Board of Insurance Commissioners;

7. A copy of the prospectus, if any, describing such securities;

8. Payment of a filing fee of Five Dollars (\$5) and a registration fee of one-tenth ( $\frac{1}{10}$ ) of one per cent (1%) of the aggregate amount of securities proposed to be sold in this State based upon the price at which such securities are to be offered to the public;

9. Filing of a consent to service of process conforming to the requirements of section 6 of this Act, if the issuer is registering the securities and is not a resident of this State or is not incorporated under the laws of this State.

b. Such filing with the Board of Insurance Commissioners shall constitute the registration of securities by notification and such registration shall become effective five (5) days after receipt of the registration statement and all accompanying papers by the Board of Insurance Commissioners; provided that the Board of Insurance Commissioners may in its discretion waive or reduce the five (5) days waiting period in any case where it finds no injury to the public will result therefrom. Upon such registration by notification, securities may be sold in this State by registered dealers and registered salesmen. Upon the receipt of a registration statement, prospectus, if any, payment of the filing fee and registration fee, and, if required, a consent to service of process, the Board of Insurance Commissioners shall record the registration by notification of the securities described. Such registration shall be effective for a period of one (1) year and may be renewed for additional periods of one (1) year, if the securities are entitled to registration under this subsection at the time of renewal, by a new filing under this section together with the payment of the renewal fee of Ten Dollars (\$10).

c. If at any time, before or after registration of securities under this section, in the opinion of the Board of Insurance Commissioners, the information in a registration statement filed with it is insufficient to establish the fact that the securities described therein are, or were, entitled to registration by notification under this section, or that the registration information contains, or contained, false, misleading or fraudulent facts, it may order the applicant who filed such statement to cease and desist from selling, or offering for sale, such securities registered, or proposed to be registered, under provisions of this section until there is filed with the Board of Insurance Commissioners such further information as may in its judgment be necessary to establish the fact that such securities are, or were, entitled to registration under this section. The provisions of Sec-

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tion 24 of this Act<sup>4</sup> as to hearing and appeal shall be applicable to an order issued hereunder. Acts 1955, 54th Leg., p. 1002, ch. 384, § 5.

<sup>1</sup> Article 580—1 et seq.

<sup>2</sup> Article 580—3.

<sup>3</sup> Article 580—4.

<sup>4</sup> Article 580—24.

#### **Art. 580—6. Consent to Service and Certificate of Good Standing**

If the application for a permit to sell securities be filed by an issuer, or by a dealer who will offer such securities for sale as the agent of the issuer, and the issuer is organized under the laws of any other state, territory or government, or domiciled in any other state than Texas, such application shall also contain a certificate executed by the proper officer of such state, territory or government dated not more than thirty (30) days prior to the date of filing of the application showing that such issuer is authorized to transact business in such state, territory or government, and is not delinquent in any taxes or assessments required to be paid to such state, territory or government. Such application shall also contain a written instrument duly executed by an executive officer of such issuer, under proper resolution of its board of directors, and authenticated and attested by the seal of said issuer, appointing the Board of Insurance Commissioners irrevocably its true and lawful attorney upon whom all process in any action or proceedings against such issuer arising out of any transaction subject to this Act<sup>1</sup> may be served with the same effect as if such issuer were organized or created under the laws of this state and had been lawfully served with process therein. It shall be the duty of the Board of Insurance Commissioners, whenever it shall have been served with any process as is herein provided, to forward same by United States mail to the home office of such issuer. Acts 1955, 54th Leg., p. 1002, ch. 384, § 6.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—7. Protection to Purchasers of Securities**

In the event any company, as defined herein, shall sell, or offer for sale, any securities, as defined in this Act,<sup>1</sup> the Board of Insurance Commissioners, if it deems it necessary to protect the interests of prospective purchasers of such securities, may require the company so offering such securities for sale to deposit all, or any part, of the proposed securities, or all, or any part, of the moneys and funds received from the sale thereof, except such amounts thereof as the Board of Insurance Commissioners deems necessary to be used, and not to exceed the amount allowed, as expenses and commissions for the sale of such securities, to be deposited in a trust account in some bank or trust company approved by the Board of Insurance Commissioners and doing business in the State of Texas, until such time as such proposed company or existing company shall have sold a specified monetary amount or number of shares of such securities as in its opinion will reasonably assure protection of the public. When the Board of Insurance Commissioners makes a written finding that the terms of the escrow agreement have been fully met, the bank or trust company shall transfer such funds to the proposed or existing corporation and its executive officers for the purpose of permitting it to use such securities or money in its business. In the event such proposed or existing company shall fail within two (2) years to sell the minimum amount of capital necessary under the escrow agreement, the Board of Insurance Commissioners may authorize, and the bank or trust company shall return to the subscribers, upon receipt of such authority from the Board of Insurance Commissioners, that portion of the funds which were deposited or es-

crowed under such escrow agreement; provided, however, that any securities held by such bank or trust company under the escrow agreement, shall be returned to the corporation only after the bank or trust company has received evidence of cancellation thereof from the issuer. At the time of making the deposits, as herein provided for, the dealer or issuer shall furnish to such bank or trust company, and to the Board of Insurance Commissioners, the names of the persons purchasing or subscribing for such securities, and the amount of money paid in by each.

The total expenses for marketing any securities, including organization expenses, all commissions for the sale of stock or securities, and all other incidental selling expenses, shall not, in the aggregate, exceed twenty per cent (20%) of the price at which the stock or other securities of any proposed or existing company are to be sold, or offered for sale, to the public of this state; and this amount may be limited by the Board of Insurance Commissioners to a less percentage which is in its opinion fair, just and equitable under the facts of the particular case. Acts 1955, 54th Leg., p. 1002, ch. 384, § 7.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—8. The Board of Insurance Commissioners to Examine Application; Grant or Deny**

Upon the filing of an application for qualifying securities under Section 5(a),<sup>1</sup> it shall be the duty of the Board of Insurance Commissioners to examine same and the papers and documents filed therewith. If it finds that the proposed plan of business of the applicant appears to be fair, just and equitable, taking into consideration the line or lines of insurance proposed to be written, the territorial extent of the proposed plan, the time element involved in carrying out the proposed plan, the existing assets, liabilities, capital and surplus, if any, of the issuer, the additional capital and surplus to be received by the issuer under the proposed plan and any and all other matters and things which the Board of Insurance Commissioners shall deem necessary or material in connection with each particular application, and the Board of Insurance Commissioners shall not approve any such plan which will not provide adequate surplus to the issuer to render success of the proposed plan probable, and also that any consideration paid, or to be paid, for such securities by promoters is fair, just and equitable when such consideration for such securities is less than the proposed offering price to the public, and that the securities which it proposes to issue and the methods to be used by it in issuing and disposing of the same are not such as will work a fraud upon the purchaser thereof, the Board of Insurance Commissioners shall issue to the applicant a permit authorizing it to issue and dispose of such securities. Should the Board of Insurance Commissioners find that the proposed plan of business of the applicant appears to be unfair, unjust or inequitable, it shall deny the application for a permit and notify the applicant in writing of its decision and its grounds therefor. Any issuer, as the same is defined herein, who is dissatisfied with any ruling or decision of the Board of Insurance Commissioners may file within ten (10) days thereafter, an application for a hearing before the Board of Insurance Commissioners which shall, within ten (10) days after the receipt of such application, set said hearing at such time and place as it may fix, and shall give said applicant ten (10) days notice of such hearing. Such applicant may appeal from any ruling or decision made at such hearing in the same manner and in the same form as is hereinafter provided in Section 28,<sup>2</sup>

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

and the rules applicable thereto and the relief to be had shall be the same. Acts 1955, 54th Leg., p. 1002, ch. 384, § 8.

<sup>1</sup> Article 580—5(a).

<sup>2</sup> Article 580—28.

#### **Art. 580—9. Permit, Form and Contents; Term and Renewals**

Every permit qualifying securities shall be in such form as the Board of Insurance Commissioners may prescribe, and shall recite in bold type that the issuance thereof is permissive only, and does not constitute a recommendation or endorsement of the securities permitted to be issued. Such permit shall be for a period of one (1) year only; provided, however, that if the securities authorized to be sold are not sold within one (1) year from the date of issuance, a renewal application shall be filed with the Board of Insurance Commissioners. Such renewal application shall recite the total number of shares sold in Texas, the total number of shares sold elsewhere, total number of shares outstanding, and shall contain a detailed balance sheet, an operating statement, and such other information as the Board of Insurance Commissioners may require. If satisfied that the business of the issuer has been conducted fairly, justly, and equitably, and in accordance with the previously approved method and plan of business of applicant, the Board of Insurance Commissioners shall issue to the applicant renewal permits, each of which shall be for a period of one (1) year and shall be in such form as the Board of Insurance Commissioners may prescribe. All applications for renewals must be made before the expiration date of the permit under which the issuer is operating; otherwise, all the terms and conditions required for the issuance of an original permit must be met. The Board of Insurance Commissioners shall charge such fees for the issuance of permits to sell securities as are hereinafter provided. No permit instrument will be issued if securities are registered under Section 5(b) of this Act,<sup>1</sup> but the Board of Insurance Commissioners will examine the registration papers to determine their sufficiency under the requirements of Section 5(b). Acts 1955, 54th Leg., p. 1002, ch. 384, § 9.

<sup>1</sup> Article 580—5(b).

#### **Art. 580—10. Use of Permit to Aid Sale of Securities Forbidden**

It shall be unlawful for any dealer or issuer, agent or salesman, to use a permit authorizing the issuance of securities in connection with any sale or effort to sell any security. Acts 1955, 54th Leg., p. 1002, ch. 384, § 10.

#### **Art. 580—11. Papers Filed with the Board of Insurance Commissioners; Records Open to Inspection**

All information, papers, documents, instruments and affidavits required by this Act<sup>1</sup> to be filed with the Board of Insurance Commissioners shall be deemed public records of this State, and shall be open to the inspection and examination of any purchaser or prospective purchaser of said securities or the agent or representative of such purchaser or prospective purchaser; and the Board of Insurance Commissioners shall give out to any such purchaser or prospective purchaser or his agent or representative any information required to be filed with it under the provisions of this Section, or any other part of this Act, and shall furnish any such purchaser, prospective purchaser, or his agent or representative, requesting it, certified copies of any and all papers, documents, instruments and affidavits filed with it under the provisions of this Section or of

any part of this Act. No action at law for damages shall lie against the Board of Insurance Commissioners or any member or any employee thereof on account of any information herein required or permitted to be given. Acts 1955, 54th Leg., p. 1002, ch. 384, § 11.

<sup>1</sup> Article 580—1 et seq.

**Art. 580—12. Registration of Persons Selling**

Except as provided in Section 3 of this Act,<sup>1</sup> no person, firm, corporation or dealer shall, directly or through agents or salesmen, offer for sale, sell or make a sale of, any securities in this State without first being registered as in this Act<sup>2</sup> provided. No salesman or agent shall, in behalf of any dealer, sell, offer for sale, or make sale of, any securities within the State unless registered as a salesman or agent of a registered dealer under the provisions of this Act. A list of dealers, agents and salesmen registered under the provisions of this Act shall, at all times, be kept by the Board of Insurance Commissioners and be open to the public. Acts 1955, 54th Leg., p. 1002, ch. 384, § 12.

<sup>1</sup> Article 580—3.

<sup>2</sup> Article 580—1 et seq.

**Art. 580—13. Method of Registration**

A dealer to be registered must submit sworn application therefor to the Board of Insurance Commissioners, which shall be in such form as the Board of Insurance Commissioners may determine and which shall state the principal place of business of the applicant wherever situated; the location of the principal place of business, and all branch offices in this State, if any; the name or style of doing business and the address of the dealer; the names, residences, and business addresses of all persons interested in the business as principals, officers, directors, or managing agents, specifying as to each his capacity and title; the general plan and character of business of such applicant and the length of time during and the places at which the dealer has been engaged in business. Such application shall also contain such additional information as to applicant's previous history, record, associations and present condition as may be required by the Board of Insurance Commissioners, or as is necessary to enable the Board of Insurance Commissioners to determine whether the sale of any security proposed to be issued or dealt in by such applicant would be fraudulent or would result in fraud. Each application shall be accompanied by certificate or other evidences satisfactory to the Board of Insurance Commissioners, establishing the good repute in business of the applicant, his directors, officers, copartners, or principals. If the applicant is a corporation organized under the laws of any other State or territory or government or shall have its principal place of business therein, it shall accompany the application with a copy of its articles of incorporation and all amendments thereto, certified by the proper officer of such State, or government, and of its regulations and bylaws; if a limited partnership, either a copy of its articles of copartnership or a verified statement of its plan of doing business; and if an unincorporated association or organization under the laws of any other State, territory or government, or having its principal place of business therein, a copy of its articles of association, trust agreement or other form of organization. It shall be the duty of the Board of Insurance Commissioners to prepare, immediately, proper forms to be used by applicants under the terms of this Section, and the Board of Insurance Commissioners shall furnish copies thereof to all persons desiring to make

application to be registered as a dealer. Acts 1955, 54th Leg., p. 1002, ch. 384, § 13.

#### **Art. 580—14. Registration Certificates**

If the Board of Insurance Commissioners is satisfied that the applicant is of good business repute, and that the proposed plan of business of the applicant is not unfair, unjust or inequitable, and upon the applicant filing a written consent to service as and when required by Section 15 of this Act,<sup>1</sup> and upon the payment of the fees required by Section 37 of this Act,<sup>2</sup> the Board of Insurance Commissioners shall register the applicant and issue to it or him a registry certificate, stating the principal place of business and address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer has been registered for a current calendar year as a dealer in securities. Pending final disposition of an application, the Board of Insurance Commissioners may, for special cause shown, grant temporary permission, revocable at any time and subject to such terms and conditions as the Board of Insurance Commissioners may prescribe, to transact business as a dealer under this Act.<sup>3</sup> Any dealer acting under such a temporary permission, shall be considered a registered dealer for all purposes of this Act. Acts 1955, 54th Leg., p. 1002, ch. 384, § 14.

<sup>1</sup> Article 580—15.

<sup>2</sup> Article 580—37.

<sup>3</sup> Article 580—1 et seq.

#### **Art. 580—15. Consent of Foreign Company or Non-Resident Dealers to Suit in this State**

Every company organized under the laws of any other state, or having its principal office therein, and every non-resident individual, shall file with its or his application for registration as a dealer a written consent, irrevocable, that actions growing out of any transaction subject to this Act<sup>1</sup> may be commenced against it or him, in the proper court of any county of this State in which the cause of action may arise, or in which the plaintiff may reside, by a service of process upon the Board of Insurance Commissioners as its or his agent, and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service had been made upon the person or company itself according to the laws of this or any other state, and such instrument shall be authorized by the seal of such corporation, or by the signature of all the members of such co-partnership, or by the signature of the president and secretary of the association, if it is a corporation or association, and shall be accompanied by a duly certified copy of the resolutions of the board of directors, trustees, or managers of the corporation authorizing the said secretary and president to execute the same. Acts 1955, 54th Leg., p. 1002, ch. 384, § 15.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—16. Hearing by the Board of Insurance Commissioners After Notice Refusing Registration**

If the Board of Insurance Commissioners declines or fails to so register an applicant, it shall immediately give notice of the fact to the applicant, and upon request from such applicant filed within ten (10) days after receipt of such notice, shall fix a time and place of hearing of which ten (10) days notice shall be given to such applicant and to other persons

interested or protesting to offer evidence relating to the dealer's application. In each such case, the Board of Insurance Commissioners shall fix the time for such hearing on a date within thirty (30) days from receipt of the request for the particular hearing provided the time of hearing may be continued from time to time on consent of the applicant. If satisfied, as aforesaid as a result of said hearing, the Board of Insurance Commissioners shall thereupon register the dealer. Acts 1955, 54th Leg., p. 1002, ch. 384, § 16.

**Art. 580—17. Form of Certificates**

The certificate shall be in such form as the Board of Insurance Commissioners may determine. Any changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer shall be immediately certified under oath to the Board of Insurance Commissioners and any change in the certificate necessitated thereby may be made at any time, upon written application setting forth the fact necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the Board of Insurance Commissioners. Acts 1955, 54th Leg., p. 1002, ch. 384, § 17.

**Art. 580—18. Registration of Agents or Salesmen of Dealers**

Upon written application by a registered dealer, and upon satisfactory evidence as to the good repute of the proposed agents or salesmen and qualification, the Board of Insurance Commissioners shall register as agents or salesmen of such dealer, such persons as the dealer may request. The application shall be in such form as the Board of Insurance Commissioners may prescribe and shall state the residences and addresses of the persons whose registration is requested, together with such information as to such agent's or salesman's previous history, record and association as may be required by the Board of Insurance Commissioners. Such application shall also be signed and sworn to by the agent or salesman for whom registration is requested. The Board of Insurance Commissioners shall issue to such dealer, to be retained by such dealer for each person so registered, a registration certificate, stating his name and residence, the address of the dealer and the fact that he is registered for the current calendar year as an agent or salesman of the dealer. The certificate shall be in such form as the Board of Insurance Commissioners shall determine. Upon application by the dealer, the registration of any agent or salesman shall be cancelled. Acts 1955, 54th Leg., p. 1002, ch. 384, § 18.

**Art. 580—19. Annual Registration; Renewals**

All registrations shall expire at the close of the calendar year, but new registrations for the succeeding year shall be issued upon written application and upon payment of the fees as hereinafter provided, without filing of further statements or furnishing any further information unless specifically requested by the Board of Insurance Commissioners. Applications for renewals must be made not less than thirty (30) nor more than sixty (60) days before the 1st of January of the ensuing year. All applications for renewals received otherwise shall be treated as original applications; provided, that if any applicant is registered after December 1st of any year, he may immediately apply for a renewal of his registration for the ensuing year. Acts 1955, 54th Leg., p. 1002, ch. 384, § 19.

**Art. 580—20. Sales by Authorized Persons**

Any registered dealer, and any registered agent or salesman of a registered dealer, and any person or company named in the registration certificate, may sell, offer for sale or delivery, or solicit subscriptions to or orders for, or dispose of or undertake to dispose of, or invite offers for, securities in this State. Acts 1955, 54th Leg., p. 1002, ch. 384, § 20.

**Art. 580—21. Display or Advertisement of Fact of Registration Unlawful**

It shall be unlawful for any dealer, agent or salesman to use the fact of his registry, by public display or advertisement, except as hereinafter expressly provided, or the registry certificate or any certified copy thereof, in connection with any sale or effort to sell any security. Acts 1955, 54th Leg., p. 1002, ch. 384, § 21.

**Art. 580—22. Posting Certificate of Authority**

Immediately upon receipt of the dealer's registry certificate, issued pursuant to the authority of this Act,<sup>1</sup> the dealer named therein shall cause such certificate to be posted and at all times conspicuously displayed in such dealer's principal place of business, if one is maintained in this state, and shall likewise forthwith cause a duplicate of such certificate to be posted and at all times conspicuously displayed in each branch office located within this state. Acts 1955, 54th Leg., p. 1002, ch. 384, § 22.

<sup>1</sup> Article 580—1 et seq.

**Art. 580—23. Advertising**

(a) It shall be unlawful and punishable with the penalties set forth in Section 30 of this Act<sup>1</sup> for any person, company, dealer, agent or salesman to issue, distribute, or publish, within this state, any circular, advertisement, pamphlet, prospectus, program or other matter, as to any security, unless such advertising complies with the requirements hereinafter set forth in this Section 23;<sup>2</sup> in addition, the state and purchasers shall have all other remedies provided for where unlawful sales are made under this Act.<sup>3</sup>

(b) After a securities permit is issued by the Board of Insurance Commissioners, or registration by notification with the Board of Insurance Commissioners is completed under Section 5(b),<sup>4</sup> any advertising may be issued, distributed, or published, until notice to cease publication has been given under Section 24:<sup>5</sup>

(1) If such person, company, dealer, agent or salesman shall have been registered as in this Act provided; and

(2) If such securities shall have been qualified under a securities permit granted by the Board of Insurance Commissioners, or shall have been registered under Section 5(b), as in this Act provided; and

(3) If a true copy of such circular, advertisement, pamphlet, prospectus, program or other matter with the name of the dealer, or dealers, subscribed thereto, or printed thereon, shall have been filed with the Board of Insurance Commissioners.

(c) Advertising issue, distributed, or published in compliance with the provisions of Section 23(b), or used in compliance with subsection 23(d), may include the names of non-registered dealers who have participated with registered dealers of Texas in the original purchase, or underwriting, of securities, and inclusion of such names of non-



registered dealers on any circular, advertisement, pamphlet, prospectus, program or other matter with names of such registered dealers shall not be a violation of this Act if the circular, advertisement, pamphlet, prospectus, program or other matter bears a legend thereon in plain and legible type stating that such securities are being offered within the State of Texas only by registered dealers within the State of Texas whose names are subscribed thereto, or printed thereon.

(d) The whole, or any part, of any written, typed, or printed documents theretofore filed under the Federal Securities Act of 1933<sup>6</sup> with the Securities and Exchange Commission of the United States may be used as advertising, if not printed in newspapers, used on television, or broadcast over radio. With the above exceptions, and if a copy of such advertising matter is first sent to the Board of Insurance Commissioners, same may be used prior to and during the time an application for a securities permit, or application for registration by notification, of securities is under consideration by the Board of Insurance Commissioners, and thereafter until notice is given under Section 24 by the Board of Insurance Commissioners to cease advertising. Any advertising matter used under this subsection (d) shall have the following legend printed or securely pasted on the first page thereof:

“INFORMATIONAL ADVERTISING ONLY  
THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN  
QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATIONS TO THE CONTRARY, OR SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE.”

If any advertising matter used under this subsection (d) does not bear the above legend, or if such information is televised, broadcast over radio, or printed in a newspaper, prior to issue of a permit, or prior to completion of the notification procedure, or if a copy is not first sent to the Board of Insurance Commissioners, such use is declared unlawful and shall be deemed a sale punishable under the penalties set out in Section 30 of this Act.

(e) Section 23 shall not apply to exempt transactions listed in Section 3 of this Act,<sup>7</sup> or to exempt securities listed in Section 4 of this Act,<sup>8</sup> unless such advertising violates the provisions of Section 24 of this Act.

(f) Appeals from decisions of the Board of Insurance Commissioners under this Section 23 shall be made in accordance with Section 24 of this Act. Acts 1955, 54th Leg., p. 1002, ch. 384, § 23.

<sup>1</sup> Article 580—30.

<sup>2</sup> This article.

<sup>3</sup> Article 580—1 et seq.

<sup>4</sup> Article 580—5(b).

<sup>5</sup> Article 580—24.

<sup>6</sup> 15 U.S.C.A. § 77a et seq.

<sup>7</sup> Article 580—3.

<sup>8</sup> Article 580—4.

**Art. 580—24. List of Securities Filed with the Board of Insurance Commissioners on Request; Notice and Hearing as to Questioned Securities**

The Board of Insurance Commissioners may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the Board of Insurance Commissioners a list of securities which he has of-

ferred for sale or has advertised for sale within this State during the preceding six (6) months, or which he is at the time offering for sale or advertising, or any portion thereof. No dealer, agent or salesman shall knowingly sell or offer for sale any security or securities named or listed in a notice in writing given him by the Board of Insurance Commissioners that, in the opinion of the Board of Insurance Commissioners, the further sale or offer for sale of the security or securities named or listed in such notice would not be in compliance with this Act<sup>1</sup> or would tend to work a fraud on any purchaser thereof or that the plan of business of the issuer of such security or securities is not fair, just and equitable; and no dealer, agent or salesman shall publish within this State any circular, advertisement, prospectus, program or other matter in the nature thereof, after notice in writing has been given him by the Board of Insurance Commissioners that, in the opinion of the Board of Insurance Commissioners, the same contains any statement that is false or misleading or otherwise likely to deceive a reader thereof. The dealer, agent or salesman to whom any such notice is given shall be entitled to a hearing and an appeal as provided for in this Act. The fact that the Board of Insurance Commissioners may give such notice in writing with reference to any specified security or securities shall not affect, limit or impair the right of any dealer, agent or salesman to whom any such notice is given to continue to issue, offer for sale and sell other securities in accordance with the provisions of this Act. Upon receipt of any such notice in writing the dealer, agent or salesman to whom such notice is given shall have the right to demand an immediate hearing with reference thereto, and the Board of Insurance Commissioners shall, upon request, set a time within thirty (30) days from receipt of such request and fix the place for such hearing and give notice thereof not less than seven (7) days in advance to the dealer, agent or salesman making the request for the hearing. Should the final decision of the Board of Insurance Commissioners, as a result of such hearing and given at the conclusion thereof, reverse the former opinion of the Board of Insurance Commissioners, forming the basis for such notice in writing, then the dealer, agent or salesman may proceed to offer for sale, sell and deal in the security or securities involved and to use the advertisement, prospectus, circular, program or other matter in the same manner as if such notice had not been given. Should the final decision of the Board of Insurance Commissioners, as a result of such hearing and given at the conclusion thereof, confirm the former opinion of the Board of Insurance Commissioners, forming the basis for such notice in writing, then the dealer, agent or salesman may proceed to effect an appeal to the courts in the manner provided generally in this Act for similar appeals. Acts 1955, 54th Leg., p. 1002, ch. 384, § 24.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—25. Revocation of Registration of Dealers on Hearing**

If the Board of Insurance Commissioners at any time has reason to believe any dealer has in any way violated, or is violating or about to violate any of the provisions of this Act,<sup>1</sup> or has been guilty of any fraud or fraudulent practice, then the Board of Insurance Commissioners may, after hearing, and having reasonable cause to believe the dealer has been guilty of such offense, revoke said dealer's registration. Notice of the time and place of any such hearing shall be sent to such dealer at least seven (7) days prior thereto. The dealer shall not be regarded as registered under the provisions hereof until restored to registration by the Board of Insurance Commissioners, either on its own initiative or upon the order of the court, as in this Act hereinafter provided. In case of

revocation, all registration certificates shall at once be surrendered to the Board of Insurance Commissioners upon request. The revocation of the dealer's registration shall constitute a revocation of the registration of any agent or salesman of the dealer's and notice of its operation on such agent's or salesman's registration shall be forthwith sent by the Board of Insurance Commissioners to each of such agents and salesmen. Acts 1955, 54th Leg., p. 1002, ch. 384, § 25.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—26. Revocation of Registration of Agents or Salesmen**

If the Board of Insurance Commissioners at any time has reason to believe any salesman or agent of any dealer has in any way violated or is violating, or is about to violate any of the provisions of this Act,<sup>1</sup> or has been guilty of any fraud or fraudulent practice, then the Board of Insurance Commissioners may, after hearing, and having reasonable cause to believe that the agent or salesman has been guilty of such offense, revoke said agent's or salesman's registration. Notice of the time and place of such hearing shall be sent to such dealer and to such agent or salesman at least seven (7) days prior thereto. The agent or salesman shall not be regarded as registered under the provisions hereof until restored to registration by the Board of Insurance Commissioners, either on its own initiative or upon the order of the court as in this Act hereinafter provided. In case of revocation as a result of proceedings under this Section, or in case of the revocation of an agent's or salesman's registration as a result of proceeding against a dealer under Section 25<sup>2</sup> hereof, in either such event, all agents' or salesmen's registration certificates shall at once be surrendered to the Board of Insurance Commissioners upon request. Acts 1955, 54th Leg., p. 1002, ch. 384, § 26.

<sup>1</sup> Article 580—1 et seq.

<sup>2</sup> Article 580—25.

#### **Art. 580—27. Notices by Registered Mail**

Any notice required by this Act<sup>1</sup> shall be sufficient if sent by registered mail unless otherwise specified in this Act, addressed to the dealer, agent or salesman, as the case may be, at the address designated in the application for registration. All testimony taken at any hearing before the Board of Insurance Commissioners shall be reported stenographically and a full and complete record shall be kept of all proceedings had before the Board of Insurance Commissioners on any hearing or investigation. Acts 1955, 54th Leg., p. 1002, ch. 384, § 27.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—28. Petition to District Court of Travis County on Complaint of Decision of Board of Insurance Commissioners**

Any dealer, salesman or agent aggrieved by any decision of the Board of Insurance Commissioners may file within thirty (30) days thereafter in the District Court of Travis County, Texas, a petition against the Board of Insurance Commissioners, officially as defendant, alleging therein in brief detail the action and decision complained of and praying for a reversal thereof and for an order directing the Board of Insurance Commissioners to register the applicant. Upon service of a summons upon the Board of Insurance Commissioners, returnable within ten (10) days from its date, the Board of Insurance Commissioners shall, on or before the return day, file an answer in which it shall allege, by way of defense, the ground for its decision. The Board of Insurance Com-

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

missioners shall also, on or before the return day of such summons, certify to said District Court the record of the proceedings to which the petition refers. Such records shall include the testimony taken therein, the finding of fact, if any, of the Board of Insurance Commissioners based upon such testimony, a copy of all orders made by the Board of Insurance Commissioners in the proceedings, and a copy of the action or decision of the Board of Insurance Commissioners which the petition calls upon the court to reverse. The cost of preparing and certifying such record shall be paid to the Board of Insurance Commissioners by the petitioner and taxed as a part of the cost in the case, to be paid as directed by the court upon the final determination of the case.

Upon the filing of the answer of the Board of Insurance Commissioners, the case before the District Court of Travis County shall be at issue, without further pleadings, and upon application of either party and upon due notice given, the case shall be advanced and heard without further delay. Mere technical irregularities in the procedure of the Board of Insurance Commissioners shall be disregarded.

The case shall be heard upon the record certified to the court by the Board of Insurance Commissioners, and the court may consider such other evidence as in its discretion may be necessary to properly determine the issues involved. If the court reverses the decision of the Board of Insurance Commissioners, it may require such Board to register an applicant. The substantial evidence rule as interpreted by the courts of Texas shall not apply in the District Court.

From the decision of the District Court an appeal may be taken to the Court of Civil Appeals by either party as in other cases, and no bond shall be required of the Board of Insurance Commissioners.

A judgment sustaining the refusal of the Board of Insurance Commissioners to grant or renew a registration shall not bar, after one (1) year, a new application by the plaintiff for registration, nor shall a judgment in favor of the plaintiff prevent the Board of Insurance Commissioners from thereafter revoking or refusing to renew such registration for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs. Acts 1955, 54th Leg., p. 1002, ch. 384, § 28.

#### Art. 580—29. Subpoenas or Other Process in Investigations by the Board of Insurance Commissioners

The Board of Insurance Commissioners may require, by subpoena or summons issued by the Board of Insurance Commissioners, addressed to the sheriff or any constable, the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence or other records or indices showing the names and addresses of the stockholders (except such books of account as are necessary to the continued conduct of the business, which books the Board of Insurance Commissioners shall have the right to examine or cause to be examined at the office of the concern and to require copies of such portion thereof as may be deemed necessary touching the matter in question, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 31 hereof),<sup>1</sup> relating to any matter which the Board of Insurance Commissioners has authority by this Act<sup>2</sup> to consider or investigate, and for this purpose any member of the Board of Insurance Commissioners may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature contained therein

shall be treated as confidential by the Board of Insurance Commissioners and shall not be disclosed to the public except under order of court, but nothing in this Section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Board of Insurance Commissioners. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the Board of Insurance Commissioners, the Board of Insurance Commissioners may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof.

The Board of Insurance Commissioners may in any investigation cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed for depositions in civil actions under the laws of Texas.

Each witness required to attend before the Board of Insurance Commissioners shall receive, for each day's attendance, the sum of Two Dollars (\$2), and shall receive in addition the sum of Ten Cents (10¢) for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act as hereinafter provided.

The fee for serving the subpoena shall be the same as those paid the sheriff for similar services. The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Board of Insurance Commissioners upon any party to the record, or may be divided between any and all parties to the record in such proportions as the Board of Insurance Commissioners may determine. Acts 1955, 54th Leg., p. 1002, ch. 384, § 29.

<sup>1</sup> Article 580—31.

<sup>2</sup> Article 580—1 et seq.

### Art. 580—30. Penal Provisions

Any dealer, agent, salesman, principal officer, or employee who shall, within this State, sell, offer for sale or delivery, solicit subscriptions to or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities, without being registered as in this Act<sup>1</sup> provided, or who shall within this State sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities after the effective date of this Act,<sup>2</sup> except for advertising made in compliance with Section 23 of this Act,<sup>2</sup> without having secured a permit, or having complied with Section 5(b) of this Act,<sup>3</sup> as herein provided, or who knowingly sells or offers for sale any security or securities named or listed in a notice in writing given him by the Board of Insurance Commissioners that, in the opinion of the Board of Insurance Commissioners, the further sale or offer for sale of the security or securities named or listed in such notice would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or that the plan of business of the issuer of such security or securities is not fair, just and equitable, or who knowingly makes any false statement of fact in any statement or matter of information required by this Act to be filed with the Board

of Insurance Commissioners, or in any advertisement, prospectus, letter, telegram, circular, or any other document containing an offer to sell or dispose of, or in or by verbal or written solicitation to purchase, or in any commendatory matter concerning any securities, with intent to aid in the disposal or purchase of the same, or who knowingly makes any false statement or representation concerning any registration made under the provisions of this Act, or who is guilty of any fraud or fraudulent practice in the sale of, offering for sale or delivery of, invitation of offers for, or dealing in any manner in any security or securities, or who shall knowingly participate in declaring, issuing or paying any cash dividend by or for any person or company out of any funds other than the actual earnings of such person or company or from the lawful liquidation of the business thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than One Thousand Dollars (\$1000), or imprisoned in the penitentiary for not more than two (2) years, or by both such fine and imprisonment. Acts 1955, 54th Leg., p. 1002, ch. 384, § 30.

<sup>1</sup> Article 580—1 et seq.

<sup>2</sup> Article 580—23.

<sup>3</sup> Article 580—5(b).

#### **Art. 580—31. Certified Copies of Papers Filed with Board of Insurance Commissioners as Evidence**

Copies of all papers, instruments, or documents filed in the office of the Board of Insurance Commissioners certified under the seal of the Board of Insurance Commissioners, shall be admitted to be read in evidence in all courts of law and elsewhere in this State in all cases where the original would be admitted in evidence; provided, that in any proceeding in the court having jurisdiction, the court may, on cause shown, require the production of the originals.

In any prosecution, action, suit or proceeding before any of the several courts of this State based upon or arising out of or under the provisions of this Act,<sup>1</sup> a certificate under the seal of the Board of Insurance Commissioners, duly signed by the Board of Insurance Commissioners, showing compliance or non-compliance with the provisions of this Act respecting compliance, or non-compliance with the provisions of this Act by any dealer or salesman, shall constitute prima-facie evidence of such compliance or of such non-compliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act. Acts 1955, 54th Leg., p. 1002, ch. 384, § 31.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—32. Construction**

Nothing herein contained shall limit or diminish the liability of any person or company, or of its officers or agents thereof, now imposed by law to prevent the prosecution of any person or company, or of its officers or agents thereof, for the violation of the provisions of any other statute. Acts 1955, 54th Leg., p. 1002, ch. 384, § 32.

#### **Art. 580—33. Injunctions**

Whenever it shall appear to the Board of Insurance Commissioners either upon complaint or otherwise, that in the issuance, sale, promotion, negotiations, advertisement or distribution of any securities within this State, including any security embraced in the subsections of Section 4,<sup>1</sup>

and including any transaction exempted under the provisions of Section 3,<sup>2</sup> any person or company shall have employed or employs, or is about to employ any device, scheme or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or that any such person or company shall have made, makes, or attempts to make in this State fictitious or pretended purchases or sales of securities or shall have engaged in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities which is in violation of law or which is fraudulent or which has operated or which would operate as a fraud upon the purchaser, any one or all of which devices, schemes, artifices, artifices, fictitious or pretended purchases, or sales of securities, practices, transactions and courses of business are hereby declared to be and are hereafter referred to as fraudulent practices; or that any person or company is acting as dealer or salesman within this State without being duly registered as such dealer or salesman as provided in this Act,<sup>3</sup> the Board of Insurance Commissioners and Attorney General may investigate, and whenever it or he, shall believe from evidence satisfactory to it or him that any such person or company has engaged in, is engaged in, or is about to be engaged in any of the practices or transactions heretofore referred to as and declared to be fraudulent practices, or is selling or offering for sale any securities in violation of this Act or is acting as a dealer or salesman without being duly registered as provided in this Act, the Attorney General may, on request by the Board of Insurance Commissioners, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any other person or persons heretofore concerned in or in any way participating in or about to participate in such fraudulent practices or acting in such violation of this Act, to enjoin such person or company and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this Act. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and his employees, salesmen or agents and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county, wherein it is shown that the acts complained of have been or are about to be committed, shall have jurisdiction of any action brought under this section, and this provision shall be superior to any provision fixing the jurisdiction and/or venue with regard to suits for injunction. No bond for injunction shall be required of the Board of Insurance Commissioners or Attorney General in any such proceeding. Acts 1955, 54th Leg., p. 1002, ch. 384, § 33.

<sup>1</sup> Article 580—4.

<sup>2</sup> Article 580—3.

<sup>3</sup> Article 580—1 et seq.

#### **Art. 580—34. Sales in Violation of Law Voidable; Action by Purchaser; Limitations**

Every sale or contract of sale of any security made in violation of any provision of this Chapter shall be voidable at the election of the purchaser, who shall be entitled to recover from the seller in an action at law, upon tender to the seller of the security sold, in proper form for transfer, together with the amount of all dividends, interest, and other income and distributions received by the purchaser from or upon such security, the

full amount paid by such purchaser for such security, with interest from the date of purchase; provided that any action by a purchaser to enforce any right or liability based upon any sale made in violation of any provision of this Act<sup>1</sup> or any Acts predecessor thereto or amendatory thereof or upon any misrepresentation made in connection with such sale, shall be commenced within two (2) years after the purchaser thereof has knowledge that such sale was made in violation of any provision of this Act or Acts predecessor thereto or amendatory thereof or upon a misrepresentation or within two (2) years after such purchaser, by the exercise of ordinary care, should have discovered that such sale was made in violation of this Act or Acts predecessor thereof or amendatory thereof, or upon a misrepresentation, and not thereafter; and provided further, that no purchaser shall bring any action under this Act against the seller unless (1) at least fifteen (15) days before filing suit, he shall have made a written demand on the seller for a refund of the full amount paid by the purchaser for the security, with interest from the date of purchase, less the amount of any income from such security that may have been received by the purchaser, and he shall have tendered to the seller the securities sold in proper form for transfer, and (2) the seller shall not have made such refund and accepted such tender within the said fifteen (15) days. Acts 1955, 54th Leg., p. 1002, ch. 384, § 34.

<sup>1</sup> Article 580—1 et seq.

#### **Art. 580—35. Actions for Commission; Allegations and Proof of Compliance**

No person or company shall bring or maintain any action in the courts of this State for the collection of a commission or compensation for services rendered in the sale or purchase of securities, as that term is herein defined, without alleging and proving that such person or company was duly licensed under the provisions hereof and the securities so sold were duly registered under the provisions hereof at the time the alleged cause of action arose; provided however, that this Section or provision of this Act<sup>1</sup> shall not apply to the exempt transactions set forth in Section 3 of this Act<sup>2</sup> or to the sale and purchase of exempt securities listed in Section 4 of this Act,<sup>3</sup> when sold by a registered dealer. Acts 1955, 54th Leg., p. 1002, ch. 384, § 35.

<sup>1</sup> Article 580—1 et seq.

<sup>2</sup> Article 580—3.

<sup>3</sup> Article 580—4.

#### **Art. 580—36. Administration and Enforcement by Board of Insurance Commissioners and Attorney General**

The administration of the provisions of this Act<sup>1</sup> shall be vested in the Board of Insurance Commissioners. It shall be the duty of the Board of Insurance Commissioners and the Attorney General to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The Board of Insurance Commissioners shall at once lay before the District or County Attorney of the proper county any evidence which shall come to its knowledge of criminality under this Act. In the event of the neglect or refusal of such attorney to institute and prosecute such violation, the Board of Insurance Commissioners shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon district or county attorneys, including the power to appear before grand



juries and to interrogate witnesses before such grand juries. Acts 1955, 54th Leg., p. 1002, ch. 384, § 36.

<sup>1</sup> Article 580—1 et seq.

**Art. 580—37. Fees**

The Board of Insurance Commissioners shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

(a) For the filing of any original or renewal application of a dealer, Twenty-five Dollars (\$25);

(b) For each and every registration certificate issued to a dealer, whether on an original or renewal application, Ten Dollars (\$10);

(c) For the filing of any original or renewal application for each salesman, Ten Dollars (\$10);

(d) For each and every registration certificate issued to each salesman, Five Dollars (\$5);

(e) For each and every registration certificate issued to a dealer or salesman after the first day of July of any year, one-half ( $\frac{1}{2}$ ) of the fee provided in subsections (b) and (d) herein, whichever is applicable;

(f) For the filing of any original, amended, or renewal application of an issuer to sell or dispose of stock, Five Dollars (\$5);

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

(h) For each and every renewal or amended permit issued to an issuer, Five Dollars (\$5);

(i) For copies of any papers filed in the office of the Board of Insurance Commissioners, or for the certification thereof, the Board of Insurance Commissioners shall charge such fees as the Board of Insurance Commissioners is now authorized to charge in similar cases;

(j) For the filing of any original or renewal application of a dealer of any instrument representing any interest in or under an oil, gas, or mining lease, fee or title, a fee of Twelve Dollars (\$12);

(k) For each and every registration certificate issued to a dealer under the terms of subsection (j), a fee of Five Dollars (\$5);

(l) For the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of Two Hundred and Fifty Dollars (\$250);

(m) For securities registered by notification, the fees prescribed in Section 5(b) of this Act.<sup>1</sup> Acts 1955, 54th Leg., p. 1002, ch. 384, § 37.

<sup>1</sup> Article 580—5(b).

**Art. 580—38. Deposit to Insurance Securities Act Fund**

All fees collected under this Act<sup>1</sup> shall be deposited in the State Treasury in a special fund designated as "Insurance Securities Act Fund" to be used for the effective enforcement of this Act. No expenditures shall be made from said fund except by authority of the Legislature. At the close of each fiscal year, the Comptroller shall transfer to the General Revenue Fund any unexpended balance in excess of Fifty Thousand Dollars (\$50,000). Acts 1955, 54th Leg., p. 1002, ch. 384, § 38.

<sup>1</sup> Article 580—1 et seq.

**Art. 580—39. Pleading Exemptions**

It shall not be necessary to negative any of the exemptions in this Act<sup>1</sup> in any complaint, information or indictment, or any writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the party claiming the same. Acts 1955, 54th Leg., p. 1002, ch. 384, § 39.

<sup>1</sup> Article 580—1 et seq.

**TITLE 19A—THE SECURITIES ACT**

**Art. 600a. Repealed. Acts 1955, 54th Leg., p. 322, ch. 67, § 41. Eff. Sept. 6, 1955**

The Securities Act of 1935, Acts 1935, 44th Leg., p. 255, ch. 100, as amended, was repealed by Acts 1955, 54th Leg., p. 322, ch. 67, effective September 6, 1955.

The new Securities Act of 1955 is set out as article 579—1 et seq.

For saving clause, see article 579—41.

**TITLE 20—BOARD OF CONTROL**

Chap.

Art.

4A. State Building Commission [New] -----

678m

**CHAPTER TWO—DIVISION OF PUBLIC PRINTING**

**Art. 613. Bidder's bond or security**

All bids or proposals shall be accompanied by a bond or certified check or cashier's check or Bank Exchange or Bank Money Orders in such sum as the Board of Control may require, and such requirement shall be stated in the advertisement or invitation calling for bids. As amended Acts 1955, 54th Leg., p. 846, ch. 314, § 1.

Emergency. Effective May 24, 1955.

**CHAPTER THREE—PURCHASING DIVISION**

**Art. 634. Departmental supplies**

The Board of Control shall purchase all the supplies used by each Department of the State Government, including the State Prison System, and each eleemosynary institution, Teachers College, Agricultural and Mechanical College, University of Texas, and each and all other State Schools or Departments of the State Government heretofore or hereafter created, such supplies to include furniture and fixtures, technical instruments and books, and all other things required by the different departments or institutions, except strictly perishable goods.

When any manufactured products of visually handicapped persons or workshops for the blind, produced under the supervision and direction of the Commission for the Blind, or in any other workshop which has been approved by the Commission for the Blind, meet the requirements of any State department, board, or institution as to quality, quantity and price, such products shall have preference. As amended Acts 1955, 54th Leg., p. 1160, ch. 443, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Emergency. Effective May 24, 1955.

**Art. 649. Bond or security**

All bids or proposals shall be accompanied by a bond or certified check or cashier's check or Bank Exchange or Bank Money Orders in such sum as the Board of Control may require. Such requirement shall be stated in the advertisements calling for bids. As amended Acts 1955, 54th Leg., p. 846, ch. 314, § 1.

**Art. 653. Purchases to comply with requisitions; approval by Board; duty to inspect; powers of Board**

All purchases and contracts awarded by the State Board of Control for each and every State department, board, commission, eleemosynary or educational institution, or State agency of any kind or character whatso-

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

ever, shall be of the kind and type as requisitioned; and the specifications and conditions included in such requisition shall be subject to approval by the State Board of Control.

It shall be the duty of any State department, board, commission, eleemosynary or educational institution, or other State agency upon receipt of any items, supplies, equipment, or services purchased by the Board of Control under any contract, to inspect the same. If in the judgment of such receiving agency any of the items, supplies, equipment, or services do not meet the specifications set forth in the contract, such agency shall forthwith notify the Board of Control in writing, setting forth the reasons and the particulars wherein the same does not comply with the specifications. The duty, and the sole power to determine whether or not such items, supplies, equipment, or services comply with the specifications, shall rest with the State Board of Control. Provided, however, the State Board of Control shall have the right to designate which items and supplies are perishable items and supplies and the State Board of Control shall have the right to delegate to the State agency receiving said perishable items and supplies the authority to determine whether or not said perishable items and supplies comply with the specifications; and provided further, the State Board of Control shall make its determinations on whether or not such items, supplies, equipment or services comply with the specifications within fifteen (15) days after receiving from the agency receiving said items, supplies, equipment or services their reasons and particulars why the same does not comply with the specifications. As amended Acts 1955, 54th Leg., p. 1126, ch. 421, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 655. Invoice; affidavit or certificate

The contractor or seller shall in all cases append an affidavit stating that the invoice is correct and that it corresponds in every particular with the supplies and/or services contracted for; except where the supplies and/or services contracted for amount to Fifty Dollars (\$50) or less, the affidavit of the contractor or seller may be dispensed with, and in lieu thereof the contractor or seller shall certify that the invoice is correct and that it corresponds in every particular with the supplies and/or services contracted for. As amended Acts 1955, 54th Leg., p. 846, ch. 314, § 1.

Emergency. Effective May 24, 1955.

### CHAPTER FOUR—PUBLIC BUILDINGS AND GROUNDS DIVISION

Arts. 678e–678l. Reserved for future legislation

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

Art.  
678m. Building Commission.

#### Art. 678m. Building Commission

Composition of commission; state agency; functions

Section 1. The State Building Commission, to be composed of the Governor, the Attorney General, and the Chairman of the Board of Con-

trol, is hereby declared to be a State agency for performing the governmental functions outlined in Section 51-b of Article III of the Constitution of the State, and where the term "Commission" is referred to in this Act, it shall mean the State Building Commission.

#### **Organization of Commission**

Sec. 2. The Commission shall meet immediately after the effective date of this Act and elect its Chairman for a period of two years, ending the first day of February, 1957, and shall in like manner elect a Chairman for the ensuing two years on or before the first day of February each two years thereafter. Should the chairmanship become vacant during the interim between such biennial elections, same shall be filled by a majority vote of the Commission.

#### **Rules and regulations; powers as to property**

Sec. 3. The Commission shall have the authority to promulgate such rules and regulations as it deems proper for the effective administration of this Act. Under such terms and conditions as may be provided by law, the Commission may acquire necessary real and personal property, modernize, remodel, build and equip buildings for State purposes, and make contracts necessary to carry out and effectuate the purposes herein mentioned in keeping with appropriations authorized by the Legislature. Provided, however, that the Commission shall not sell or dispose of any real property of the State, except by specific authority from the Legislature.

#### **Executive Director; duties; salary; bond; employees**

Sec. 4. The Commission shall employ an Executive Director of the State Building Commission. The Executive Director shall receive a salary of not less than Nine Thousand (\$9,000.00) Dollars per annum and shall possess qualifications and training which suit him to perform the duties required of him by the Commission. It shall be the duty of the Executive Director to carry out such duties as the Commission may direct. The Executive Director shall give bond in the sum of Ten Thousand (\$10,000.00) Dollars payable to the State of Texas conditioned upon the faithful performance of his duties. The Executive Director may, with the consent and approval of the Commission, employ such professional, technical, clerical, stenographic, and other assistance as may be deemed necessary, the compensation for whom may be fixed by the Commission until September 1, 1955, after which it shall be fixed in the biennial appropriation bill. The Commission may require bond of such additional employees.

#### **Action and contracts to obtain sites and construct buildings; authority of Commission**

Sec. 5. The Commission is authorized to take any action and enter into any contracts necessary to provide for the obtaining of sites and the planning, designing and construction of the buildings and memorials provided for by Section 51-b, Article III of the Constitution, and the Commission is also authorized to take any action and enter into any contracts to obtain sites which it deems necessary in order to provide for the orderly future development of the State Building Program which is contemplated by this Act, insofar as appropriations permit. Provided, however, that all construction contracts shall be let by the Commission on bids in the same manner as, and in accordance with, the laws now governing the awarding of construction contracts by the State Highway Commission.

Provided further, that all engineering features, including but not limited to foundations, structural, mechanical, and electrical, shall be designed, planned and the construction supervised by a registered professional engineer, and all architectural features involving function and master planning shall be designed, planned and the construction supervised by a registered professional architect. Provided further, that the Commission may call upon the Texas Highway Department to make appropriate tests and analyses of the natural materials at the site of each building constructed under the terms of this Act, to insure that foundations of said buildings will be adequate for the life of the buildings.

#### **Eminent domain**

Sec. 6. The Commission shall have and may exercise the power of eminent domain under the General Laws to obtain sites for buildings.

#### **Title of realty acquired by Commission for sites and buildings thereon; transfer of management of buildings to Board of Control**

Sec. 7. The Commission shall obtain title for the State and retain control of the real property acquired for sites and of the buildings located thereon until final construction is completed and the buildings are occupied by the State agencies to be housed therein, at which time the management and control of said buildings shall be transferred to the Board of Control. Except as otherwise provided in this Act, the initial occupants shall be those State agencies agreed upon by the Commission and the Board of Control.

#### **Other departments of State Government to assist Commission; Board of Control, duties of**

Sec. 8. The Commission shall have the authority to call on any Department of State Government to assist it in carrying out the duties of the Commission. And particularly, it shall be the duty of the Board of Control to do and perform such acts and functions in connection with this Act as the Commission may direct; and to that end any portion of the money appropriated to the Commission may be allocated by the Commission to the Board of Control and expended by it under the direction of the Commission in carrying out the provisions of this Act.

#### **Investment of State Building Fund in interest bearing obligations of United States**

Sec. 9. The State Building Commission may, in its discretion, invest all or any part of the State Building Fund created by Section 51-b of Article III of the Constitution in bonds, notes, certificates or other interest bearing obligations which are direct obligations of the United States of America; provided, however, that the Commission shall keep available sufficient monies to meet current expenditures authorized by appropriations. All income realized from interest or sale of such obligations shall become a part of the State Building Fund.

#### **Air conditioning of Capitol Building; appropriation**

Sec. 9a. The first major modernizing and remodeling program to be undertaken under the provisions of this Act shall be the air conditioning of the halls, offices and committee rooms of the House of Representatives and the Senate in the Capitol Building; and to carry out this program of remodeling and modernization the sum of Five Hundred Thousand (\$500,000.00) Dollars or so much thereof as may be necessary is hereby appro-

priated out of the State Building Fund. It is the intention of the Legislature that this air conditioning program for the House and Senate shall be the first undertaken and completed, so that such facilities may be ready for legislative use at the opening of the 55th Regular Session, beginning in January, 1957.

#### **Court building and library; first building erected**

Sec. 10. The first building to be erected pursuant to this Act and in compliance with Section 51-b of Article III of the Constitution shall be for the use and occupancy of the Supreme Court of this State, the Court of Criminal Appeals, and also the offices of the Attorney General of Texas, the State's Attorney before the Court of Criminal Appeals, the Supreme Court Library, and such other facilities and agencies as the Commission and the Board of Control may jointly deem necessary or desirable.

#### **Memorial to Confederate soldiers; Supreme Court Building**

Sec. 11. Pursuant to Section 51-b of Article III of the Constitution the building provided for in Section 10 herein shall be known and properly designated by the State Building Commission as a memorial to the Texans who served in the Armed Services of the Confederate States of America, and a suitable cornerstone or plaque, or other proper means of designation, shall be integrated into the construction of the building to effectuate this memorial purpose. It shall be proper, however, to refer to the building as the "Supreme Court Building". Said building shall be of fireproof construction and provided with modern improvements including air conditioning, proper lighting, heating, ventilation, parking areas, and such other utilities and facilities as the Commission shall determine.

#### **Site for Supreme Court Building**

Sec. 12. The State Building Commission is hereby directed to make a careful survey of the most suitable site in the vicinity of the State Capitol for the erection of the said "Supreme Court Building". In keeping with the foregoing considerations, the Commission is hereby specifically authorized, if the State does not already own a suitable site, to acquire such a site.

#### **Supreme Court Building Advisory Board**

Sec. 13. The Governor is hereby empowered at his discretion to appoint a "Supreme Court Building Advisory Board" of not more than five members. It shall be the duty of said Board to advise with the Commission as to the design of the Supreme Court Building mentioned in Section 11 of this Act. The Board shall serve without pay, but may be reimbursed for such travel expenses as authorized by the Commission. The Board's duties shall terminate when the final contract for the construction of the "Supreme Court Building" is made.

#### **State Office Building**

Sec. 14. The second building specifically authorized by this Act and to be considered by the Commission shall be known and designated as the "State Office Building" and shall be designed as a suitable office building for such State agencies as are now occupying office space in Travis County, Texas. Said building shall be of fireproof construction and provided with modern improvements including air conditioning, proper lighting, heating, ventilation, and such other utilities and facilities as the Commission shall determine. The Commission shall give due consideration to the efficient operation of the agencies housed in said building in its choice of

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

a site, and if the State does not already own a suitable site, the Commission is hereby authorized and empowered to acquire such a site.

**Monuments and memorials; erection or acquisition**

Sec. 15. Monuments or memorials for the Texas Heroes of the Confederate States of America and the Texas War for Independence may be erected on land owned or acquired by the State or, if suitable contracts can be made for permanent preservation of such monuments or memorials, on private property or on land owned by the Federal Government or by other States. The locating and marking of graves of such Texans is hereby authorized.

**Texas Historical Survey Committee; advice as to memorials and monuments**

Sec. 16. The Commission is hereby authorized to negotiate and contract with the Texas Historical Survey Committee, created by the 53rd Legislature, for the purpose of assisting and advising the Commission with regard to the proper memorials and monuments to be erected, repaired, and removed to new locations, the selection of sites therefor, and the locating and marking of graves.

**Vicksburg National Military Park; monument to Texans serving in armed forces of Confederate States**

Sec. 17. Pursuant to Section 51-b of Article III of the Constitution, it shall be the duty of the Commission, and it is hereby directed, to make inquiry into the terms and conditions upon which a suitable monument may be erected in Vicksburg National Military Park, Vicksburg, Mississippi, in memory of the Texans who served in the Armed Forces of the Confederate States of America, at the Siege of Vicksburg in 1863. If the Commission finds that the erection of a suitable monument in said park is in keeping with the provisions of Section 51-b of Article III of the Constitution of Texas, it shall cause plans to be drawn for the erection of said monument, and at the earliest practicable date inform the Legislature as to the sum of money that should be appropriated to erect said monument.

**Appropriation for Supreme Court Building**

Sec. 18. The sum of Three Million (\$3,000,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated from the State Building Fund for the purpose of erecting and equipping the Supreme Court Building and providing a suitable site therefor. The same shall include the necessary expenditures for the drawing of plans for said building, the leveling of the site and all other necessary expenditures in connection therewith, and the providing of suitable parkways and other necessary means of proper ingress and egress to and from said building.

**Appropriation for State Office Building**

Sec. 19. The sum of Three Million (\$3,000,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated from the State Building Fund for the purpose of erecting and equipping the State Office Building mentioned in Section 14 hereof, and for providing a suitable site therefor, if the Commission finds it desirable to purchase a site. The sum shall include the necessary expenditures for drawing of plans for said State Office Building, the leveling of the site and all other necessary expenditures in connection with the construction and equipping of said building.



**State Library**

Sec. 19a. The State Library shall be kept and maintained in the State Capitol, and shall include an up-to-date law library.

**Appropriation to carry out contract with Texas Historical Survey Committee**

Sec. 20. The sum of Twenty-five Thousand (\$25,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the State Building Fund for compensation and other necessary operating expenses of the said Commission from the effective date of this Act until August 31, 1955. The sum of Thirty Thousand (\$30,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the State Building Fund for use by the Commission for the payment of contracts entered into with the Texas Historical Survey Committee in carrying out the provisions set forth in Section 16 of this Act.

**Appropriation for memorials for heroes of Texas War for Independence**

Sec. 21. Pursuant to Section 51-b of Article III of the Constitution, there is also appropriated from the State Building Fund the sum of Thirty Thousand (\$30,000.00) Dollars, or so much thereof as may be necessary, for the purpose of erecting suitable memorials to the heroes of the Texas War for Independence on any suitable sites now owned by, or hereafter acquired by, the State, or on sites otherwise authorized in Section 15 hereof.

**Appropriation for preliminary expenses; Vicksburg National Park; erection of monument**

Sec. 22. The sum of Three Thousand (\$3,000.00) Dollars is hereby appropriated out of the State Building Fund to cover preliminary expenses incurred in carrying out the purposes mentioned in Section 17 of this Act, including the drafting of a design for said monument.

**Capitol Building; allocation of space and remodeling after removal of Supreme Court etc.**

Sec. 23. When the Supreme Court of this State, the Court of Criminal Appeals, the offices of the Attorney General and the State's Attorney and the Supreme Court Library shall have moved from the State Capitol Building, the Board of Control is directed to make available for the use and occupancy of the Legislature such offices and committee rooms as the Legislature shall consider necessary and appropriate for the efficient conduct of the affairs of the House of Representatives and the Senate; provided, that office facilities which are substantially equal in quality and space shall be made available for individual members of the House of Representatives and shall be assigned among the members by lot, conducted as the House shall direct. The State Building Commission is hereby empowered and directed to allocate from the State Building Fund an amount sufficient to cover the cost of remodeling and repairing the State Capitol Building to provide the space made available under the authority of this section for the use and occupancy of the Legislature.

**Storage and display of archives of Texas**

Sec. 24. The State Building Commission may, in its discretion, provide for the storage and display of the archives of Texas. Acts 1955, 54th Leg., p. 1298, ch. 514.

Emergency. Effective June 24, 1955.

Section 25 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

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

Art.  
695h. Federal old age and survivors insurance coverage for state employees [New].

Art. 695g. Federal old age and survivors insurance coverage for county and municipal employees

**Definitions**

Section 1. The following definitions of words and terms shall apply as used in this Act:

(b) The term "employment" means any service performed by an employee in the employ of a county or municipality or other political subdivision of the State except (1) service which in the absence of an agreement entered into under this Act would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the State and the Federal Security Administrator entered into under this Act. As amended Acts 1955, 54th Leg., p. 1254, ch. 502, § 1.

Emergency. Effective June 22, 1955.

(c) The term "employee" includes an officer of a county, municipality, or other political subdivision of the State; also the word "employee" shall include any State Employee or officer who is paid wholly from United States funds and would be a Federal employee except for classification as a State employee by the Federal Government. As amended Acts 1954, 53rd Leg., 1st C.S., p. 129, ch. 58, § 1.

(h) The term "political subdivision" includes an instrumentality of the State, of one or more of its political subdivisions, or of the State and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision. Added Acts 1955, 54th Leg., p. 1253, ch. 501, § 1; Acts 1955, 54th Leg., p. 1254, ch. 502, § 2.

Subdivision (h) added by chs. 501, § 1 and 502, § 2 are identical.

**Agreements with Federal Security Administrator**

Sec. 3. The State Agency is authorized to enter into agreements with the Federal Security Administrator to obtain Federal old-age and survivor's insurance coverage for employees of any of the counties, municipalities or other political subdivisions of the State. These agreements may contain such provisions relating to coverage, benefits, contributions, effective date, modification, and termination of the agreement, administration, and any other appropriate matters consistent with the Constitution and laws of Texas as the State Agency and Federal Security Administrator shall agree. As amended Acts 1953, 53rd Leg., p. 544, ch. 197, § 1; Acts 1955, 54th Leg., p. 1254, ch. 502, § 3.

**Agreements with county and municipal governing bodies; agreements between Adjutant General, State Agency and United States Government**

Sec. 4. The State Agency is authorized to enter into agreements with the governing bodies of counties and with the governing bodies of municipalities and with the governing bodies of other political subdivisions of the State which are eligible for Social Security coverage under Federal law when the governing body of any of said counties or municipalities or other political subdivisions desire to obtain coverage under the old-age and survivor's insurance program for their employees, these agreements to embrace such provisions relating to coverage benefits, contributions, effective date, modification and termination of the agreement, administration, and any other appropriate matters consistent with the Constitution and laws of Texas as the State Agency and the governing body of the county, municipality or other political subdivision shall agree. Any such agreement entered into shall include a provision that no action of the Federal Government shall ever impair or impede the retirement program of this State or its political subdivisions. Any instrumentality of the State, for which direct appropriations are made by the Legislature, may contribute to the old-age and survivor's insurance program of the Federal Government for employees covered under Chapter 470, Acts, 1937, Forty-fifth Legislature, Regular Session,<sup>1</sup> and amendments thereto, only such funds as are specifically appropriated therefor. As amended Acts 1953, 53rd Leg., p. 544, ch. 197, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 129, ch. 58, § 2; Acts 1955, 54th Leg., p. 1253, ch. 501, § 1.

<sup>1</sup> Article 2922—1.

Effective 90 days after June 7, 1955, date of adjournment.

**Submission and approval of plans**

Sec. 7. Each county, municipality or other political subdivision of the State is authorized to submit for approval by the State Agency a plan for extending the benefits of the Federal old-age and survivor's insurance system to employees of the county, municipality or political subdivision. The State Agency shall not finally refuse to approve a submitted plan and shall not terminate an approved plan without reasonable notice and opportunity for hearing to the affected county, municipality or political subdivision. Each plan shall be approved by the State Agency if it finds it is in conformity with requirements provided in the regulations of the State Agency, except that no plan shall be approved unless: (a) it is in conformity with requirements of the applicable Federal law and with the Federal-State agreements; (b) it specifies the source or sources from which the funds necessary to make the payments required are to be derived and contains guarantees that these sources will be adequate for this purpose (the State Agency may by appropriate rules and regulations require guarantees in the form of surety bonds, advance payments into escrow, detailed representations and assurances of priority dedication, or any legal undertakings to create adequate security that each county, municipality and political subdivision will be financially responsible for its share in this program for at least a minimum period equivalent to that specified by Federal requirements to precede coverage cancellation); (c) it provides such methods for administration of the plan by the county, municipality or political subdivision as are found by the State Agency to be necessary for proper and efficient administration; (d) it provides the county, municipality or political subdivision will make reports in such form and containing such information as the State Agency may from

time to time require and will comply with such provisions as the State Agency or appropriate Federal authorities may from time to time find necessary to assure the receipt, correctness and verification of these reports; and (e) it authorizes the State Agency to terminate the plan in its entirety if it finds there has been a failure to comply with any provision contained in the plan, this termination to take effect at the expiration of such notice and upon such conditions as may be provided by regulations of the State Agency consistent with applicable Federal law. As amended Acts 1953, 53rd Leg., p. 544, ch. 197, § 1; Acts 1955, 54th Leg., p. 1254, ch. 502, § 4.

**Art. 695h. Federal old age and survivors insurance coverage for state employees**

**Definitions**

Section 1. The following definitions of words and terms shall apply as used in this Act:

(a) The term "Wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act,<sup>1</sup> would not constitute "wages" within the meaning of that Act.

(b) The term "Employment" means any service performed by a State employee except (1) service which in the absence of an agreement entered into under this Act shall constitute "employment" as defined in the Social Security Act;<sup>2</sup> or (2) service which under the Social Security Act may not be included in an agreement between the State and the Secretary of Health, Education and Welfare entered into under this Act.

(c) The term "State Employee" in addition to its usual meaning shall include elective and appointive officials of the State, but shall not include those persons rendering services in positions, the compensation for which is on a fee basis. The term "State Employee" shall not include any employees in positions subject to the Teachers Retirement System except those employed by State departments, State agencies, and State institutions as construed in their usual meaning.

(d) The term "State Agency" means the State Department of Public Welfare.

(e) The term "Secretary of Health, Education and Welfare" includes any individual to whom the Secretary of Health, Education and Welfare has delegated any of his functions under the Social Security Act with respect to coverage under such Act of employees of States.

(f) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", (including regulations and requirements issued pursuant thereto), as such Act has been and may from time to time be amended.

(g) The term "Federal Insurance Contributions Act" means subchapter A and B of Chapter 21 of the Federal Internal Revenue Code of 1954 as such Code has been and may from time to time be amended; and the term "employee tax" means the tax imposed by Section 3101 of such Code of 1954.

<sup>1</sup> 26 U.S.C.A. §§ 3121-3125.

<sup>2</sup> 42 U.S.C.A. § 1 et seq.

**Administration of Act**

Sec. 2. The State Department of Public Welfare is designated the State Agency to administer the provisions of this Act. The Executive Director of the Department shall act for and shall direct and administer its functions under this Act. He is further instructed to negotiate the best possible contract for the employees of the State of Texas.

**Agreements to obtain coverage**

Sec. 3. The State Agency is authorized to enter into agreements with the Secretary of Health, Education and Welfare to obtain Federal Old Age and Survivors insurance coverage for State employees. These agreements may contain such provisions relating to coverage, benefits, contributions, administration and any other appropriate matters consistent with the terms and provisions of this Act as the State Agency and the Secretary of Health, Education and Welfare shall agree.

**Contributions by State Agency from Social Security Trust Fund**

Sec. 4. The State Agency is authorized to pay contributions as required by these agreements from the Social Security Trust Fund established by House Bill No. 603, Acts, Fifty-second Legislature, 1951;<sup>1</sup> and it is expressly provided that all laws and parts of laws which fix a maximum compensation for any covered employees of the State are hereby amended to allow payment of the matching contribution necessary to this program, in addition to any maximum compensations otherwise fixed by law.

<sup>1</sup> Article 695g.

**Contributions by state employees**

Sec. 5. In consideration of State employees' retention in or entry upon employment, there is imposed upon said employees as to services which are covered by an agreement with the Secretary of Health, Education and Welfare a contribution with respect to wages (as defined in Section 1(a) of this Act) equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act<sup>1</sup> if such services constituted employment within the meaning of that Act. Such contributions shall be paid to the Social Security Trust Fund in the manner hereinafter detailed. An amount equal to the amount specified in the first sentence of this Section shall be paid by the State to the Social Security Trust Fund from the respective funds from which covered employees receive their compensation.

<sup>1</sup> 26 U.S.C.A. §§ 3121-3125.

**Collection of Contributions**

Sec. 6. (a) The collection of said employees' contributions shall be as follows:

(1) Each department (including for the purpose of this Act any State office, board, bureau, or agency) of the State shall cause to be deducted on each and every payroll of a covered employee for each and every payroll period beginning on the date of establishment of Social Security coverage for said employee the contributions payable by such employee, as provided in this Act. Each department head of the State shall certify to the proper disbursing officer of said department on each and every payroll a statement of the amount of the employee's contribution which should be deducted from each employee's salary and a statement of the

total amount to be deducted from all salaries and shall include the total amount in the payroll voucher. Each department head at the end of each month shall certify to the State Agency copies of said payroll statement and voucher on forms prescribed by the State Agency.

(2) The proper disbursing officer of each State department on authorization from the department head shall make deductions from salaries of the employees as provided in this Act. The total amount deducted shall be paid by each department head to the State Treasurer as custodian of the Social Security Trust Fund, and the State Treasurer shall deposit said amounts in the Social Security Trust Fund.

(3) If less than the correct amount of an employee's contribution is deducted with respect to any remuneration, the employee shall remain liable therefor.

(4) If more than the correct amount of the employee's contribution is paid or deducted with respect to any remuneration, proper adjustments, or refund, if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State Agency shall prescribe.

(b) The collection of the State's contribution shall be made as follows:

(1) From and after the date of the establishment of Social Security coverage for State employees, there is hereby allocated and appropriated to the Social Security Trust Fund, in accordance with this Act, from the several funds from which the employees benefited by this Act receive their respective salaries, a sum equal to the amount of the tax which would be imposed by the Federal Insurance Contributions Act if the services of such employee constituted employment within the meaning of that Act for said employees whose compensation is paid from funds in the State Treasury. The State Agency shall certify to the State Comptroller of Public Accounts at the end of each month the total amount of the State's monthly contributions for employees whose salaries are paid from funds in the State Treasury. The State Comptroller upon receipt of such authorization shall pay said amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall deposit the amounts so received in the Social Security Trust Fund. Provided, however, that should the amount paid as the State's contribution vary from the net amount actually contributed by the employees during the fiscal year ending August 31st of each year the State Agency shall certify on or before October 1st of each year the amount of such difference by Fund and by Department to the State Comptroller who shall then make necessary adjusting entries.

(2) Thereafter, on or before the first day of November next preceding each Regular Session of the Legislature, the State Agency shall certify to the Governor for review and adoption the amount necessary to pay the contributions of the State of Texas for the ensuing biennium. This amount shall be included in the budget of the State which the Governor submits to the Legislature. The State Agency shall send a copy to the State Comptroller of Public Accounts of the certification to the Governor.

(3) All moneys hereby allocated and appropriated by the State to the Social Security Trust Fund shall be paid to the Fund in monthly installments.

(4) In those instances in which State employees are paid from funds not in the State Treasury, the department head at the end of each month shall certify to the proper disbursing officer the total amount of the State's contributions based upon compensation paid such employees and the disbursing officer shall thereupon pay that amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall

deposit said amounts in the Social Security Trust Fund. A copy of the department heads' certification in these instances shall be given to the State Agency at the same time the original is certified to the disbursing officer. These copies shall be on forms prescribed by the State Agency.

#### **Powers and duties of State Agency**

Sec. 7. The State Agency shall have the power to make and publish such rules and regulations, not inconsistent with the provisions of this Act, and to require such reports from the Departments as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this Act. It is further provided that the State Agency shall certify to the Comptroller of Public Accounts any and all departments which have not filed required reports within the specified time, and the Comptroller of Public Accounts is hereby directed to withhold any salary warrants or expense reimbursement warrants to the heads or any employees of such departments as are on the certified list until such time as the State Agency shall notify the Comptroller that such delinquent reports have been filed. In those instances in which State employees' salaries are paid from funds other than funds in the State Treasury, it shall be unlawful for the disbursing officer of a department to pay any salaries or expense reimbursements after notification by the State Agency that a required report is delinquent; and said disbursing officer shall be personally liable as well as liable on his official bond for payment of salaries or expense reimbursements after notification of delinquency by the State Agency.

#### **State Social Security Administration Fund**

Sec. 8. There is hereby created a special fund, separate and apart from all public moneys or funds of this State, to be known as the State Social Security Administration Fund. The State Treasurer shall be treasurer and custodian of the fund and shall administer it in accordance with directions from the State Agency. Money deposited in this fund shall be disbursed upon warrants issued by the Comptroller of Public Accounts pursuant to sworn vouchers executed by the State Agency acting through the executive director or personnel of the agency to whom he expressly delegates this function.

#### **Expenditures; personnel**

Sec. 9. The State Agency is authorized to expend moneys in the State Social Security Administration Fund for any purpose necessary to the proper administration of this Act including, but not limited to, salaries, traveling expenses, printing, stationery, supplies, equipment, bond premiums, postage, communications, and contingencies; and the State Agency is authorized to employ such personnel, accountants and attorneys, purchase such equipment, and incur such expenses as may be necessary to carry out the administration of this Act, provided all salaries and expenditures from this fund shall be consistent with the letter and spirit of comparable items and general provisions in the general departmental appropriation bill then current.

#### **Appropriation**

Sec. 10. For the purpose of administering the provisions of this Act, there is hereby appropriated from any funds in the State Treasury not otherwise appropriated to the State Social Security Administration Fund the sum of Fifteen Thousand Dollars (\$15,000).

**Benefits from both State Employees Retirement Act and Federal Social Security Act; conflicting laws repealed**

Sec. 11. Nothing shall prevent any employee from receiving benefits under both the State Employees Retirement Act<sup>1</sup> and the Federal Social Security Act<sup>2</sup> and any law in conflict herewith is repealed to the extent of such conflict. Acts 1955, 54th Leg., p. 1188, ch. 467.

<sup>1</sup> Article 6228a.

<sup>2</sup> 42 U.S.C.A. § 1 et seq.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act providing for coverage of State Employees under the Old Age and Survivors Insurance provisions of the Federal Social Security Act; defining terms; providing for the administration of this Act; providing for contributions and payroll de-

ductions; making allocations and appropriations; creating a special fund to be known as the State Social Security Administration Fund and providing for its administration; providing a severability clause and declaring an emergency. Acts 1955, 54th Leg., p. 1188, ch. 467.

**TITLE 21—BOND INVESTMENT COMPANIES**

**Art. 696. 1309 Deposit**

Securities Act, see art. 579—1 et seq.



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

## CHAPTER ONE—GENERAL PROVISIONS AND REGULATIONS

Arts. 703a. Use of bond proceeds for other purposes; election [New]. 717j. Public securities; definition; execution; facsimile signatures, etc. [New].	Arts. 717k. State, county, municipality or political subdivision; issuer of bonds, notes, etc. [New].
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## Art. 701. 605 Shall hold election

Securities Act not applicable to securities issued by state, municipal corporation, or political subdivision, etc., see art. 579—4.

## Art. 703a. Use of bond proceeds for other purposes; election

This Act shall apply to all cities, including, but not limited to, home rule cities, which have heretofore issued, sold and delivered bonds for a specific purpose or purposes and such purpose or purposes have been accomplished by other means or have been abandoned and all or a portion of such bond proceeds remain unexpended. In such cases, the governing body of each such city shall be authorized to call and hold an election, in the same manner provided for calling and holding bond elections, for the purpose of submitting to the duly qualified resident electors of such city who own taxable property within said city and who have duly rendered the same for taxation the proposition of whether or not such unexpended funds may be expended for other and different purposes specified in the election resolution or ordinance and the election notice. If a majority of those voting at such election vote in favor of the use of such unexpended funds for such designated purpose or purposes, then the governing body of such city shall be authorized to make such expenditures. Acts 1955, 54th Leg., p. 4, ch. 4, § 1.

Emergency. Effective Feb. 8, 1955.

Section 2 of the Act of 1955 provided that if any clause, phrase, sentence, paragraph, section or provision of this Act, or the application thereof to any particular person or thing, is held to be invalid, such invalidity shall not affect the remainder of this Act or the application thereof to any person or thing.

## Title of Act:

An Act authorizing cities to hold an election to authorize the use of the proceeds of sale of bonds for other purposes where the purpose for which the bonds were voted has been accomplished by other means or has been abandoned; containing a saving clause; and declaring an emergency. Acts 1955, 54th Leg., p. 4, ch. 4.

## Art. 717j. Public securities; definition; execution; facsimile signatures, etc.

Section 1. The term "public securities," as used herein, shall mean bonds, notes or other obligations for the payment of money issued by this State, by its political subdivisions, or by any department, agency or other instrumentality of this State or of any of its political subdivisions.

Sec. 2. All public securities which hereafter may be issued or be authorized to be issued under the laws of this State, may be executed with an engraved, imprinted, lithographed, or otherwise reproduced facsimile of any signature required or permitted to be recorded thereon in the execution, authentication, certification, or endorsement of such securities, if the use of such facsimile signature is authorized by the Board, body or officer empowered by law to authorize the issuance of such securities;

provided, however, that at least one signature required to be placed thereon shall be manually subscribed; and provided that as to public securities required to be registered by the Comptroller of Public Accounts of the State of Texas, only his signature (or that of a deputy designated in writing to act for the Comptroller) shall be required to be manually subscribed to such public securities.

Sec. 3. The provisions of the Act shall be cumulative of all existing laws pertaining to the execution, authentication, certification or endorsement of public securities; and the provisions hereof concerning the method of execution shall apply to all public securities, despite any provision in any earlier law to the contrary. This Act shall not repeal any other law authorizing the execution of public securities with facsimile signature or seals. Acts 1955, 54th Leg., p. 802, ch. 293.

Emergency. Effective May 20, 1955.

**Title of Act:**

An Act defining the term "public securities" as used herein; authorizing the execution of public securities by means of engraved, imprinted, lithographed or otherwise reproduced facsimile of all signatures (except one) required for execution, au-

thentication, certification or endorsement of such securities; declaring the Act to be cumulative; repealing inconsistent provisions of other laws; and declaring an emergency. Acts 1955, 54th Leg., p. 802, ch. 293.

**Art. 717k. State, county, municipality or political subdivision; issuer of bonds, notes, etc.**

**"Issuer" defined; applicability of Act**

Section 1. This Act shall be applicable to (and the term "issuer" as used in this Act shall mean and include) the State of Texas, or any department, agency or instrumentality of the State of Texas or any county, municipal corporation, taxing district or other political district or subdivision of the State of Texas having power to borrow money and issue bonds, notes or other evidences of indebtedness; and which has the power to issue refunding bonds in lieu of outstanding obligations of the issuer.

**Refunding bonds, power to issue; deposits with State Treasurer**

Sec. 2. (a) An issuer which has outstanding any bonds, notes or other evidences of indebtedness which it has the power to refund into bonds, and which has duly and legally called said obligations in accordance with the terms thereof, shall have the right to issue refunding bonds therefor without cancellation and surrender of the underlying securities, provided the deposit required by this Act shall have been made by or on behalf of the issuer with the State Treasurer of the State of Texas upon the terms and conditions prescribed in this Act.

(b) An issuer shall have the right to deposit, or cause to be deposited to the State Treasurer of the State of Texas a sum of money equal to the principal amount of the bonds, notes, and other evidences of indebtedness which it proposes to refund plus the amount of interest which will accrue thereon calculated to the date on which it is to become due or on which it may be redeemed, together with the amount of contract premium if any, required for redemption; and concurrently with such deposit shall pay to the State Treasurer for his services and to reimburse him for his expenses in performing his duties under this Act a sum of money equivalent to one-twentieth (1/20) of one per cent (1%) of the principal amount of said bonds and one-eighth (1/8) of one per cent (1%) of the interest to accrue on all of said underlying obligations, and an additional amount of money sufficient to pay the charges of the bank or trust company at which the

principal and interest of said underlying obligations are payable for its services in paying such principal and interest. The State Treasurer may rely on a certificate by such city as to the amount of the charges made by such bank or trust company. At the same time such city shall deliver to the State Treasurer a certified copy of the ordinance authorizing said underlying obligations, or a certified excerpt therefrom, showing clearly the amounts and the date or dates on which interest is due on such underlying obligations, the date when the principal becomes subject to redemption, and the name and address of the bank or trust company at which such principal and interest must be paid. It shall be the duty of the State Treasurer to accept such deposits, payments, and instruments, and safely to keep and use such money for the purposes set forth in this Act and for no other purpose, and no part of such money except that in payment for his services and to reimburse his expenses in performing such services shall be used by or for the State of Texas or for any creditor of the State of Texas, nor shall such money be commingled with any other money.

#### **Duty of State Treasurer**

Sec. 3 Upon receipt of such deposits and payments, it shall be the duty of the State Treasurer, if the securities involved are to be redeemed at a place of payment other than his office, immediately and by the most expeditious means to forward to and deposit with the bank or trust company where such underlying securities are payable, the amount out of such deposits as is specified as being for the payment of the principal and interest, and contract premium, if any, on the securities to be redeemed, and for the payment of the service charges of such bank or trust company; provided however, that the issuer shall have made deposits and payments with the State Treasurer during normal banking hours at least one (1) business day prior to the date on which such securities are designated to be redeemed. The State Treasurer shall notify such bank or trust company to forward to him the underlying securities thus redeemed and cancelled, and after the State Treasurer shall have made a record of their payment and cancellation shall forward such cancelled bonds, coupons or securities to issuer.

#### **Issuance and sale of refunding bonds; registration by Comptroller of Public Accounts**

Sec. 4. When the issuer shall have deposited and paid into the Office of the State Treasurer the money, and shall have done the things required by Section 2 of this Act, it shall have authority to issue, sell and deliver refunding bonds in lieu of the underlying securities, despite the fact that the holders of other such underlying securities may not have surrendered or presented the same for payment; provided that the Attorney General of Texas shall certify to the Comptroller of Public Accounts as to any underlying securities which have not reached their normal maturity date that the issuer has validly called the bonds for redemption in accordance with the contract rights of the issuer. Where the issuer has complied with the requirements of this Act, the Comptroller shall register the refunding bonds despite the fact that some or all of the underlying securities shall not have been surrendered by the holder for payment and cancellation.

#### **Cancellation of underlying securities not required for issuance, sale or registration of refunding bonds**

Sec. 5. Regardless of any provisions to the contrary contained in prior laws requiring the issuance of refunding bonds, the issuer shall

have the right to issue, register and sell such bonds without cancellation of the underlying securities provided the issuer has made the deposit required and has otherwise complied with the requirements of this Act.

**Withdrawal of deposits on cancellation of underlying obligation**

Sec. 6. After an issuer has made the deposits and payments required under Section 2 hereof, the issuer may apply to the State Treasurer to withdraw from the paying agent the amount of money deposited on the account of any underlying bond or security, together with the deposit for interest thereon and premium, if any, by exhibiting to the State Treasurer said obligation duly cancelled, whereupon the State Treasurer shall make a proper record of the payment and cancellation of such instrument. No funds so deposited by issuer with the State Treasurer under the provisions of this Act shall otherwise be withdrawn by the issuer except upon the conditions stated above in this Section, or unless the Attorney General of Texas shall certify to the State Treasurer that the payment by the issuer of the underlying security is barred by limitation and that payment thereof by the issuer is forbidden by law.

**Presenting bond or other obligation for payment**

Sec. 7. At any time after an issuer shall have made the deposits and payments required in Section 2, the holder of any bond, note or other obligation payable from such deposits, shall have the right to present the same for payment within a lawful period to the paying agent designated in such obligation, or to the State Treasurer, and to receive therefor the principal, any contract premium, and interest to maturity or to date lawfully fixed for redemption, provided there remains on deposit sufficient funds to pay said sum. Whereupon such underlying securities shall be cancelled by the State Treasurer, its cancellation recorded by the State Comptroller, and it shall be forwarded by the State Treasurer to the issuer.

**State Treasurer's bond; protection of deposits of moneys and securities**

Sec. 8. The bond or bonds given by the State Treasurer under Article 4368 to secure the faithful execution of the duties of his office (except such special bonds as may have been given to protect funds of the United States Government) and any and all other bonds which may have been given by the State Treasurer, shall be construed as protecting all moneys and securities deposited or placed with the State Treasurer under this Act.

**Cumulative of other acts**

Sec. 9. This Act is cumulative of all other Acts on the subject, but to the extent that its provisions are inconsistent or in conflict with the provisions of other laws, the provisions of this Act shall be controlling. Acts 1955, 54th Leg., p. 1256, ch. 503.

Emergency. Effective June 22, 1955.

**CHAPTER THREE—PUBLIC ROAD BONDS**

**Art. 752a. Power to issue road and turnpike bonds; taxes for interest and sinking fund for redemption; use of surplus funds**

Any county, or any political subdivision of a county, or any road district that has been or may hereafter be created by any General or

Special Law, is hereby authorized to issue bonds for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, in any amount not to exceed one-fourth of the assessed valuation of the real property of such county or political subdivision or road district, and to levy and collect ad valorem taxes to pay the interest on such bonds and provide a sinking fund for the redemption thereof. Such bonds shall be issued in the manner hereinafter provided, and as contemplated and authorized by Section 52, of Article 3, of the Constitution of this State. The term "Political Subdivision," as used in this Act, shall be construed to mean any commissioners precinct or any justice precinct of a county, now or hereafter to be created and established. Provided, when the principal and all interest on said bonds are fully paid, in the event there is any surplus remaining in the sinking fund said remaining surplus not used in the full payment of the principal and interest on said bond or bonds may be used by the county, political subdivision of the county, or any local district that has been or may hereafter be created by any General or Special Law for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes or in aid thereof as may be determined by the Commissioners Court of any county or the officials of any political subdivision of a county or of any said road district.

Provided further, that after each biennial appropriation has been made by the Legislature under the provisions of Section 7-a, Article VIII, Constitution of Texas, for the payment of principal, interest, and sinking fund requirements of bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund, all moneys in the interest and sinking fund of any such bond or warrant issue over and above whatever is necessary to supplement the funds made available under said appropriation for the biennium for which the appropriation is made, less such moneys as have been accumulated for sinking fund requirements for prior years as "sinking fund" is defined in Article 6674q—7(a), Vernon's Texas Civil Statutes, may be considered as surplus and may be used by the Commissioners Court for the purchase of right of ways in the county, or district, or political subdivision, as the case may be, for highways and roads constructed by, or constructed under the supervision of, or maintained by the State Highway Department; provided further, that if the funds appropriated by the Legislature shall ever for any reason be insufficient for the payment of the eligible portion of the principal, interest, and sinking fund requirements falling due during the biennium for which the appropriation is made, or if the Legislature shall fail to make an appropriation, then taxes shall be assessed, levied, and collected in an amount sufficient to insure full payment of said principal, interest, and sinking fund requirements. The Commissioners Court is limited to the expenditure of such surplus sinking funds as are on hand upon the effective date of this Act, and any further payments of any kind or character made to such sinking funds after that date shall not be available for the purchase of additional right of ways. As amended Acts 1955, 54th Leg., p. 348, ch. 69, § 1.

Emergency. Effective April 22, 1955.

*Amendment by Acts 1955, p. 303, ch. 113, § 1, see art. 752a, post.*

#### **Art. 752a. Power to issue road bonds; surplus in sinking fund**

Any county, or any political subdivision of a county, or any road district that has been or may hereafter be created by any General or Special

Law, is hereby authorized to issue bonds for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, in any amount not to exceed one-fourth of the assessed valuation of the real property of such county or political subdivision or road district, and to levy and collect ad valorem taxes to pay the interest on such bonds and provide a sinking fund for the redemption thereof. Such bonds shall be issued in the manner hereinafter provided, and as contemplated and authorized by Section 52, of Article 3, of the Constitution of this State. The term "Political Subdivision," as used in this Act, shall be construed to mean any commissioners precinct or any justice precinct of a county, now or hereafter to be created and established. Provided when the principal and all interest on said bonds are fully paid, in the event there is any surplus remaining in the sinking fund, said remaining surplus not used in the full payment of the principal and interest on said bond or bonds may be used by the county, political subdivision of the county, or any local district that has been or may hereafter be created by any General or Special Law for the purpose of the construction, maintenance, and operation of macadamized, graveled or paved roads and turnpikes or in the aid thereof or for any other lawful permanent improvement as may be determined by the Commissioners Court of any county or the officials of any political subdivision of a county or any said road district. As amended Acts 1955, 54th Leg., p. 393, ch. 113, § 1.

Emergency. Effective April 28, 1955.

Section 2 of the amendatory Act of 1955 repealed all inconsistent laws and parts of laws to the extent of such conflict.

*Amendment by Acts 1955, p. 348, ch. 69, § 1, see art. 752a, ante.*

## CHAPTER FIVE—FUNDING, REFUNDING AND COMPROMISES

Art.

802g. Refunding bonds due serially issued  
under composition plan approved  
under Bankruptcy Act [New].

Art. 802g. Refunding bonds due serially issued under composition plan approved under Bankruptcy Act

### Eligible cities

Section 1. This Act shall be applicable to any city which has outstanding refunding bonds, whether revenue bonds or tax supported bonds, or both, issued pursuant to a plan of composition confirmed by a United States District Court under the National Bankruptcy Laws which do not mature in annual installments, hereinafter called "Term Bonds".

### Maturities; interest rate; pledge of revenues

Sec. 2. Any such city is hereby authorized to issue refunding bonds (hereinafter called "Serial Refunding Bonds") having serial maturities and bearing interest at a rate to be determined by the governing body of the city provided that the interest cost to the city, calculated by the use of standard interest tables currently in use by insurance companies and investment houses, does not exceed an average rate of four (4%) per cent per annum, for the purpose of refunding such outstanding term bonds,

in the manner provided by law for the issuance of city refunding bonds. Where serial refunding bonds are issued to refund outstanding revenue bonds, the governing body of the city is authorized to secure the serial refunding bonds by a deed of trust upon the utility system as well as by a pledge of the net revenues of the system if the bonds being refunded so provide.

#### **Sale of refunding bonds in lieu of exchange for term bonds**

Sec. 3. In lieu of exchanging the serial refunding bonds for the term bonds in the manner otherwise provided by law, the city may, at any time after calling the outstanding term bonds for redemption in the manner provided in said bonds, sell the serial refunding bonds (or the unexchanged portion of them) at not less than par and accrued interest and deposit the principal amount received from such sale together with the additional amount necessary to pay the interest to the call date, with the bank where the term bonds are payable, in which event, a certified copy of the ordinance or resolution so providing shall be transmitted to the Comptroller of Public Accounts and he shall register the serial refunding bonds without cancellation of the underlying term bonds and deliver them as provided in said ordinance or resolution. No city charter provision relating to the terms, issuance, sale and delivery of bonds shall be applicable to bonds issued under this law.

#### **Existing ordinances relating to bonds validated**

Sec. 4. If, prior to the effective date of this Act, any such city has passed an ordinance or ordinances authorizing the issuance of serial refunding bonds and making provisions for the payment and security thereof, including, in the case of revenue bonds, the pledge of revenues and the encumbrance on the properties of the utility system or systems, such ordinance or ordinances and the provisions for the payment and security of the serial refunding bonds, are hereby validated and ratified.

#### **Incontestibility of bonds**

Sec. 5. When such serial refunding bonds shall have been authorized by ordinance of the governing body of the city, signed by the Mayor and City Secretary or Clerk of said city, approved by the Attorney General of Texas, and registered by the Comptroller of Public Accounts, they shall be incontestable and shall constitute valid and binding obligations of such city. Acts 1955, 54th Leg., p. 665, ch. 236.

Emergency. Effective May 16, 1955.

## TITLE 25—CARRIERS

Art. 911b. Motor carriers and regulation by Railroad Commission—  
Definitions

Terms "Motor Carrier" and "Contract Carrier" not to include what

## Sec. 1a(1)

(e) Any person transporting fresh iced fish or shellfish from coastal production-landing points to initial packing or freezing plant not more than seventy-five (75) miles inland from such coastal production-landing points, regardless of whether or not such person owns said fish or shellfish, provided, however, that such person shall have first filed with the Railroad Commission of Texas certificates of insurance covering each motor vehicle to be used in such transportation with public liability and property damage insurance in the amounts required by the Commission for motor vehicles subject to its regulation. Added Acts 1955, 54th Leg., p. 51, ch. 37, § 1.

Emergency. Effective March 25, 1955.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. Section

3 provided that partial invalidity should not affect the remaining portions of the Act.



TITLE 26—CEMETERIES

<p>Art. 912a—28. Articles of incorporation; requisites and contents [New].</p> <p>912a—29. Perpetual care and maintenance guarantee fund; minimum necessity and requisites [New].</p> <p>912a—30. Cancellation of charter for failure to operate thereunder; rescission of cancellation [New].</p>	<p>Art. 912a—31. Examination of association; fees and expenses [New].</p> <p>912a—32. Compliance required; books, records, and funds to be maintained within state; examination [New].</p> <p>912a—33. Annual report; liability for failure to make [New].</p>
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Art. 912a—3. Payment, receipt, and disbursement of filing fees

At the time of the filing of the statement of its perpetual care fund each cemetery filing same which serves a city, the population of which is twenty-five thousand (25,000) inhabitants or less, according to the last preceding Federal Census, shall pay to the Banking Commissioner of Texas each year a filing fee of Ten Dollars (\$10) and each cemetery filing same which sells any part of its property to residents of any city the population of which is greater than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census, shall pay to the Banking Commissioner of Texas each year a filing fee of Twenty-five Dollars (\$25). The Banking Commissioner of Texas shall receive and keep all such filing fees in a separate fund to be known as the "Cemetery Perpetual Care Enforcement Fund." Such fees, together with any other fees, penalties, or revenues collected by the commissioner, pursuant to any law of this State, shall be retained by the Banking Department and shall be expended only for the expenses of said Department. No part of such fees, penalties, and other revenues shall ever be paid into the General Revenue Fund of this State, except that the Banking Department shall cause to be transferred each year of the biennium that amount of surplus in the Cemetery Perpetual Care Enforcement Fund which exceeds the estimated cost of operation of the Banking Department to enforce the provisions of this Act projected for one year to the General Revenue Fund, to cover the cost of governmental service rendered by other departments. All moneys of the 'Cemetery Perpetual Care Enforcement Fund' shall be used by the Banking Department in the administration and enforcement of the laws relating to the operation of perpetual care cemeteries and to the creation, investment, and expenditure of cemetery perpetual care funds, and for investigations either on its own initiative or on complaints made by others, with reference to the operation of perpetual care cemeteries and the creation, investment, and expenditure of cemetery perpetual care funds. As amended Acts 1955, 54th Leg. p. 574, ch. 190, § 1.

Effective 90 days after June 7, 1955, date of adjournment. Section 2 of the amendatory Act of 1955 was a severability clause.

Art. 912a—24. Location of cemetery

It shall be unlawful for any person, company, corporation, or association to establish or use for burial purposes any graveyard or cemetery, or any mausoleum and/or cemetery except in a cemetery heretofore established and operating, located within, or within less than one (1) mile from, the incorporated line of any city of not less than five thousand (5,000) nor more than twenty-five thousand (25,000) inhabitants according to the last preceding Federal Census, or within, or within less than two (2) miles from, the incorporated line of any city

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

of not less than twenty-five thousand (25,000) nor more than fifty thousand (50,000) inhabitants according to the last preceding Federal Census, or within, or within less than three (3) miles from, the incorporated line of any city of not less than fifty thousand (50,000) nor more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, or within, or within less than four (4) miles from, the incorporated line of any city of not less than one hundred thousand (100,000) nor more than two hundred thousand (200,000) inhabitants, according to the last preceding Federal Census, or within, or within less than five (5) miles from, the incorporated line of any city of not less than two hundred thousand (200,000) inhabitants, according to the last preceding Federal Census; provided that where cemeteries have heretofore been used and maintained within the limits hereinabove set forth, and additional lands are required for cemetery purposes, land adjacent to said cemetery may be acquired by the cemetery association operating such cemetery, to be used as an addition to such cemetery, and the use of said additional land for such purposes shall be exempt from the provisions of this Section; and further provided that the establishment or use of a columbarium by any organized religious society or sect as a part of or attached to the principal church building owned by such religious society or sect, and within the limits hereinabove set forth, shall not be unlawful, and shall be exempt from the provisions of this Section. As amended Acts 1955, 54th Leg., p. 41, ch. 30, § 1.

Emergency. Effective March 24, 1955.

#### Art. 912a—28. Articles of incorporation; requisites and contents

No perpetual care cemetery shall ever be organized without its Articles of Incorporation filed with the Secretary of State showing the subscriptions and payment in cash of its full Capital Stock, the designation of the location of its cemetery property, and a certificate showing the deposit of its Perpetual Care and Maintenance Guarantee Fund as provided in Section 29 of this Act.<sup>1</sup> The minimum amount of such Capital shall be in accordance with the following schedule: Those serving a town or city having a population of less than fifteen thousand (15,000), Seven Thousand, Five Hundred Dollars (\$7,500); those serving a city having a population of fifteen thousand (15,000) but not more than twenty-five thousand (25,000) inhabitants, Fifteen Thousand Dollars (\$15,000); those serving a city of twenty-five thousand (25,000) or more inhabitants, Twenty-five Thousand Dollars (\$25,000).

Nothing contained in this Section 28<sup>2</sup> shall apply to cemetery corporations chartered prior to the effective date of this Act, provided, however, that any corporation which amends its charter shall be required to comply with the minimum requirements set forth in this Section 28. Added Acts 1955, 54th Leg., p. 574, ch. 190, § 1.

<sup>1</sup> Article 912a—29.

<sup>2</sup> This article.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 912a—29. Perpetual care and maintenance guarantee fund; minimum; necessity and requisites

Any Corporation chartered under this Act desiring to operate a Perpetual Care Cemetery, before being chartered must establish a minimum Perpetual Care and Maintenance Guarantee Fund, according to the following schedule:

Cemeteries with a Capital Stock of Seven Thousand, Five Hundred Dollars (\$7,500) must deposit with the trustee, as provided by law, a

Perpetual Care and Maintenance Guarantee Fund of Seven Thousand, Five Hundred Dollars (\$7,500) in cash.

Those with a Capital Stock of Fifteen Thousand Dollars (\$15,000), a Perpetual Care and Maintenance Guarantee Fund of Fifteen Thousand Dollars (\$15,000) in cash; and,

Those with a Capital Stock of Twenty-five Thousand Dollars (\$25,000), or more, a Perpetual Care and Maintenance Guarantee Fund of Twenty-five Thousand Dollars (\$25,000) in cash.

The Perpetual Care and Maintenance Guarantee Fund shall be permanently set aside and deposited in trust with the Trustee, as is provided in Section 15 of the Perpetual Care Cemetery Code.<sup>1</sup> Upon all sales made of lots, spaces, crypts, mausoleum space and columbariums, the deposits as required by law, to be placed in trust for the Perpetual Care and Maintenance of the Cemetery, shall be allowed as a credit against the original Perpetual Care and Maintenance Guarantee Fund to the full amount of the original deposit. The Corporation thereafter shall continue to deposit in the Perpetual Care Fund, the minimum amount required by law, and such additional amount as may be required by the Rules and Regulations and/or the Trust Agreement or contract of said Cemetery Corporation or Association, for the Perpetual Care and Maintenance of the Cemetery.

Nothing contained in this Section 29<sup>2</sup> shall apply to cemetery corporations chartered prior to the effective date of this Act, provided, however, that any corporation which amends its charter shall be required to comply with the minimum requirements set forth in this Section 29. Added Acts 1955, 54th Leg., p. 574, ch. 190, § 1.

<sup>1</sup> Article 912a—15.

<sup>2</sup> This article.

**Art. 912a—30. Cancellation of charter for failure to operate thereunder; rescission of cancellation**

If any such incorporated association shall fail to begin actual operations thereunder after the granting and delivery of its charter for six (6) months, the Banking Commissioner shall thereupon cancel such charter and serve notice upon the association by registered letter duly addressed to the association's address. The Banking Commissioner may at his discretion rescind such order of cancellation upon the application of the Board of Directors upon the payment to him of a penalty or fee to be fixed by the Commissioner not to exceed Five Hundred Dollars (\$500) and the execution of and delivery to him of an agreement to begin actual operations within one (1) month, and a proper showing by the Trustee of the Perpetual Care and Maintenance Guarantee Fund that it is on deposit.

If such association should fail to begin such active operations within such latter period, the Commissioner shall make an order setting aside his order of rescission of the cancellation of such charter, and such cancellation shall thereupon be final, and the Commissioner shall make full relation of such matters to the Attorney General of the State for liquidation, if necessary. A certified copy of such cancellation shall be sufficient to authorize the Trustee of the Perpetual Care and Maintenance Guarantee Fund to refund the same to the incorporators signing the Articles of Incorporation, if no sales have been made of the dedicated property. Added Acts 1955, 54th Leg., p. 574, ch. 190, § 1.

**Art. 912a—31. Examinations of association; fees and expenses**

It shall be the duty of the Banking Commissioner to examine, or cause to be examined, each of such associations annually or as often as necessary, for which the examined association shall pay to the Commissioner not to exceed Forty Dollars (\$40) per day or fraction thereof, for each examiner for such departmental services not to exceed One Hundred and Twenty Dollars (\$120) and any excess to be paid out of the Cemetery Perpetual Care Enforcement Fund.

If in any case the conditions existing in any such association are found to be such as to necessitate an additional examination or a prolonged audit to ascertain the true status of its affairs, the whole expense of such additional examination or such prolonged audit shall be defrayed by such association. Added Acts 1955, 54th Leg., p. 574, ch. 190, § 1.

**Art. 912a—32. Compliance required; books, records, and funds to be maintained within state; examination**

Any Perpetual Care Cemetery doing business in Texas shall comply with all of the provisions of this Act and shall maintain all books, accounting records, and funds within the State of Texas. Such funds and records must be available at all times to the Banking Department for examination. Added Acts 1955, 54th Leg., p. 574, ch. 190, § 1.

**Art. 912a—33. Annual report; liability for failure to make**

If an Association embraced within this Act shall fail to make its annual report and file the publication with the Banking Commissioner, as provided in Section 2<sup>1</sup> hereof, it shall be liable for and the Banking Commissioner shall collect as a fee or penalty the sum of Five Dollars (\$5) per day for the period of such failure, and upon the relation of the Banking Commissioner of such default in payment, the Attorney General shall institute a suit to recover said fees or penalties and for such other relief by the State as in the judgment of the Attorney General is proper and necessary. Added Acts 1955, 54th Leg., p. 574, ch. 190, § 1.

<sup>1</sup> Article 912a—2.

**TITLE 27—CERTIORARI**

**Art. 932 Repealed.** Acts 1955, 54th Leg., p. 88, ch. 55, § 434, eff. Jan. 1, 1956.

Saving clause and application of Probate Code, see Probate Code § 2.

## TITLE 28—CITIES, TOWNS AND VILLAGES

## CHAPTER ONE—CITIES AND TOWNS

<p>Art. 966d. Validation of incorporation; incor- rect description; excessive area; elections [New].</p> <p>974d—4. Cities of 5,000 or less; validation of incorporation; areas and boundary lines; governmental proceedings and acts [New].</p>	<p>Art. 974d—5. Cities and towns of 15,000 or less; validation of incorporation; boundary lines; governmental proceedings; exceptions [New].</p>
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**Art. 966c. Validation of incorporation, proceedings and acts; cities and towns of 5,000 or less; limits of territory**

Sec. 4. The provisions of this Act shall not apply to any city or town involved in litigation at the time of the effective date of this Act (Chapter 177, Regular Session, Acts of the 53rd Legislature) questioning the legality of the incorporation or extension of boundaries. As amended Acts 1954, 53rd Leg., 1st C.S., p. 13, ch. 4, § 1.

Emergency. Effective April 19, 1954.

**Art. 966d. Validation of incorporation; incorrect description; excessive area; elections**

Section 1. In each instance where an election has been held for the purpose of incorporating a city, town or village, and the territory to be contained in such city, town or village was inadequately or incorrectly described in connection with such election proceedings or the order of the county judge declaring such territory to be incorporated, or such territory contained a greater area than was permitted by law, and where, thereafter, the county judge of the county in which such city, town or village is situated entered an order declaring the inhabitants of such city, town or village, incorporated under the General Laws of the State of Texas relating to cities and towns, and fixing and declaring the boundaries thereof and finding and declaring the names of the mayor, aldermen and city secretary of any such city, such order by the county judge is hereby in all things validated, ratified and approved, and such city, town or village shall be known by the name specified in such order.

Sec. 2. Any city, town or village declared to be incorporated by an order as mentioned in Section 1 of this Act is hereby validated and declared to be a duly incorporated city with the boundaries as defined in such order, and the mayor, aldermen and city secretary named in such order are hereby declared to have been the mayor, aldermen and city secretary of such city at the time of the entry of said order, and all elections held for the election of city officials are hereby validated and ratified.

Sec. 3. This Act shall not apply to any municipality which is now involved, or which within sixty (60) days from the effective date of this Act becomes involved, in litigation in any district court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, in which litigation the validity of the organization, incorporation or creation of such municipality is attacked; and this Act shall not apply to any municipality involved in formal proceedings now pending before such municipality's com-

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

mission or council in which proceedings the organization or creation of such municipality is attacked. Provided, further, that this Act shall not apply to any municipality which has heretofore been declared invalid by a court of competent jurisdiction of this State or which may have been established and which was later returned to its original status. Acts 1955, 54th Leg., p. 808, ch. 298.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 974a. Platting and recording subdivisions or additions

**Approval of plat or plan by Planning Commission or governing body; record**

Sec. 3. That it shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act,<sup>1</sup> if said city has a City Planning Commission and if it has no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If such land lies outside of and within five (5) miles of more than one (1) city affected by this Act, then the requisite approval shall be by the City Planning Commission or governing body, as the case may be, of such of said cities having the largest population; provided, however, that the governing body of any city having the largest population may enter into an agreement with any other city or cities affected, or the governing body of the largest city may enter into an agreement with any other city within five (5) miles conferring the power of approval within stated portions of the area upon such other city; but any such agreement shall be revocable by either city at the end of twenty (20) years after the date of the agreement or at the end of such shorter period of time as may be agreed upon. A copy of any such agreement shall be filed with the County Clerk, and during the time the agreement continues in force he shall not receive or record any such plan, plat or replat unless it has been approved by the City Planning Commission or the governing body, as the case may be, of the city or cities upon which the power of approval is conferred by the agreement. Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefor to and file a copy with the Commission or governing body herein authorized to approve same, which shall act upon same within thirty (30) days from the filing date. If said plat be not disapproved within thirty (30) days from said filing date, it shall be deemed to have been approved and a certificate showing said filing date and the failure to take action thereon within thirty (30) days from said filing date, shall on demand be issued by the City Planning Commission or Governing Body, as the case may be, of such city, and said certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. If the plan, plat, or replat is approved, such Commission or governing body shall indicate such finding by certificate endorsed thereon, signed by the Chairman or presiding officer of said Commission or governing body and attested by its Secretary, or signed by a majority of the members of said Commission or Governing Body. Such Commission or governing body shall keep a record of such applications and the action taken thereupon, and upon demand of the owners of any land affected, shall certify its reasons for the action taken in the matter. As amended Acts 1955, 54th Leg., p. 851, ch. 317, § 1.

<sup>1</sup> This article and Vernon's Ann.P.C. art. 427b.  
Emergency. Effective May 24, 1955.

**Art. 974d—4. Cities of 5,000 or less; validation of incorporation; areas and boundary lines; governmental proceedings and acts**

Section 1. All cities and towns in Texas of five thousand (5,000) inhabitants or less, heretofore incorporated, or attempted to be incorporated under any of the terms and provisions of the General Laws of the State of Texas, whether under the aldermanic or commission form of government, and which are now functioning or attempting to function as incorporated cities and towns, are hereby in all respects validated as of the date of such incorporation, or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or other incorporation proceedings may not have been in accordance with law, or by reason of a failure to properly define the limits of said city or town.

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

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

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

Sec. 4a. The provisions of this Act shall in no wise affect or validate the incorporation or attempted incorporation of any city or town where the election held for such incorporation or attempted incorporation was held prior to January 1, 1953.

Sec. 5. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of the incorporation or extension of boundaries or any of the Acts or proceedings hereby validated if such litigation is ultimately determined against the legality thereof. Acts 1954, 53rd Leg., 1st C.S., p. 98, ch. 47.

Emergency. Effective April 22, 1954.

Section 6 of the act of 1954 provided constitutional, the remaining portions that if any word, etc., was declared un- should remain in full force.

**Art. 974d—5.** Cities and towns of 15,000 or less; validation of incorporation; boundary lines; governmental proceedings; exceptions

Section 1. All cities and towns in this State of fifteen thousand (15,000) inhabitants or less, heretofore incorporated or attempted to be incorporated under the General Laws of Texas, whether under the aldermanic form of government or the commission form of government, and which have functioned as incorporated cities and towns since the date of such incorporation or attempted incorporation, are hereby in all respects validated as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or other incorporation proceedings may not have been in accordance with law.

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

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

Sec. 4. This Act shall not apply to any municipality which is now involved, or which within sixty (60) days from the effective date becomes involved, in litigation in any District Court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, in which litigation the validity of the organization, annexation, incorporation or creation of such municipality is attacked; and this Act shall not apply to any municipality involved in formal proceedings now pending before such municipality's commission or council in which proceedings the organization or creation of such municipality is attacked. Provided further, that this Act shall not apply to any municipality which has heretofore been declared invalid by a court of competent jurisdiction of this State or which may have been established and which was later returned to its original status, nor shall this Act apply to any annexation or incorporation proceedings which have heretofore been declared valid or invalid by a court of competent jurisdiction of this State before the effective date of this Act. Acts 1955, 54th Leg., p. 1175, ch. 454.

Emergency. Effective June 15, 1955.

#### CHAPTER FOUR—THE CITY COUNCIL

<p><b>Art.</b>  <b>1015c—1.</b> Recreational programs and facilities; establishment by counties, cities and towns, jointly or singly, authorized [New].</p>	<p><b>1015j.</b> Appropriations for advertising and promoting growth and development of general law cities [New].</p>
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**Art. 1015c—1.** Recreational programs and facilities; establishment by counties, cities and towns, jointly or singly, authorized

##### Purpose

Section 1. The purpose of this Act is to promote the establishment, operation and support of public recreational facilities and programs by local government units of this State either singly or jointly.



**Definitions**

Sec. 2. As used in this Act:

(a) The term "governing body" means any city council, city commission, county commissioners court, or other body acting in lieu thereof.

(b) The term "governmental unit" means any city, town, or county.

(c) The term "board" means any board, commission, committee or council appointed or designated to carry out the provisions of this Act.

**Recreational Powers**

Sec. 3. Any governmental unit may establish, provide, acquire, maintain, construct, equip, operate, and supervise recreational facilities and programs, either singly or jointly in cooperation with one (1) or more other governmental units.

**Elections**

Sec. 4. Any governmental unit may submit the question of whether it shall exercise the powers conferred in Section 3 to an election of the qualified electors of such unit.

**Finances**

Sec. 5. Any governmental unit may pay costs and expenses of carrying out the provisions of this Act from the general revenues of the unit, or from other revenues now provided by law for the establishment or the operation of parks and recreational facilities. Governmental units jointly exercising the powers conferred in Section 3 may agree upon the manner and method of division of costs and expenses.

**Administration**

Sec. 6. A governing body may administer and operate recreational facilities and programs through a bureau or department of recreation or through a board established jointly with another governing body. The Board shall adopt and promulgate rules and regulations for administration and operation of recreational facilities and programs in its charge subject to the approval of the establishing governing bodies.

**Acceptance of gifts**

Sec. 7. Any governmental unit may accept any grant, lease, loan or devise of real estate, or gift or bequest of money, either principal or income, or any other personal property for either temporary or permanent use for the establishment, operation, or support of public recreation facilities and programs.

**Limitations**

Sec. 8. This Act shall be cumulative as to all laws, ordinances, and charter provisions relating to public recreation and parks. Acts 1955, 54th Leg., p. 1179, ch. 458.

Effective 90 days after June 7, 1955, date of adjournment.

Section 9 of the Act of the 1955 was a severability clause.

**Title of Act:**

An Act concerning public recreational programs and facilities; authorizing their establishment by counties, cities and towns acting singly or jointly; providing a saving clause; and declaring an emergency. Acts 1955, 54th Leg., p. 1179, ch. 458.

**Art. 1015g. Toll bridges over international boundary rivers, powers respecting**

**Acquisition**

Section 1. Any city or town in this State now or hereafter incorporated under the General Laws of the State, or incorporated and acting under its Special Charter or Home Rule Charter, and having located within

its corporate limits or outside its corporate limits but within a distance of fifteen (15) miles from such corporate limits thereof, a toll bridge over a river between the State of Texas and the Republic of Mexico shall have power to acquire any such toll bridge, with its rights and franchises and appurtenant properties, by purchase thereof from the owner or owners thereof; either by purchase of the properties, as such, or, if such toll bridge is owned by a private corporation, either by purchase from it of the properties, as such, or by purchasing the capital stock of such corporation from the owner or owners of such stock, either all of the outstanding capital stock of such corporation or a sufficient amount thereof as required under the law for the dissolution and liquidation of such corporation, and immediately liquidating such corporation, paying the debts and obligations or liabilities thereof, and winding up its business and affairs, and causing conveyance of its properties to said city or town, taking the Title to such stock either in the name of such city or town or in the name of a trustee therefor, and voting or causing such stock to be voted to carry out and accomplish such purposes, and all in such manner and to such effect as to vest title to such toll bridge, with its rights and franchises and appurtenant properties, in such city or town; and to thus purchase and acquire any such properties or stock of such corporation, from the owner or owners thereof, for such price, upon such terms and conditions, and upon such covenants and agreements in respect thereto, and to make and enter into such contracts and agreements with such owner or owners therefor, in respect thereto, and to accomplish the purposes of this Act, as may be agreed upon by and between such owner or owners and the Governing Body of any such city or town, the action of the latter being expressed by Ordinance, all as consistent with and subject to the provisions of this Act. As amended Acts 1955, 54th Leg., p. 551, ch. 175, § 1.

#### **Parks, recreation grounds, camps, quarters, accommodations and facilities**

Sec. 5. Any such city or town acquiring any such toll bridge shall have the power, in connection with the maintenance and operation thereof, to acquire lands and a site or sites for the purpose either within or without the corporate limits of such city or town, within territory adjacent to said city or town or to said toll bridge, and to construct, maintain, and operate parks, recreation grounds and facilities, camps, quarters, accommodations and facilities, for the use and convenience of the public; and to fix and to enforce and collect fees, rentals, and charges, for the use thereof, which shall be just and reasonable and non-discriminatory, as determined by and fixed from time to time by the Governing Body of such city or town; and to make and enforce reasonable rules and regulations therefor; and if such toll bridge is located within the corporate limits of the city, to manage, control, govern, police and regulate the same, and if the toll bridge is situated outside of the corporate limits of the city to manage, control, govern, police and regulate the same to the same extent as if it were located within the corporate limits of the city. As amended Acts 1955, 54th Leg., p. 551, ch. 175, § 2.

#### **Application of other laws**

Sec. 13. The provisions of Articles 1111 to 1118, inclusive, of the Revised Civil Statutes of Texas of 1925, as amended, and of the Bond and Warrant Law of 1931, as amended,<sup>1</sup> shall apply to and govern the purchase of any such properties by any such city or town, in pursuance of the provisions of this Act, and the issuance, sale, and delivery of any such bonds, and manner of securing the payment thereof, and in respect to the enforcement of such obligations, and the rights and remedies of the owners and holders of such bonds or of any person acting in their behalf, in respect

to the maintenance and operation of the properties acquired in pursuance of this Act, and in respect to the accomplishment of all the purposes of this Act; except as herein specifically provided for and prescribed by the terms of this Act; and except that none of the limitations and restrictions contained in or imposed by Sections 2, 3, and 4 of said Bond and Warrant Law of 1931, as amended, shall apply to or govern any such purchase of any such properties or issuance of any such bonds by any such city or town; and except that, as is hereby expressly provided, any such city or town may purchase any such properties and issue any such bonds, and may use such bonds or the proceeds of the sale thereof for the purchase of any such properties or to accomplish any of the purposes of this Act, by action of its Governing Body as expressed by Ordinance authorizing and effecting same, and without the necessity of any referendum, and without the necessity of calling or holding any election to authorize any such action, and without the necessity of giving or publishing any notice of intention to acquire any such properties or to issue any such bonds, and without the necessity of advertising or calling for any competitive bids in respect thereto; and provided that in the event there is any conflict between the provisions of this Act and the provisions of said Articles 1111 to 1118, inclusive, Revised Civil Statutes of Texas of 1925, as amended, or the provisions of said Bond and Warrant Law of 1931, as amended, or the provisions of any other applicable Act or law, the provisions of this Act shall control; and, in all events, all specific provisions of this Act shall control. As amended Acts 1955, 54th Leg., p. 551, ch. 175, § 2.

<sup>1</sup> Article 2368a.

#### **Approval of bonds by Attorney General; incontestability**

Sec. 13(a). After any such bonds are authorized by the governing body of any such city, the bonds and the record relating to their issuance shall be submitted to the Attorney General for examination by him. If such bonds shall have been issued in accordance with the Constitution and Laws of the State they shall be approved by the Attorney General and shall be registered by the Comptroller of Public Accounts, and after such approval and registration the bonds shall be incontestable. Added Acts 1955, 54th Leg., p. 551, ch. 175, § 3.

#### **Bonds to repair, improve, reconstruct or replace toll bridge authorized**

Sec. 13(b). After any such city or town shall have acquired a toll bridge as defined and used in Section 4 of Chapter 258, Acts of the Regular Session of the Forty-ninth Legislature (Vernon's Texas Civil Statutes, Article 1015g) it may in the manner prescribed in Section 13 thereof issue and deliver bonds for the purpose of repairing or improving or reconstructing or replacing the toll bridge, or for any one or more of said purposes, subject only to the restrictions contained in the ordinance authorizing the original issue of toll bridge revenue bonds and in the Deed of Indenture securing such original issue of bonds. Added Acts 1955, 54th Leg., p. 551, ch. 175, § 3.

#### **Revenue bonds**

Sec. 13(c). Revenue Bonds only may be issued to accomplish the purposes of the Act amended hereby. Such bonds shall not constitute indebtedness of any such city or town but shall be a charge only against the pledged revenues, and against the property comprising the toll bridge if a lien is given on such property. And every such bond shall contain substantially this clause: "The holder hereof shall never have the right to

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

demand payment of this obligation out of any funds raised or to be raised by taxation." Added Acts 1955, 54th Leg., p. 551, ch. 175, § 3.

Emergency. Effective May 7, 1955.

Section 4 of the amendatory act of 1955 provided that nothing herein shall be construed as preventing the governing body of such city from calling an election to authorize the issuance of revenue bonds for any one or more of the purposes herein provided, and if such election is called, it

shall be held in accordance with and subject to the provisions of Chapter 1 of Title 22, Revised Civil Statutes of Texas, as amended, and such bonds may be issued if the proposition is approved by a majority of the qualified property taxpaying voters who have duly rendered their property for taxation voting at said election.

#### Art. 1015j. Appropriations for advertising and promoting growth and development of general law cities

Each city incorporated or operating under the general laws of this State may appropriate from the General Fund of the city an amount not exceeding Five Cents (5¢) on the One Hundred Dollars (\$100) assessed valuation, for the purpose of advertising and promoting the growth and development of such city; providing that before the governing body of any city may appropriate any sums for such purpose, the qualified property taxpaying voters of the city shall, by a majority vote at an election, authorize the governing body of the city to thereafter appropriate not to exceed Five Cents (5¢) on the One Hundred Dollars (\$100) assessed valuation. Acts 1955, 54th Leg., p. 949, ch. 370, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Similar law applicable to home rule cities and counties, see art. 2352d.

#### Title of Act:

An Act authorizing general law cities to make appropriations for advertising and promoting their growth and development; requiring an election; and declaring an emergency. Acts 1955, 54th Leg., p. 949, ch. 370.

## CHAPTER TEN—PUBLIC UTILITIES

### 1. CITY OWNED UTILITIES

Art.

1109f. Validation of contracts for water supply [New].

1109g. Water supply contracts with persons, firms or corporations [New].

### 2. ENCUMBERED CITY SYSTEM

Art.

1118n-6. Validating; bonds, bond elections, and proceedings for utility systems in any city or town; home-rule city elections

for disposition of city owned plant, utility or business [New].

1118n-7. Redemption and refunding of outstanding waterworks revenue bonds; additional revenue bonds [New].

1118t. Additional revenue bonds; issuance without election [New].

1118u. Additional revenue bonds; waterworks, sewers and swimming pool [New].

### 1. CITY OWNED UTILITIES

#### Art. 1109f. Validation of contracts for water supply

Section 1. This Act shall be applicable to any contract heretofore executed by and between an "Eligible City" and an "Eligible District" as the terms are defined in this Act. An "Eligible City" is a city having a population in excess of two hundred thousand (200,000) according to the latest Federal Census. An "Eligible District" is one created under Article XVI, Section 59 of the Constitution, which has contracted to furnish water supply service to a city or cities.

Sec. 2. Any water supply contract heretofore executed by and between an Eligible City and an Eligible District obligating the district to

convey and make available for delivery water which the city will have the right to use as a supplemental supply, and for which service the city is obligated to make payments from the revenues of its waterworks system and which imposes no obligation on the tax resources of the city, is hereby validated in all things whether or not an election has been held in the city on the question of authorizing or approving such contract.

Sec. 2a. This law shall not apply to any contract by and between an Eligible City and an Eligible District as referenced above, which is now involved in litigation in any District Court of this State, Court of Civil Appeals, or the Supreme Court of Texas in which litigation the validity of any Eligible District or the validity of any contract to furnish water by and between the above referenced parties is attacked. Acts 1954, 53rd Leg., 1st C.S., p. 68, ch. 29.

Emergency. Effective April 22, 1954.

**Title of Act:**

An Act validating contracts for supplemental water supply heretofore executed by and between Eligible Cities and Eligible Districts, as defined herein, when the payments under any such contract are to be made from the water revenues of such

City, imposing no tax obligation on the City; enacting other provisions related to the subject; providing the Act shall not apply to any contract between any Eligible City and District involved in litigation; and declaring an emergency. Acts 1954, 53rd Leg., 1st C.S., p. 68, ch. 29.

**Art. 1109g. Water supply contracts with persons, firms or corporations**

Section 1. Any city or town whether operating under the general law or under its special or home rule charter, which owns and operates its water distribution system, is authorized to enter into a contract for such period of time, with such renewal and extension privileges as may be prescribed therein, with any person, firm or corporation (when operating without profit) under the terms of which such supplier will make available for delivery to and use by the municipality all or part of the raw or treated water to be used in or for the distribution system of such municipality.

Sec. 2. If any such contract which is to be effective for a longer period than one (1) year involves an obligation by the municipality to pay all or any part of the consideration for such service out of funds raised or to be raised by taxation, or if it involves the leasing to the supplier or the right to operate a major part of any existing water production or supply facilities belonging to the municipality, or if the contract restricts the municipality from obtaining water from any other supplier, such contract shall not become effective unless and until an election shall have been called, held and carried on the proposition to approve or authorize such contract. In instances where such contract shall be payable solely from the revenues of the municipality's water system, not involving any obligation against its taxing power and not conferring on the supplier the right to lease or to operate a major part of the municipality's existing water production or supply facilities, and if the contracts do not restrict the municipality from obtaining water from any other supplier, no election shall be necessary. However, within its discretion the governing body of the municipality may order an election on the question before approving any such contract. Any election under this Act shall be held in accordance with the provisions of Chapter 2 of Title 22 of the Revised Civil Statutes of Texas insofar as such provisions are applicable.

Sec. 3. When any contract made under this law provides for payments solely out of water system revenues of such municipality the money thus required to be paid by the municipality shall constitute an operating expense of the City's water system, and such municipality shall

fix and maintain rates and charges for services rendered by such water system as will be sufficient to pay the maintenance and operation expenses thereof as contemplated by Article 1113, Revised Civil Statutes, as amended, and provide for the payment of principal of and interest on any revenue bonds of such municipality which shall be payable from its water revenues.

Sec. 4. As is customary under water supply contracts made between cities and towns on the one part and districts and authorities on the other part under Chapter 342, Acts of the Regular Session of the Fifty-first Legislature,<sup>1</sup> the service to be rendered by the supplier may include among other items the holding of water available for and the readiness to serve the water needs of such municipality, and the charge to be effective under such contract may include compensation for such item of service. Acts 1954, 53rd Leg., 1st C.S., p. 91, ch. 41.

<sup>1</sup> Article 1109e.

Emergency. Effective April 22, 1954.

**Title of Act:**

An Act authorizing cities and towns to make water supply contracts with persons, firms or corporations; prescribing the circumstances under which any such contract shall be approved or authorized at an election and the procedure for such election; declaring payments under any such

contract to be made by the municipality from water system revenues to be operating expenses of such system; prescribing duties of any such municipality as to fixing and maintaining of sufficient rates for its water service; enacting other provisions related to the subject; and declaring an emergency. Acts 1954, 53rd Leg., 1st C.S., p. 91, ch. 41.

## 2. ENCUMBERED CITY SYSTEM

### Art. 1118n—5. Redemption of outstanding revenue bonds and issuance of new bonds

#### Refunding bonds to pay outstanding revenue bonds

Sec. 1a. To provide sufficient money for the purposes stated in Section 1 of the Act hereby amended, a city is authorized to issue refunding bonds and sell them for cash, in which event a certified copy of the ordinance so providing shall be transmitted to the Comptroller of Public Accounts and he shall register such refunding bonds without cancellation of the underlying bonds and deliver them as provided in the ordinance. Such refunding bonds shall bear interest at a rate not to exceed five per cent (5%) per annum, evidenced by coupons, mature serially in not to exceed forty (40) years and be signed as other city bonds. If the bonds thus to be refunded are secured by a deed of trust or other encumbrance in which a trustee is named, the money for the payment of the underlying bonds, interest, stipulated premium, if any, and payment charges, may, in the discretion of the governing body of the city, be deposited with such trustee. Such refunding bonds and any additional bonds may be combined into a single issue. Refunding bonds and any additional bonds may be secured in any manner authorized by Article 1111, Revised Civil Statutes, as amended. Such refunding bonds may be issued without an election. Refunding bonds shall not be sold for cash in lieu of being exchanged unless all of the bonds to be paid therefrom become due or optional for redemption within three (3) years from the date of the proposed refunding bonds. If the underlying bonds are optional for redemption within said period of time, the city shall call them in the manner therein provided. Added Acts 1955, 54th Leg., p. 972, § 1.

Emergency. Effective May 28, 1955.

Tex.St.Supp. '56—12

**Art. 1118n—6. Validating; bonds, bond elections, and proceedings for utility systems in any city or town; home-rule city elections for disposition of city owned plant, utility or business**

Section 1. All bonds heretofore authorized by any incorporated city, town or village which pledge the revenues of water, sewer, electric, or gas system, or the revenues of parking meters, auditorium or auditoriums, swimming pool or pools, or any combination of the revenues of such systems or sources, and any and all proceedings pertaining to the authorization and issuance thereof, are hereby validated, ratified, approved and confirmed notwithstanding any lack of statutory or general authority of such city, town or village or the governing body thereof to authorize such bonds and make such pledge of revenue or revenues, and notwithstanding the fact that the proposition as submitted to the voters might have been defective or insufficient or the fact that the election might not have been ordered and held in all respects in accordance with the provisions of the statutes or General Laws, and irrespective of the sufficiency or existence of the pledge of the revenues in the voted proposition; and such bonds, when approved by the Attorney General and registered by the Comptroller of Public Accounts of the State of Texas, and sold and delivered, shall be binding, legal, valid and enforceable obligations against the revenues so encumbered, and the bonds shall be uncontestable. Provided, however, that this Act shall apply only to such bonds as were authorized at an election or elections wherein a majority of the qualified property taxpaying voters who had duly rendered their property for taxation voted in favor of the issuance thereof.

Section 1-A. All elections heretofore called or held in any home rule city prior to the effective date of this Act, for the purpose of authorizing the lease, sale, or other disposition of any city owned plant, utility or business or any part thereof in attempted compliance with Article 1112 or Article 1268, Revised Civil Statutes of Texas, 1925, as amended, are hereby validated, ratified, confirmed and approved notwithstanding the fact that the proposition submitted to the voters might have been defective or insufficient, or the fact that the election might not have been ordered and held in all respects in accordance with the provisions of the Home Rule Charter of such city or the General Laws of this state, including those hereinabove particularly mentioned. Provided, however, that this Act shall only apply to those instances in which the lease, sale or other disposition of any city owned plant, utility or business, or any part thereof, were authorized at an election wherein a majority of the qualified voters of such city had voted in favor thereof.

Sec. 2. This Act shall not be construed as validating any such proceedings or bonds issued or to be issued, the validity of which is contested or under attack in any suit or litigation pending at the time this Act becomes effective, if such suit or litigation is ultimately determined against the validity of the proceedings. Acts 1955, 54th Leg., p. 600, ch. 206.

Emergency. Effective May 13, 1955.

**Art. 1118n—7. Redemption and refunding of outstanding waterworks revenue bonds; additional revenue bonds****Eligible cities**

Section 1. Any city, including any city operating under a Home Rule Charter, having outstanding water revenue bonds payable from the net revenues of its waterworks system, the net revenues of which system for

each of the two (2) fiscal years next preceding the date when it avails itself of this law are equal to two hundred per cent (200%) of the requirements for the payments of interest on and principal of such outstanding revenue bonds for the year when such requirements are the greatest shall, under the provisions of this Act, be considered hereinafter as an "Eligible City."

**Negotiable tax-supported general obligation bonds, issuance;  
tax levy to pay**

Sec. 2. An Eligible City, through its governing body may, for the express purpose of providing funds for the refunding or redemption of its outstanding water revenue bonds payable from the revenues of its waterworks system, issue negotiable tax-supported general obligation bonds, pledging therefor the full faith and credit of such city, in an aggregate amount not greater than the aggregate principal amount of such outstanding water revenue bonds, and the total interest thereon accrued to the final date of redemption of each such outstanding water revenue bond; provided, however, that if such Eligible City shall issue such negotiable tax-supported general obligation bonds under the authority of this Act, it shall make provision for the payment of such bonds by annual levies of ad valorem property taxes to pay the interest thereon and to provide a sinking fund to pay them at maturity; and provided, further, that no such bonds shall be issued under the authority of this Act unless the issuance thereof, and the levy of annual ad valorem property taxes to provide for the payment of the interest thereon and to create a sinking fund with which to pay them at maturity, shall have been authorized at an election called and conducted under the provisions of Chapter I, Title 22 of the Revised Civil Statutes of Texas, 1925, and laws amendatory thereof and supplementary thereto, which shall govern the issuance of all such bonds under the authority herein given.

**Subrogation to rights of holders of water revenue bonds refunded**

Sec. 3. Any Eligible City, which may provide funds for the refunding or redemption of its outstanding water revenue bonds in the manner prescribed in Section 2 hereof, shall thereupon become subrogated to the rights of the holders of the water revenue bonds refunded with funds thus provided, in so far as payments from the revenues of its waterworks system are concerned, and be entitled to have paid into its general fund from such revenues like amounts as would have been payable on the water revenue bonds thus refunded or redeemed, had the same remained outstanding; but such rights on the part of such Eligible City shall in nowise limit any encumbrance on the properties of its water system securing any other water revenue bonds secured by such encumbrance, nor shall such encumbrance in anywise inure to the benefit of such Eligible City or in anywise be enforceable by it, but shall remain in full force for the sole benefit of the holders of any unpaid water revenue bonds of such city, whose rights to enforce such encumbrance shall remain superior to the rights of such city to payment from the revenues of its water system as hereinabove prescribed; nor shall any of the provisions of this Section of this Act be deemed as affecting the right of any such Eligible City to payments from such revenues from its water system into its general fund as might be provided by the terms of any contract under which its water revenue bonds may be issued, and any such payments shall be in addition to payments hereinabove prescribed in this Section.



**Refinancing or redemption agreements; additional water system revenue bonds; referendum**

Sec. 4. An Eligible City may also enter into such agreements with the holders of its outstanding water revenue bonds as may be necessary to effect a refunding or refinancing or redemption of such outstanding bonds, or any part thereof, and further in aid of such refunding or refinancing or redemption, may enter into agreements with such other persons, firms or corporations as may be deemed advisable by any such city. All water system revenue bonds issued pursuant to this Act, other than water system refunding revenue bonds, and an additional amount of new revenue bonds not exceeding the total amount of the then outstanding revenue bonds, shall be sold in accordance with the charter provisions of any such Eligible City. It may issue its water system refunding revenue bonds in the manner authorized by Chapter 250, Acts, 1949, Fifty-first Legislature, as amended by Chapter 23, Acts, 1951, Fifty-second Legislature,<sup>1</sup> and with or without an election, as such City shall determine. Such City may, from time to time, issue additional water system revenue bonds for the purpose of extending or improving said water system or for the purpose of acquiring privately or publicly owned water systems or water system facilities situated in or adjacent to such city, or for the purpose of acquiring an additional water supply by purchase or construction or by contribution to the construction of a reservoir by the Federal Government or any agency thereof and, except as otherwise provided in this Act, such bonds shall be issued in accordance with the provisions of Articles 1111 to 1118 of the Revised Civil Statutes of Texas, as amended, and said additional bonds, when issued, shall be on a parity and of equal dignity with any water system refunding bonds issued by such city and shall be secured by a first lien on and pledge of the net revenues of said system, and, in the discretion of such city, may be further secured by a first mortgage on the physical properties constituting said system; provided, however, that in the event that all of said outstanding water revenue bonds cannot be obtained for refunding or redemption, then such new revenue bonds and any refunding bonds which may be authorized and issued hereunder shall constitute a first charge on the income and properties of the water system of said city, subject only to any payments which must be made from such income as required by the provisions of Sections 5, 6, 7 and 12, of this Act; provided, however, that before any additional water system revenue bonds, as herein authorized, are issued, they shall be authorized by a majority vote of the duly qualified taxpaying voters of such an Eligible City at an election ordered and held for that purpose, which election shall be ordered and held in the same manner as required by law for holding elections to authorize the issuance of tax-supported bonds. The right of the holders of any outstanding water revenue bonds not so refunded to have any deficiency paid out of such income shall remain unimpaired.

<sup>1</sup> Article 1111b.

**Deposit in state treasury of outstanding water system revenue bonds**

Sec. 5. An Eligible City shall have the right to deposit in the office of the State Treasurer of the State of Texas a sum of money equal to the principal amount of its outstanding and unpaid water system revenue bonds that cannot be obtained for refunding or redemption plus the amount of interest which will accrue on each of said bonds calculated to the date on which it is to become due or the date on which it is to become optional for prior redemption, or on which it may be redeemed, and

the contract premium, if any, and, concurrently with such deposit, shall pay to the State Treasurer for his services and to reimburse him for his expenses in performing his duties under this Act a sum of money equivalent to one-eighth ( $\frac{1}{8}$ ) of one per cent (1%) of the principal amount of said bonds, and one-fourth ( $\frac{1}{4}$ ) of one per cent (1%) of the interest to accrue on all said bonds, and an additional amount of money sufficient to pay the charges of the bank or trust company at which the principal and interest on said bonds are payable for its services in paying such principal and interest. The State Treasurer may rely on a certificate by such city as to the amount of the charges made by such bank or trust company. At the same time, such city shall deliver to the State Treasurer a certified copy of the ordinance authorizing such water system revenue bonds, or a certified excerpt therefrom, showing clearly the amounts and the date or dates on which interest is due on such bonds, the date when the principal matures, and the name and address of the bank or trust company at which such principal and interest must be paid. It shall be the duty of the State Treasurer to accept such deposits, payments and instruments, and safely to keep and use such money for the purposes set forth in this Act, and for no other purpose, and no part of such money, except that in payment for his services and to reimburse his expenses in performing such services, shall be used by or for the State of Texas, or for any creditor of the State of Texas, nor shall such money be commingled with any other money.

#### State treasurer's duties

Sec. 6. It shall be the duty of the State Treasurer not less than fifteen (15) days before such interest is due according to the tenor and effect of said bonds, and the principal becomes due, to forward by registered mail to the bank or trust company where the principal of and interest on such bonds are payable, an amount sufficient to pay such principal and interest, and to pay the service charges of such bank or trust company. The State Treasurer shall notify such bank or trust company to forward to him bonds and coupons thus canceled, and after he shall have made a record of their payment and cancellation shall forward such canceled bonds and coupons to such city. When an Eligible City shall have deposited and paid into the office of the State Treasurer the money and shall have done the things required under Section 3 it shall have authority to issue additional revenue bonds and refunding bonds as permitted in Section 2 hereof.

#### Rights of holders to surrender bonds

Sec. 7. At any time after an Eligible City shall have made the deposits and payments required under Section 5 of this Act, the holder of any such bond, irrespective of its maturity date, shall have the right to surrender such bond to the State Treasurer and shall receive therefor a sum equivalent to all money then remaining on deposit with the State Treasurer, made on account of such surrendered bond; whereupon such bond shall be duly canceled by the State Treasurer and delivered or forwarded to such city.

#### Subsequent issuance of additional revenue bonds

Sec. 8. Regardless of any provisions to the contrary contained in the law or laws under which such refunding bonds and new revenue bonds shall be issued, so long as any of said bonds are outstanding no additional revenue bonds secured by a pledge of the revenues of the system shall be issued thereafter except in accordance with limitations prescribed in the ordinance or deed of trust authorizing and securing the revenue bonds first to be issued by such city pursuant to this Act; but it shall be lawful for such city to authorize and issue additional or sub-

sequent revenue bonds provided that they are issued in all respects in conformity with and subject to limitations contained in such ordinance or deed of trust.

**Withdrawal of deposits from state treasury**

Sec. 9. After an Eligible City has made the deposits and payments required under Section 5, at any time it may withdraw from the State Treasury the amount of money, both principal and interest, deposited on account of any bond by exhibiting to the State Treasurer said bond duly canceled, whereupon the State Treasurer shall make a proper record of the payment and cancellation of such bond.

**Approval of record and bonds by Attorney General; registration; incontestability**

Sec. 10. When an Eligible City shall have authorized the issuance of its revenue bonds, and the record pertaining thereto shall have been presented to the Attorney General of Texas, it shall be the duty of the Attorney General to approve such record and thereafter when such new revenue bonds are presented to him, to approve such bonds subject to the making of the deposit provided in Section 5 hereof. After such record and bonds have been approved by the Attorney General and after such bonds have been registered in the office of the Comptroller of Public Accounts, they shall be held for all purposes to be fully negotiable instruments and shall, according to their tenor and effect, be valid and binding revenue obligations of such city and shall be incontestable for any cause from and after such registration.

**Bond of state treasurer**

Sec. 11. The bond or bonds given by the State Treasurer under Article 4368 to secure the faithful execution of the duties of his office (except such special bonds as may have been given to protect funds of the United States Government) and any and all other bonds which may have been given by the State Treasurer shall be construed as protecting all moneys and securities deposited or placed with the State Treasurer under this Act.

**Cancellation of bonds; validation of issuance and sale of cancelled bonds**

Sec. 12. Whenever an Eligible City has purchased, from the holders thereof, any of its outstanding water system revenue bonds with money taken from its water system revenue bond interest and sinking fund, or from its Waterworks Bond and Interest Redemption Account, and whenever such bonds have been thereby canceled through error or otherwise, and whenever the governing body of any such city has adopted an ordinance authorizing the issuance or sale of any such canceled bonds, the proceedings authorizing the issuance or sale of such canceled bonds are hereby validated and confirmed, and any such canceled bonds shall constitute valid and legally binding obligations of any such city in accordance with their terms, and each such Eligible City is authorized to do all things necessary to refund or redeem any such canceled bonds, under the authority of this Act.

**Act cumulative**

Sec. 13. This Act is cumulative of all other Acts on the subject, but to the extent that its provisions are inconsistent or in conflict with the provisions of other laws, or the provisions of the Charter of any Eligible City, the provisions of this Act shall be controlling. Chapter 541, Acts, 1949, Fifty-first Legislature,<sup>1</sup> shall remain unimpaired by the provisions of this Act.

<sup>1</sup> Article 1118n—5.

**Partial invalidity**

Sec. 14. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. Acts 1955, 54th Leg., p. 854, ch. 320.

Effective 90 days after June 7, 1955 date of adjournment.

**Art. 1118u. Additional revenue bonds; waterworks, sewers and swimming pool**

Section 1. This Act shall be applicable to any city which has heretofore issued bonds payable from and secured by a pledge of revenues of its waterworks system, sewer system and swimming pool, retaining therein the right to issue additional parity bonds to be payable from and secured by such revenues, and which has held or hereafter holds an election resulting favorably to the issuance of additional bonds to be payable from and secured by a pledge of waterworks system, sewer system and swimming pool revenues.

Sec. 2. Any city to which this Act is applicable is authorized to issue the bonds authorized or to be authorized by such election and to secure them with a pledge of the net revenues of the waterworks and sewer system, and, in the discretion of the governing body of the city, the bonds may be additionally secured by a pledge of the net revenues of the swimming pool. Such bonds, when approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts, shall constitute valid and binding special obligations of such city. Acts 1953, 53rd Leg., p. 98, ch. 64, as amended Acts 1955, 54th Leg., p. 794, ch. 287, § 1.

Emergency. Effective May 20, 1955.  
 Title of Act:

An Act applicable to any city which has issued waterworks and sewer system and swimming pool revenue bonds reserving the right to issue additional bonds secured by and payable from revenues of the systems and swimming pool and which has voted additional revenue bonds to be so payable and secured; authorizing the issuance, sale and delivery of such additional bonds pay-

able from and secured by revenues of the waterworks and sewer systems or revenues of the waterworks and sewer systems and the swimming pool; providing that when such additional bonds are approved by the Attorney General and registered by the Comptroller of Public Accounts they shall constitute valid and binding obligations of such city; enacting other provisions relating to the subject; and declaring an emergency. Acts 1953, 53rd Leg., p. 98, ch. 64.

**CHAPTER THIRTEEN—HOME RULE**

Art.

1174a—3. Validation of amendment of charter; elections and assumption of office; acts of governing boards [New].

**Art. 1174a—3. Validation of amendment of charter; elections and assumption of office; acts of governing boards**

Section 1. In any instance where a home rule city has previously held an election for the purpose of adopting an amendment or amendments to an existing home rule charter, and copies of the proposed charter amendment or amendments were mailed to every qualified voter in the

city as prescribed by law, and a majority of the qualified voters of said city voting at said election voted in favor of adopting such amendment or amendments, and such city did not publish the proposed amendment or amendments after calling said election as required by *Turner v. Lewie*, 201 S.W.2d 86, is, and such proceedings are, hereby in all things validated, ratified and confirmed as if such notice had been published. All elections held under the provisions of said charter, as amended, for the purpose of electing members of the governing body of the city and the assumption of office by those persons receiving the highest votes at such election and all elections thereafter called and/or held to authorize the issuance of bonds by such city, are hereby in all things validated. All acts of said officers and officials of any such city are hereby in all things validated.

Sec. 2. This Act shall not be construed as validating the adoption of any charter amendment, or the charter as so amended, if the validity of the charter amendment proceedings, or of the charter, are involved in litigation on the effective date of this Act in a court of competent jurisdiction of this State and such litigation is ultimately determined against the validity thereof.

Sec. 3. If any word, phrase, clause, sentence, or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence, or part of this Act. Acts 1955, 54th Leg., p. 28, ch. 20.

Emergency. Effective March 7, 1955.

**Title of Act:**

An Act validating certain proceedings of home rule cities amending their home rule charters; validating the election proceedings whereby officials of such city have taken office; validating certain acts of such governing board of such city; provid-

ing that the Act shall not be applicable where litigation is pending at the time of the effective date of the Act where litigation is ultimately determined against the validity of such amendment; providing a savings clause; and declaring an emergency. Acts 1955, 54th Leg., p. 28, ch. 20.

**CHAPTER FOURTEEN—CITIES ON NAVIGABLE STREAMS**

1187a—2. Home rule cities owning portion of bridge over Rio Grande River financed by revenue

bonds; additional bonds for acquisition, construction, repair and improvement [New].

Art. 1187a—2. Home rule cities owning portion of bridge over Rio Grande River financed by revenue bonds; additional bonds for acquisition, construction, repair and improvement

Section 1. This Act shall be applicable to any Home Rule City which owns the portion of an international toll bridge over the Rio Grande River which is situated within the United States of America and whose Home Rule Charter authorizes the City Council of any such city to issue bonds payable from the net revenues derived from the operation of such bridge for the purpose of providing funds to acquire such bridge and to construct, repair and improve such bridge, or for any of such purposes.

Sec. 2. Where any such city has bonds outstanding payable from the revenues of such bridge, additional bonds may be issued to the extent and under the conditions prescribed by the provisions of the outstanding bonds and the proceedings relating thereto, including the provisions of any trust indenture securing such outstanding bonds, and any such additional bonds may be secured by a pledge of and lien on the net revenues of the bridge on a parity with such outstanding bonds to the extent, in the manner, and under the conditions set out in the proceedings and the trust indenture authorizing and securing such previously issued and outstanding bonds.

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

Sec. 3. Any such city which, on or prior to the effective date of this Act, by ordinance duly passed by the governing body thereof and pursuant to published notice of intention as required by the charter to issue additional bonds for any one or more of the purposes specified in Section 1 hereof, or for capital improvements to such bridge, has authorized the issuance of any such additional bonds payable from the net revenues of such bridge and secured by a trust indenture or by a supplement to any previously executed indenture is authorized to issue, sell and deliver such additional bonds, and any such additional bonds when approved by the Attorney General of Texas, registered by the Comptroller of Public Accounts of Texas and sold and delivered in accordance with law, shall be valid and binding special obligations of such city. All proceedings authorizing and relating to the issuance of such bonds, including the execution and delivery of a trust indenture or supplemental trust indenture securing such bonds, and any provisions contained therein which by expression or reference provide for the substitution of new bonds or coupons for any such bonds or coupons which may be lost, mutilated or stolen, provide for the issuance of refunding bonds, authorize the issuance of additional parity bonds for the purpose of constructing another bridge, restrict the rights of minority bondholders, grant to the trustee a lien on the revenues and funds coming into its possession to secure the payment of fees and charges justly due such trustee and providing under certain conditions for the modification of such trust indenture or supplement thereto, be and they are hereby in all things ratified, confirmed and validated. Acts 1955, 54th Leg., p. 9, ch. 8.

Emergency. Effective February 26, 1955.

Section 4 of the Act of 1955 was a severability clause. Section 6 declared an emergency. Section 5 provided that the provisions of this Act shall not be construed

to validate any such proceedings or bonds, where the validity of any such proceedings or bonds has been questioned in any suit or litigation pending on the effective date of this Act.

## CHAPTER SIXTEEN—CORPORATION COURT

Art.

1200d. Cities over 130,000 and not more than 285,000 [New].

Art. 1200d. Cities over 130,000 and not more than 285,000

### Establishment; Judges

Section 1. All incorporated cities of this State having a population over one hundred and thirty thousand (130,000) and not over two hundred and eighty-five thousand (285,000), according to the last preceding United States census, may, by ordinance legally adopted, provide for the establishment of one (1) or more Corporation Courts, not exceeding four (4). The judges of such courts shall have the same qualifications, and be selected in the same manner, as may be provided for the judge of the existing Corporation Court in the charter of such city, or as may be provided in any future charter or charter amendment. If the present charter of such city requires the election of the judge by vote of the people, the governing body may designate a person as judge of each newly created court until the next regular city election. Such courts may be in concurrent or continuous session, either day or night.

### Jurisdiction

Sec. 2. Each of such Corporation Courts, when established, shall have and exercise concurrent jurisdiction within the corporate limits of the city establishing them, and such jurisdiction shall be the same as is now or

hereafter may be conferred upon all Corporation Courts by the General Laws of this State.

**Ordinance; provisions authorized**

Sec. 3. Except as otherwise provided by the charter of such city, the governing body of the city establishing such Courts may provide by ordinance:

(1) Prescribe the qualifications of the persons to be eligible to appointment as judge of said Court or Courts.

(2) That such Courts and the judges thereof may transfer cases from one (1) Court to another, and that any judge of any of such Courts may exchange benches and preside over any of such Courts.

(3) That there shall be a Corporation Court Clerk who shall be Clerk for all of such Corporation Courts, together with such number of deputies as may be needed.

(4) That complaints shall be filed with such Corporation Court Clerk in such manner as to provide for an equal distribution of cases among such Courts.

**Procedure**

Sec. 4. Except as modified by the terms of this Act, the procedure before such Courts and appeals therefrom shall be governed by the General Law applicable to all Corporation Courts. Acts 1955, 54th Leg., p. 465, ch. 130.

Emergency. Effective April 30, 1955.

Section 5 of the Act of 1955 repealed conflicting laws. Section 6 was a severability clause. Section 7 was emergency clause. Title of Act:

An Act enabling cities having a population over one hundred and thirty thousand (130,000) and not over two hundred and eighty-five thousand (285,000), according to the last preceding United States census, to establish one (1) or more Corporation

Courts, not exceeding four (4); providing for the qualifications and selection of the judges thereof; providing for the appointment of a clerk and deputy clerks; providing for the jurisdiction and the holding of sessions of such courts, the filing of complaints therein, and the procedure before such courts and appeals therefrom; repealing conflicting laws; and declaring an emergency. Acts 1955, 54th Leg., p. 465, ch. 130.

**CHAPTER TWENTY—MISCELLANEOUS PROVISIONS**

Art. 1269j—5. Airport revenue bonds; cities with population over 250,000 [New].

1269j—6. Validating bonds for auditorium, equipment and facilities, issued by cities, including home-rule cities [New].

**Art. 1269j—5. Airport revenue bonds; cities with population over 250,000**

Section 1. All cities having a population of more than Two Hundred and Fifty Thousand (250,000) according to the last preceding Federal Census may issue Revenue Bonds for: Enlarging, or extending, or repairing, or improving its airport, or for any two (2) or more such uses. Included in meaning of improvements without limiting the generality of the term, is the construction or enlargement of hangars and related buildings for use by tenants or concessionaires of the airport, including persons, firms or corporations rendering repair or other services to air carriers. Such Revenue Bonds may be issued when duly authorized by an ordinance passed by the governing body of such city. Such Revenue Bonds shall be secured by a pledge of all, or such part of, the revenues from the operation of the City's airport as may be prescribed in such ordinance. To the extent that the revenues of the airport may have been

pledged to the payment of Revenue Bonds which are still outstanding, the pledge securing the proposed Revenue Bonds shall be inferior to the previous pledge or pledges. Within the discretion of the governing body of the City, and subject to limitations contained in previous pledges, if any, in addition to the pledge of revenues, a lien may be given on all or any part of the physical properties comprising such airport. Included within the authority to pledge revenues and without limiting the generality of such authority is the right to pledge all or any part of the lease consideration to be received by the City for any such hangars or buildings, and within the discretion of the governing body of the City the sole security for such bonds may be the revenues to be received from leasing any one or more of such hangars and buildings, together with or without a lien upon such hangars or buildings and the land on which they are to be situated.

Sec. 2. No money raised or to be raised from taxation shall be used to pay the principal of or interest on any revenue or refunding bonds issued under this Act. When any of the revenues of such airport are pledged to the payment of bonds issued under this Act, it shall be the duty of the governing body of the City in reference to the revenues pledged, to cause to be fixed, maintained and enforced charges for services to be rendered by properties and facilities whose revenues have been pledged at rates and amounts sufficient to provide for the expense of maintenance and operation of such properties and facilities and to provide the amounts of money required under such ordinance to pay principal of and interest on the revenue bonds and to provide the reserve funds required by such ordinance.

Sec. 3. The Revenue Bonds shall be sold at a price or prices so that the interest cost of the money received therefor, computed to maturity in accordance with standard bond interest tables, shall not exceed five per-cent (5%) per annum; shall mature serially or otherwise within thirty (30) years from their date; shall be negotiable instruments under the Negotiable Instruments Act of the State of Texas; shall not be finally issued until approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and after such approval shall be incontestable.

Sec. 4. Refunding Bonds bearing an interest rate or interest rates which result in the same or a lower over-all interest cost to City may be either issued in exchange for or to provide funds to repurchase and retire any such revenue bonds. Acts 1954, 53rd Leg., p. 93, ch. 43.

Emergency. Effective April 22, 1954.

**Title of Act:**

An Act authorizing cities having more than Two Hundred and Fifty Thousand (250,000) population to issue Airport Revenue Bonds for purposes, under conditions, and having specifications as provided

herein; providing expressly that no money raised by taxation shall ever be used to pay principal thereof or interest thereon; enacting other provisions related to the subject; and declaring an emergency. Acts 1954, 53rd Leg., p. 93, ch. 43.

**Art. 1269j—6. Validating bonds for auditorium, equipment and facilities, issued by cities, including home-rule cities**

Section 1. All bonds heretofore authorized by an incorporated city, including home-rule cities, for the purpose of constructing a municipal auditorium and to purchase or acquire the necessary lands, equipment and facilities therefor, including lands for parking and the necessary equipment and facilities therefor, and which pledge the revenues of the auditorium to be acquired, constructed and equipped by the use of the proceeds of such bonds, and which pledge the revenues of a coliseum, if



any, owned by the city, together with the parking facilities in connection therewith, for either or both, including all present and future extensions, additions, replacements and improvements thereto, for either or both, and which pledge other revenues to be derived from parking meters in the city and from certain existing swimming pools in the city, and any and all acts and proceedings pertaining to the authorization and issuance thereof, are hereby validated, ratified, approved and confirmed notwithstanding any lack of statutory or general authority of such city or the governing body thereof to authorize such bonds and make such pledge of the revenue or revenues; and such bonds, when approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas and sold and delivered, regardless of whether such sale and delivery is made prior to or after the effective date of this Act, shall be binding, legal, valid and enforceable obligations against the revenues so encumbered, and said bonds shall be incontestable.

Sec. 2. This Act shall take precedence over any law or parts of any law to the contrary or in conflict herewith.

Sec. 3. This Act shall not be construed as validating any such proceedings or bonds issued or to be issued, the validity of which is contested or under attack in any suit or litigation pending at the time this Act becomes effective, if such suit or litigation is ultimately determined against the validity of the proceedings. Acts 1955, 54th Leg., p. 237, ch. 63.

Emergency. Effective April 13, 1955.

Section 4 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER TWENTY-TWO—CIVIL SERVICE

Art. 1269m. Firemen's and Policemen's Civil Service in cities over 10,000

### Promotions; filling vacancies

Sec. 14.

D. All applicants shall be given an identical examination in the presence of each other, which promotional examination shall be entirely in writing and no part of which shall be by oral interview, and the questions asked therein shall be based upon the duties of the position sought and upon any study courses given by such Departmental Schools of Instruction and upon the applicant's efficiency; and each applicant shall, at his request made in writing within five (5) days thereafter, have the opportunity to examine the same together with the grading thereof and if dissatisfied shall, within five (5) days, appeal the same to the Commission for hearing in accordance with the provisions of this Act. No person shall be eligible for promotion unless he has served in such Department for at least two (2) years immediately preceding the date of such promotional examination in the next lower position or other positions specified by the Commission, and no person with less than four (4) years actual service in such Department shall be eligible for promotion to the rank of Captain.

No person shall be eligible for appointment as Chief or Head of the Fire or Police Department of any city coming under the provisions of this Act who has not been a bona fide fire fighter in a Fire Department or a bona fide law enforcement officer for five (5) years in the State of Texas. As amended Acts 1955, 54th Leg., p. 706, ch. 255, § 1.

#### Indefinite suspensions

Sec. 16. The Chief or Head of the Fire Department or Police Department of the city government shall have the power to suspend indefinitely any officer or employee under his supervision or jurisdiction for the violation of civil service rules, but in every such case the officer making such order of suspension shall, within one hundred and twenty (120) hours thereafter, file a written statement with the Commission, giving the reasons for such suspension, and immediately furnish a copy thereof to the officer or employee affected by such act, said copy to be delivered in person to such suspended officer or employee by said department head. Said order of suspension shall inform the employee that he has ten (10) days after receipt of a copy thereof, within which to file a written appeal with the Commission. The Commission shall hold a hearing and render a decision in writing within thirty (30) days after it receives said notice of appeal. Said decision shall state whether or not the suspended officer or employee shall be permanently or temporarily dismissed from the Fire or Police Department or be restored to his former position or status in the classified service in the department. In the event that such suspended employee is restored to the position or class of service from which he was suspended, such employee shall receive full compensation at the rate of pay provided for the position or class of service from which he was suspended, for the actual time lost as a result of such suspension. All hearings of the Commission in case of such suspension shall be public.

The written statement above provided to be filed by the department head with the Commission, shall not only point out the civil service rule alleged to have been violated by the suspended employee, but shall contain the alleged acts of the employee which the department head contends are in violation of the civil service rules. It shall not be sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated and in case the department head does not specifically point out the act or acts complained of on the part of such employee, it shall be the duty of the Commission promptly to reinstate him. In any civil service hearing hereunder, the department head is hereby restricted to his original written statement and charges, which shall not be amended, and no act or acts may be complained of by said department head which did not happen or occur within six (6) months immediately preceding the date of suspension by the department head. No employee shall be suspended or dismissed by the Commission except for violation of the civil service rules, and except upon a finding by the Commission of the truth of the specific charges against such employee.

In the event the Commission orders that such suspended employee be restored to his position as above provided, it shall be the duty of the department head immediately to reinstate him as ordered and in event the department head fails to do so, the employee shall be entitled to his salary just as though he had been regularly reinstated.

In the event such department head wilfully refuses to obey the orders of reinstatement of the Commission, and such refusal persists for a period of ten (10) days, it shall be the duty of the chief executive or legislative body of the city to discharge such department head from his employment with the city.

The Commission may punish for contempt any department head who wilfully refuses to obey any lawful order of reinstatement of the Commission, and such Commission shall have the same authority herein to punish for contempt as has the Justice of the Peace. As amended Acts 1955, 54th Leg., p. 706, ch. 255, § 2.

**Appeal to district court**

Sec. 18. In the event any Fireman or Policeman is dissatisfied with the decision of the Commission, he may, within ten (10) days after the rendition of such final decision, file a petition in the District Court, asking that his order of suspension or dismissal or demotion be set aside, that he be reinstated in the Fire Department or Police Department, and such case shall be tried de novo. Such cases shall be advanced on the docket of the District Court, and shall be given a preference setting over all other cases. As amended Acts 1955, 54th Leg., p. 706, ch. 255, § 4.

**Disciplinary suspensions**

Sec. 20. The head of either the Fire or Police Department shall have the power to suspend any officer or employee under his jurisdiction or supervision for disciplinary purposes, for reasonable periods, not to exceed fifteen (15) days; provided, that in every such case, the department head shall file with the Commission within one hundred and twenty (120) hours, a written statement of action, and the Commission shall have the power to investigate and to determine whether just cause exists therefor. In the event the department head fails to file said statement with the Commission within one hundred and twenty (120) hours, the suspension shall be void and the employee shall be entitled to his full salary. The Commission shall have the power to reverse the decision of the department head and to instruct him immediately to restore such employee to his position. In the event such department head refuses to obey the order of the Commission, then the provisions with reference to salaries of the employees and to the discharge of the department head as well as the other provisions of Section 16, pertaining to such refusal of the department head, shall apply. As amended Acts 1955, 54th Leg., p. 706, ch. 255, § 3.

**Reduction of force-reinstatement list**

Sec. 21. In the event that any position in the Fire Department or Police Department is vacated or abolished by ordinance of the City Council, or legislative body, the employee holding such position shall be demoted to the position next below the rank of the position so vacated or abolished; provided that when any position or positions of equal rank may be abolished or vacated, the employee or employees with the least seniority in the said rank shall be the one or ones who are demoted.

In the event that it thereby becomes necessary to demote an employee or employees to the position next below the rank of the position so vacated or abolished, such employee or employees as are involuntarily demoted without charges having been filed against them for violation of civil service rules shall be placed on a position reinstatement list in order of their seniority. If any such position so vacated or abolished is filled or re-created within one (1) year, the position reinstatement list for such position shall be exhausted before any employee not on such list is promoted to such position. Promotions from the position reinstatement list shall be in the order of seniority.

In the event positions in the lowest classifications are abolished or vacated, and it thereby becomes necessary to dismiss employees from the Department, the employee with the least seniority shall be dismissed, but such employees as are involuntarily separated from the Department without charges having been filed against them for violation of civil service rules, shall be placed on the reinstatement list in order of their seniority. The reinstatement list shall be exhausted before appointments are made from the eligibility list. Appointments from reinstatement list shall be in

the order of seniority. Those who shall have been on any such reinstatement list for a period of three (3) years shall be dropped from such list but shall be reinstated upon request from the Commission. As amended Acts 1955, 54th Leg., p. 706, ch. 255, § 5.

#### Sick and injury leaves of absence

Sec. 26. Permanent and temporary employees in the classified service shall be allowed a total of sick leave with full pay computed upon a basis of one (1) full working day allowed for each full month employed in a calendar year, with an extra day added for each four (4) months, so as to total fifteen (15) working days to an employee's credit each twelve (12) months.

Employees shall be allowed to accumulate fifteen (15) working days or sick leave with pay in one (1) calendar year.

Sick leave with pay may be accumulated without limit and may be used while an employee is unable to work because of any bona fide illness. In the event that the said employee can conclusively prove that illness was incurred while in performance of his duties, an extension of sick leave in case of exhaustion of time shall be granted.

In the event that an employee of the Fire or Police Department for any reason leaves the classified service he shall remain on the payroll for a period not exceeding ninety (90) days and only until his accumulated sick leave is all used. Provided, that in order to facilitate the settlement of the accounts of deceased employees of the Fire or Police Departments all unpaid compensation due such employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the beneficiary or beneficiaries designated by the employee in writing to receive such compensation filed with the Chief of the Department in which the employee was employed at the time of his death, and received by such Chief prior to the employee's death;

Second, if there be no such beneficiary, to the widow or widower of such employee;

Third, if there be no such beneficiary or surviving spouse, to the child or children of such employee, and descendants of deceased children, by representation;

Fourth, if none of the above, to the parents of such employee, or the survivor of them;

Fifth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased employee, or if there be none, to the person or persons determined to be entitled thereto under the laws of descent and distribution of the State of Texas.

Provided that all such cities coming under the provisions of this Act shall provide injury leaves of absence with full pay for periods of time commensurate with the nature of injuries received while in line of duty for at least one (1) year. At the expiration of said one-year period, the City Council or governing body may extend such injury leave, at full or reduced pay, provided that in cities that have a Firemen's or Policeman's<sup>1</sup> Pension Fund, that if said injured employee's salary should be reduced below sixty per cent (60%) of his regular monthly salary, said employee shall be retired on pension until able to return to duty. As amended Acts 1955, 54th Leg., p. 706, ch. 255, § 6.

<sup>1</sup> So in enrolled bill. Probably should be "Policemen's".

**Repeal of provisions in city by vote**

Sec. 27(b). In any city in which the provisions of this Act have been in effect for a period of one (1) year, if a petition of ten per cent (10%) of the qualified voters of such city shall be presented to the governing body of such city to call an election for the repeal of the provisions of this Act, then and in that event, the governing body of such city shall call an election of the qualified voters to determine if they desire the repeal of such provisions. Should a majority of the qualified voters so vote to repeal the provisions of this Act, then the provisions shall become null and void as to such city. As amended Acts 1955, 54th Leg., p. 706, ch. 255, § 7.

Effective 90 days after June 7, 1955, date  
of adjournment.

# TEXAS

## BUSINESS CORPORATION ACT

ACTS 1955, CHAPTER 64, PAGE 239

Approved April 15, 1955

*An Act to adopt and establish general statutory provisions applicable to business corporations; to provide for the incorporation, regulation, admission to do business in Texas, merger, consolidation, receivership, dissolution, and liquidation of those business corporations to which this Act shall apply; to provide that it shall apply to certain Texas corporations incorporated after the Act becomes effective, and certain foreign corporations admitted to do business in Texas after it becomes effective, for voluntary adoption of the provisions of the Act by certain other corporations and for application of the Act to certain other corporations upon the expiration of five (5) years after the Act becomes effective; to provide for powers, duties, authorizations and responsibilities of affected corporations and their officers, directors, and stockholders; providing for filing fees; providing the Antitrust Laws of Texas shall not be affected or nullified under the provisions of this Act; containing a saving clause; repealing Acts in conflict herewith; and declaring an emergency.*

### PART ONE

Art.

- 1.01. Short Title, Captions, Parts, Articles, Sections, Subsections, and Paragraphs.
- 1.02. Definitions.

### PART TWO

- 2.01. Purposes.
- 2.02. General Powers.
- 2.03. Right of Corporation to Acquire and Dispose of Its Own Shares.
- 2.04. Defense of Ultra Vires.
- 2.05. Corporate Name; Use of Assumed Names.
- 2.06. Reserved Name.
- 2.07. Registered Name.
- 2.08. Renewal of Registered Name.
- 2.09. Registered Office and Registered Agent.
- 2.10. Change of Registered Office or Registered Agent.
- 2.11. Service of Process on Corporation.
- 2.12. Authorized Shares.
- 2.13. Issuance of Shares of Preferred or Special Classes in Series.

## Art.

- 2.14. Subscription for Shares.
- 2.15. Consideration for Shares.
- 2.16. Payment for Shares.
- 2.17. Determination of Amount of Stated Capital.
- 2.18. Expenses of Organization, Reorganization, and Financing.
- 2.19. Certificates Representing Shares.
- 2.20. Issuance of Fractional Shares or Scrip.
- 2.21. Liability of Subscribers and Shareholders.
- 2.22. Provisions Relating to Restrictions on the Transfer of Shares and Pre-emptive Rights.
- 2.23. Bylaws.
- 2.24. Meetings of Shareholders.
- 2.25. Notice of Shareholders' Meetings.
- 2.26. Closing of Transfer Books and Fixing Record Date.
- 2.27. Voting List.
- 2.28. Quorum of Shareholders.
- 2.29. Voting of Shares.
- 2.30. Voting Trust.
- 2.31. Board of Directors.
- 2.32. Number and Election of Directors.
- 2.33. Classification of Directors.
- 2.34. Vacancies.
- 2.35. Quorum of Directors.
- 2.36. Executive Committee.
- 2.37. Place and Notice of Directors' Meetings.
- 2.38. Dividends.
- 2.39. Dividends of Consuming Assets Corporation.
- 2.40. Distribution in Partial Liquidation.
- 2.41. Liability of Directors and Shareholders in Certain Cases.
- 2.42. Officers.
- 2.43. Removal of Officers.
- 2.44. Books and Records.

**PART THREE**

- 3.01. Incorporators.
- 3.02. Articles of Incorporation.
- 3.03. Filing of Articles of Incorporation.
- 3.04. Effect of Issuance of Certificate of Incorporation.
- 3.05. Requirement Before Commencing Business.
- 3.06. Organization Meeting of Directors.

**PART FOUR**

- 4.01. Right to Amend Articles of Incorporation.
- 4.02. Procedure to Amend Articles of Incorporation.
- 4.03. Class Voting on Amendments.
- 4.04. Articles of Amendment.
- 4.05. Filing of Articles of Amendment.
- 4.06. Effect of Certificate of Amendment.
- 4.07. Restated Articles of Incorporation.
- 4.08. Procedure for Redemption.

## Art.

- 4.09. Restrictions on Redemption or Purchase of Redeemable Shares.
- 4.10. Reduction of Stated Capital by Redemption or Purchase of Redeemable Shares.
- 4.11. Cancellation of Treasury Shares.
- 4.12. Reduction of Stated Capital Without Amendment of Articles and Without Cancellation of Shares.
- 4.13. Special Provisions Relating to Surplus and Reserves.

**PART FIVE**

- 5.01. Procedure for Merger of Domestic Corporations.
- 5.02. Procedure for Consolidation of Domestic Corporations.
- 5.03. Approval by Shareholders of Merger or Consolidation of Domestic Corporations.
- 5.04. Articles of Merger or Consolidation of Domestic Corporations.
- 5.05. Effective Date of Merger or Consolidation of Domestic Corporations.
- 5.06. Effect of Merger or Consolidation of Domestic Corporations.
- 5.07. Merger or Consolidation of Domestic and Foreign Corporations.
- 5.08. Conveyance by Corporation.
- 5.09. Sale or Mortgage of Assets Authorized by Board of Directors.
- 5.10. Sale or Mortgage of Assets Requiring Special Authorization of Shareholders.
- 5.11. Rights of Dissenting Shareholders in the Event of Certain Corporate Actions.
- 5.12. Procedure for Dissent by Shareholders as to Said Corporate Actions.
- 5.13. Provisions Affecting Remedies of Dissenting Shareholders.
- 5.14. [Antitrust Laws; Dissenting Stockholders; Saving Clause].

**PART SIX**

- 6.01. Voluntary Dissolution by Incorporators.
- 6.02. Voluntary Dissolution by Consent of Shareholders.
- 6.03. Voluntary Dissolution by Act of Corporation.
- 6.04. Filing of Statement of Intent to Dissolve.
- 6.05. Effect of Statement of Intent to Dissolve.
- 6.06. Procedure After Filing of Statement of Intent to Dissolve.
- 6.07. Revocation of Voluntary Dissolution Proceedings by Consent of Shareholders.
- 6.08. Revocation of Voluntary Dissolution Proceedings by Act of Corporation.
- 6.09. Filing of Statement of Revocation of Voluntary Dissolution Proceedings.
- 6.10. Effect of Statement of Revocation of Voluntary Dissolution Proceedings.
- 6.11. Articles of Dissolution.
- 6.12. Filing of Articles of Dissolution.



**PART SEVEN**

Art.

- 7.01. Involuntary Dissolution.
- 7.02. Notification to Attorney General, Notice to Corporation and Opportunity of Corporation to Cure Default.
- 7.03. Venue and Process.
- 7.04. Appointment of Receiver for Specific Corporate Assets.
- 7.05. Appointment of Receiver to Rehabilitate Corporation.
- 7.06. Jurisdiction of Court to Liquidate Assets and Business of Corporation and Receiverships Therefor.
- 7.07. Qualifications, Powers, and Duties of Receivers; Other Provisions Relating to Receiverships.
- 7.08. Shareholders Not Necessary Parties Defendant to Receivership or Liquidation Proceedings.
- 7.09. Decree of Involuntary Dissolution.
- 7.10. Filing of Decree of Dissolution.
- 7.11. Deposit with State Treasurer of Amount Due Certain Shareholders and Creditors.
- 7.12. Survival of Remedy After Dissolution.

**PART EIGHT**

- 8.01. Admission of Foreign Corporation.
- 8.02. Powers of Foreign Corporation.
- 8.03. Corporate Name of Foreign Corporation.
- 8.04. Change of Name by Foreign Corporation.
- 8.05. Application for Certificate of Authority or Renewal Thereof.
- 8.06. Filing of Application for Certificate of Authority or Renewal Thereof.
- 8.07. Effect and Term of Certificate of Authority or Renewal Thereof.
- 8.08. Registered Office and Registered Agent of Foreign Corporation.
- 8.09. Change of Registered Office or Registered Agent of Foreign Corporation.
- 8.10. Service of Process on Foreign Corporation.
- 8.11. Amendment to Articles of Incorporation of Foreign Corporation.
- 8.12. Merger of Foreign Corporation Authorized to Transact Business in this State.
- 8.13. Amended Certificate of Authority.
- 8.14. Withdrawal of Foreign Corporation.
- 8.15. Filing of Application for Withdrawal.
- 8.16. Revocation of Certificate of Authority.
- 8.17. Filing of Decree of Revocation.
- 8.18. Transacting Business Without Certificate of Authority.

**PART NINE**

- 9.01. Interrogatories by Secretary of State.
- 9.02. Information Disclosed by Interrogatories.
- 9.03. Powers of Secretary of State.
- 9.04. Appeals From Secretary of State.
- 9.05. Certificates and Certified Copies to be Received in Evidence.
- 9.06. Forms to be Promulgated by Secretary of State.

Art.

- 9.07. Time for Filing Documents in the Office of the Secretary of State.
- 9.08. Greater Voting Requirements.
- 9.09. Waiver of Notice.
- 9.10. Actions by Shareholders Without a Meeting.
- 9.11. Application to Foreign and Interstate Commerce.
- 9.12. Reservation of Power.
- 9.13. Effect of Invalidity of Part of This Act.
- 9.14. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporations.
- 9.15. Extent to Which Existing Laws Shall Remain Applicable to Corporations.
- 9.16. Repeal of Existing Laws; Extent and Effect Thereof.

**PART TEN**

- 10.01. Filing Fees.

**PART ELEVEN**

- 11.01. Emergency Clause.

**PART ONE**

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

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

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

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

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

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

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

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

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

**Art. 1.02. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) "Earned surplus" means that portion of the surplus of a corporation remaining after deducting from its net profits, income, and realized gains and losses from date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital, or otherwise, all subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus.

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

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

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

(17) "Consuming assets corporation" means a corporation which is engaged in the business of exploiting assets subject to depletion or amortization and which elects to state in its Articles of incorporation that it is a consuming assets corporation and includes as a part of its

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

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

## PART TWO

### Art. 2.01. Purposes

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

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

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

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

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

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

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

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

(a) Banks, (b) trust companies, (c) building and loan associations or companies, (d) insurance companies of every type and character that

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

<sup>1</sup> Vernon's Ann.Civ.St. arts. 6020, 6022.

### **Art. 2.02. General Powers**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

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

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

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

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

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

C. Nothing contained in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Chapter 4 of Title 32 of Revised Civil Statutes of Texas, 1925,<sup>1</sup> as now existing or hereafter amended.

<sup>1</sup> Vernon's Ann.Civ.St. arts. 1359-1365.

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

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

B. A corporation may purchase its own shares to the extent of the aggregate of any unrestricted surplus available therefor and its stated capital when the purchase is authorized by the directors, acting in good faith to accomplish any of the following purposes:

(1) To eliminate fractional shares.

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

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

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

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

D. Upon resolution of its board of directors and vote of the holders of at least two-thirds of all shares of each class, voting separately, authorizing the purchase and upon compliance with any other requirements of its articles of incorporation, a corporation may purchase its own shares to the extent of the aggregate of unrestricted capital surplus available therefor and unrestricted reduction surplus available therefor.

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

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

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

**Art. 2.04. Defense of Ultra Vires**

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

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

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such con-

tract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a part of loss or damage sustained.

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

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

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

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

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

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

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

B. Any domestic or foreign corporation having authority to transact business in this State, may do so under an assumed name, by filing an assumed name certificate in the manner prescribed by law.

#### **Art. 2.06. Reserved Name**

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

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

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

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

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

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

B. The reservation shall be made by filing with the Secretary of State an application to reserve a specified corporate name, executed by the applicant or the attorney or agent thereof. If the Secretary of State finds



that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred and twenty (120) days.

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

#### **Art. 2.07. Registered Name**

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

B. Such registration shall be made by:

(1) Filing with the Secretary of State:

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

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

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

C. Such registration shall be effective for a period of one year from the date on which the application for registration is filed.

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

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

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

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

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

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

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

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

- (1) The name of the corporation.
- (2) The post office address of its then registered office.
- (3) If the post office address of its registered office is to be changed, the post office address to which the registered office is to be changed.
- (4) The name of its then registered agent.
- (5) If its registered agent is to be changed, the name of its successor registered agent.
- (6) That the post office address of its registered office and the post office address of the business office of its registered agent, as changed, will be identical.
- (7) That such change was authorized by resolution duly adopted by its board of directors.

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

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

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

D. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

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

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

B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary of State, he shall immediately cause

one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

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

**Art. 2.12. Authorized Shares**

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

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

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

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

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

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

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

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

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

(1) The rate of dividend.

(2) The price at and the terms and conditions on which shares may be redeemed.

(3) The amount payable upon shares in event of involuntary liquidation.

- (4) The amount payable upon shares in event of voluntary liquidation.
- (5) Sinking fund provisions for the redemption or purchase of shares.
- (6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

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

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

D. Prior to the issuance of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the Secretary of State a statement setting forth:

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

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

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

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

#### **Art. 2.14. Subscription for Shares**

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

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

scription in the list of subscriptions shall constitute a rejection of the offer.

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

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

#### **Art. 2.15. Consideration for Shares**

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

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

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

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

E. In the event of a conversion of shares, or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be:

(1) The stated capital then represented by the shares so exchanged or converted, and

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

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

**Art. 2.16. Payment for Shares**

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

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

C. In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

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

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

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

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

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

A. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and non-assessable, only if the consideration still retained by the corporation after such disbursements is at least equal to the stated capital of the corporation represented by such shares.

**Art. 2.19. Certificates Representing Shares**

A. A corporation shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president, and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the

corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance.

B. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate a full or summary statement of all of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences of the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

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

- (1) That the corporation is organized under the laws of this State.
- (2) The name of the person to whom issued.
- (3) The number and class of shares and the designation of the series, if any, which such certificate represents.
- (4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

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

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

A. A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may, in lieu thereof pay the fair value in cash or issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable.

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

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

B. Any person becoming an assignee or transferee of a certificate of shares or of a subscription for shares in good faith and without knowl-

edge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

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

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

#### **Art. 2.22. Provisions Relating to Restrictions on the Transfer of Shares and Pre-emptive Rights**

A. Any corporation may impose restrictions on the sale or other disposition of its shares and on the transfer thereof, which do not unreasonably restrain or prohibit transferability, if each such restriction is expressly set forth in the articles of incorporation or bylaws of the corporation and is copied at length on the face or so copied on the back and referred to on the face of each certificate representing shares, to the transfer of which the restriction applies.

B. In addition to any other restrictions which may reasonably be imposed on the transfer of its shares by any corporation, in accordance with the foregoing provisions of this Article, any of the following restrictions may be so imposed:

(1) Restrictions reasonably defining pre-emptive or prior rights of the corporation or its shareholders of record, to purchase any of its shares offered for transfer.

(2) Restrictions reasonably defining rights and obligations of the holders of shares of any class, in connection with buy-and-sell agreements binding on all holders of shares of that class, so long as there are no more than twenty (20) holders of record of such class.

(3) Restrictions reasonably defining rights of the corporation or of any other person or persons, granted as an option or options or refusal or refusals on any shares.

C. The pre-emptive rights of a shareholder to acquire unissued or treasury shares of a corporation may be limited or denied by the articles of incorporation, but such limitation or denial must be set forth at length on the face or back of each certificate representing shares subject thereto.

D. Unless otherwise provided by its articles of incorporation, any corporation may issue and sell any of its treasury or unissued shares to its officers or employees or to the officers or employees of any subsidiary corporation, without first offering such shares to its shareholders, for such consideration, fixed as provided by law, and upon such terms and conditions as shall be approved by the holders of two-thirds of all shares entitled to vote thereon or by its board of directors pursuant to like approval of the shareholders.

E. Except as otherwise expressly provided in this Article, no provision of the Uniform Stock Transfer Act of this State shall be deemed to be amended or repealed by any provision of this Act.

#### **Art. 2.23. Bylaws**

A. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the shareholders, but such power may be



delegated by the shareholders to the board of directors. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

**Art. 2.24. Meetings of Shareholders**

A. Meetings of shareholders shall be held at such place, either within or without this State, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

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

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

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

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

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

A. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such de-

termination of shareholders, such date in any case to be not more than fifty (50) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of stock transfer books and the stated period of closing has expired.

#### **Art. 2.27. Voting List**

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

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

C. An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or keep the same on file for a period of ten (10) days, or produce and keep it open for inspection at the meeting, as provided in this Article, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. In the event that such officer or agent does not receive notice of a meeting of shareholders sufficiently in advance of the date of such meeting reasonably to enable him to comply with the duties prescribed by this Article, the corporation, but not such officer or agent, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

#### **Art. 2.28. Quorum of Shareholders**

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

**Art. 2.29. Voting of Shares**

A. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this Act.

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

C. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for a period of more than eleven (11) months.

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

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

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

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

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

#### **Art. 2.30. Voting Trust**

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

#### **Art. 2.31. Board of Directors**

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

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

A. The number of directors of a corporation shall not be less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Unless removed in accordance with the provisions of the bylaws, such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this Act. Unless removed in accordance with provisions of the bylaws, each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

#### **Art. 2.33. Classification of Directors**

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

ers after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

**Art. 2.34. Vacancies**

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

**Art. 2.35. Quorum of Directors**

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

**Art. 2.36. Executive Committee**

A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, a majority of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the articles of incorporation or in the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors in the business and affairs of the corporation except where action of the board of directors is specified by this Act or other applicable law, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

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

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

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

board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

#### **Art. 2.38. Dividends**

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

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

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

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

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

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

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

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

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

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

A. In addition to dividends otherwise authorized by law, the board of directors of a consuming assets corporation may declare, and the corpora-

tion may pay, dividends on its outstanding shares in cash or in property in an amount not exceeding the total amount of the depletion and amortization reserves created by the corporation, subject to the following conditions and limitations:

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

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

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

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

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

**Art. 2.40. Distributions in Partial Liquidation**

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

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

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

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

(4) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of voluntary

liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

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

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

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

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

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

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

(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

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

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



shall be terminated when the corporation has actually received the required consideration for the issuance of shares.

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

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

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

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

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

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

**Art. 2.42. Officers**

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

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

**Art. 2.43. Removal of Officers**

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

**Art. 2.44. Books and Records**

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

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

C. Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production, for examination by such shareholder, of the books and records of account, minutes, and record of shareholders of a corporation.

## **PART THREE**

### **Art. 3.01. Incorporators**

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

### **Art. 3.02. Articles of Incorporation**

A. The articles of incorporation shall set forth:

- (1) The name of the corporation.
  - (2) The period of duration, which may be perpetual.
  - (3) The purpose or purposes for which the corporation is organized.
  - (4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value.
  - (5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class.
  - (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series in so far as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.
  - (7) A statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum which shall be at least One Thousand Dollars (\$1,000), or ten per cent (10%) of the total capitalization of said corporation, whichever is the greater, consisting of money, labor done, or property actually received.
  - (8) Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation.
  - (9) Any provision, not inconsistent with law, including any provision which under this act is required or permitted to be set forth in the bylaws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.
  - (10) The post office address of its initial registered office and the name of its initial registered agent at such address.
  - (11) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.
  - (12) The name and address of each incorporator.
- B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

**Art. 3.03. Filing of Articles of Incorporation**

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

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

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

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

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

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

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

**Art. 3.05. Requirement Before Commencing Business**

A. A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000), or ten per cent (10%) of the total capitalization of said corporation, whichever is the greater, consisting of money, labor done, or property actually received.

**Art. 3.06. Organization Meeting of Directors**

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

**PART FOUR****Art. 4.01. Right to Amend Articles of Incorporation**

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

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

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

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

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

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

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

(1) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

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

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

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

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

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

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

(1) Increase or decrease the aggregate number of authorized shares of such class.

(2) Increase or decrease the par value of the shares of such class.

(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

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

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

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

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

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

(9) Limit or deny the existing pre-emptive rights of the shares of such class.

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

#### **Art. 4.04. Articles of Amendment**

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

(1) The name of the corporation.

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

(3) The date of the adoption of the amendment by the shareholders.

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

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

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

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

**Art. 4.05. Filing of Articles of Amendment**

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

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

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

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

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

**Art. 4.06. Effect of Certificate of Amendment**

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

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

**Art. 4.07. Restated Articles of Incorporation**

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

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

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

B. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in any provision thereof.

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

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



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

(2) Contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof.

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

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

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

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

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

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

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

#### **Art. 4.08. Procedure for Redemption**

A. A corporation may at any time, subject to the provisions of the articles of incorporation, proceed, by resolution of its board of directors, to redeem any or all outstanding shares subject to redemption. If less than all such shares are to be redeemed, the shares to be redeemed shall be selected for redemption in accordance with the provisions in the articles of incorporation, or, in the absence of such provisions therein, may be selected ratably or by lot in such manner as may be prescribed by resolution of the board of directors. Such redemption shall be effected by call and written or printed notice in the following manner:

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

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

(b) The date fixed for redemption.

(c) The redemptive price.

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

(2) The notice shall be given to each holder of redeemable shares being called, either personally or by mail, not less than twenty (20) nor

more than fifty (50) days before the date fixed for redemption. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer book of the corporation, with postage thereon prepaid.

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

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

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

- (1) At a price exceeding the redemptive price thereof.
- (2) When there is a reasonable ground for believing that such redemption or purchase will render the corporation unable to satisfy its debts and liabilities when they fall due.
- (3) Which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon voluntary dissolution.
- (4) Which would involve paying any shareholder more than the stated capital represented by the shares redeemed, unless the excess shall be paid out of a surplus of the corporation.
- (5) Which would reduce the aggregate stated capital to a sum less than One Thousand Dollars (\$1,000).

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

A. When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a can-

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

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

- (1) The name of the corporation.
- (2) The number of redeemable shares cancelled through the redemption or purchase, itemized by classes and series.
- (3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.
- (4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.
- (5) If the articles of incorporation provide that the cancelled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

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

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

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

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

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

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

B. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an

assistant secretary, shall be verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. When a reduction of the stated capital of a corporation has been approved as provided in this Article, a statement shall be executed in

duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (1) The name of the corporation.
- (2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.
- (3) The number of shares outstanding, and the number of shares entitled to vote on the resolution.
- (4) The number of shares voted for and against such reduction, respectively.
- (5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

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

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

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

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

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

A. The surplus created by any reduction of the stated capital of a corporation, such reduction being accomplished by any of the methods permitted by this Act, shall be deemed to be reduction surplus.

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

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

## PART FIVE

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

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

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

- (1) The names of the corporations proposing to merge.
- (2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
- (3) The terms and conditions of the proposed merger.
- (4) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.
- (5) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.
- (6) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

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

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

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

- (1) The names of the corporations proposing to consolidate.
- (2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.
- (3) The terms and conditions of the proposed consolidation.
- (4) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation.
- (5) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act.
- (6) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

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

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

consolidation, as the case may be, shall be included in or enclosed with such notice.

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

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

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

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

- (1) The plan of merger or the plan of consolidation.
- (2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
- (3) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The net surplus of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that such surplus is not transferred to stated capital or capital surplus by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.



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

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

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

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

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

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

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

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

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

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

certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

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

#### **Art. 5.08. Conveyance by Corporation**

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

#### **Art. 5.09. Sale or Mortgage of Assets Authorized by Board of Directors**

A. The sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required.

#### **Art. 5.10. Sale or Mortgage of Assets Requiring Special Authorization of Shareholders**

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

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

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

(3) At such meeting the shareholders may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions

thereof and the consideration to be received by the corporation therefor. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such authorization shall require the affirmative vote of the holders of at least four-fifths of the outstanding shares of the corporation, and, in the event any class of shares is entitled to vote as a class thereon, such authorization shall require in addition the affirmative vote of the holders of at least four-fifths of the outstanding shares of each class of shares entitled to vote as a class thereon.

(4) After such authorization by vote of shareholders, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

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

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

(1) Any amendment to the articles of incorporation which substantially alters or changes the corporate purposes.

(2) Any plan of merger or consolidation to which the corporation is a party.

(3) Any sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without good will, of a corporation requiring the special authorization of the shareholders as provided by law.

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

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

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

(2) Within ten (10) days after such corporate action is effected, the existing, surviving, or new corporation, as the case may be, shall give no-

tice thereof to each dissenting shareholder who has made demand as herein provided for the payment of the fair value of his shares. Such notice shall either set out that the corporation accepts the amount claimed in such demand and agrees to pay such amount within ninety (90) days after the date on which such corporate action was effected, upon the surrender of the share certificates duly endorsed, or shall contain an estimate by the corporation of the fair value of such shares, together with an offer to pay the amount of such estimate within ninety (90) days after the date on which such corporate action was effected, upon receipt of notice within thirty (30) days after such date from such shareholder that he agrees to accept such amount upon the surrender of the share certificates duly endorsed.

(3) If, within thirty (30) days after the date on which such proposed corporate action was effected the value of such shares is agreed upon between the dissenting shareholder and the existing, surviving, or new corporation, as the case may be, payment therefor shall be made within ninety (90) days after the date on which such corporate action was effected, upon surrender of his certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

B. If, within such period of thirty (30) days, the shareholder and the existing, surviving, or new corporation, as the case may be, do not so agree, then the dissenting shareholder or the corporation may, within sixty (60) days after the expiration of the thirty (30) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of such shares by an appraiser to be appointed by the court. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the corporation, which shall, within ten (10) days after such service, file in the office of the clerk of the court in which such petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment of their shares and with whom agreements as to the value of their shares have not been reached by the corporation. If the petition shall be filed by the corporation, the petition shall be accompanied by such a duly verified list. The clerk of the court shall give notice of the time and place fixed for the hearing of such petition by registered mail to the corporation and to the shareholders shown upon such list at the addresses therein stated. The forms of the notices by mail shall be approved by the court. All shareholders thus notified and the corporation shall thereafter be bound by the final judgment of the court.

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

D. The appraiser shall determine the fair value of the shares of the shareholders adjudged by the court to be entitled to payment therefor

and shall file his report respecting such value in the office of the clerk of the court, and notice of the filing of such report shall be given by the clerk to the parties in interest. Such report shall be subject to exceptions to be heard before the court both upon the law and the facts. The court shall by its judgment determine the fair value of the shares of the shareholders entitled to payment therefor and shall direct the payment of such value by the existing, surviving, or new corporation, together with interest thereon, to the date of such judgment, to the shareholders entitled thereto. The judgment shall be payable only upon, and simultaneously with, the surrender to the existing, surviving, or new corporation, as the case may be, of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholders shall cease to have any interest in such shares, or in the corporation. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and persons claiming under him shall be bound by the corporate action to which he seeks to dissent. The court shall allow the appraiser a reasonable fee as court costs and all court costs shall be allotted between the parties in such manner as the court shall determine to be fair and equitable.

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

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

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

A. Dissenting holders of shares of a domestic corporation who have invoked the procedure detailed in the last preceding Article shall continue to have all the rights and privileges incident to their shares, except as expressly limited by this Article, until such time as the fair value of such shares as so determined shall be paid or tendered to any such dissenting shareholder.

B. Cash dividends paid by the corporation upon the dissenting shares after the day on which the corporate action dissented from was approved by the shareholders and prior to payment for such shares by the corporation shall be credited upon the total amount to be paid by the corporation therefor. Any share dividends declared by the corporation upon the dissenting shares after the day on which the vote was taken and prior to payment of such shares by the corporation shall be treated as part of the dissenting shares and no additional compensation shall be allowed therefor.

C. In the event any dissenting shareholder shall waive his dissent before payment and before any judicial proceedings have been instituted seeking a determination of the fair value of such shares, the corporation shall accept such waiver.

D. The right of the dissenting shareholder to relief accorded by this Act shall cease if and when the corporation shall abandon the proposed corporate action entitling the dissenting shareholder to relief. Upon abandonment of such proposed corporate action, any dissenting shareholder who has initiated judicial proceedings in good faith seeking a determination of the fair value of such shares, or who has been

made a defendant in such proceedings, shall be entitled to recover from the corporation all necessary expenses incurred in such proceedings, together with reasonable attorneys' fees.

**Art. 5.14. [Antitrust Laws; Dissenting Stockholders; Saving Clause]<sup>1</sup>**

Nothing contained in part Five of this Act shall ever be construed as affecting, nullifying or repealing the Antitrust Laws or as abridging any right or rights of a dissenting stockholder under existing laws.

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

## PART SIX

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

A. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by the incorporators at any time within two years after the date of the issuance of its certificate of incorporation, in the following manner:

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

- (a) The name of the corporation.
- (b) The date of issuance of its certificate of incorporation.
- (c) That none of its shares has been issued.
- (d) That the corporation has not commenced business.

(e) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(f) That no debts of the corporation remain unpaid.

(g) That a majority of the incorporators elect that the corporation be dissolved.

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

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

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

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

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

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

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

B. Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its

president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.
- (4) A copy of the written consent signed by all shareholders of the corporation.
- (5) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

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

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

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

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

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

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth;

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation.
- (e) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

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

the number of shares of each such class voted for and against the resolution, respectively.

**Art. 6.04. Filing of Statement of Intent to Dissolve**

A. Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:

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

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

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

**Art. 6.05. Effect of Statement of Intent to Dissolve**

A. Upon the filing by the Secretary of State of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except in so far as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Secretary of State or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this Act provided.

**Art. 6.06. Procedure After Filing of Statement of Intent to Dissolve**

A. After the filing by the Secretary of State of a statement of intent to dissolve:

(1) The corporation shall promptly cause written notice of the filing of the statement of intent to dissolve to be mailed to each known creditor of and claimant against the corporation.

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

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

**Art. 6.07. Revocation of Voluntary Dissolution Proceedings by Consent of Shareholders**

A. By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary of State, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(1) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate



by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings.
- (e) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

**Art. 6.08. Revocation of Voluntary Dissolution Proceedings by Act of Corporation**

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

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

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

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

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings.
- (e) The number of shares outstanding, and if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

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

#### **Art. 6.09. Filing of Statement of Revocation of Voluntary Dissolution Proceedings**

A. Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:

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

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

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

#### **Art. 6.10. Effect of Statement of Revocation of Voluntary Dissolution Proceedings**

A. Upon the filing by the Secretary of State of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

#### **Art. 6.11. Articles of Dissolution**

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

(1) The name of the corporation.

(2) That a statement of intent to dissolve the corporation has been filed with the Secretary of State and the date on which such statement was filed.

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

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

just and equitable payment of the liabilities and obligations of the corporation.

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

**Art. 6.12. Filing of Articles of Dissolution**

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

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

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

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

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

**PART SEVEN**

**Art. 7.01. Involuntary Dissolution**

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

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

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

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

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

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

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

**Art. 7.02. Notification to Attorney General, Notice to Corporation and Opportunity of Corporation to Cure Default**

A. The Secretary of State, on or before the first day of July of each year, shall certify to the Attorney General the names of all corporations, both domestic and foreign, which have failed to file their annual reports or have failed to pay franchise taxes in accordance with the laws of this State, together with the facts pertinent thereto. The Secretary of State shall also certify, from time to time, the names of all corporations which have given other cause for dissolution or revocation of their certificates of authority as provided in this Act, together with the facts pertinent thereto. Every such certificate from the Secretary of State to the Attorney General pertaining to the failure of any such corporation to file its annual report or to pay its franchise tax shall be taken and received in all courts as prima facie evidence of the facts therein stated.

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

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General shall then file an action in the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

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

E. If, after the issues made in any such action have been heard by the court trying same and it is found that the corporate defendant has been guilty of any default of such nature as to justify its dissolution or revocation of its certificate of authority as provided in this Act, the court shall, without rendering or entering any judgment for a period of five (5) days pending the filing of and<sup>1</sup> action upon a sworn application for stay of judgment as hereinafter provided, promptly pronounce its findings to such effect. If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and intends in good faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the corporation opportunity to cure such defaults if it acts with reasonable

diligence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation has been adjudged guilty are capable of being cured, it shall, if the appealing corporation has so prayed, remand the case to the trial court with instructions to grant the corporation opportunity to cure such defaults, such cure to be accomplished within such time after issuance of the mandate as the appellate court shall determine but in no event more than sixty (60) days thereafter. If during such period of time as shall have been so allowed the corporation shall cure such defaults and pay all costs accrued in such action, the trial court shall then enter judgment dismissing such action. If the corporation does not satisfy the trial court that it has cured its defaults within such period of time, the judgment shall thereupon become final.

<sup>1</sup> So in enrolled bill. Probably should be "an."

### **Art. 7.03. Venue and Process**

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

### **Art. 7.04. Appointment of Receiver for Specific Corporate Assets**

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

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

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

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

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

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

**Art. 7.05. Appointment of Receiver to Rehabilitate Corporation**

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

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

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

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

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

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

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

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

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

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

B. In the event that the condition of the corporation necessitating such an appointment of a receiver is remedied, the receivership shall be

terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

**Art. 7.06. Jurisdiction of Court to Liquidate Assets and Business of Corporation and Receiverships Therefor**

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

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

(2) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this Act, to have its liquidation continued under the supervision of the court.

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

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

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

**Art. 7.07. Qualifications, Powers, and Duties of Receivers; Other Provisions Relating to Receiverships**

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

B. A receiver appointed by authority of this Act shall have authority to sue and be sued in all courts in his own name and shall have those powers and duties provided by laws of general applicability relating to receivers and in addition thereto may be accorded such other powers and duties as the court shall deem appropriate to accomplish the objectives for which the receiver was appointed. Such additional and unusual pow-

ers and duties shall be stated in the order appointing the receiver and may be increased or diminished at any time during the proceedings.

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

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

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

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

#### **Art. 7.08. Shareholders Not Necessary Parties Defendant to Receivership or Liquidation Proceedings**

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

#### **Art. 7.09. Decree of Involuntary Dissolution**

A. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, ob-



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

**Art. 7.10. Filing of Decree of Dissolution**

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

**Art. 7.11. Deposit with State Treasurer of Amount Due Certain Shareholders and Creditors**

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

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

**Art. 7.12. Survival of Remedy after Dissolution**

A. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its officers, directors, or shareholders, for any

right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three years so as to extend its period of duration.

## PART EIGHT

### Art. 8.01. Admission of Foreign Corporation

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

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

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

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

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities.

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

(6) Effecting sales through independent contractors.

(7) Creating evidences of debt, mortgages, or liens on real or personal property.

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

(9) Transacting any business in interstate commerce.

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

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

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

### **Art. 8.02. Powers of Foreign Corporation**

A. A foreign corporation which shall have received a certificate of authority under this Act shall, for a period of ten (10) years from the granting of such certificate or a renewal thereof, or until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the transaction of intrastate business in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors.

### **Art. 8.03. Corporate Name of Foreign Corporation**

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

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one (1) of such words, or such corporation shall, for use in this State, add at the end of its name one (1) of such words or an abbreviation thereof.

(2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State or of any foreign corporation authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act, or the name of a corporation which has in effect a registration of its name as provided in this Act.

### **Art. 8.04. Change of Name by Foreign Corporation**

A. Whenever a foreign corporation which is authorized to transact business in this State determines to change its name, it shall, within one hundred and twenty (120) days prior to the accomplishment of such change of name, apply to the Secretary of State for reservation of the proposed new name in the manner prescribed by this Act, and shall secure from the Secretary of State a certificate that the name which such corporation purposes to assume has been reserved for corporate use in this State.

**Art. 8.05. Application for Certificate of Authority or Renewal Thereof**

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

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

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

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

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

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

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State.

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

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

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

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

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

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

**Art. 8.06. Filing of Application for Certificate of Authority or Renewal Thereof**

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

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

(2) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

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

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

**Art. 8.07. Effect and Term of Certificate of Authority or Renewal Thereof**

A. Upon the issuance of a certificate of authority or renewal thereof by the Secretary of State, the corporation shall be authorized to transact business in this State for a period of ten (10) years for those purposes set forth in its application, and such certificate shall be conclusive evidence of such right of the corporation to transact business in this State for such purposes, except as against this State in a proceeding to revoke such certificate.

**Art. 8.08. Registered Office and Registered Agent of Foreign Corporation**

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

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

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

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

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

(1) The name of the corporation.

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

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

(4) The name of its then registered agent.

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

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

(7) That such change was authorized by resolution duly adopted by its board of directors.

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

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

- (2) File one of such duplicate originals in his office.
- (3) Return the other of such duplicate originals to the corporation or its representative.

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

#### **Art. 8.10. Service of Process on Foreign Corporation**

A. The president and all vice presidents of a foreign corporation authorized to transact business in this State and the registered agent so appointed by a foreign corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

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

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

#### **Art. 8.11. Amendment to Articles of Incorporation of Foreign Corporation**

A. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this State are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the Secretary of State a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this State, nor authorize such corporation to transact business in this State under any other name than the name set forth in its certificate of authority.

#### **Art. 8.12. Merger of Foreign Corporation Authorized to Transact Business in this State**

A. Whenever a foreign corporation authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, no domestic corporation being a party to such merger, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the Secretary of State a copy of the articles of merger duly authenticated by the proper officer of the state

or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this State unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this State a purpose or purposes other than those authorized by its existing certificate of authority.

**Art. 8.13. Amended Certificate of Authority**

A. In the event a foreign corporation authorized to transact business in this State shall change its corporate name, or in the event such corporation desires to pursue in this State purposes other than, or in addition to, those authorized by its existing certificate of authority, it shall procure an amended certificate of authority by making application therefor to the Secretary of State.

B. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

**Art. 8.14. Withdrawal of Foreign Corporation**

A. A foreign corporation authorized to transact business in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

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

(2) That the corporation is not transacting business in this State.

(3) That the corporation surrenders its authority to transact business in this State.

(4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to transact business in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) A post-office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him.

(6) A statement that all sums due, or accrued, to this State have been paid.

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this State.

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

**Art. 8.15. Filing of Application for Withdrawal**

A. Duplicate originals of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that

such application conforms to the provisions of this Act, he shall, when all fees and franchise taxes have been paid as required by law:

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

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

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

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

#### **Art. 8.16. Revocation of Certificate of Authority**

A. The certificate of authority of a foreign corporation to transact business in this State may be revoked by a decree of the district court for the county in which the registered office of the corporation in this State is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

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

(3) The certificate of authority to transact business in this State or any amendment thereof was procured through fraud; or

(4) The corporation has continued to transact business beyond the scope of the purpose or purposes expressed in its certificate of authority to transact business in this State; or

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

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation as required by law; or

(7) The corporation has failed to file in the office of the Secretary of State any amendment to its articles of incorporation or any articles of merger or consolidation within the time prescribed by this Act; or

(8) The corporation has changed its corporate name and has failed to file with the Secretary of State, within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this State.

#### **Art. 8.17. Filing of Decree of Revocation**

A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to transact business in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.



**Art. 8.18. Transacting Business Without Certificate of Authority**

A. No foreign corporation which is transacting, or has transacted, business in this State without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this State (whether brought directly by the corporation or in the form of a derivative action by a shareholder) on any cause of action arising out of the transaction of business in this State, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding on any such cause of action be maintained in any court of this State by any successor, assignee, or legal representative of such foreign corporation, until a certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check, or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

C. A foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by law and thereafter filed all reports required by law, plus all penalties imposed by law for failure to pay such fees and franchise taxes. In addition to the penalties and payments thus prescribed, such corporation shall forfeit to this State an amount not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each month or fraction thereof it shall have transacted business in this State without a certificate. The Attorney General shall bring suit to recover all amounts due this State under the provisions of this section.

## PART NINE

**Art. 9.01. Interrogatories by Secretary of State**

A. The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Act. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual, they shall be answered by him, and if directed to a corporation, they shall be answered by the president, vice president, secretary or assistant secretary

thereof. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of the provisions of this Act.

#### **Art. 9.02. Information Disclosed by Interrogatories**

A. Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

#### **Art. 9.03. Powers of Secretary of State**

A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

#### **Art. 9.04. Appeals from Secretary of State**

A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to transact business in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

#### **Art. 9.05. Certificates and Certified Copies to be Received in Evidence**

A. All certificates issued by the Secretary of State in accordance with the provisions of this Act, and all copies of documents filed in his office in accordance with the provisions of this Act, when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated, and shall be subject to recordation. A certificate by the Secretary of State, under the great seal of this State, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

**Art. 9.06. Forms to be Promulgated by Secretary of State**

A. Forms may be promulgated by the Secretary of State for all reports and all other documents required to be filed in the office of the Secretary of State. The use of such forms, however, shall not be mandatory, except in instances in which the law may specifically so provide.

**Art. 9.07. Time for Filing Documents in the Office of the Secretary of State**

A. Whenever any document is required to be filed in the office of the Secretary of State by any provision of this Act, the requirement of the statute shall be construed to involve the requirement that same be so filed with reasonable promptness.

**Art. 9.08. Greater Voting Requirements**

A. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than is required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

**Art. 9.09. Waiver of Notice**

A. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

**Art. 9.10. Actions by Shareholders Without a Meeting**

A. Any action required by this Act to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Secretary of State.

**Art. 9.11. Application to Foreign and Interstate Commerce**

A. The provisions of this Act shall apply to commerce with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

**Art. 9.12. Reservation of Power**

A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

**Art. 9.13. Effect of Invalidity of Part of This Act**

A. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection, section, or Article of

this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, or Article of this Act so adjudged to be invalid or unconstitutional.

**Art. 9.14. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporations**

A. This Act does not apply to corporations organized for the purpose of operating banks, trust companies, building and loan associations or companies, insurance companies of every type or character that operate under insurance laws of this State and corporate attorneys in fact for reciprocal or interinsurance exchanges, railroad companies, cemetery companies, cooperatives or limited cooperative associations, labor unions, or abstract and title insurance companies whose purposes are provided for and powers are prescribed by Chapter 9 of the Insurance Code of this State;<sup>1</sup> nor to corporations organized for the purpose of operating nonprofit institutions, including but not limited to those devoted to charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purposes; provided, however, that if any of said excepted corporations are hereafter organized under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or if such special statutes specifically provide that the general laws for incorporation shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

B. For a period of five (5) years from and after the effective date of this Act, it shall not apply to any domestic corporation duly chartered or existing on said effective date or to any foreign corporation holding, on that date, a valid permit to do business in this State, unless such domestic or foreign corporation shall, during such period of five (5) years, voluntarily elect to adopt the provisions of this Act and shall comply with the procedure prescribed by Section C of this Article.

C. During the period of five (5) years from and after the effective date of this Act, any domestic corporation duly chartered or existing prior to said effective date and any foreign corporation holding a valid permit to do business in this State, prior to the effective date of this Act, may voluntarily elect to adopt the provisions of this Act and may become subject to its provisions by taking the following steps:

(1) As to domestic corporations, a resolution reciting that the corporation voluntarily adopts this Act shall be adopted by the board of directors and shareholders by the procedure prescribed by this Act for the amendment of articles of incorporation. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this Act.

(2) Upon adoption of the required resolution or resolutions, an instrument shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which shall set forth:

- (a) The name of the corporation.
- (b) Each resolution adopted by the corporation.
- (c) The date of the adoption of each resolution.
- (d) The post office address of its initial registered office, and the name of its initial registered agent at such address.

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

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

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

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

(4) Upon the filing of such document, all provisions of this Act shall thereafter apply to the corporation.

D. Except for the exceptions and limitations of Section A of this Article, this Act shall apply to all domestic corporations organized after the date on which this Act becomes effective and to all foreign corporations transacting, or seeking to transact, business within this State and not holding, on the effective date of this Act, a valid permit so to do, and to all domestic and foreign corporations electing within five (5) years to adopt this Act and manifesting their election in the manner provided in Section C of this Article.

E. Upon the expiration of a period of five (5) years after the date on which this Act becomes effective, except for the exceptions and limitations of Section A of this Article, this Act shall apply to all domestic corporations and to all foreign corporations transacting or seeking to transact business within this State. Those domestic corporations existing at the time that this Act becomes effective and those foreign corporations holding a valid permit to do business in this State at the time this Act becomes effective, which have not meanwhile adopted this Act by complying with Section C of this Article, shall at the expiration of five (5) years from the effective date of this Act be deemed to have elected to adopt this Act by not voluntarily dissolving, in the case of a domestic corporation, or by not voluntarily withdrawing from the State, in the case of a foreign corporation.

<sup>1</sup> V.A.T.S. Insurance Code, arts. 9.01-9.27.

#### **Art. 9.15. Extent to Which Existing Laws Shall Remain Applicable to Corporations**

A. Except as provided in the last preceding Article, existing corporations shall continue to be governed by the laws heretofore applicable thereto.

B. Except as provided in Section B of Article 9.16 of this Act, any special limitations, obligations, liabilities, and powers, applicable to a particular kind of corporation for which special provision is made by the laws of this State, including, (but not excluding other corporations) those corporations subject to supervision under Article 1524a of the Revised Civil Statutes of Texas,<sup>1</sup> shall continue to be applicable to any such corporation, and this Act is not intended to repeal and does not repeal the statutory provisions providing for these special limitations, obligations, liabilities, and powers.

C. Provided that nothing in this Act shall in anywise affect or nullify the Antitrust Laws of this State.

<sup>2</sup> Vernon's Ann. Civ. St. art. 1524a.

**Art. 9.16. Repeal of Existing Laws; Extent and Effect Thereof**

A. Subject to the provisions of the two last preceding Articles of this Act and of Section C of Article 2.02 of this Act and Section B of this Article, and excluding any existing general act not inconsistent with any provision of this Act, no law of this State pertaining to private corporations, domestic or foreign, shall hereafter apply to corporations organized under this Act, or which obtain authority to transact business in this State under this Act, or to existing corporations which adopt this Act.

B. Chapter 15 of Title 32, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> is hereby repealed effective five (5) years after the date on which this Act becomes effective; provided that such Chapter 15, Title 32, shall not hereafter apply to corporations organized under this Act, or which obtain authority to transact business in this State under this Act, or to existing corporations which adopt this Act.

C. The repeal of a prior act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act, prior to the repeal thereof.

<sup>1</sup> Vernon's Ann.Civ.St. arts. 1495-1507.

**PART TEN****Art. 10.01. Filing Fees**

A. The Secretary of State is authorized and required to collect for the use of the State the following filing fees upon filing the following documents filed pursuant to the provisions of this Act.

(1) Filing articles of incorporation of a domestic corporation and issuing a certificate of incorporation, Fifty Dollars (\$50).

(2) Filing articles of amendment of a domestic corporation and issuing a certificate of amendment, Fifty Dollars (\$50).

(3) Filing articles of merger or consolidation, whether the surviving or new corporation be a domestic or foreign corporation, One Hundred Dollars (\$100).

(4) Filing an application of a foreign corporation for an original or renewal of a certificate of authority to transact business in this State and issuing such a certificate of authority, Fifty Dollars (\$50).

(5) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing such an amended certificate of authority, Fifty Dollars (\$50).

(6) Filing a copy of an amendment or supplement to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State, Fifty Dollars (\$50).

(7) Filing restated articles of incorporation of a domestic or foreign corporation, One Hundred Dollars (\$100).

(8) Filing application for reservation of corporate name and issuing certificate therefor, Five Dollars (\$5).

(9) Filing notice of transfer of reserved corporate name and issuing a certificate therefor, Five Dollars (\$5).

(10) Filing application for registration of corporate name and issuing certificate therefor, Twenty-five Dollars (\$25).

(11) Filing application for renewal of registration of corporate name and issuing certificate therefor, Twenty-five Dollars (\$25).

- (12) Filing statement of change of registered office or registered agent, or both, One Dollar (\$1).
- (13) Filing statement of resolution establishing series of shares, Five Dollars (\$5).
- (14) Filing statement of cancellation of redeemable shares, Five Dollars (\$5).
- (15) Filing statement of cancellation of reacquired shares, Five Dollars (\$5).
- (16) Filing statement of reduction of stated capital, Five Dollars (\$5).
- (17) Filing articles of dissolution by incorporators and issuing certificate therefor, One Dollar (\$1).
- (18) Filing statement of intent to dissolve, One Dollar (\$1).
- (19) Filing statement of revocation of voluntary dissolution proceedings, One Dollar (\$1).
- (20) Filing articles of dissolution and issuing certificate therefor, One Dollar (\$1).
- (21) Filing application for withdrawal and issuing certificate therefor, Five Dollars (\$5).
- (22) Filing application for adoption of the provisions of this Act and issuing a certificate therefor, One Dollar (\$1).

## PART ELEVEN

### Art. 11.01. Emergency Clause

A. The fact that existing laws of the State of Texas have been amended from time to time over a period of some seventy (70) years and more without any adoption meanwhile of a complete Act relating to business corporations generally, the provisions of which are consistent with one another; the fact that with so many amendments of the corporation laws applicable to business corporations generally over so many years there have developed many uncertainties in the corporation laws of this State and with the result that there is now an imperative need for clarification of certain provisions of the existing laws; the fact that all of the other states than Texas in which large and important business is transacted have adopted in recent years modern corporation laws and with the result that Texas citizens are increasingly prone to organize their corporate ventures under the laws of other states than the laws of Texas because Texas does not have such a modern act; and the fact that Texas in such connection is losing a substantial volume of corporate enterprise which it should otherwise gain from and after the time that a modern business corporation Act becomes effective in Texas and is losing tax income from ad valorem taxes, filing fees and otherwise meanwhile; all such facts create an emergency and public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended and said Rule is hereby suspended; and require that this Act take effect and be in force from and after the date of its enactment, and it is so enacted.

Passed the House, March 21, 1955, by a viva-voce vote, House concurred in Senate amendments, March 30, 1955, by a viva-voce vote; passed the Senate, as amended, March 29, 1955, by a viva-voce vote.

Approved April 15, 1955.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 32—CORPORATIONS—PRIVATE

## CHAPTER ONE—PURPOSES

Art.

1302d—1. Mutual protection of members of non-profit poultry associations; tax exemption [New].

**Art. 1302d—1. Mutual protection of members of non-profit poultry associations; tax exemption**

Section 1. Corporations may be formed, in the manner provided by General Law, for the purposes of providing for the mutual protection of members of voluntary non-profit poultry associations and to promote generally the welfare of the poultry industry of the state and nation.

Sec. 2. The Secretary of State shall charge a filing fee of Ten Dollars (\$10.00) for filing each charter, amendment or supplement thereto of a corporation formed pursuant to Section 1 of this Act.

Sec. 3. Corporations formed pursuant to Section 1 of this Act shall be exempt from payment of any franchise tax now or hereafter imposed upon corporations by the laws of this state. Acts 1955, 54th Leg., p. 646, ch. 222.

Emergency. Effective May 16, 1955.

Title of Act:

An Act authorizing the formation of private corporations to provide for the mutual protection of members of voluntary non-profit poultry associations and to promote the welfare of the poultry industry;

providing the amount of fee to be paid by such corporation for filing each charter, amendment or supplement; exempting such corporations from payment of franchise tax; and declaring an emergency. Acts 1955, 54th Leg., p. 646, ch. 222.

## CHAPTER THREE—GENERAL PROVISIONS

Art.

1334a. Repealed.

1334b. Stock certificates; bonds, debentures or other evidence of in-

debtedness; manner of issuance; facsimile signatures and seal [New].

**Art. 1334a Repealed. Acts 1955, 54th Leg., p. 1161, ch. 444, § 3, eff. June 14, 1955**

This article, derived from Acts 1955, 54th Leg., p. 80, ch. 51, sets forth the manner and form in which stock certificates shall

be issued by any corporation and how such certificates shall be signed. See article 1334b, post.

**Art. 1334b. Stock certificates; bonds, debentures or other evidence of indebtedness; manner of issuance; facsimile signatures and seal**

Section 1. Any private corporation organized under the laws of the State shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president, and either the secretary or an assistant secretary or such officer or officers as the bylaws of the corporation shall prescribe, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary or such officer or officers as the bylaws of the corporation shall prescribe upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent, or registered by a registrar, either



of which is other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance.

Sec. 2. Where any private corporation organized under the laws of this State hereafter issues any bond, debenture or other evidence of indebtedness the seal of the corporation thereon may be facsimile, engraved or printed, and where any such bond, debenture or other evidence of indebtedness is authenticated with the manual signature of an authorized officer of the corporation or other trustee appointed or named by an indenture of trust or other agreement under which such security is issued, the signature of any of the corporation's officers authorized to execute such security may be facsimile. In case any officer who signed, or whose facsimile signature has been used on any such bond, debenture or other evidence of indebtedness shall cease to be an officer of the corporation for any reason before the same has been delivered by the corporation, such bond, or debenture or other evidence of indebtedness may nevertheless be adopted by the corporation and issued and delivered as though the person who signed it or whose facsimile signature had been used thereon had not ceased to be such officer. Acts 1955, 54th Leg., p. 1161, ch. 444.

Emergency. Effective June 14, 1955.

Section 3 of the Act of 1955 repealed art. 1334a.

## CHAPTER NINETEEN "A"—NON-PAR CORPORATIONS

### Art. 1538h. May Amend Charter

Any private corporation, for profit, other than corporations authorized to conduct a banking or insurance business, having authorized shares with par or face value, or shares without nominal or par value, or both, may, by vote of the holders of a majority of its outstanding stock, entitled to vote at any annual meeting or at any special meeting called and held for the purpose, amend its charter as follows:

(a) So as to change its shares of stock with par or face value, or any class or classes thereof, into the same number or into a larger or smaller number of shares without nominal or par value; or

(b) So as to change its shares of stock without nominal or par value or any class or classes thereof, into the same number or into a larger or smaller number of shares with par or face value, provided that all the provisions of Article 1308 with reference to subscription to and payment for capital stock have first been complied with.

(c) Provided that all its shares in any one class shall be changed on the same basis, or so as to change its shares without nominal or par value, or any class or classes thereof, into shares of par or face value or into a larger or smaller number of shares without nominal or par value provided that all shares in any one class shall be changed on the same basis; and provided further, that except as herein provided, the preferences, rights, limitations, privileges and restrictions granted or imposed with respect to any shares of outstanding stock shall not be impaired, diminished or changed without the consent of the holder thereof. Whenever any such amendment shall be made effective, all the shares with par or face value of the class or classes specified in said amendment shall be deemed for all purposes to have been converted, on the basis in said amendment stated, shares without nominal or par value of the class or classes specified, and

all of the shares without nominal or par value changed into shares with par or face value or changed into a larger or smaller number of shares without nominal or par value shall be deemed for all purposes to have been converted, on the basis in said amendment stated, into such class or classes of shares with par or face value or into such larger or smaller number of shares without nominal or par value, and the corporations shall, in writing, notify all holders of shares of stock of the class or classes affected and shall thereafter, whenever any certificate for any such shares is presented for transfer or exchange, cancel the same, and in its place issue, on the basis in said amendment stated, a new certificate which shall conform to the provisions of Article 1538b hereof. (Nothing in this amendatory Act of the Regular Session of the 54th Legislature, 1955, shall ever be construed as repealing or in any manner affecting any of the provisions of the Insurance Code of this State authorizing the issuance of stock without nominal or par value.) As amended Acts 1955, 54th Leg., p. 1209, ch. 483, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 33—COUNTIES AND COUNTY SEATS

## Art. 1580. 1373, 797, 684 Agents to contract for county

Counties of 100,000 or more

Acts 1939, 46th Leg., Spec.L., p. 602, § 1, as amended Acts 1949, 51st Leg., p. 713, ch. 376, § 1; Acts 1955, 54th Leg., p. 815, ch. 302, § 1 read as follows:

"Section 1. In all counties of this State having a population of one hundred thousand (100,000) or more inhabitants according to the last preceding Federal Census, General or Special, a majority of a Board composed of the Judges of the District Courts and the County Judge of such county, may appoint a suitable person who shall act as the County Purchasing Agent for such county, who shall hold office, unless removed by said Judges, for a period of two (2) years, or until his successor is appointed and qualified, who shall execute a bond in the sum of Five Thousand Dollars (\$5,000), payable to said county, for the faithful performance of his duties. It shall be the duty of such Agent to make all purchases for such county of all supplies, materials and equipment required or used by such county or by a subdivision, officer, or employee thereof, excepting such purchases as may by law be required to be made by competitive bid, and to contract for all repairs to property used by such county, its subdivisions, officers, and employees, except such as by law are required to be contracted for by competitive bid. All purchases made by such Agent shall be paid for by warrants drawn by the County Auditor on the County Treasurer of such county as in the manner now provided by law.

"It shall be unlawful for any person, firm or corporation, other than such Purchasing Agent, to purchase any supplies, materials and equipment for, or to contract for any repairs to property used by, such county or subdivision, officer, or employee thereof, and no warrant shall be drawn by the County Auditor or honored by the County Treasurer of any such county for any purchases except by such Agent and those made by competitive bid as now pro-

vided by law. On the first day of July of each year such Purchasing Agent shall file with the County Auditor and each of said Judges of such county an inventory of all property of the county and of each subdivision, officer, or employee thereof then on hand, and it shall be the duty of the County Auditor to carefully examine such inventory and to make an accounting for all property purchased or previously inventoried and not appearing in such inventory. In order to prevent unnecessary purchases, such Agent shall have authority and it shall be his duty to transfer county supplies, materials, and equipment from any subdivision, department, officer, or employee of the county when such supplies, materials, or equipment are not actually needed or used by such subdivision, department, officer, or employee that may require such supplies and materials, or the use of such equipment; and such Agent shall furnish to the County Auditor a list of such supplies, materials, and equipment so transferred. Such Agent shall receive as compensation for his services a salary of not less than Thirty-six Hundred Dollars (\$3,600) per year, nor more than Six Thousand Dollars (\$6,000) per year, payable in equal monthly installments. The salary of the County Purchasing Agent shall be paid out of the General Fund and/or the Road and Bridge Fund of such county by warrants drawn on the County Treasurer. Said Agent shall have one assistant who shall receive as compensation for his services a salary of not less than Twenty-four Hundred Dollars (\$2,400) per year nor more than Three Thousand Dollars (\$3,000) per year, payable in equal monthly installments out of the General Fund and/or the Road and Bridge Fund. Said Agent and said assistant may have such help, equipment, supplies and traveling expenses with the approval of said Board of Judges, as they may deem advisable, the amount of said expenses to be approved by said Board."

## TITLE 34—COUNTY FINANCES

## I. GENERAL PROVISIONS

Art.

1644a—1. Surveys of water resources for use within county; expenditure for by certain counties; referendum [New].

## I. GENERAL PROVISIONS

## Art. 1641. Audit by accountant

Any Commissioners Court, when in its judgment an imperative public necessity exists therefor, shall have authority to employ a disinterested, competent and expert public accountant to audit all or any part of the books, records, or accounts of the county; or of any district, county or precinct officers, agents, or employees, including auditors of the counties, and all governmental units of the county, hospitals, farms, and other institutions of the county kept and maintained at public expense, as well as for all matters relating to or affecting the fiscal affairs of the county. The resolution providing for such audit shall recite the reasons and necessity existing therefor such as that in the judgment of said court there exists official misconduct, willful omission or negligence in records and reports, misapplication, conversion or retention of public funds, failure in keeping accounts, making reports and accounting for public funds by any officer, agent or employee of the district, county or precinct, including depositories, hospitals, and other public institutions maintained for the public benefit, and at public expense; or that in the judgment of the court, it is necessary that it have the information sought to enable it to determine and fix proper appropriation and expenditure of public moneys, and to ascertain and fix a just and proper tax levy. The said resolution may be presented in writing at any regular or called session of the Commissioners Court, but shall lie over to the next regular term of said court, and shall be published in one issue of a newspaper of general circulation published in the county; provided if there be no such newspaper published in the county, then notice thereof shall be posted in three public places in said county, one of which shall be at the court house door, for at least ten days prior to its adoption. At such next regular term said resolution shall be adopted by a majority vote of the four Commissioners of the court and approved by the County Judge. Any contract entered into by said Commissioners Court for the audit provided herein shall be made in accordance with the statutes applicable to the letting of contracts by said court, payment for which may be made out of the public funds of the county in accordance with said statutes. The authority conferred on county auditors contained in this title as well as other provisions of statutes relating to district, county and precinct finances and accounts thereof shall be held subordinate to the powers given herein to the Commissioners Court. Provided that in addition to the emergency powers granted herein, there is also conferred upon the Commissioners Court the authority to provide for and cause to be made, annually or biennially, an independent audit of the aforesaid accounts and officials when the court, by order duly entered at any January or February regular term, finds that the interest of the public would be best served thereby. Any contract entered into by said Commissioners Court for the audit provided herein shall be made in accordance with the statutes applicable to the letting of contracts by said court, payment for

which may be made out of the public funds of the county in accordance with said statutes. The authority conferred on county auditors contained in this title as well as other provisions of statutes relating to district, county and precinct finances and accounts thereof shall be held subordinate to the powers given herein to the Commissioners Court. As amended Acts 1955, 54th Leg., p. 78, ch. 50, § 1.

Emergency. Effective April 2, 1955.

**Art. 1644a—1. Surveys of water resources for use within county; expenditure for by certain counties; referendum**

**Section 1.** Any county of this State having a river flowing through or forming a part of the boundary of such county is hereby authorized to make expenditures from the General Fund or any other available fund of the county for the purpose of conducting investigations and assembling information relative to the present and prospective water needs of its inhabitants and the feasibility of developing the water resources of the river for uses within the county upon approval of such expenditure at an election as hereinafter provided.

**Sec. 2.** Before any expenditure authorized in Section 1 is incurred, the Commissioners Court shall fix the maximum amount of the expenditure and shall submit to the qualified taxpaying voters of the county, at an election ordered for that purpose, the proposition of whether such expenditure shall be incurred. The election shall be ordered and conducted in accordance with the General Election laws of this State. The ballots at the election shall have printed thereon the propositions:

“FOR the expenditure of county funds for the purpose of making a survey of water resources, in an amount not to exceed \_\_\_\_\_ Dollars.”

“AGAINST the expenditure of county funds for the purpose of making a survey of water resources, in an amount not to exceed \_\_\_\_\_ Dollars.”

If a majority of the ballots cast are in favor of such expenditure, the Commissioners Court shall have authority to contract for professional services and incur such other expenses as may be necessary, not to exceed the maximum amount fixed for this purpose. If the majority of the ballots cast are opposed to such expenditure, the Commissioners Court shall not be authorized to make any expenditure for this purpose, and no further election shall be held for a period of two (2) years thereafter. Acts 1955, 54th Leg., p. 973, ch. 378.

Emergency. Effective May 28, 1955.

Section 3 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Title of Act:**

An Act authorizing the Commissioners Court of any county of this State having a river flowing through or forming a part of

its boundary to expend county funds for the purpose of making surveys of water resources, upon approval of such expenditure at an election; providing for the election; providing a saving clause; and declaring an emergency. Acts 1955, 54th Leg., p. 973, ch. 378.

## 2. COUNTY AUDITOR

**Art. 1645. 1460 Appointment in certain counties; term of office; compensation**

In any county having a population of 35,000 inhabitants or over according to the last preceding Federal Census, or having a tax valuation of \$15,000,000 or over according to the last approved tax rolls, there shall be appointed every two years an auditor of accounts and finances, the title of said office to be County Auditor, who shall hold his office for two years and

who shall receive as compensation for his services an annual salary from the County General Fund of not more than the amount allowed or paid the Assessor-Collector of Taxes in his county, such salary of the County Auditor to be fixed and determined by the District Judge or District Judges making such appointment and having jurisdiction in the county, a majority ruling, said annual salary to be paid monthly out of the General Fund of the county. The action of the District Judge or District Judges in determining and fixing the salary of the County Auditor shall be made by order and recorded in the minutes of the District Court of the county and the Clerk thereof shall certify the same for observance to the Commissioners Court which shall cause the same to be recorded in its minutes. As amended Acts 1949, 51st Leg., p. 1068, ch. 552, § 1; Acts 1955, 54th Leg., p. 1117, ch. 414, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 4 of the amendatory Act of 1955 read as follows: "All laws or parts of laws in conflict herewith are hereby expressly repealed. However, it is the intention of the Legislature that this Act shall not be construed as repealing the provisions of Article 1672 of the Revised Civil Statutes of Texas of 1925 or Article 8245 of the Revised Civil Statutes of Texas of 1925, as amended."

Sections 2-4 of the act of 1949 read as follows:

"Sec. 2. All laws or parts of laws which are in conflict herewith are hereby repealed to the extent of such conflict, and, particularly House Bill No. 793, passed by the Fifty-first Legislature of Texas, Regular Session, 1949 [ch. 341, amending this article] and that portion of Senate Bill No. 246, passed by the Forty-ninth Legislature, Regular Session, Acts of 1945, Chapter 312, page 510 (Vernon's Civil Statutes, Article 3912e-9, Section 2) setting the compensation of County Auditors is hereby expressly repealed; provided, however, that this Act shall not in any way repeal or affect Senate Bill No. 173, passed

at the Regular Session of the Forty-seventh Legislature, 1941, and provided, further that this Act shall not repeal or affect Sections 1 and 2, Chapter 81, Acts of the Regular Session of the Forty-fifth Legislature, 1937, page 151 or Article 1672, Revised Civil Statutes of 1925, or Article 8245, Revised Civil Statutes of 1925, as amended by Section 1 of Chapter 119, Acts of the Regular Session, Forty-fourth Legislature.

"Sec. 3. This Act shall not apply in any county in Texas having a population of not less than ten thousand, four hundred (10,400) nor more than eleven thousand (11,000), according to the Federal Census of 1940.

"Sec. 4. It is hereby declared to be the legislative intent that if any sentence or part of this Act shall be held to be invalid or unconstitutional, such invalidity shall not be held to affect the validity or constitutionality of any other sentence or part of this Act."

Acts 1949, 51st Leg., ch. 341, § 2 repealed Acts 1941, 47th Leg., p. 229, ch. 160, which also amended this article. Chapter 341, as above shown, was itself repealed by Acts 1949, p. 1068, ch. 552.

#### Art. 1649. 1463 Bond and oath

The Auditor shall within twenty days of his appointment and before he enters upon the duties of his office make bond with two or more good and sufficient personal sureties or a good and sufficient surety bond in the minimum sum of \$5,000 payable to the District Judge or District Judges conditioned for the faithful performance of his duties to be approved by the District Judge or District Judges having jurisdiction of the county, a majority ruling. He shall also take the official oath and an additional one in writing stating that he is in every way qualified under the provisions and requirements of this title and giving fully the positions of private or public trust he has heretofore held and the length of service under each. He shall further include in his oath that he will not be personally interested in any contracts with the county. As amended Acts 1955, 54th Leg., p. 1117, ch. 414, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

For section 4 of the amendatory Act of 1955, see note under art. 1645.

#### Art. 1665. 1491 Reports to commissioners

The County Auditor shall make monthly and annual reports to the Commissioners Court and District Judge or District Judges of his county

setting forth all the facts of interest and showing the aggregate amounts received and disbursed out of each fund, the condition of each account on the books, the amounts of county, district and school funds on deposit in the County Depository, showing further the amount of bonded and other indebtedness of the county, together with such other information and suggestions as he may deem proper or that said Commissioners Court or District Judge or District Judges may require. Said annual report shall be made to include all transactions during the year ending December 31st of each year and shall be completed and filed at a regular or special term of the Commissioners Court in the following April and copies of such reports shall be filed with the District Judge or District Judges of said county. Each time an annual audit is delivered to the Commissioners Court and the District Judge or District Judges, as the case may be, the County Auditor shall send a report to the bonding company of each district, county or precinct officer showing the condition of that particular office. As amended Acts 1955, 54th Leg., p. 1117, ch. 414, § 3.

Effective 90 days after June 7, 1955, date of adjournment.

For section 4 of the amendatory Act of 1955, see note under art. 1645.

## TITLE 35—COUNTY LIBRARIES

### 1. COUNTY FREE LIBRARY

Art.

1696a. Acquisition of land; construction, repair, equipment and improvement of buildings; bond issues; taxes [New].

### 1. COUNTY FREE LIBRARY

Art. 1696a. Acquisition of land; construction, repair, equipment and improvement of buildings; bond issues; taxes

Section 1. The Commissioners Court of any county in this State is hereby authorized to acquire land for and to purchase, construct, repair, equip and improve buildings, and other permanent improvements to be used for county library purposes. Such building or buildings and other permanent improvements may be located in the county at such place or places as the Commissioners Court may determine. Payment for such buildings and repairs and improvements and other permanent improvements shall be made from the Constitutional Permanent Improvement Fund.

Sec. 2. To pay the costs of acquiring land for and of purchasing, constructing, repairing, equipping and improving such buildings and other permanent improvements, the Commissioners Court is hereby authorized to issue negotiable bonds of the county and to levy and collect taxes in payment thereof, the issuance of such bonds and the levy and collection of taxes to be in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, governing the issuance of bonds by cities, towns, and/or counties in this State. Acts 1955, 54th Leg., p. 585, ch. 194.

Effective 90 days after June 7, 1955, date of adjournment.

Title of Act:

An Act to authorize Commissioners Courts to acquire land for and to purchase, construct, repair, equip and improve buildings and other permanent improvements

to be used for county library purposes; providing for the location and payment therefor; authorizing the issuance of negotiable bonds for such purpose and the levy and collection of taxes in payment thereof; and declaring an emergency. Acts 1955, 54th Leg., p. 585, ch. 194.

## TITLE 40—COURTS—DISTRICT

## CHAPTER FOUR—TERMS OF COURT

**Art. 1919.** 1718, 1111, 1127 Terms of court; continuous sessions; rules and regulations; proceedings validated [amendment effective Jan. 1, 1956]

Section 1. All district courts in this State, including all criminal district courts, whenever and however created, shall hold at least two (2) terms of court per year in each county wherein they sit. Notwithstanding the provisions of any law, the terms of all district courts in the State, civil and criminal, shall be continuous and shall begin on the day now or hereafter fixed by law and shall continue until the day fixed by law for the beginning of the next succeeding term. It shall be no objection to the commencement of a term of court that the first day falls upon a legal holiday, nor that the Judge is not present in the county upon the day set for the commencement of the term of court. The Judge of the district may hold as many sessions of court in any county as is deemed proper and expedient for the dispatch of business, and may adopt such rules and regulations relating thereto as are permitted by, and not contrary to, the Statutes of this State and the Texas Rules of Civil Procedure prescribed by the Supreme Court of Texas.

Sec. 2. In all judicial districts in Texas containing more than one (1) county, the district court may hear and determine all preliminary and interlocutory matters in which a jury may not be demanded, and unless there is objection from some party to the suit, hear and determine any noncontested or agreed cases except divorce cases and contests of elections, pending in his district, and may sign all necessary orders and judgments therein in any county in his judicial district, and may sign any order or decree in any case pending for trial or on trial before him in any county in his district at such place as may be convenient to him, and forward such order or decree to the clerk for filing and entry. Any district judge assigned to preside in a court of another judicial district, or who may be presiding in exchange or at the request of the regular Judge of said court may in like manner hear, determine and enter any such orders, judgments and decrees in any such case which is pending for trial or has been tried before such visiting judge; provided that all divorce cases, all default judgments, and all cases in which any of the parties have been cited by publication shall be tried in the county in which filed. As amended Acts 1951, 52nd Leg., p. 341, ch. 212; Acts 1955, 54th Leg., p. 806, ch. 297, § 1.

Sections 2-6 of the amendatory Act of 1955, read as follows: "Sec. 2. All processes issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term, as herein established, of the district courts in all counties in this State, as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 3. If any district court in any county of the State shall be in session at the time this Act takes effect, such court or courts affected thereby shall continue

in session until the term thereof shall expire under the provisions of existing laws, but thereafter all district courts in every district in the State shall conform to the requirements of this Act.

"Sec. 4. This Act shall supersede Chapter 212, Acts of the Regular Session of the Fifty-second Legislature. All other laws or parts of laws, including both general and special laws, in conflict with the provisions of this Act are hereby expressly repealed to the extent of such conflict.

"Sec. 5. This Act shall become effective on the first day of January, 1956."



TITLE 41—COURTS—COUNTY

CHAPTER FIVE—MISCELLANEOUS PROVISIONS

<p>Art. 1969a—3. County judges, acting for judge of County Court at Law [New].</p> <p>ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER</p> <p>EL PASO COUNTY AT LAW</p> <p>1970—141.1 County Court at Law No. 2 of El Paso County [New].</p>	<p>POTTER COUNTY AT LAW</p> <p>1970—311a. County Court at Law of Potter County created, etc. [New].</p> <p>HILL COUNTY COURT</p> <p>1970—333a. Jurisdiction restored; jurisdiction of district court [New].</p> <p>NUECES COUNTY</p> <p>1970—339A. County Court at Law No. II of Nueces County [New].</p> <p>TAYLOR COUNTY</p> <p>1970—343. County Court at Law of Taylor County [New].</p>
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Art. 1969a—3. County judges, acting for judge of County Court at Law

Section 1. The County Judge of any county in this State having a population of five hundred thousand (500,000) inhabitants or more, according to the last preceding or any future Federal Census, if such County Judge is a duly licensed attorney at law, may act for the judge of any County Court at Law of such counties in any case, civil or criminal, and also in any matter and proceeding of which such County Court at Law may now or hereafter have jurisdiction, during the absence or inability of the Judge of the County Court at Law to perform such duties.

Sec. 2. The absence or inability of the Judge of the County Court at Law to perform any of the duties set forth in Section 1 shall be certified by the Judge of the County Court at Law or the Commissioners Court to the County Judge and when such certification is for the purpose of conferring powers to perform some judicial act, such certificate shall be spread on the minutes of the appropriate court.

Sec. 3. That any act performed pursuant to this Act by the County Judge for the Judge of the County Court at Law shall be valid and binding upon all parties to such proceeding and matters the same as if performed by the Judge of the County Court at Law.

Sec. 4. Notwithstanding the additional duties herein conferred upon the County Judge, he shall not be entitled to, nor shall he receive, any additional compensation for performing such additional duties and services and his compensation shall remain the same as now or may hereafter be set by law.

Sec. 5. It is not intended by this Act to repeal any law providing for the election or appointment of a special judge of any County Court at Law, and this Act shall be cumulative of and in addition to such law. Acts 1955, 54th Leg., p. 520, ch. 156.

Emergency. Effective May 6, 1955.  
Section 6 of the Act of 1955 was a separability clause.  
Title of Act:  
An Act concerning the performance of certain duties of the Judges of the County Courts at Law by the County Judge in

counties of five hundred thousand (500,000) or more population; validating such substituted actions; providing for no additional compensation for such acts; declaring this Act cumulative and severable; and declaring an emergency. Acts 1955, 54th Leg., p. 520, ch. 156.

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR  
COURTS, AND AFFECTING PARTICULAR COUNTY  
COURTS, AND DECISIONS THEREUNDER

JEFFERSON COUNTY AT LAW

Art. 1970—122. Salary of judge; fees collected and accounted for

The Judge of the County Court of Jefferson County at Law shall receive a salary of not less than Eight Thousand (\$8,000) Dollars and not more than Ten Thousand (\$10,000) Dollars per annum, the amount of the salary to be paid out of the County Treasury of Jefferson County, Texas, as fixed and ordered by the Commissioners Court of said county; said salary shall be paid monthly in equal installments. The Judge of the County Court of Jefferson County at Law shall assess the same fees as are now prescribed by law, relating to County Judges' fees, all of which shall be collected by the clerk of the court and shall be paid into the County Treasury on collection; no part of which shall be paid to said Judge, but he shall draw a salary as above specified in this Section. As amended Acts 1951, 52nd Leg., p. 4, ch. 4, § 1; Acts 1955, 54th Leg., p. 1176, ch. 455, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 3 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict.

Section 2 of the amending Acts of 1951 and 1955 provided that if any section or part of this Act shall be held to be unconstitutional, the remaining sections or parts thereof shall not be affected, but shall remain in force and effect.

EL PASO COUNTY AT LAW

Art. 1970—138. Compensation of judge

There shall be taxed and collected by the El Paso County Court at Law the same fees provided by law for County Judges in similar cases, all of which shall be paid by the clerk monthly into the County Treasury. The Judge of the El Paso County Court at Law shall receive an annual salary of not less than Fifty-five Hundred (\$5500.00) Dollars and not more than Eight Thousand (\$8000.00) Dollars, the amount of the salary to be fixed by the Commissioners Court of El Paso County and to be paid monthly out of the County Treasury upon order of the Commissioners Court. As amended Acts 1955, 54th Leg., p. 43, ch. 32, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Art. 1970—141.1 County Court at Law No. 2 of El Paso County

Section 1. There is hereby created an additional County Court at Law in El Paso County, Texas, to be known and designated as the "County Court at Law No. 2 of El Paso County, Texas."

Sec. 2. The County Court at Law No. 2 of El Paso County, Texas, shall have and is hereby granted the same jurisdiction over criminal matters that is now or may be vested in County Courts having jurisdiction in criminal actions and proceedings under the Constitution and laws of Texas, and shall have appellate jurisdiction in appeals in criminal cases from Justice Courts and Corporation Courts within El Paso County, and the judges of said Court shall have the same powers, rights and privileges as to criminal matters as are or may be vested in the judges of County Courts having criminal jurisdiction. Said County Court at Law No. 2 shall have and is hereby granted the same jurisdiction and

powers in criminal matters and civil actions or proceedings that are now or may be conferred by law upon and vested in the County Court at Law of El Paso County, Texas; and each of the judges of said County Courts at Law may with the consent of the judge of the Court to which transfer is to be made, transfer civil or criminal actions or proceedings from his respective Court to the other Court by the entry of an order to that effect upon the docket, and the said County Court at Law of El Paso County, and the judge thereof, shall transfer to the said County Court at Law No. 2 of El Paso County, any civil or criminal action or proceeding pending on the docket of said Court on the effective date of this Act as may be necessary in order that the now overcrowded dockets of said Court may be relieved, and said County Court at Law No. 2 of El Paso County, and the judge thereof, shall have jurisdiction to hear and determine said civil or criminal matters, and render and enter the necessary and proper orders, decrees, and judgments therein. No cause shall be transferred without the consent of the judge of the Court to which it is transferred.

Sec. 3. The County Court at Law of El Paso County and County Court at Law No. 2 of El Paso County shall henceforth have general jurisdiction of Probate Courts within the limits of El Paso County concurrent with jurisdiction of the County Court of El Paso County in such matters and proceedings. Such County Court at Law and County Court at Law No. 2 shall probate wills, appoint guardians of minors, idiots and lunatics, persons non compos mentis and drunkards, grant letters testamentary and of administration, settle accounts with administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and drunkards; including the settlement, partition and distribution of estates of deceased persons, the apprenticing of minors as provided by law, and conduct lunacy proceedings. Said County Court at Law and County Court at Law No. 2 shall have no jurisdiction over any other of those matters which are now vested exclusively in the County Court of El Paso County, or in the judge therein.

The County Court of El Paso County, the El Paso County Court at Law and the County Court at Law No. 2 of El Paso County, or either of the judges thereof shall have the power to issue writs of injunction, sequestration, attachments, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said Courts; and also power to punish for contempt under such provisions as are, or may be provided by the General Laws governing County Courts throughout the State, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said Courts or of any Court or tribunal inferior to said Courts.

The judges of the County Court of El Paso County, County Court at Law of El Paso County, and County Court at Law No. 2 of El Paso County may with the consent of the judge of the Court to which transfer is to be made, transfer probate matters or proceedings from his respective Court to the other Court by the entry of an order to that effect upon the docket, to enable the efficient and justiciable disposition of the probate matters and proceedings in El Paso County, Texas.

The judges of the County Court, County Court at Law and County Court at Law No. 2 may collectively make and publish rules from time to time governing the docketing and disposition of probate matters and proceedings in their Courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure and for the purpose of efficient and justiciable disposition of such probate matters and proceedings. A copy of such rules and changes shall be filed with the

County Clerk of El Paso County, Texas, and one (1) copy of such rules and changes shall be available in each such Court for the examination of participants in any probate matters filed.

Sec. 4. The terms of the County Court at Law of El Paso County and the County Court at Law No. 2 of El Paso County, Texas, shall commence on the first Monday in January and July and said Courts may continue in session until the Sunday next preceding the Monday for the convening of the next regular term of Court.

The judges of the County Court at Law of El Paso County, and the County Court at Law No. 2 of El Paso County may divide each term of Court into as many sessions as they deem necessary for the disposition of business, and may extend a particular term of Court whenever practicable for the efficient and justiciable disposition of individual proceedings and matters.

Sec. 5. The judge of the County Court at Law of El Paso, Texas, and the judge of the County Court at Law No. 2 of El Paso County shall be a citizen of the United States and of this State, who shall have been a practicing attorney of this State for at least five (5) years next preceding his election or appointment and who shall have resided in the County of El Paso for at least two (2) years next preceding his election or appointment.

Judges of the County Court at Law of El Paso County and the County Court at Law No. 2 of El Paso County shall each receive an annual salary of not less than Five Thousand, Five Hundred Dollars (\$5,500) and not more than Eight Thousand Dollars (\$8,000), the amount of the salary to be fixed by the Commissioners Court of El Paso County and to be paid monthly out of the County Treasury upon order of the Commissioners Court; such judges shall not collect any fee from the County for disposing of any criminal case.

Sec. 6. Within sixty (60) days after the effective date of this Act, the senior district judge in and for El Paso County, Texas, shall call an election of the licensed attorneys practicing in El Paso County, Texas, for the purpose of electing a panel of three (3) qualified nominees for the office of judge of the County Court at Law No. 2 of El Paso County, Texas. Notice of the time of such election shall be prominently posted in the district clerk's office and the county clerk's office at least one (1) week prior to the date of such nominations. A candidate for the office of judge of the County Court at Law No. 2 of El Paso County, Texas, may be nominated for said panel by a written nomination from one (1) of said licensed attorneys or the candidate himself filed prior to the date of said election with the said senior district judge. At the said called election, the senior district judge shall present said written applications and nominations and shall receive further oral nominations at that time; the senior district judge shall not permit nominations to be closed until it is apparent no further nominations are forthcoming. Said attorneys then present shall then vote by secret ballot from the written and oral nominees and applicants, their respective three (3) preferences marked in order of their preference, which vote shall be counted according to preference.

The panel of the three (3) candidates receiving the highest number of votes and the results of said election shall be certified by the said senior district judge and submitted to the county judge of El Paso County, Texas, as a recommendation only, but such recommendation shall not be binding on the Commissioners Court in their appointment as hereinafter provided. Within one (1) week from the receipt of said panel by the said county judge, the Commissioners Court of El Paso County, Texas, shall appoint a judge of the County Court at Law No. 2 of El Paso County, Texas, who

shall serve beginning September 1, 1955, until the next general election and until his successor shall be duly elected and qualified. Thereafter said office shall be filled at general election as provided by law except in case of vacancy. In case of vacancy said office shall be filled by appointment by the Commissioners Court in the same manner.

After the effective date of this Act a vacancy occurring in the office of the judge of the County Court at Law of El Paso County, Texas, shall likewise be filled by appointment by the Commissioners Court from a panel of three (3) nominees elected in the same manner as in the County Court at Law No. 2 of El Paso County, Texas, which appointed judge shall serve until the next general election and until his successor shall be duly elected and qualified, as now provided by law.

Sec. 7. The judge of the County Court at Law No. 2 of El Paso County, shall execute bond and take the oath of office as required by law relating to county judges.

Sec. 8. The judge of the County Court at Law No. 2 of El Paso County, Texas, shall appoint an official court reporter for such Court, who shall be well skilled in his profession and shall be a sworn officer of the Court and shall hold his office at the pleasure of the Court and all of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same may hereafter be amended and all other provisions of the law relating to "official court reporters" shall and is hereby made to apply in all its provisions, in so far as they are applicable to the official court reporter herein authorized to be appointed, and in so far as they are not inconsistent with the provisions of this Act, and such official court reporter shall be entitled to the same compensation as applicable to official court reporters in the District Courts of El Paso County, Texas, paid in the same manner that compensation of official court reporters of the District Courts of El Paso County are paid.

Sec. 9. The county clerk of El Paso County, Texas, shall act as and be the clerk of said County Court at Law No. 2 of El Paso County, Texas, in civil and criminal matters. The county clerk shall receive and collect the same fees which he now receives and collects as clerk of the County Court at Law of El Paso County, Texas. Said clerk shall keep separate dockets for each of said Courts; and shall tax the official court reporter's fee as costs in civil actions in each of said Courts in like manner as said fee is taxed in civil cases in the District Courts.

Sec. 10. The sheriff of El Paso County, either in person or by deputy, shall attend said Court when required by the judge thereof; and the various sheriffs and constables of this State executing process issued out of said Court shall receive the fees now or hereafter fixed by law for executing process issued out of County Courts.

Sec. 11. The seal of the County Court at Law No. 2 of El Paso County, Texas, shall be the same as that provided by law for County Courts, except that such seal shall contain the words "County Court at Law No. 2 of El Paso County, Texas," and said seal shall be judicially noticed.

Sec. 12. A special judge of said Court may be appointed or elected in the manner and instances now or hereafter provided by law relating to County Courts and judges thereof.

Sec. 13. The judges of the County Court at Law and County Court at Law No. 2 of El Paso County shall have the power to make and publish rules as to the docketing and disposition of criminal and civil cases in their Courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure.

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

The judges of the County Court at Law of El Paso County, Texas, and the County Court at Law No. 2 of El Paso County, Texas, with mutual consent may exchange benches with one another or act as presiding judge of the other Court in individual proceedings or actions in the absence or disqualification of the other judge.

Sec. 14. In cases transferred to any one of the County Courts at Law by order of the judge of one of said Courts as provided in Section 2 of this Act, all process extant at the time of such transfer shall be returned to and filed in the Court to which such transfer is made, and shall be as valid and binding as though originally issued out of the Court to which such transfer may be made. Acts 1955, 54th Leg., p. 82, ch. 53.

Emergency. Effective April 2, 1955. Section 15 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act. Section 16 repealed all conflicting laws or parts of laws to the extent of such conflict only.

### CAMERON COUNTY COURT AT LAW

#### Art. 1970—305. County court at law Cameron county created

Sec. 7. The practice in the County Court at Law of Cameron County, Texas, and the appeals and writs of error therefrom shall be as prescribed by the laws relating to county courts. The terms of the County Court at Law of Cameron County, Texas, shall be held in the courthouse of Cameron County, and begin on the first Monday in February, April, June, August, October and December of each year, and shall continue in session until Saturday midnight prior to the beginning of the next succeeding term. As amended Acts 1955, 54th Leg., p. 223, ch. 57, § 1.

Emergency. Effective April 8, 1955.

Sec. 11. In case of the disqualification of the Judge of the County Court at Law of Cameron County in any case pending in said court, the County Judge of Cameron County shall sit in such case to hear all matters of such disqualification and the appointment of a Judge to hear such case and the parties or their attorneys may agree on the selection of a Special Judge to try such case or cases; and in default of such agreement, a majority of the practicing lawyers of Cameron County, not less than three, present and voting in open court, shall elect a Special Judge to try such case or cases, and the County Judge hearing such disqualification shall so order. As amended Acts 1955, 54th Leg., p. 223, ch. 57, § 2.

Emergency. Effective April 8, 1955.

Change of name, see art. 1970—305a.

### PARTICULAR COUNTY COURTS

#### Art. 1970—310. Other acts creating or affecting jurisdiction of particular county courts

Crockett. Acts 1909, 31st Leg., 1st C.S., ch. 31, repealed in part and jurisdiction restored: Acts 1955, 54th Leg., p. 384, ch. 105, effective April 26, 1955.

### POTTER COUNTY AT LAW

#### Art. 1970—311a. County court at law of Potter County created, etc.

Section 1. There is hereby created a court to be held in Amarillo, Potter County, Texas which shall be known as the County Court at Law of Potter County.

Sec. 2. The County Court at Law of Potter County shall have original and concurrent jurisdiction with the County Court of Potter County, in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of this state, County Courts have jurisdiction, except as provided in Section 6 of this Act; but this provision shall not affect jurisdiction of the Commissioners Court or the County Judge of Potter County, Texas as the presiding officer of the Commissioners Court as to roads, bridges and public highways, and matters of eminent domain, which are now within the jurisdiction of the Commissioners Court or the judge of Potter County.

With the consent of the other, the judge of either of such courts shall have the power to transfer to the other court any case over which the courts have concurrent jurisdiction pending upon the docket of his court except in cases where the writ of certiorari has been granted.

Sec. 3. The County Court at Law of Potter County shall have and exercise original concurrent jurisdiction with the Justice Courts in all civil matters which by the General Laws of this state is conferred upon Justice Courts. Neither the County Court at Law of Potter County nor the judge thereof shall have jurisdiction to act as a coroner nor to preside at inquests, nor have jurisdiction of claims which come within the jurisdiction of the Small Claims Court as prescribed by Article 2460a of the Revised Civil Statutes of Texas.

Sec. 4. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of the County Court at Law of Potter County in civil cases of which said court had appellate or original concurrent jurisdiction with the Justice Court where the judgment or amount in controversy would not exceed One Hundred (\$100.00) Dollars, exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the Justice Courts of jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the County Court at Law of Potter County over such matters as are specified in this Act; nor shall this Act be construed to deny the right of an appeal to the County Court at Law of Potter County from the Justice Court, where the right of appeals to the County Court now exists by law.

Sec. 6. The County Court of Potter County shall retain, as heretofore, the general jurisdiction of a Probate Court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and to apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by General Law governing County Courts throughout the state. The County Judge of Potter County shall be the judge of the County Court of Potter County. All ex officio duties of the County Judge shall be exercised by the judge of the County Court of Potter County except in so far as the same shall, by this Act, be committed to the judge of the County Court at Law of Potter County.

Sec. 7. The terms of the County Court at Law of Potter County shall be as prescribed by the laws relating to the County Courts. The

terms of the County Court at Law of Potter County shall be held as now established for the terms of the County Court of Potter County and the same may be changed in accordance with the laws governing the change in the terms of the County Court of Potter County.

Sec. 8. There shall be elected in Potter County by the qualified voters thereof, at each general election, a judge of the County Court at Law of Potter County. No person shall be elected or appointed judge of the court who is not a resident citizen of Potter County. He shall also be a licensed attorney of the State of Texas and shall have been a licensed attorney of the State of Texas for at least two years immediately prior to his appointment or election. The person elected such judge shall hold his office for four years and until his successor shall have been duly elected and qualified.

Sec. 9. The County Attorney of Potter County shall represent the state in all prosecutions in the County Court at Law of Potter County, as provided by law for such prosecutions in County Courts, and shall be entitled to the same fees as now prescribed by law for such prosecutions in the County Courts.

Sec. 10. As soon as this Act becomes effective the Commissioners Court of Potter County shall appoint a judge of the County Court at Law of Potter County, who shall hold his office until the next general election and until his successor shall have been duly elected and qualified, and shall provide suitable quarters for the holding of said court.

Sec. 11. The judge of the County Court at Law of Potter County may be removed from office in the same manner and for the same causes as any County Judge may be removed under the laws of this state.

Sec. 12. The judge of the County Court at Law of Potter County shall execute a bond and take the oath of office as required by law relating to County Judges.

Sec. 13. A special judge of the County Court at Law of Potter County may be appointed or elected as provided by law relating to County Courts and to the judge thereof. He shall receive the sum of Thirty (\$30.00) Dollars per day for each day he so actually serves, to be paid out of the general fund of the county by the Commissioners Court.

Sec. 14. In the case of the disqualification of the judge of the County Court at Law of Potter County to try any case pending in his court, the parties or their attorneys may agree on the selection of a special judge to try such case or cases where the judge of the County Court at Law of Potter County is disqualified. In case of the selection of such special judge by agreement of the parties or their attorneys, such special judge shall draw the same compensation as that provided in Section 13 of this Act.

Sec. 15. The County Court at Law of Potter County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said court or of any other court in said county of inferior jurisdiction to the County Court at Law.

Sec. 16. The County Clerk of Potter County shall be the clerk of the County Court at Law of Potter County, and the seal of the court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court at Law of Potter County."



Sec. 17. The sheriff of Potter County shall in person or by deputy attend the County Court at Law of Potter County when required by the judge thereof.

Sec. 18. The jurisdiction and authority now vested by law in the County Court of Potter County and the judge thereof, for the drawing, selection and service of jurors and talesmen shall also be exercised by the County Court at Law of Potter County and the judge thereof; but jurors and talesmen summoned for either of said courts may by order of the judge of the court in which they are summoned be transferred to the other court for service therein and may be used therein as if summoned for the court to which they may be thus transferred. Upon concurrence of the judge of the County Court at Law of Potter County and the judge of the County Court of Potter County jurors may be summoned for service in both courts and shall be used interchangeably in both such courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect, shall be as valid as if no change had been made and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of said courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the court for which they were originally drawn.

Sec. 19. Any vacancy in the office of the judge of the County Court at Law of Potter County shall be filled by the Commissioners Court, and when so filled the judge shall hold office until the next general election and until his successor is elected and qualified.

Sec. 20. The judge of the County Court at Law of Potter County shall receive the same salary and be paid from the same fund and in the same manner as is now prescribed or may be established by law for the County Judge of Potter County, to be paid out by the County Treasurer of Potter County, Texas, on the order of the Commissioners Court of said county, and said salary shall be paid monthly in equal installments.

Sec. 21. The judge of the County Court at Law of Potter County shall assess the same fees as are prescribed by law relating to the County Judge's fees all of which shall be collected by the clerk of the court and shall be paid into the County Treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as above specified in this Act.

Sec. 22. The judge of the County Court at Law of Potter County may appoint an official shorthand reporter for such court who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. Such reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Potter County to be paid out of the County Treasury of Potter County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall be and is hereby made to apply in all its provisions in so far as they are applicable to the official shorthand reporter herein authorized to be appointed and in so far as they are not inconsistent with this Act.

Sec. 23. The laws of the State of Texas, the rules of procedure and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law of Potter County, and shall be applicable

to and govern the proceedings in and appeals to and appeals from the County Court at Law of Potter County. Acts 1955, 54th Leg., p. 219, ch. 56. Emergency. Effective April 8, 1955.

### HILL COUNTY COURT

#### Art. 1970—333a. Jurisdiction restored; jurisdiction of district court

Section 1. There is hereby restored to the County Court of Hill County, original jurisdiction in matters of eminent domain which had been transferred to the District Court of Hill County by the provisions of House Bill No. 648, Acts of the 50th Legislature, Regular Session, 1947, Chapter 271 (codified in Vernon's Civil Statutes as Article 1970—333), and original jurisdiction in matters of eminent domain is hereby transferred from the District Court of Hill County to the County Court of Hill County.

From and after the effective date of this Act, the County Court of Hill County shall have and exercise original jurisdiction in matters of eminent domain.

Sec. 2. The District Clerk of Hill County is hereby required within thirty days after this Act takes effect to file with the Clerk of the County Court of Hill County all original papers in cases or proceedings here transferred to the County Court of Hill County, and all dockets and certified copies of any interlocutory judgment or other order entered in the minutes of the District Court in said cases or proceedings so transferred, and the Clerk of the County Court shall immediately docket all such cases on the docket of the County Court of Hill County and all such cases or proceedings shall stand on the docket of said court in the same manner and place as each stands on the docket of the District Court. It shall not be necessary that the Clerk of the County Court refile any papers theretofore filed by the District Clerk, but papers in said case or proceeding bearing the file marks of the District Clerk prior to the time of such transfer shall be held to have been filed in the case or proceeding as of the date filed, without being refiled by the Clerk of the County Court. The District Clerk in cases or proceedings so transferred shall accompany the papers with the certified bill of costs, and against all costs deposits, if any, the District Clerk shall charge accrued fees to him and the remainder of the deposit he shall pay to the County Court as a deposit in the particular case for which the same was deposited. Credit shall be given litigants for all jury fees paid in the District Court.

Sec. 3. All writs and process relating to such cases or proceedings issued by or out of the District Court of Hill County are hereby made returnable to the next term of the County Court of Hill County after this Act takes effect. Any case or proceeding on appeal which has been transferred by this Act to the County Court, should a judgment be rendered by the Court of Civil Appeals or the Supreme Court remanding the case or proceeding for a new trial or for further proceedings, shall be remanded to the County Court of Hill County, and all jurisdiction in respect to said particular case or proceeding shall vest in the County Court of Hill County.

Sec. 4. This Act shall not be construed to in anywise or manner affect final judgments heretofore rendered by the District Court of Hill County pertaining to matters transferred by the provisions of this Act to the County Court, but the District Court shall retain jurisdiction to enforce said final judgments. Acts 1955, 54th Leg., p. 674, ch. 243.

Emergency. Effective May 16, 1955.

Section 5 was a severability clause.

Title of Act:

An Act restoring to the County Court of Hill County original jurisdiction in mat-

ters of eminent domain; transferring from the District Court in Hill County to the County Court of Hill County, original jurisdiction in matters of eminent domain;

making other provisions relating to such transfer; providing a severability clause; and declaring an emergency. Acts 1955, 54th Leg., p. 674, ch. 243.

### NUECES COUNTY

#### Art. 1970—339. County Court at Law No. I of Nueces County

Sec. 5. The County Court at Law No. 1 of Nueces County shall hold four (4) terms of Court each year in the Courthouse of Nueces County, said terms to be as follows: One term beginning on the first Monday in January, one term beginning on the first Monday in April, one term beginning on the first Monday in July, and one term beginning on the first Monday in October; and each of said terms shall continue until and including the Sunday next before the first Monday of the term immediately following. As amended Acts 1953, 53rd Leg., p. 791, ch. 320, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 42, ch. 14, § 26.

Emergency. Effective April 22, 1954.

Sec. 8. A special judge of the County Court at Law No. I of Nueces County may be appointed or elected as provided by law relating to County Courts and to the judges thereof, who shall receive the sum of Twenty-five Dollars (\$25) per day for each day he so actually serves, to be paid out of the General Fund of the County by the Commissioners Court. As amended Acts 1954, 53rd Leg., 1st C.S., p. 42, ch. 14, § 25; Acts 1955, 54th Leg., p. 5, ch. 5, § 1.

Emergency. Effective Feb. 11, 1955.

Section 5 of amendatory Act of 1955 was

a severability clause. Section 6 repealed conflicting laws.

Sec. 15. The County Clerk of Nueces County, Texas shall be the Clerk of the County Court at Law No. 1 of Nueces County, Texas. The Seal of said Court shall be the same as that provided by law for County Courts, except the Seal shall contain the words 'County Court at Law No. 1 of Nueces County.' The Sheriff of Nueces County shall in person or by deputy attend the said Court when required by the Judge thereof. The County Attorney of Nueces County shall represent the State in all prosecutions pending in said County Court at Law No. 1 of Nueces County, and he shall be entitled to the same fees as now prescribed by law for such prosecutions in the County Courts. As amended Acts 1954, 53rd Leg., 1st C.S., p. 42, ch. 14, § 26.

Emergency. Effective April 22, 1954.

Sec. 17. The Judge of the County Court at Law No. I of Nueces County shall receive a salary of Eight Thousand, Five Hundred Dollars (\$8,500) per annum, to be paid out of the County Treasury on the order of the Commissioners Court, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law No. I of Nueces County shall assess the same fees as are now prescribed or may be established by law, relating to the County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, and no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this Section. As amended Acts 1951, 52nd Leg., p. 542, ch. 318, § 1; Acts 1955, 54th Leg., p. 5, ch. 5, § 2.

Emergency. Feb. 11, 1955.

Change of name of court, see art. 1970—339A, § 2.

**Art. 1970—339A. County Court at Law No. II of Nueces County**

Section 1. There is hereby created a Court to be held in Corpus Christi, Nueces County, Texas, to be called the County Court at Law No. II of Nueces County, Texas.

Sec. 2. The name of the County Court at Law of Nueces County, created by Acts, 1949, Fifty-first Legislature, Page 692, Chapter 362, known and cited as Article 1970—339, Vernon's Annotated Civil Statutes of the State of Texas, is hereby changed to County Court at Law No. I of Nueces County, Texas, and all laws heretofore or hereafter enacted by the Legislature applicable or relating to the County Court at Law of Nueces County shall hereafter be applicable and shall relate to the County Court at Law No. I of Nueces County.

Sec. 3. The County Court at Law No. II of Nueces County shall have and exercise jurisdiction in the matters and causes, civil and criminal, original and appellate, over which the County Court at Law No. I of Nueces County has jurisdiction according to the provisions of Sections 2 and 3 of Acts, 1949, Fifty-first Legislature, page 692, Chapter 362, known and cited as Article 1970—339, Vernon's Annotated Civil Statutes of the State of Texas. Its jurisdiction shall be concurrent with that of the County Court at Law No. I of Nueces County, except that each Court shall give priority to cases according to the provisions contained in this Act.

Sec. 4. The County Court of Nueces County shall have and retain, as heretofore, jurisdiction in matters of eminent domain and the general jurisdiction of the Probate Court and all jurisdiction now conferred by law over probate and eminent domain matters; and the Court herein created shall have no other jurisdiction than that named in Section 3 of this Act, and the County Court of Nueces County as now existing shall have no jurisdiction over matters civil and criminal. The County Judge of Nueces County shall be the Judge of the County Court of said County, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Nueces County, except in so far as the same shall be committed to the County Courts at Law of Nueces County by the provisions of this Act and by the provisions of Acts, 1949, Fifty-first Legislature, page 692, Chapter 362, known and cited as Article 1970—339, Vernon's Annotated Civil Statutes of the State of Texas.

Sec. 5. The County Court at Law No. II of Nueces County shall hold four (4) terms of Court each year in the Courthouse of Nueces County, said terms to be as follows: One term beginning on the first Monday in January, one term beginning on the first Monday in April, one term beginning on the first Monday in July, and one term beginning on the first Monday in October; and each of said terms shall continue until and including the Sunday next before the first Monday of the term immediately following.

Sec. 6. There shall be elected in Nueces County by the qualified voters thereof, at each General Election, a Judge of the County Court at Law No. II of Nueces County, who shall be a qualified voter in said County, and who shall be a regularly licensed Attorney at Law in this State, and who shall be a resident of Nueces County, Texas, and shall have been actively engaged in the practice of law for a period of not less than four (4) years next preceding such General Election, who shall hold his office for two (2) years, and until his successor shall have been duly elected and qualified.

Sec. 7. The Judge of the County Court at Law No. II of Nueces County shall execute a bond and take the oath of office as required by law relating to County Judges.

Sec. 8. A special Judge of the County Court at Law No. II of Nueces County may be appointed or elected as provided by law relating to County Courts and to the Judges thereof, who shall receive the sum of Twenty-five Dollars (\$25) per day for each day he so actually serves, to be paid out of the General Fund of the County by the Commissioners Court. As amended Acts 1955, 54th Leg., p. 5, ch. 5, § 3.

Emergency. Effective Feb. 11, 1955.

Sec. 9. The County Court at Law No. II of Nueces County, Texas, as herein created, shall come into legal existence on January 1, 1955, and said Court shall have no legal status, shall perform no duties, and shall receive no compensation until on or after said date. The first Judge of the County Court at Law No. II of Nueces County shall be elected by the qualified voters of Nueces County at the General Election to be held in November, 1954, and the person so elected shall qualify for such office on January 1, 1955, or as soon thereafter as practicable. Candidates for the position of Judge of the County Court at Law No. II shall be nominated by the respective political parties of Texas in the primaries to be held in July and August of 1954 in the same manner and under the same legal provisions as govern the holding of all other primary elections.

Sec. 10. Any vacancy in the office of the Judge of the County Court at Law No. II of Nueces County occurring after January 1, 1955, shall be filled by appointment by the Commissioners Court of Nueces County for the unexpired term only, and when so filled the Judge of the County Court at Law No. II so appointed by said Commissioners Court shall hold office until the next General Election and until his successor is duly elected and qualified.

Sec. 11. In the event that the Judge of the County Court at Law No. II of Nueces County is disqualified for any reason to try any case pending in his Court, the parties or their attorneys may agree upon the selection of a special Judge to try such case or cases in the same manner and under the same provisions of law as govern the selection of Special Judges for County Courts of the State of Texas.

Sec. 12. The Judge of the County Court at Law No. II of Nueces County may be removed from office in the same manner and for the same causes as any other County Judge may be removed under the laws of this State.

Sec. 13. The Judge of the County Court at Law No. II is authorized to appoint an official shorthand reporter for such County Court at Law. Such official shorthand reporter shall receive the same compensation provided for in Article 2326, Revised Civil Statutes of Texas. The Judge of the County Court at Law No. II of Nueces County shall have the authority to terminate the employment of such official shorthand reporter at any time.

Sec. 14. The County Court at Law No. II of Nueces County, and the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said Court, or of any other Court in said County of inferior jurisdiction to said County Court at Law No. II of Nueces County.

Sec. 15. All cases appealed from the Justice Courts and other inferior Courts in Nueces County, Texas, shall be made direct to the County Courts at Law of Nueces County, Texas, under the provisions heretofore governing such appeals; provided, however, that such appeals shall be

assigned to the proper Court and shall be docketed and heard in accordance with the provisions of this Act.

Sec. 16. The County Clerk of Nueces County, Texas, shall be the Clerk of the County Court at Law No. II of Nueces County, Texas. The Seal of said Court shall be the same as that provided by law for County Courts, except the Seal shall contain the words "County Court at Law No. II of Nueces County." The Sheriff of Nueces County shall in person or by deputy attend the said Court when required by the Judge thereof. The County Attorney of Nueces County shall represent the State in all prosecutions pending in said County Court at Law No. II of Nueces County, and he shall be entitled to the same fees as now prescribed by law for such prosecutions in the County Courts.

Sec. 17. The jurisdiction and authority now vested by law in the County Court of Nueces County and the County Court at Law No. I of Nueces County, for the drawing, selection, and service of jurors, shall be exercised by said Court; but juries summoned for any of said Courts may by order of the Judge of the Court in which they are summoned be transferred to either of the other Courts for service therein and may be used therein as if summoned for the Court to which they may be thus transferred.

Sec. 18. The Judge of the County Court at Law No. II of Nueces County shall receive a salary of Eight Thousand, Five Hundred Dollars (\$8,500) per annum, to be paid out of the County Treasury on the order of the Commissioners Court, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law No. II of Nueces County shall assess the same fees as are now prescribed or may be established by law, relating to the County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, and no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this Section. As amended Acts 1955, 54th Leg., p. 5, ch. 5, § 4.

Emergency. Effective Feb. 11, 1955.

Sec. 19. On or before January 1, 1955, the County Clerk of Nueces County shall establish a separate docket for County Court at Law No. I and a separate docket for County Court at Law No. II. The present docket of the County Court at Law shall become the docket of the County Court at Law No. I. All criminal cases on which original jurisdiction is vested by law at the County Court level shall be retained by the Clerk on the docket of the County Court at Law No. I. All civil cases, plus all criminal cases which have been appealed to the County Court level from inferior Courts, shall be transferred by the County Clerk to the docket of the County Court at Law No. II. Thereafter, as new cases are filed with the County Clerk, he shall docket said cases as follows: All criminal cases on which original jurisdiction is vested by law at the County Court level shall be docketed in the County Court at Law No. I; and all civil cases, plus all criminal cases appealed from Courts of inferior jurisdiction, shall be docketed in the County Court at Law No. II. Each of said Courts shall give preference to the cases which are originally docketed in their Court.

Sec. 20. Each of the judges of said County Courts at Law may, with the consent of the Judge of the Court to which transfer is to be made, transfer any case, action or proceeding from his Court to the other Court by the entry of an order to that effect upon the docket, and the Court to which such case, action or proceeding is transferred shall have full power and authority to hear and determine same in the same manner and with

the same legal effect as if said case had been originally docketed in his Court.

Sec. 21. The Judges of said County Courts at Law may exchange benches from time to time and hear and determine any case, action or proceeding pending in the other Court in the same manner and with the same legal effect as if said case were originally docketed in the Court of the Judge hearing same. The Judge of either of said Courts may issue restraining orders, injunctions, and other extraordinary writs returnable to the other Judge or Court, and either of said Judges may hear and determine preliminary matters with respect to cases, actions or proceedings pending in the other Court; provided, however, that every judgment and order shall be entered in the minutes of the Court in which the case is pending.

Sec. 22. The practice of said County Courts at Law, and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now or may hereafter be prescribed for County Courts.

Sec. 23. All process issued out of the County Court at Law of Nueces County, Texas, prior to the time when the County Clerk shall transfer cases from the present docket to the docket of the County Court at Law No. II, as provided in Section 19 of this Act shall be returned to and filed in the appropriate County Court at Law as herein provided for; and such process shall be equally as valid and binding upon the parties as though such process had originally been issued out of the County Court at Law to which it is returned. Likewise, in cases hereafter transferred from one of the County Courts at Law to the other by order of the judge of one of said Courts as provided for in Section 20 of this Act, all process extant at the time of such transfer shall be returned to and filed in the Court to which such transfer is made, and shall be as valid and binding as though originally issued out of the Court to which such transfer may be made.

Sec. 27. Acts, 1949, Fifty-first Legislature, Page 692, Chapter 362, known and cited as Article 1970—339, Vernon's Annotated Civil Statutes of the State of Texas, as amended, creating the County Court at Law of Nueces County shall be liberally construed in order that the provisions of same will be harmonized and made consistent with the provisions of this Act. Acts 1954, 53rd Leg., 1st C.S., p. 42, ch. 14.

Emergency. Effective April 22, 1954.

Sections 24, 25, and 26 of the act of 1954 amended sections 5, 8, and 15 of article 1970—339, section 28 was a severability provision. Section 29 repealed conflicting laws or parts of laws to the extent of such conflict.

## TAYLOR COUNTY

### Art. 1970—343. County Court at Law of Taylor County

Section 1. There is hereby created a court in and for Taylor County, to be called the County Court at Law of Taylor County. It is expressly provided that the provisions of this Act shall not become effective until the Commissioners Court of Taylor County enters an order adopting the same.

Sec. 2. The County Court at Law of Taylor County shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the State, the County Court of said county would have jurisdiction except as provided in Section 3 of this Act; and all cases now pending in the County Court of said county, other than probate matters and such as are provided in Section 3 of this Act, are hereby transferred to the County Court at Law of Taylor County, and all writs

and process, civil and criminal, heretofore issued by or out of the County Court of said county, other than pertaining to matters over which, by Section 3 of this Act, jurisdiction remains in the County Court of Taylor County, are hereby made returnable to the County Court at Law of Taylor County. The jurisdiction of the County Court at Law of Taylor County and the Judge thereof shall extend to all matters of eminent domain of which jurisdiction has been heretofore vested in the County Court or in the County Judge, but this provision shall not affect the jurisdiction of the Commissioners Court, or of the County Judge of Taylor County as the presiding officer of such Commissioners Court as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the Commissioners Court or the Judge thereof. The County Court at Law of Taylor County shall be the Juvenile Court of Taylor County and shall exercise the jurisdiction conferred on juvenile courts by Chapter 204, Acts of the Forty-eighth Legislature,<sup>1</sup> as heretofore or hereafter amended. All cases pending in the Juvenile Court of Taylor County on the effective date of this Act, along with all the books and records thereof, shall be transferred to the County Court at Law of Taylor County. The County Court at Law of Taylor County and the Judge thereof shall have concurrent jurisdiction with the County Court of Taylor County and the Judge thereof in the trial of insanity cases and the restoration thereof, approval of applications for admission to State Hospitals and Special Schools where admissions are by application, and the power to punish for contempt.

Sec. 3. The County Court of Taylor County shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said Court and the Judge thereof shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said Court, and also to punish contempts under such provisions as are or may be provided by law governing County Courts throughout the State; but said County Judge of Taylor County shall have no other jurisdiction, civil or criminal. The County Judge of Taylor County shall be the Judge of the County Court of Taylor County. All ex-officio duties of the County Judge shall be exercised by the said Judge of the County Court of Taylor County, except in so far as the same shall by this Act be committed to the Judge of the County Court at Law of Taylor County.

Sec. 4. The terms of the County Court at Law of Taylor County shall be held as follows:

On the third Mondays in February, April, June, August, October, and December in each year, and each term of said Court shall continue in session until and including the Saturday next preceding the beginning of the next succeeding term thereof. The practice in said Court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to county courts.

Sec. 5. There shall be elected in Taylor County by the qualified voters thereof, at a general election, a Judge of the County Court at Law of Taylor County, who shall be a qualified voter in said county and who shall be a regularly licensed attorney in this State, well informed in the laws of this



State, and who shall have resided in and been actively engaged in the practice of law in this State or as the Judge of a Court for a period of not less than three (3) years next preceding such general election, who shall hold his office for four (4) years, and until his successor shall have been duly qualified. Any vacancy in the office of the Judge of the Court created by this Act shall be filled by the Commissioners Court of Taylor County until the next general election. The Commissioners Court of Taylor County shall, upon the adoption of this Act, appoint a Judge of the County Court at Law of Taylor County, who shall serve until the next general election and until his successor shall be duly elected and qualified.

Sec. 6. The Judge of the County Court at Law of Taylor County shall execute a bond and take the oath of office as required by law relating to County Judges.

Sec. 7. A Special Judge of the County Court at Law of Taylor County may be appointed or elected when and under such circumstances as are provided by law relating to County Courts and to the Judges thereof, who shall receive the sum of Ten Dollars (\$10) per day for each day he so actually serves, to be paid out of the General Fund of the county by the Commissioners Court.

Sec. 8. The Court created by this Act and the Judges thereof shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said Court or of any other Court or tribunal inferior to said Court.

Sec. 9. The clerk of the County Court of Taylor County shall be the clerk of the County Court at Law of Taylor County. The seal of said Court shall be the same as that provided by law for county courts except that the seal shall contain the words "Clerk of the County Court at Law of Taylor County." The sheriff of Taylor County shall in person or by deputy<sup>2</sup> attend the said Court when required by the Judge thereof.

Sec. 10. Upon authorization by the Commissioners Court, the Judge of the County Court at Law of Taylor County may appoint a secretary for such County Court at Law. Such secretary shall receive the same compensation as is now allowed to the secretary of the Judge of the County Court, to be paid out of the treasury of Taylor County as other county officials are paid, in equal monthly installments. The Judge of the County Court at Law of Taylor County shall have the authority to terminate the employment of said secretary at any time.

Sec. 11. Upon authorization by the Commissioners Court, the Judge of the County Court at Law of Taylor County may appoint an official shorthand reporter for such court, who shall be well skilled in his profession and shall be a sworn officer of the Court and shall hold his office at the pleasure of the Court. Such reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Taylor County, to be paid out of the county treasury of Taylor County as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as they may hereafter be amended, and all other provisions of the law relating to official court reporters shall apply in so far as they may be made applicable to the official shorthand reporter herein authorized to be appointed and in so far as they are not inconsistent with this Act.

Sec. 12. The Judge of the County Court at Law of Taylor County shall assess the same fees as are or may be established by law relating to County

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

Judges, all of which shall be collected by the clerk of said court and be by him paid monthly into the county treasury. The Judge of said County Court at Law shall receive an annual salary which shall be fixed by the Commissioners Court of Taylor County at an amount equal to the salary paid to the County Judge of Taylor County, and which shall be payable monthly, out of the county treasury of Taylor County. Acts 1955, 54th Leg., p. 556, ch. 177.

<sup>1</sup> Article 2338—1.

<sup>2</sup> So in enrolled bill. Probably should be "deputy."

Emergency. Effective May 7, 1955.

Section 13 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**TITLE 42—COURTS—PRACTICE IN DISTRICT AND COUNTY****CHAPTER ONE—INSTITUTION, PARTIES AND VENUE****Art. 1995. 1830, 1194, 1198 Venue, general rule**

17a. Labor Disputes.—Suits to enjoin strikes or picketing for an unlawful purpose or conducted in an unlawful manner may be brought in (1) the county where the strike or picketing is alleged to have occurred; or in (2) the county of the residence of the defendant or any one of the defendants, if there be more than one; or in (3) Travis County when suit is brought by the State of Texas, and the State, its agencies or a political subdivision thereof is a party to the suit. Provided, however, that where suit is filed in a county authorized by the provisions of clauses (1) or (2) above, any party thereto may, within five (5) days after notice of institution of suit, make written application to the Presiding Judge of the Administrative Judicial District within which the suit is filed for the appointment of a substitute judge in the court where suit is filed, whereupon such Presiding Judge of such Administrative Judicial District immediately shall assign another District Judge from such Administrative Judicial District who shall thereafter hear all proceedings in such suit. The judge of the court in which such suit is filed shall have full power to act in the case until receipt by him of a copy of an order of the Administrative Judge removing the case or appointing a substitute judge, and the provisions of this Act shall be cumulative of existing rights of the parties to a change of venue as authorized by law. For the purpose of enabling all parties to procure the personal attendance of witnesses in any suit in a court of competent jurisdiction under the provisions hereof the clerk of said court where such suit is pending, if the suit is brought in or removed to a county other than the county where the strike or picketing is alleged to have occurred or the county of the residence of the defendant or any one of the defendants and on the application of any party to said suit, shall issue a subpoena for any witness or witnesses who may be represented to reside within any county in the State of Texas or found therein at the time of trial; and the provisions with respect to the issuance of subpoenas, penalties for failure of witnesses to appear, and the tendering of mileage and traveling expenses as provided in Article 7439a of Vernon's Revised Civil Statutes of Texas, 1925, shall apply. Added Acts 1955, 54th Leg., p. 1031, ch. 388, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws.

**CHAPTER FOUR—COSTS AND SECURITY THEREFOR****Art. 2075. 1927 Taxing Stenographer's Fees**

The clerks of all courts having official reporters shall tax as costs in each civil case where an answer is filed, and a record or any part thereof is made of the evidence in said case by the official reporter, except suits to collect delinquent taxes, a stenographer's fee of Three Dollars (\$3.00). Said fee shall be paid as other costs in the case, and paid by said clerk, when collected, into the General Funds of the county in which said court

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

sits; provided, however, that no stenographer's fee shall be taxed as costs in any civil case where no record or any part thereof is made of the evidence in the case by the official reporter. As amended Acts 1955, 54th Leg., p. 1033, ch. 390, § 3.

Effective 90 days after June 7, 1955, date of adjournment.

## CHAPTER SEVEN—THE JURY

### 4. THE JURY IN COURT

#### Art. 2133. 5114-15-16 Qualifications

All persons both male and female over twenty-one (21) years of age are competent jurors, unless disqualified under some provision of this chapter. No person shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the State and of the County in which he is to serve, and qualified under the Constitution and laws to vote in said County; provided, that his failure to pay poll tax as required by law shall not be held to disqualify him for jury service in any instance.

2. He must be of sound mind and good moral character.

3. He must be able to read and write, except as otherwise provided herein.

4. He must not have served as a juror for six (6) days during the preceding six (6) months in the District Court, or during the preceding three (3) months in the County Court.

5. He must not have been convicted of felony.

6. He must not be under indictment or other legal accusation of theft or of any felony.

7. He must be either a freeholder in the State of Texas or a householder in the County or wife of a householder in the County.

Whenever it shall be made to appear to the Court that the requisite number of jurors able to read and write cannot be found within the County, the Court may dispense with the exception provided for in the third subdivision; and the Court may in like manner dispense with the exception provided for in the fourth subdivision, when the County is so sparsely populated as to make its enforcement seriously inconvenient.

Where the word "he" is used in this Section it shall be used in the generic term so as to include both male and female persons. As amended Acts 1955, 54th Leg., p. 795, ch. 288, § 1.

Emergency. Effective May 20, 1955.

Section 2 of the amendatory Act of 1955 amended art. 2135. Sections 3 and 4 amended Vernon's Ann.C.C.P. arts. 623

and 670. Section 5 was a severability clause and section 6 repealed all conflicting laws and parts of laws to the extent of the conflict.

#### Art. 2135. [5118] [3142] [3013] Jury service

All competent jurors are liable to jury service, except the following persons:

1. All persons over sixty-five (65) years of age.

2. All civil officers of this State or the United States.

3. All overseers of roads.

4. All ministers of the gospel engaged in the active discharge of their ministerial duties.

5. All physicians, dentists, and attorneys and spouses of attorneys engaged in actual practice.

6. All railroad station agents, conductors, engineers and firemen of railroad companies when engaged in the regular and actual discharge of their respective positions.

7. Any person who has acted as a jury commissioner within the preceding twelve (12) months.

8. All members of the national guard of this State under the provisions of the title "Militia" during periods of time when they are actually on active duty.

9. In cities and towns having a population of one thousand (1,000) or more inhabitants, according to the last preceding United States Census, the active members of organized fire companies, not to exceed twenty (20) to each one thousand (1,000) of such inhabitants.

10. All females who have legal custody of a child or children under the age of sixteen (16) years.

11. All registered, practical and vocational nurses actively engaged in the practice of their profession.

12. Any practitioner who treats the sick by prayer or spiritual means in accordance with the tenets, teachings or practice of any well established church or denomination, or a nurse who cares for the sick who are under treatment by such spiritual means, or a reader whose duty is to conduct regular religious services of such church or denomination.

13. All licensed morticians who are actively engaged in the practice of their profession.

14. All registered pharmacists who are actively engaged in the practice of their profession.

15. Agents and patrolmen engaged in forestry protection work employed by the State Department of Forestry when engaged in the actual discharge of their duties.

16. The wife of any man who is summoned to serve on the same jury panel. As amended Acts 1927, 40th Leg., p. 88, ch. 63, §§ 1, 2; Acts 1931, 42nd Leg., p. 375, ch. 221; Acts 1933, 43rd Leg., 1st C.S., p. 291, ch. 106, § 1; Acts 1953, 53rd Leg., p. 781, ch. 310, § 1; Acts 1955, 54th Leg., p. 795, ch. 288, § 2.

Emergency. Effective May 20, 1955.

## CHAPTER THIRTEEN—GENERAL PROVISIONS

### 2. RECEIVERS

#### Art. 2293. 2128, 1465 Appointment

Insurance Securities Act, application to foreclosure sale of mortgaged property, see art. 580—3. Securities Act, application to foreclosure sale of mortgaged property, see art. 579—3.

### 3. OFFICIAL COURT REPORTER

#### Art. 2324. 1923—4—6 Duty of Reporter

Each official court reporter shall:

Attend all sessions of the court; take full shorthand notes of all oral testimony offered in every case tried in said court, together with all objections to the admissibility of the evidence, the rulings and remarks of

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

the court thereon, and all exceptions thereto; take full shorthand notes of closing arguments when requested so to do by the attorney for any party to such case, together with all objections to such arguments, the rulings and remarks of the court thereon, and all exceptions thereto;

Preserve all shorthand notes taken in said court for future use or reference for a full year, and furnish to any person a transcript in question and answer form of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to him of the fees provided by law.

When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same and the reporter shall make up such transcript and shall receive as compensation therefor the sum of not more than thirty cents per one hundred words for the original thereof. In the event said transcript should be ordered made in narrative form, then such reporter shall make up same in duplicate in narrative form, and shall receive as compensation therefor the sum of twenty cents per hundred words for the original; provided, however, that no charge shall be made for the duplicate copy, and provided further, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid.

Provided further, that when such court reporter is requested to report the closing arguments in any case, the clerk of the court shall tax as costs in such case the sum of Five Dollars (\$5.00). Said fee shall be paid as other costs in the case, and paid by said clerk, when collected, into the General Funds of the county in which said court sits; provided further, however, that if a transcript of such arguments or any portion thereof be ordered by any party, said reporter shall prepare same and charge therefor at the rate herein provided for transcripts in question and answer form; provided, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid. As amended Acts 1955, 54th Leg., p. 1033, ch. 390, § 1.

Section 2 of the amendatory Act of 1955  
repealed art. 2325.

Effective 90 days after June 7, 1955, date  
of adjournment.

**Art. 2325. Repealed. Acts 1955, 54th Leg., p. 1033, ch. 390, § 2, eff. 90 days after June 7, 1955, date of adjournment**

**Art. 2327d. Official shorthand reporters for county courts**

For the purpose of preserving a record of all hearings had before the County Judge of the counties of Texas, for the information of the Court and parties that may be interested therein, the Judge of the County Courts of Texas may appoint an official shorthand reporter for such Court who shall be well skilled in his profession, shall be a sworn officer of the Court, and shall hold office at the pleasure of the County Judge, and all provisions of the Civil Statutes of the State of Texas relating to the appointment of stenographers for District Courts shall apply, in so far as applicable to the official shorthand reporter herein authorized to be appointed by the County Judge of the County Courts of Texas, and such shorthand reporter shall receive a salary not to exceed Twelve Hundred Dollars (\$1,200) annually to be paid in equal monthly installments out of the County Treasury of the various counties upon order of the Commissioners Court. Provided, that in counties having a population of not less than five hundred thousand (500,000) inhabitants, according to the last preceding Federal Census, or any future Federal Census, there

may be paid to the official shorthand reporter for the County Court of such county a salary to be fixed by the County Judge and approved by the Commissioners Court not to exceed Five Thousand, Five Hundred Dollars (\$5,500) per annum, payable in equal monthly installments, in addition to compensation for transcript fees as provided by law, such salary to be paid out of the Officer's Salary Fund of such county. Acts 1951, 52nd Leg., p. 462, ch. 290, § 1; Acts 1955, 54th Leg., p. 804, ch. 295, § 1.

Emergency. Effective May 20, 1955.

Section 2 of the Act of 1955 provided that partial invalidity should not affect the remaining of the Act. Section 3 repealed all conflicting laws and parts of laws to the extent of such conflict.

The act of 1955 recited in its title that it was an act to amend article 2327d. The body of the act contained no amendatory provision.

**Title of Act:**

An Act providing for and authorizing the appointment of official shorthand reporters for the County Courts of Texas; fixing the compensation of the reporters; authorizing the County Judge of said Counties to appoint such reporter; and declaring an emergency. Acts 1951, 52nd Leg., p. 462, ch. 290.

## TITLE 43—COURTS—JUVENILE

Art.  
2338—7. Court of Domestic Relations for  
Hutchinson County [New].

## Art. 2338—7. Court of Domestic Relations for Hutchinson County

## Creation of court; adoption of Act; referendum

Section 1. There is hereby created the Court of Domestic Relations in and for Hutchinson County which shall be a court of record; provided, however, that the provisions of this Act shall not become operative until the Commissioners Court of Hutchinson County enters an order adopting same. The Commissioners Court may adopt the provisions of this Act only if the qualified voters who are property taxpayers and whose names appear on the rendered rolls of Hutchinson County express their will that such court be established in Hutchinson County in an election called for that purpose as provided for in Section 2 of this Act.

## Referendum; ballot form

Sec. 2. The Commissioners Court may upon its own motion at any time after the effective date of this Act call an election to determine whether there shall be created and established in Hutchinson County a Court of Domestic Relations. The issue submitted to the qualified voters who are property taxpayers and whose names appear on the rendered rolls at the election shall be by ballot upon which shall be printed:

FOR the creation of a Court of Domestic Relations in and for Hutchinson County."

AGAINST the creation of a Court of Domestic Relations in and for Hutchinson County."

The Commissioners Court must call such an election when petitioned by five per cent (5%) of the qualified voters who are property taxpayers and whose names appear on the rendered rolls in Hutchinson County as determined by the number of votes cast in the last General Election for Governor.

If a majority of the qualified voters who are property taxpayers and whose names appear on the rendered rolls voting at the election, votes for the creation of the Court of Domestic Relations in and for Hutchinson County, the Commissioners Court shall immediately enter an order adopting the provisions of this Act.

If a majority of the qualified voters who are property taxpayers and whose names appear on the rendered rolls voting at the election, vote against the creation of the Court of Domestic Relations in and for Hutchinson County, the provisions of this Act shall expire and have no force and effect thereafter.

## Jurisdiction

Sec. 3. The Court of Domestic Relations shall have jurisdiction of all cases involving adoption, removal of disabilities of minority and coverture, change of name of persons, delinquent, dependent or neglected child proceedings, and all jurisdiction, power and authority now or hereafter placed in the district or county courts under the juvenile and child-welfare laws of this State; and of all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor chil-



dren involved therein, alimony pending final hearing, and any and every other proceeding or matter incident to divorce or annulment proceedings, as well as independent actions involving child custody or support; and all other cases involving controversies and differences between spouses, or between parents, or between them or one of them, and their minor children, which are now, or may hereafter be, within the jurisdiction of the district or county courts; and all cases in which children are alleged or charged to be dependent and neglected or delinquent children as provided by law; and all criminal prosecutions charged under Article 534, 535 and 602 of the Revised Penal Code of the State of Texas, 1925 revision, and amendments thereto.

#### **Terms of court**

Sec. 4. The terms of the Court of Domestic Relations shall be as follows:

On the first Monday in January and July of each year and may continue in session until the Saturday immediately preceding the Monday for the convening of the next regular term of such court. Any term of court may be divided into as many sessions as the judge thereof may deem expedient for the disposition of business.

#### **Appointment and qualifications of judge; term of office; compensation; special judge; disqualification; oath of office**

Sec. 5. Immediately upon the adoption of the provisions of this Act by the Commissioners Court, the Governor shall appoint as Judge of said Court of Domestic Relations a suitable person having the qualifications provided by the Constitution and laws of this State of district judges, who shall hold office until the next General Election after said appointment and until his successor shall be duly elected and qualified. Thereafter, the Judge of the Court of Domestic Relations shall be elected for a term of four (4) years as provided by the Constitution and laws of this State. The Judge of the Court of Domestic Relations shall receive such compensation as allowed other district judges by the laws of this State which shall be paid by the Commissioners Court of Hutchinson County out of the General Fund or the Officers Salary Fund of the County. If the judge be absent, a Special Judge possessing the qualifications herein set out, may be elected by the Bar as provided by law for election of a Special Judge in district courts. If the judge be disqualified in a cause and the parties fail to agree upon a Special Judge to try the cause, the Judge shall certify his disqualification to the Commissioners Court of Hutchinson County, Texas, and the Commissioners Court shall appoint a Special Judge in such cause; a Special Judge shall be paid the sum of Twenty-five Dollars (\$25) for each and every day he actually serves as such. The Judge of the Court of Domestic Relations shall qualify by subscribing to and filing with the Commissioners Court of Hutchinson County the official oath of office.

#### **Shorthand reporter**

Sec. 6. The Judge of the Court of Domestic Relations, with the approval of the Commissioners Court of Hutchinson County, is authorized to appoint an official shorthand reporter who shall have the qualifications now required by law of official shorthand reporters. Such reporter shall perform such duties as are required by law and such duties as may be assigned to him by the Judge of the Court of Domestic Relations and shall receive as compensation for his services the compensation now allowed official shorthand reporters under the laws of this State to be paid out of the General Fund or the Officers Salary Fund of the county.

**District clerk for court; dockets; transfer of cases**

Sec. 7. The District Clerk of Hutchinson County shall also act as District Clerk for the Court of Domestic Relations and shall assume and perform all duties required by law of clerks of county and district courts as well as any other duties as may be assigned to him by the Judge of the Court of Domestic Relations. Upon the creation of the Court of Domestic Relations in Hutchinson County, the District Clerk shall immediately prepare a civil and criminal docket for such court and shall docket thereon all cases or proceedings transferred to or filed in such court.

The County Judge of Hutchinson County and the Judge of the 84th Judicial District, in their discretion, may transfer to the Court of Domestic Relations all cases of which the Court of Domestic Relations is given jurisdiction by this Act which are on their respective dockets.

**Prosecuting attorneys**

Sec. 8. The District Attorney for the 84th Judicial District of Texas shall prosecute all cases of a felony nature over which the Court of Domestic Relations has jurisdiction and the County Attorney of Hutchinson County shall prosecute all misdemeanor cases, juvenile cases and dependent and neglected child actions over which the Court of Domestic Relations has jurisdiction.

**Practice and procedure; appeals**

Sec. 9. The practice and procedure, rules of evidence, drawing and selection of juries, issuing process, and all other matters pertaining to the conduct of trials and hearings in said Court of Domestic Relations shall be governed by the laws and rules pertaining to practice and procedure in district and county courts; provided that petit juries shall be composed of twelve (12) members and no grand jury shall be selected or summoned to appear or be empaneled by said court. All appeals from the Court of Domestic Relations shall be governed by the laws and rules pertaining to appeals from district courts.

**Writs and process in transferred cases**

Sec. 10. All writs and process issued by or out of the district or county courts prior to the time any case is transferred by either of said courts to the Court of Domestic Relations shall be returned to and filed in the said Court of Domestic Relations, and shall be as valid and binding upon the parties to such transferred cases as though such writs or process had been issued out of the Court of Domestic Relations, and all waivers of process, and other instruments executed prior to the transfer of any case shall also be as valid and binding as though executed after such transfer; and when a cause may be transferred from the Court of Domestic Relations to the district or county court, all such matters transpiring while such cause was pending in the said Court of Domestic Relations shall be as valid and binding in the county or district court to which transferred as though such matter transpired after such transfer.

**Boards and officers, duties**

Sec. 11. It shall be the duty of all officers, agents and employees of the Child Welfare Board, County Welfare Office, County Health Officer, County Juvenile Officer, Sheriff and Constables of Hutchinson County, Texas, to

furnish to said court such services in the line of their respective duties as shall be required by said court or by the judge thereof; and all sheriffs and constables within the State of Texas shall render the same services and perform the same duties with reference to the process and writs from said Court of Domestic Relations of Hutchinson County, as is required of them by law with reference to process and writs from district and county courts of Texas. Acts 1955, 54th Leg., p. 75, ch. 49.

Effective 90 days after June 7, 1955, date of adjournment.

Section 12 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## TITLE 44—COURTS—COMMISSIONERS

Art.

## 2. POWERS AND DUTIES

2351g. Counties of 300,000 or more; public dumping and garbage disposal grounds; power to acquire [New].

2368a—4. Validation of contracts; scrip; time warrants; proceeding; refunding bonds; exceptions [New].

2372m. Rabies: regulations [New].

2372n. Public platform tonnage scales.

## 1. COMMISSIONERS COURTS

Art. 2350n. Allowance for travelling expenses and automobile depreciation

Sec. 3a. In any county in this State having a population in excess of forty-seven thousand (47,000), according to the last preceding or any future Federal Census, and having an assessed valuation in excess of Forty Million Dollars (\$40,000,000), as shown by the total assessed valuations of all properties certified by the county assessor and approved by the Commissioners Court, for county purposes, for the previous year, the Commissioners Court is hereby authorized to allow each member of the Commissioners Court the sum of not exceeding One Hundred Dollars (\$100) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county. Added Acts 1955, 54th Leg., p. 1153, ch. 437, § 1.

Sec. 3b. The provisions of this Act shall not lower the amount of compensation being received at the effective date of this Act by any member of a Commissioners Court for traveling expenses and depreciation on his automobile used on official business. Acts 1955, 54th Leg., p. 1153, ch. 437, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## 2. POWERS AND DUTIES

Art. 2351g. Counties of 300,000 or more; public dumping and garbage disposal grounds; power to acquire

Section 1. Commissioners Courts of the counties of the State of Texas, are hereby authorized on behalf of the counties, to acquire by easement or by fee simple title, lands on which to locate public dumping and garbage disposal grounds, and to expend moneys out of the General Fund for the purpose of acquiring such easements or fee simple title, either by purchase or by condemnation.

Sec. 2. The location of such dumping or garbage disposal grounds, and the consideration to be paid therefor, shall be a matter committed to the sound discretion of the Commissioners Courts, taking into consideration the convenience of the people to be served, and the general health of, and the annoyance to the community to be served by such dumping and garbage disposal grounds.

Sec. 3. Counties are hereby given the right of eminent domain in acquiring such grounds in accordance with the provisions of the eminent

domain Statutes of the State of Texas; provided, however, that counties shall not have the right of eminent domain in acquiring such grounds as against corporations which also have the right of eminent domain by Statute. This Act shall apply only to counties having a population of three hundred thousand (300,000) or more, according to the last Federal Census. Acts 1955, 54th Leg., p. 1185, ch. 464.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act authorizing the Commissioners Courts of the State of Texas to expend county tax money for the purpose of acquiring lands for public dumping and garbage disposal grounds for the use of the residents of said county so acquiring such sites, and giving counties the right

of eminent domain with certain exception in acquiring such necessary grounds; making the Act applicable only to counties having a population of three hundred thousand (300,000) or more, according to the last Federal Census; and declaring an emergency. Acts 1955, 54th Leg. p. 1185, ch. 464.

**Art. 2352d. Appropriations for advertising and promoting growth and development by home rule cities and counties; Board of Development**

**Appropriation**

Section 1. All counties in the State of Texas may appropriate from the General Fund of said counties an amount not exceeding Five Cents (5¢) on the One Hundred Dollars (\$100) assessed valuation for the purpose of advertising and promoting the growth and development of such county; providing that before the Commissioners Court of any county may appropriate any sums for such purpose, the qualified taxpaying voters of said county shall, by a majority vote of the persons voting at such election, authorize the County Commissioners to thereafter appropriate not to exceed Five Cents (5¢) on the One Hundred Dollars (\$100) assessed valuation.

**Board of Development Fund; budget**

Sec. 2. The amount of money approved by the Commissioners Court for the Board of Development shall constitute a separate fund to be known as the Board of Development Fund and shall not be used for any other purpose. Each claim against the Board of Development shall be authorized and approved by the Board of Development before presented for payment and after such approval, shall be presented to the Commissioners Court and acted upon as all other claims against the Commissioners Court.

The Board of Development hereinafter provided for shall annually in advance, prepare and submit to the Commissioners Court a budget for the ensuing year in the same manner as required of counties. The money appropriated annually shall be governed by the discretion of the Commissioners Court, but in no event shall said sum be in excess of Five Cents (5¢) on the One Hundred Dollars (\$100) assessed valuation.

**Board of Development**

Sec. 3. There is hereby created, in counties qualifying under this law, a Board of Development, which shall devote its time and effort for the purpose of advertising and promoting the growth and development of any such county. The Board of Development shall be authorized to expend any sums reasonably necessary to accomplish its purposes for personnel, rent, and materials, subject to the approval of the Commissioners Court.

The Board of Development shall consist of five (5) members, to be appointed by the Commissioners Court; said members shall serve for a period of two (2) years from their appointment, without compensation and

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

until their successors are appointed and accept said appointment. Vacancies on such Board shall be filled by the Commissioners Court in the same manner as the original appointment.

**Law as cumulative; maximum appropriation**

Sec. 4. This law shall be cumulative of all other laws authorizing counties to appropriate money, or to levy a tax for advertising and promotional purposes, and counties shall have the option of operating under any one applicable law, but in any event, the maximum amount of money which can be appropriated for such purpose shall not exceed the limits herein fixed.

**Appropriations validated**

Sec. 5. Any sums heretofore appropriated or expended for advertising or promotional purposes under any such previous Acts are hereby validated. As amended Acts 1951, 52nd Leg., p. 359, ch. 224, § 1; Acts 1955, 54th Leg., p. 899, ch. 351, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Sections 2-4 of the amendatory Act of 1955, read as follows:

"Sec. 2. The authority to levy the tax provided for herein shall be restricted to counties of more than one hundred thousand (100,000) population, according to the most recent United States Census.

"Sec. 3. The authority to appropriate the amount authorized in this bill out of

the General Fund shall be restricted to counties of more than fifty thousand (50,000) population according to the last preceding Federal Census.

"Sec. 4. If any section, clause, paragraph, or sentence of this Act shall be declared unconstitutional, it is hereby declared to be the intention of the Legislature that the remainder of such Act shall remain in full force and effect."

**Art. 2368a—4. Validation of contracts; scrip; time warrants; proceedings; refunding bonds; exceptions**

Section 1. In every instance since the approval by the Governor of Texas, on June 8, 1953, of Chapter 382, Acts of the Fifty-third Legislature, Regular Session, 1953,<sup>1</sup> where the Commissioners Court of a county in this State has entered into contracts or agreements, or has incurred and recognized or approved claims for the construction of public works or improvements, for the purchase of land or interests in land, including right of ways for public roads or highways and the fencing of right of ways on and along public roads or highways, or for the purchase of materials, supplies, equipment, labor, supervision, or professional or personal services, and has heretofore adopted orders authorizing the issuance of scrip or interest-bearing time warrants to pay for or to evidence the indebtedness incurred by such county for the cost of such public works or improvements, land, interests in land, including right of ways for public roads or highways and the fencing of right of ways on or along public roads and highways and such materials, supplies, equipment, labor, supervision or professional or personal services, all such contracts or agreements and claims, and assignments of such claims and such scrip and interest-bearing time warrants, and the proceedings adopted by such Commissioners Court relating thereto, are hereby in all things validated, ratified, confirmed and approved. All scrip and interest-bearing time warrants heretofore issued by the Commissioners Court of any county in this State in payment for or to evidence the indebtedness incurred for work done by such county and paid for by the day as the work progressed, and for materials, supplies, equipment, labor, supervision or professional or personal services purchased or secured in connection with such work, are hereby in all things validated, ratified, confirmed and approved. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify

or confirm any scrip or interest-bearing time warrants issued by the Commissioners Court of a county in this State unless the proceedings of such Commissioners Court shall have heretofore found or declared, in effect, that such county has received full value and consideration for the issuance of such scrip or interest-bearing time warrants. It is expressly further provided, however, that this Act shall neither apply to nor validate, ratify or confirm any contract, scrip warrant, or time warrant executed or issued by any county with a population in excess of one hundred and sixty-five thousand (165,000) inhabitants according to the last preceding Federal Census, or any contract, scrip warrant, or time warrant the validity of which is involved in litigation at the time this Act becomes effective.

**Sec. 2.** All proceedings, orders, resolutions, and other instruments heretofore adopted or executed by any Commissioners Court in this State authorizing the issuance of bonds for the purpose of refunding time warrants issued by any such county and all refunding bonds heretofore issued for such purpose are hereby in all things validated, ratified, approved and confirmed, and such refunding bonds now in process of being issued and authorized by proceedings, orders and resolutions heretofore adopted by any such Commissioners Court may be issued irrespective of the fact that such Commissioners Court in giving the notice of intention to issue refunding bonds may not have in all respects complied with statutory provisions. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any proceedings, orders, resolutions or other instruments, or bonds executed, adopted, or issued by any county with a population in excess of one hundred and sixty-five thousand (165,000) inhabitants, according to the last preceding Federal Census, or any proceedings, orders, resolutions or other instruments, or bonds the validity of which is involved in litigation at the time this Act becomes effective. Acts 1955, 54th Leg., p. 914, ch. 362.

<sup>1</sup> Article 2368a—3.

Emergency. Effective May 25, 1955.

## **Art. 2372m. Rabies; regulations**

### **Declaration of existence of epidemic; powers; duration of emergency**

**Section 1.** The Commissioners Court of any county in this State is hereby authorized, by an order duly entered on the minutes of proceedings of said Court, to declare the area of said County, lying outside the boundaries of incorporated cities located therein, to be subject to a rabies epidemic of the dog population thereof. Upon such order being duly entered, as above described, finding that the existence of such epidemic is a menace to the health and safety of the people of such area of the County, said Commissioners Court shall be authorized to promulgate and establish regulations in accordance with this Act to control all dogs running at large therein.

The Commissioners Court may declare such emergency to exist for a period not to exceed twelve (12) consecutive months, at the expiration of which said Commissioners Court shall be authorized to extend the period of emergency for like periods of time by an order duly entered on the minutes thereof in the manner above described; provided however that before any such order is entered by the Commissioners Court, a public hearing shall be held by the Court concerning the proposed regulation. As amended Acts 1955, 54th Leg., p. 515, ch. 151, § 1.

Emergency. Effective May 6, 1955.

**Regulations authorized**

Sec. 2. The regulations necessary for the control of dogs of such county as determined by the Commissioners Court shall be set forth in the minutes of the Court. The said Court shall have the power and authority upon the basis of the situation then existing in the county affecting the public health and safety of the people of the county as is caused by dogs running loose, to determine and fix any reasonable regulation to control such a situation, which may include the following but which shall not limit the power of the Court to act:

A. Require each and every dog in the county to be registered with the County Health Officer. Such registration shall be evidenced by an identification tag to be furnished by the County Health Officer which tag shall carry the registration number of the dog and if as required by this Act an anti-rabies vaccination is a condition precedent to the issuance of such a registration, the number and fact of such vaccination, shall be securely fastened to a collar or harness worn by such dog. Such registration shall be good for one (1) year from the date of registration and the owner of such dog shall be required to renew the registration each year. Acts 1954, 53rd Leg., 1st C.S., p. 89, ch. 40.

B. To require an anti-rabies vaccination with a vaccine approved by the United States Department of Agriculture as a condition precedent to the issuance of such registration where the County Health Officer or the State Health Officer certifies that rabies exist in the dog population of the County and that such existence is a menace to the health and safety of the people of such County. Evidence of the vaccination of such dog, certified by a licensed veterinarian, shall be furnished to the County Health Officer before issuance of such registration and evidence of such shall be carried on the tag required to be fastened to the collar or harness of the dog. As amended Acts 1955, 54th Leg., p. 515, ch. 151, § 2.

Emergency. Effective May 6, 1955.

**Punishment for violations**

Sec. 3. Any person who allows a dog to run at large in the county whether registered and tagged or not or any person who fails to register any dog in violation of any order of the Commissioners Court promulgated pursuant to this Act or otherwise violating any provision hereof or any provision of any regulation established by the Court, shall be guilty of a misdemeanor and shall upon conviction be punished by a fine not exceeding Fifty Dollars (\$50) for the first offense; by a fine not exceeding One Hundred Dollars (\$100) for the second offense; and by a fine not exceeding Two Hundred Dollars (\$200) or imprisonment in the County Jail not to exceed sixty (60) days, or both such fine and imprisonment for each subsequent offense. Acts 1954, 53rd Leg., 1st C.S., p. 89, ch. 40.

Emergency. Effective April 22, 1954.

Section 4 of the act of 1954 provided that in case of partial unconstitutionality, the remaining provisions should be valid, section 5 repealed conflicting or inconsistent laws and parts of laws.

**Art. 2372n. Public platform tonnage scales**

Section 1. In each county in this State, upon the presentation of a suitable petition in writing signed by not less than five hundred (500) inhabitants of the county, the Commissioners Court shall have the power



and authority to purchase and install one (1) or more public platform tonnage scales suitable and adapted for the weighing of livestock, produce, agricultural products or any other articles, goods or wares as will permit, facilitate and encourage the development of truck farming, cattle raising or other trades or businesses in which the availability of such public scales is necessary or desirable.

Sec. 2. The Commissioners Court in each county shall have authority to prescribe rules and regulations concerning use of such scales and prescribe the fees to be charged for such use, and the Commissioners Court shall have the power and authority to operate such public scales, to provide adequate personnel for the operation of such scales, or to lease, let or rent such scales to responsible private individuals, corporations, business concerns or associations upon the terms and conditions prescribed by the Commissioners Court. Provided, however, that such public scales provided for in this Act shall at all times be available for use by the public.

Sec. 3. Any and all money which may be collected or received by virtue of the use or operation of such scales and through any contract which may be executed under the provisions of this Act shall be designated to the General Fund of the county. Acts 1954, 53rd Leg., 1st C.S., p. 95, ch. 44.

Emergency. Effective April 22, 1954.

Section 4 of the act of 1954 provided that if any section, etc., should be held unconstitutional, the remaining portions of the act should nevertheless be valid.

**Title of Act:**

An Act authorizing each county in this State to purchase public platform tonnage scales upon written petition of not less than five hundred (500) inhabitants of the county; providing for the use of such scales; authorizing the Commissioners

Court to adopt rules and regulations concerning the use of such scales and to prescribe fees therefor; authorizing the Commissioners Court to lease, let or rent such scales; providing that such scales shall always be available for use by the public; allocating certain moneys to the General Fund; providing a severability clause; and declaring an emergency. Acts 1954, 53rd Leg., 1st C.S., p. 95, ch. 44.

## TITLE 45—COURTS—JUSTICE

## CHAPTER THREE—APPEARANCE AND TRIAL

## Art. 2428. Pay of jurors

Jurors in Justice Courts who serve in the trial of civil cases in such courts shall receive One Dollar (\$1) in each case in which they sit as jurors, provided that no juror in such court shall receive more than Two Dollars (\$2) for each day or fraction of a day he may so serve as such juror, to be paid out of the jury fund of the county. As amended Acts 1955, 54th Leg., p. 593, ch. 201, § 2.

Emergency. Effective May 12, 1955.

Section 1 of the amendatory act of 1955, amended Vernon's Ann.C.C.P. art. 1056.

## CHAPTER SEVEN—SMALL CLAIMS COURT

## Art. 2460a. Creation; jurisdiction; procedure

**Filing fee; process**

Sec. 5. Upon the filing of the said affidavit and the payment of a Two Dollar (\$2) filing fee, the Judge shall issue process in the same manner as any other case in Justice Court, service being by citation served by an officer of the State duly authorized to serve other citations. Service of citation may be made in any manner authorized for service of citation in a district or county court or a justice court.

The Two Dollar (\$2) filing fee provided for in this Section, the Three Dollar (\$3) jury fee provided for in Section 11 of this Act and the One Dollar (\$1) citation fee provided for in Section 5a shall constitute the only fees or costs authorized to be charged in the Small Claims Court; provided, however, such fees shall constitute only the Court costs accruing up to and including entry of judgment in the Small Claims Court and do not affect any fee or Court cost accruing in any Court after the entry of said judgment and do not apply to any proceeding or execution after entry of judgment in said Court. As amended Acts 1955, 54th Leg., p. 571, ch. 187, § 1.

Emergency. Effective May 9, 1955.

**Fee for service of citation**

Sec. 5a. A fee of One Dollar (\$1) shall be charged for the service of citation provided for in Section 5 and shall be accountable as a fee of office by the officer serving citation. Added Acts 1955, 54th Leg., p. 571, ch. 187, § 2.

## TITLE 47 — DEPOSITORIES

## CHAPTER ONE—STATE DEPOSITORIES

## Art. 2529. 2423 Qualifications of depositories

As soon as practicable after the Board shall have passed upon said applications, the Treasurer shall notify all banks whose applications have been accepted, of their designation as State Depositories of State funds. The Treasurer shall require each bank so designated to qualify as a State Depository on or before the 25th day of November next, by (a) depositing a depository bond signed by some surety company authorized to do business in Texas, in an amount equal to not less than double the amount of State funds allotted, such bond to be payable to the Treasurer and to be in such form as may be prescribed by the Board and subject to the approval of such Board; or (b) by pledging with the Treasurer any securities of the following kinds: bonds and certificates and other evidences of indebtedness of the United States, and all other bonds which are guaranteed as to both principal and interest by the United States; bonds of this State; bonds and other obligations issued by the University of Texas; warrants drawn on the State Treasury against the General Revenue of the State; bonds issued by the Federal Farm Mortgage Corporation, provided both principal and interest of said bonds are guaranteed by the United States government; shares or share accounts of any building and loan association organized under the laws of this State, provided the payment of such shares or share accounts is insured by the Federal Savings and Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings and Loan Association domiciled in this State, provided the payment of such shares or share accounts is insured by the Federal Savings and Loan Insurance Corporation; Home Owners Loan Corporation Bonds, provided both principal and interest of said bonds are guaranteed by the United States Government, and such securities shall be accepted by the Board in an amount not less than five per cent (5%) greater than the amount of State funds which they secure; provided, that Texas Relief Bonds may be accepted at face value and without margin for the amount of State funds allotted, provided such State Relief Bonds have all unmatured coupons attached; bonds of counties located in Texas; road districts of counties in Texas; independent and common school districts located in Texas; tax bonds issued by municipal corporations in Texas; and bonds issued by a municipal corporation where the payment of such bonds is secured by a pledge of the net revenues of a utility system or systems (limited to those utility systems now authorized to be encumbered under the provisions of Articles 1111-1118a, Revised Civil Statutes, as amended, inclusive). All of such securities may be accepted by the Board, provided the aggregate amount thereof is not less than twenty per cent (20%) greater than the total amount of State funds that they secure; provided that the amount of all bonds and other obligations offered as collateral shall be determined by the Board on the basis of either their par or market value, whichever is less. The term 'market value' as used herein shall mean the fair and reasonable prevailing price at which said bonds are being sold on the open market at the time of the appraisalment of the securities by the Board; and the action of the Board in fixing the valuation of said bonds shall be final, and not subject to review.

No State, county, road district bond, independent or common school district or municipal bonds, or obligations of the Board of Regents of the University issued by the University of Texas, shall be accepted as collateral security unless they shall be approved by the Attorney General. All bonds accepted as collateral security shall be registered under the same rules and regulations as are required for bonds in which the Permanent School Funds are invested. Subject to the approval of the Board, a State Depository may secure its deposits of State funds in part by an acceptable surety bond and in part by acceptable collateral of the kind herein mentioned, and any losses sustained where a Depository has secured its deposits in part by collateral and in part by a surety bond, the loss may be enforced against either the collateral security or the surety bond. No warrant drawn on the State Treasury shall be accepted as collateral unless said warrants are accompanied by affidavits, sworn to by some officer of the bank offering said warrants, which said affidavits shall affirm that none of the warrants offered as collateral security were transferred or assigned by the original payees of said warrants, or any of them, for a less consideration than ninety-eight per cent (98%) of the face value of said warrants, and that none of such warrants were obtained from the original payee by loaning money thereon at a rate of interest greater than eight per cent (8%) per annum. The Board shall have the power to reject any and all collateral or surety bonds tendered by a State Depository, without assigning any reason therefor, and its action in so doing shall be final and not subject to review. Notwithstanding the foregoing provisions requiring security for State funds deposited in State Depositories in the form of surety bond or collateral, security for such deposits shall not be required to the extent that said deposits are insured by the Federal Deposit Insurance Corporation under the provisions of Section 12b of the Federal Reserve Act as amended,<sup>1</sup> or as the same may hereafter be amended.

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

When the collateral pledged by a State Depository to secure a deposit of State funds shall be in excess of the amount required under the provisions of this Act, the Treasurer may, subject to the approval of the Board, permit the release of any such excess. In the event the balance to the credit of the Treasurer on the books of such bank shall be thereafter increased, adequate security, as provided for in this Act, shall be deposited and maintained by such Depository bank. As amended Acts 1955, 54th Leg. p. 1132, ch. 425, § 1.

<sup>1</sup> 12 U.S.C.A. § 264.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 48—DESCENT AND DISTRIBUTION

Arts. 2570–2583a. Repealed. Acts 1955, 54th Leg., p. 88, ch. 55, § 434.  
Eff. Jan. 1, 1956

## TITLE 49—EDUCATION—PUBLIC

## CHAPTER ONE—UNIVERSITY OF TEXAS

## Art. 2603a. Board for lease of oil and gas land

## Execution of lease

## Sec. 8.

(b)–(1). Each valid and subsisting oil and gas lease heretofore issued by the Commissioner of the General Land Office of Texas, on University lands, under Chapter 282, Acts of 1929, and amendments thereof shall, upon the application of the lessee and the payment of a sum of money equal to one year's annual rental thereunder, be amended by the Commissioner of the General Land Office, by instrument in writing, to provide, and each such lease issued hereafter shall provide:

a. That the primary term of the lease, as determined by the Board prior to the promulgation of the advertisement, shall in no case exceed five (5) years.

b. That if oil and/or gas is being produced in paying quantities from the leased premises before the termination of the primary term, such lease shall not terminate but shall continue in force and effect as long as such oil and/or gas is being so produced.

c. That in the event production of oil or gas on the leased premises, after once obtained, shall cease for any cause within sixty (60) days before the expiration of the primary term of such lease or at any time or times thereafter, such lease shall not terminate, if the lessee commences additional drilling or reworking operations within sixty (60) days thereafter and such lease shall remain in full force and effect so long as such operations continue in good faith and in workmanlike manner, without interruptions, totaling more than sixty (60) days during any one such operation; and if such drilling or reworking operations result in the production of oil and/or gas, such lease shall remain in full force and effect so long as oil or gas is produced therefrom in paying quantities or payment of shut-in gas well royalty or compensatory royalties is made as hereinafter provided in this Act.

d. That if at the expiration of the primary term or at any time thereafter there is located on the leased premises a well or wells capable of producing gas in paying quantities and such gas is not produced for lack of a suitable market and such lease is not being otherwise maintained in force and effect, the lessee may pay as royalty Twelve Hundred Dollars (\$1200) per annum for each well on the lease capable of producing gas in paying quantities, such payment to be made to the Commissioner of the General Land Office at Austin, Texas, prior to the expiration of the primary term of the lease, or if the primary term has expired, within sixty (60) days after lessee ceases to produce gas from such well or wells; and if such payment is made, the lease shall be considered to be a producing lease and such shut-in gas well royalty payment shall extend the term of the lease for a period of one (1) year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased; and thereafter if no suitable market for such gas exists, the lessee may extend the lease for two (2) additional and successive periods of one (1) year each by the payment of a like sum of money each year on or before the expiration of the extended term. Provided, however, that if, while such lease is being maintained in force and effect by payment of such shut-

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in gas well royalty, gas should be sold and delivered in paying quantities from a well situated within one thousand (1,000) feet of the leased premises and completed in the same producing reservoir or in any case where drainage is occurring, the right to further extend the lease by such shut-in gas well royalty payments shall cease, but such lease shall remain in force and effect for the remainder of the current one (1) year period for which the shut-in gas well royalty has been paid, and for an additional period not to exceed a combined total of three (3) years from the expiration of the primary term or from the first day of the month next succeeding the month in which production ceased by the payment by the lessee of compensatory royalty, at the royalty rate provided for in such University lease as would be due on an equivalent amount of like quality gas produced and delivered from the well completed in the same producing reservoir from which gas is being sold and delivered and which is situated within one thousand (1,000) feet of, or draining, the leased premises on which shut-in gas well is situated, such compensatory royalty to be paid monthly to the Commissioner of the General Land Office at Austin, Texas, beginning on or before the 20th day of the month next succeeding the month in which such gas is sold and delivered from the well situated within one thousand (1,000) feet of, or draining, the leased premises and completed in the same producing reservoir; provided further, that in the event such compensatory royalties paid in any twelve (12) month period are in a sum less than the annual shut-in gas well royalties provided for in this section, the lessee shall pay an additional sum equal to the difference within thirty (30) days from the end of such twelve (12) month period; provided further, that nothing herein shall relieve the lessee of the obligation of reasonable development, nor of the obligation to drill offset wells required by Section 12 of Chapter 282, Acts of 1929.

e. That if, at the expiration of the primary term, production of oil and/or gas has not been obtained in paying quantities on the leased premises but drilling operations are being conducted thereon in good faith and in good and workmanlike manner, the lessee may, on or before the expiration of the primary term, file in the General Land Office written application to the Commissioner for a thirty (30) day extension of such lease, such application to be accompanied by a payment of Seven and 50/100 Dollars (\$7.50) per acre for each acre in the lease, and the Commissioner shall, in writing, extend such lease for a thirty (30) day period from and after the expiration of the primary term and so long thereafter as oil or gas is produced in paying quantities from the premises; provided further, that the lessee may, so long as such drilling operations are being conducted in good faith, make like application and payment during any thirty (30) day extended period for an additional extension of thirty (30) days not to exceed a combined total of one hundred eighty (180) days; provided, however, lessee may, so long as such drilling operations are being conducted in good faith, make written application to the Commissioner, on or before the expiration of the initial extended period of one hundred eighty (180) days for an additional extension of one hundred eighty (180) days, such application to be accompanied by a payment of Fifty Dollars (\$50.00) per acre for each acre in the lease, and the Commissioner shall, in writing, extend such lease for an additional one hundred eighty (180) day period from and after the expiration of the initial extended period of one hundred eighty (180) days, and so long thereafter as oil or gas is produced in paying quantities from the premises; provided, that no lease shall be extended under the provisions of this Section for more than a total of three hundred sixty (360) days from and after the expiration of the primary term unless production in paying quantities has been obtained.

(b)-2. Each oil and gas lease issued on University lands hereunder shall include such additional provisions and regulations not inconsistent with the provisions of this Act, as the Board may prescribe to preserve the interest of the State and safeguard the University funds. As amended Acts 1955, 54th Leg., p. 560, ch. 179, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 provided that partial invalidity should not

affect the remaining portion of the Act. Section 3 repealed all conflicting laws and parts of laws.

## CHAPTER TWO—AGRICULTURAL AND MECHANICAL COLLEGE

Art.

2613a—7. Leases and easements; right-of-ways for electric and pipe lines, irrigation canals, etc. [New].

Art.

2613c. South Central Interstate Forest Fire Protection Compact [New].  
2615f. Student fee for operating, maintaining and improving Memorial Student Center; election [New].

**Art. 2613a—7. Leases and easements; right-of-ways for electric and pipe lines, irrigation canals, etc.**

Section 1. The Board of Directors of the Texas Agricultural and Mechanical College System is hereby authorized and empowered to execute leases and grant easements for right-of-ways for telephone, telegraph, electric transmission and power lines, for oil pipe lines, gas pipe lines, sulphur pipe lines, water pipe lines and other electric and pipe lines of any nature whatsoever, and for irrigation canals, and laterals, and may execute easements or leases for the erection and maintenance of electric substations, pumping stations, loading racks, tank farms, and other structures and may execute easements for right-of-ways to the Texas Highway Department, to any county within the State of Texas, or to any corporation, group, organization, firm, or individual for highway or roadway purposes on or across any lands belonging to the State and under the control of said Board, if the Board in its discretion deems it apparent that the interest of the State of Texas can best be served by the granting of such easements and leases.

Sec. 2. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General and shall among other things include a complete description of the land on which the easement is to be granted, the period of time covered by the easement, the amount of money to be paid by the grantee to the grantor, or other consideration for the granting of such easement. It shall also specify the terms and conditions, penalties for failure to comply with the provisions of the same and other pertinent information necessary and desirable to effect a complete understanding of the transaction.

Sec. 3. The grants of easements for right-of-ways of the character enumerated in Section 1 hereof except easements for right-of-ways for highway and roadway purposes which may be for indefinite terms shall be limited to a term of not longer than ten (10) years, but any such easement may be renewed by the Board of Directors of the Texas Agricultural and Mechanical College System.

Sec. 4. All income received by the Board of Directors of the Texas Agricultural and Mechanical College System under the provisions of this Act shall be accounted for and used in the same manner as other monies available to the part of the Texas Agricultural and Mechanical College System to which the land, from which the easement is granted, is assigned.

Sec. 5. No person, firm, group, organization, agency, or corporation shall hereafter construct any telephone, telegraph, transmission and/or electric lines, pipe line, electric substation, tank farm, loading rack, and/or pumping station, irrigation canal and/or lateral, highway, or roadway of the kind and character enumerated in Section 1 hereof across or on any section or part of a section of land of the character enumerated in Section 1 hereof owned by the State of Texas who has not obtained a proper easement as herein provided for; continue in possession of any such lands without obtaining from the Board of Directors of the Texas Agricultural and Mechanical College System, a grant of a right-of-way easement or other easement across or on such lands where such telephone, telegraph, transmission and/or electric lines, pipe lines, or any other transmission or pipe lines of the character enumerated in Section 1 hereof, electric substation, tank farm, loading rack, or pumping station, irrigation canal and/or lateral, highway or roadway is to be constructed. Any person, firm, group, organization, agency, or corporation violating this section of this Act shall be liable for a penalty of One Hundred Dollars (\$100) per day for each day of such violation, said penalty to be recovered by the Attorney General. Acts 1955, 54th Leg., p. 653, ch. 228.

Effective 90 days after June 7, 1955, date of adjournment.

Section 6 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## Art. 2613c. South Central Interstate Forest Fire Protection Compact

### Governor authorized to execute compact

Section 1. The Governor, on behalf of this State, is hereby authorized to execute a compact, in substantially the following form, with any one or more of the States of Arkansas, Louisiana, Mississippi, and Oklahoma, and the Legislature hereby signifies its approval and ratification of such compact:

### SOUTH CENTRAL INTERSTATE FOREST FIRE PROTECTION COMPACT

#### Article I.

The purpose of this compact is to promote effective prevention and control of forest fires in the South Central region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member States, by providing for mutual aid in fighting forest fires among the compacting States of the region and with States which are party to other Regional Forest Fire Protection compacts or agreements, and for more adequate forest development.

#### Article II.

This compact shall become operative immediately as to those States ratifying it whenever any two or more of the States of Arkansas, Louisiana, Mississippi, Oklahoma, and Texas which are contiguous have ratified it and Congress has given consent thereto. Any State not mentioned in this article which is contiguous with any member State may become a party to this compact, subject to approval by the legislature of each of the member States.

#### Article III.

In each State, the State Forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact admin-



istrator for that State and shall consult with like officials of the other member States and shall implement cooperation between such States in forest fire prevention and control.

The compact administrators of the member States shall organize to coordinate the services of the member States and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, representatives of the Board of Directors of the Texas Agricultural and Mechanical College System, and forestry or forest products industries representatives, which shall meet from time to time with the compact administrators. Each member State shall name one member of the Senate and one member of the House of Representatives, and the Governor of each member State shall appoint one representative who shall be associated with forestry or forest products industries, and a member of the Board of Directors of the Texas Agricultural and Mechanical College System, to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting States, and each State shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member States.

It shall be the duty of each member State to formulate and put in effect a forest fire plan for that State and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

#### Article IV.

Whenever the State forest fire control agency of a member State requests aid from the State forest fire control agency of any other member State in combating, controlling or preventing forest fires, it shall be the duty of the State forest fire control agency of that State to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

#### Article V.

Whenever the forces of any member State are rendering outside aid pursuant to the request of another member State under this compact, the employees of such State shall, under the direction of the officers of the State to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the State to which they are rendering aid.

No member State or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith; provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any State.

All liability, except as otherwise provided herein, that may arise either under the laws of the requesting State or under the laws of the aiding State or under the laws of a third State on account of or in connection with a request for aid, shall be assumed and borne by the requesting State.

Any member State rendering outside aid pursuant to this compact shall be reimbursed by the member State receiving such aid for any loss

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

or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of employees and equipment incurred in connection with such request; provided, that nothing herein contained shall prevent any assisting member State from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member State without charge or cost.

Each member State shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

For the purposes of this compact the term "employee" shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding State under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member States.

#### Article VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member State.

Nothing in this compact shall be construed to limit or restrict the powers of any State ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of State laws, rules or regulations intended to aid in such prevention, control and extinguishment in such State.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States Forest Service and a member State or States.

#### Article VII.

The compact administrators may request the United States Forest Service to act as the primary research and coordinating agency of the South Central Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each State, and the United States Forest Service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States Forest Service may attend meetings of the compact administrators.

#### Article VIII.

The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any State party to this compact and any other State which is party to a regional forest fire protection compact in another region; provided, that the Legislature of such other State shall have given its assent to such mutual aid provisions of this compact.

## Article IX.

This compact shall continue in force and remain binding on each State ratifying it until the legislature or the Governor of such State takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the State desiring to withdraw to the chief executives of all States then parties to the compact.

**Execution and ratification of compact**

Sec. 2. When the Governor shall have executed said compact on behalf of this State and shall have caused an authenticated copy thereof to be filed with the Secretary of State, and when said compact shall have been ratified by one or more of the States named in Section 1 of this Act, then said compact shall become operative and effective as between this State and such other State or States. The Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this State and any other State ratifying said compact.

**Compact administrator**

Sec. 3. The Director of the Texas Forest Service, a part of the Texas Agricultural and Mechanical College System, shall act as compact administrator for the State of Texas and represent Texas in the South Central Interstate Forest Fire Protection Compact.

**Members of advisory committee**

Sec. 4. The advisory committee referred to in Article III of this compact shall be composed of four members selected as follows: One member shall be named from the membership of the Senate of the State of Texas by the Lieutenant Governor; one member shall be named from the membership of the House of Representatives of the State of Texas by the Speaker of said House; two members shall be appointed by the Governor, provided that one shall be selected from among the persons who comprise the Board of Directors of the Texas Agricultural and Mechanical College System and the other be a person associated with forestry or a forest products industry.

**Legislative intent; joint program of member states, etc.**

Sec. 4a. It is the intent of the Legislature of the State of Texas, in ratifying the South Central Interstate Forest Fire Protection Compact, that this compact is and shall be a joint program of the member States and that representatives of the United States government shall participate in compact meetings or in other activities under the compact only in the manner and to the extent authorized by the representatives of the member States, appointed pursuant to the terms of this compact. Acts 1955, 54th Leg., p. 24, ch. 19.

Effective 90 days after June 7, 1955 date of adjournment.

Complimentary Laws—Arkansas—Laws 1953, Acts 361, p. 1025; Louisiana—Acts 1954, c. 181; Oklahoma, Laws 1953, p. 70, 74 Okl.St. Ann. §§ 354.1-354.5.

**Title of Act:**

An Act authorizing the Governor on behalf of the State of Texas to execute the South Central Interstate Forest Fire Pro-

tection Compact; prescribing the text of said compact; providing an effective date for said compact; designating the State Forester as compact administrator for this State; providing rules governing appointments of certain members to the advisory committee established in said compact; and declaring an emergency. Acts 1955, 54th Leg. p. 24, ch. 19.

**Art. 2615f. Student fee for operating, maintaining and improving Memorial Student Center; election**

Section 1. The Board of Directors of the Texas A. and M. College is hereby authorized to levy a student fee not to exceed Two Dollars (\$2.00) per student for each semester of the long session and not to exceed One Dollar (\$1.00) per student for each term of the summer session, as may in their discretion be just and necessary for the sole purpose of operating, maintaining and improving the Memorial Student Center; provided, however, that the amount of this fee may be changed at any time within the limits hereby fixed; provided further, however, that the student body shall approve said fee at an election called for that purpose by the Governing Board of the institution. Notice of any said election shall be given by publication of a substantial copy of the resolution or order of the Governing Board calling such election and showing the amount of the fee and the purpose for which it is to be used. Said notice shall be published in any student newspaper having general circulation among the students for three consecutive days of the week immediately preceding the date set for said election. The Governing Board shall canvass the returns and declare the results of any said election, and if a majority of the students voting in said election shall vote in favor of such fee, then the Governing Board may levy the fee in an amount not in excess of the amount authorized at said election.

Sec. 2. The money thus collected shall be used for the purpose of operating, maintaining and improving the Memorial Student Center and shall be expended for these purposes on order of the Board of Directors of said College. Acts 1955, 54th Leg., p. 876, ch. 331.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act authorizing and empowering the Board of Directors of the Texas A. and M. College to levy a regular student fee for the purpose of operating, maintaining and improving the Texas A. and M. College Memorial Student Center at the A. and M. College of Texas, upon approval of

the student body at an election called for that purpose; making provisions for such election; fixing the amount of the fee; providing the purpose for which said fee shall be used; placing the control of the fees in the hands of the Board of Directors of the Texas A. and M. College; and declaring an emergency. Acts 1955, 54th Leg., p. 876, ch. 331.

**CHAPTER FIVE—TEXAS STATE COLLEGE FOR WOMEN;  
TEXAS COLLEGE OF ARTS AND INDUSTRIES**

**TEXAS COLLEGE OF ARTS AND  
INDUSTRIES**

**Art.**

2628d. Health fee and Student Union Building fee; elections; notice of election [New].

**TEXAS COLLEGE OF ARTS AND INDUSTRIES**

**Art. 2628d. Health fee and Student Union Building fee; elections; notice of election**

Section 1. The Board of Directors of Texas College of Arts and Industries is hereby authorized to levy and collect a regular fixed student fee not to exceed Three Dollars (\$3) per student for each semester of a long session and not to exceed One Dollar and Fifty Cents (\$1.50) per

student for each term of summer school, for maintaining and operating a health service for students.

Sec. 2. The Board of Directors of Texas College of Arts and Industries is authorized to levy and collect a regular fixed student fee not to exceed Four Dollars (\$4) per student for each semester of a long session and not to exceed Two Dollars (\$2) per student for each term of summer school, as may in their discretion be just and necessary for the purpose of retiring the outstanding bonded indebtedness against the Student Union Building and/or operating and maintaining this building; and the fees collected under this Section shall be used for no other purpose.

Sec. 2a. Before any fee levied for the purposes set forth in Section 2 of this Act shall be collected, however, all students who are enrolled in nine (9) semester hours, or more, in the College shall approve said fee at an election called for that purpose by the Board of Directors of the College. Notice of such election shall be given by publication of a copy of the resolution, or order, of the Board of Directors calling such election, and setting forth the amount and purpose for which the fee is to be levied. Said notice shall be published one (1) time in a college student newspaper having general circulation among the students, not more than five (5) nor less than two (2) days immediately preceding the date set for such election. The Board of Directors shall canvass the returns and declare the results of such election, and if a majority of the students voting in such election shall vote in favor of such fee, then such fee shall be collected from all students as provided by the Board of Directors. Elections shall be required only when such fee is first authorized, or when increased. Acts 1955, 54th Leg., p. 1196, ch. 471.

Emergency. Effective June 15, 1955.  
Title of Act:

An Act authorizing the Board of Directors of Texas College of Arts and Industries to levy and collect a health fee and

a Student Union Building fee; providing for the calling of an election and notice thereof; and declaring an emergency. Acts 1955, 54th Leg., p. 1196, ch. 471.

**CHAPTER EIGHT—UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE FOR NEGROES**

Art.

2643f—1. Texas Southern University; courses leading to reserve

**Art. 2643d. Buildings, structures and facilities**

**Construction and equipment authorized**

Section 1. The Board of Directors of Texas Southern University is hereby authorized and empowered to construct and otherwise acquire and equip buildings and structures, suitable for the students and faculty of the institution, including, but not limited to, student dormitories, faculty dormitories, dining halls, libraries, student activity buildings, student health clinic, stadia, and gymnasias, when the total cost, type of construction, capacity of such buildings, and equipment, as well as the other plans and specifications, have been approved by said Board of Directors. As amended Acts 1955, 54th Leg., p. 50, ch. 36, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 2643f—1. Texas Southern University; Courses Leading to Reserve Commissions in Army, Navy or Air Force**

The Board of Directors of Texas Southern University is authorized to request the Secretaries of the Army, Navy and Air Force and/or the

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

Secretary of Defense of the United States of America to establish and maintain courses of training, qualifying student graduates of such courses for reserve commission awards, as a part of its curriculum. The Board of Directors is authorized to enter into mutually agreeable contracts for such purposes.

The work of the students enrolling in such courses may be credited toward degree requirements under such regulations as the Board of Directors may prescribe.

No student of the University shall ever be required to take any portion of such training as a condition for entrance into the University or graduation therefrom. Acts 1955, 54th Leg., p. 49, ch. 35.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act authorizing the Board of Directors of Texas Southern University to request the Secretaries of the Army, Navy and Air Force and/or the Secretary of Defense of the United States to establish and maintain courses of training at said

institution, and authorizing the Board of Directors to enter into contracts for such purposes; authorizing the Board of Directors to establish regulations as to credit toward degree requirements; providing the training shall not be required for entrance or graduation; and declaring an emergency. Acts 1955, 54th Leg., p. 49, ch. 35, § 1.

**Art. 2643g. Buildings and improvements; Lamar State College of Technology and Texas Southern University**

**Appropriations**

Sec. 12a. Provided that during the twenty-four (24) year period mentioned in Section 2, the Legislature of the State of Texas shall make no appropriation out of State funds for acquiring or constructing buildings or other permanent improvements at said educational institutions, except in case of fire, flood, storm, or earthquake occurring at either of said institutions, in which case an appropriation or appropriations in the amount or amounts sufficient to replace the loss or losses so incurred may be made by the Legislature out of State funds. Acts 1953, 53rd Leg., p. 819, ch. 330, as amended Acts 1955, 54th Leg., p. 644, ch. 220, § 1.

Emergency. Effective May 16, 1955.

**CHAPTER NINE B—ADMINISTRATION OF PUBLIC FREE SCHOOLS**

**Art. 2654—3a. Sale or exchange of obligations held for permanent school fund**

Section 1. The State Board of Education is hereby authorized to sell or exchange any United States Treasury bonds, notes, certificates of indebtedness or other securities issued by the United States Treasury at any time held by the State Treasurer for the account of the Permanent School Fund; provided, however, that such obligations shall not be sold for a price less than the book value of such obligations; provided further, that such obligations shall not be exchanged for other obligations having a par value less than the par value of the obligations to be exchanged. For purposes of this Section, book value shall mean the actual amount of money the Permanent School Fund has invested in such obligations at the time of such sale or exchange. As amended Acts 1954, 53rd Leg., 1st C.S., p. 28, ch. 11, § 1.

Effective 90 days after April 13, 1954, date of adjournment.

Section 2 of the amendatory act of 1954 amended art. 2671 and section 3 amended art. 2673.

CHAPTER TEN—STATE DEPARTMENT OF EDUCATION

1. STATE SUPERINTENDENT

Art. 2663b—2. American history and Texas history; courses required for degree [New].

2. STATE BOARD

Art. 2675c—1. Totally Deaf and Blind Children; Education and Maintenance; Duties of Board [New].

1. STATE SUPERINTENDENT

Art. 2663b—2. American history and Texas history; courses required for degree

Section 1. No person after July 1, 1956, shall be granted an undergraduate degree of any kind from any institution of higher learning supported or maintained by the State of Texas, or from any junior college receiving state aid, except that he or she has taken and passed six semester hours in American History provided that any student shall have the option, at his or her request, to substitute three semester hours of Texas History for three of the six semester hours in American History required by the terms of this Act.

Sec. 2. The provisions of this Act are in addition to existing laws requiring the teaching of state and federal Constitutions in state supported colleges and universities in Texas. Acts 1955, 54th Leg., p. 1168, ch. 449.

Effective 90 days after June 7, 1955, date of adjournment.

2. STATE BOARD

Art. 2671. 2738 Conditions of purchase

The Comptroller or State Board shall carefully examine the bonds, obligations, or pledges so offered and investigate the facts tending to show the validity thereof; and such Board may decline to purchase same unless satisfied that they are a safe and proper investment for such fund. No bonds, obligations, or pledges shall be so purchased that bear less than two and one-half (2½%) per cent interest. No bonds, obligations, or pledges except those of the United States, the State of Texas, and The University of Texas, shall be so purchased when the indebtedness of the county, city, precinct, or district issuing same, inclusive of those so offered, shall exceed seven (7%) per cent of the assessed value of all taxable property therein. If default be made in the payment of interest due upon such bonds, obligations, or pledges, the State Board of Education may at any time prior to the payment of such overdue interest elect to treat the principal as also due, and the same shall thereupon, at the option of said Board, become due and payable; and the payment of both such principal and interest shall in all such cases be enforced in the manner provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever. As amended Acts 1954, 53rd Leg., 1st C.S., p. 28, ch. 11, § 2.

Effective 90 days after April 13, 1954, date of adjournment.

Art. 2673. 2740 Option to purchase

Whenever any county, city, independent or common school district, road precinct, road, drainage, irrigation, navigation or levee district of

this State or The University of Texas issues any bonds, obligations, or pledges, or issues any refunding bonds in lieu of outstanding bonds which are held for the account of the State Permanent School Fund which may be redeemed before maturity and which have been called for redemption, and whenever such bonds, obligations, or pledges have been approved by the Attorney General, as required by the preceding Articles, the county judge, the mayor, the president of the board of trustees of the school district, the president of the board of regents, or the county judge or party authorized by law to sell such bonds, obligations, or pledges, shall notify the State Board of Education of all bids received for such bonds, obligations, or pledges, and shall give said Board an option of ten (10) days in which to purchase same; provided, that said Board will pay the price offered therefor by the best bona fide bidder; and if the said Board fails to purchase said bonds, obligations, or pledges within said time, then such county judge, mayor, or president shall sell the same to the best bona fide bidder. If the State Board shall pay a premium out of the Permanent School Fund on any bonds, obligations, or pledges purchased as an investment for the Permanent School Fund, then the principal of such bonds, obligations, or pledges and an amount of the interest first accruing thereon equal to the premium so paid, shall be treated as the principal in such investment, and, when such first interest is collected, such sum of the same shall be returned to the Permanent School Fund, and, if they purchase said bonds, obligations, or pledges for less than par, the discount they receive in the purchase thereof shall be paid to the Available School Fund when the said bonds, obligations, or pledges are paid off and discharged. If the said Board shall refuse or shall have refused to purchase all or any part of such bonds, obligations, and pledges from such county, city, precinct or district or The University of Texas, or from the parties to whom the same were issued, the State Board of Education may nevertheless thereafter purchase such bonds, obligations, and pledges, subject to the same restrictions provided by law governing the purchase of such obligations by the State Board of Education from the issuing Agency; and when so purchased such obligations shall be subject to all rights and powers provided by law governing the same when purchased by the State Board of Education from the issuing Agency. As amended Acts 1954, 53rd Leg., 1st C.S., p. 28, ch. 11, § 3.

Effective 90 days after April 13, 1954,  
date of adjournment.

#### Art. 2675c—1. Totally Deaf and Blind Children; Education and Maintenance; Duties of Board

Section 1. The State Board of Education may provide for the maintenance, care and education of persons under the age of eighteen (18) years who are totally deaf and blind.

Sec. 2. The Board may accept such persons on application of the parent or guardian and may require reimbursement for cost of maintenance, care and education as is provided by law for other deaf and blind persons.

Sec. 3. The Board may negotiate and enter into contracts with public or private institutions within or without the State of Texas which are equipped to provide the specialized facilities and personnel necessary to care for and educate persons who are totally deaf and blind and may provide transportation and maintenance to and from such institutions for totally deaf and blind persons and necessary attendants.

Sec. 4. "Totally deaf and blind person" as used in this Act means a person having such defects of sight and hearing that in the determination



of the Board the person may not be cared for, treated or educated in the manner now provided by the State for blind or deaf persons. Acts 1955, 54th Leg., p. 446, ch. 122.

Emergency. Effective April 29, 1955.  
Title of Act:

An Act to provide for the maintenance, care and education of persons under the

age of eighteen (18) years who are totally deaf and blind; and declaring an emergency. Acts 1955, 54th Leg., p. 446, ch. 122.

CHAPTER THIRTEEN—SCHOOL DISTRICTS

1. COMMON SCHOOL DISTRICTS

Art.

2750a—2. Common school districts; term of contracts with teachers [New].

2. INDEPENDENT DISTRICTS IN TOWN

2766a. Change of boundaries; independent districts in counties of 100,000 or more [New].

2767—1. Number of elections as to abolishing districts or creating district out of abolished district; restrictions on [New].

3. INDEPENDENT DISTRICTS IN CITIES

2775a—1. Election of trustees by separate positions in independent districts of 10,000 or more scholastics [New].

2779b. Appointment of assessor-collector for three years, bond [New].

4. TAXES AND BONDS

2784e—1. Maximum tax rate in school districts; maintenance; elec-

tions; bond issues [New].

2802—1. Contracts with attorney by independent district for collection of delinquent taxes [New].

6. DISTRICTS IN LARGE COUNTIES

2815g—48. Validation; districts; acts of trustees and others; boundaries; taxes; districts involved in litigation [New].

2815g—49. Validation; Acts of Trustees and Others; Counties of over 300,000; Annexation Elections [New].

2815g—50. Validation of districts; acts; rearrangement, consolidation, etc.; addition of territory; elections; bonds; taxes; boundaries; exceptions [New].

7. JUNIOR COLLEGES

2815r—1. Buildings, structures and additions; construction, acquisition and equipment; powers of district regents [New].

2815s—1. Annexation of parts of county line districts to adjacent junior college districts [New].

1. COMMON SCHOOL DISTRICTS

Art. 2750a—2. Common school districts; term of contracts with teachers

The board of trustees of any common school district or any district which is classified as a common school district in this State shall, at all times, have the right to enter into contracts employing a superintendent, principals, teachers, and other executive officers in the schools of any such district for a term not to exceed three (3) years; provided, that all twelve-month contracts made by the board of trustees of any such district with any such employee herein mentioned shall begin on July 1st and end on June 30th of the year terminating the contract; provided, further, that all such contracts shall be approved by the county superintendent of the county having jurisdiction and supervision of such district. Acts 1953, 53rd Leg., p. 586, ch. 228, § 1, as amended Acts 1954, 53rd Leg., 1st C.S., p. 72, ch. 34, § 1.

Effective 90 days after April 13, 1954, date of adjournment.

Section 2 of the amendatory act of 1954 repealed conflicting laws and parts of laws to the extent of the conflict only.

## 2. INDEPENDENT DISTRICTS IN TOWN

**Art. 2766a. Change of boundaries; independent districts in counties of 100,000 or more**

On and after the effective date of this Act no changes in boundaries of independent school districts having an elected Board of Trustees composed of nine (9) or more members, located in counties having a population of one hundred thousand (100,000) or more, according to the last preceding Federal Census, shall be made or effected, whether by election or by order of the County Board of School Trustees, or by any other method, until and unless the petition or proposal or order seeking to make such change either by consolidation election, annexation or detachment previously has been approved by a majority vote of the Board of Trustees or Board of Education of such independent school district. Acts 1955, 54th Leg., p. 547, ch. 172, § 1.

Emergency. Effective May 7, 1955.

**Title of Act:**

An Act providing that no changes in boundaries of independent school districts having an elected Board of Trustees composed of nine (9) or more members, located in counties having a population of one hundred thousand (100,000) or more,

according to the last preceding Federal Census, shall be made unless previously approved by the Board of Trustees or Board of Education thereof; enacting other provisions relating thereto; and declaring an emergency. Acts 1955, 54th Leg., p. 547, ch. 172.

**Art. 2767. Abolishing districts**

Any independent school district incorporated for free school purposes under the laws of Texas, may be abolished in the manner herein provided:

The County Judge of any county in which any independent school district or part thereof is situated, upon presentation of a petition in writing signed by ten per cent (10%) of the qualified voters residing in such independent school district shall order an election for such purpose, on a day therein stated, and at a place within said independent school district and within the county in which said county court is situated, therein designated. He shall appoint an officer to preside at the election, who shall select two (2) judges and two (2) clerks to assist in holding it. After previous notice of ten (10) days by posting advertisements thereof at three (3) public places within such independent school district, the election shall be held in the manner prescribed by law for holding general elections, except as is herein provided.

All persons who are legally qualified voters of the State and of the county in which such independent school district or part thereof is situated, and who have resided within said independent school district for at least six (6) months next preceding, shall be entitled to vote at such election.

The officers holding such election shall make return thereof to the County Judge within ten (10) days after the same is held. If a majority of such voters, voting at such election, shall vote to abolish such independent school district, the County Judge shall declare such independent school district abolished and shall enter an order to that effect upon the minutes of the Commissioners Court, and from the date of such order, said independent school district shall cease to exist. As amended Acts 1955, 54th Leg., p. 577, ch. 191, § 1.

Emergency. Effective May 10, 1955.

Section 2 of the amendatory Act of 1955 was classified to article 2767—1.

**Art. 2767—1. Number of elections as to abolishing districts or creating district out of abolished district; restrictions on**

Within any twelve (12) month period not more than one (1) election shall be held involving a change in an independent district by abolishment of an existing independent district or by creation of an independent district out of territory formerly comprising an independent district which has been abolished within the preceding twelve (12) months. Acts 1955, 54th Leg., p. 577, ch. 191, § 2.

**3. INDEPENDENT DISTRICTS IN CITIES****Art. 2775a—1. Election of trustees by separate positions in independent districts of 10,000 or more scholastics**

Section 1. In all independent school districts, whether created under the General Laws or by Special Act of the Legislature, having ten thousand (10,000) or more scholastics according to the last scholastic census, in which the candidates for school trustee are not voted on and elected by separate positions under some other applicable statute, the Board of Trustees of any such independent school district may, by appropriate action, taken at least sixty (60) days prior to the first election of school trustees after the effective date of this Act, order that all candidates for school trustee be voted upon and elected separately for positions on the Board of Trustees and all candidates shall be designated on the official ballots according to the number of the position to which they seek election. At least sixty (60) days prior to the first election which is governed by this Act in each district now or hereafter coming within its provisions, the Board of Trustees shall number the positions in the order in which the terms of office expire, the expiring terms which are to be filled at the first election to be numbered Position No. 1, Position No. 2, and so on, and the next succeeding terms expiring to take the next larger numbers, until all of the positions have been numbered. Thereafter, any candidate offering himself for a position as trustee of such district in any election shall indicate the number of the position for which he desires to run, and his application for a place on the ballot shall disclose the position number for which he is a candidate or the name of the incumbent member holding the position for which he desires to run. The names of the candidates for each position shall be arranged by lot by the Board of Trustees of the district. Once the Board of Trustees of an independent school district shall have adopted the foregoing procedure for elections, said Board of Trustees or their successors may not rescind the action which adopted the foregoing procedure.

Sec. 2. This Act shall not repeal or affect any other statute providing for the election of school trustees by position number. All other laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. Acts 1955, 54th Leg., p. 912, ch. 360.

Emergency. Effective May 25, 1955.

**Title of Act:**

An Act providing for the election of school trustees by separate positions in certain independent school districts; providing that when the Board of Trustees

adopt the procedure herein it may not rescind such action; repealing all laws in conflict except statutes providing for election of school trustees by position number; and declaring an emergency. Acts 1955, 54th Leg., p. 912, ch. 360.

**Art. 2779b. Appointment of assessor-collector for three years; bond**

Section 1. Boards of Trustees of Independent School Districts operating under the General Law are authorized to appoint an Assessor-

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

Collector of Taxes for their respective School Districts for a term of office not to exceed three (3) years, to be determined by the Board of Trustees; providing that such Assessor-Collector shall give bond, to be executed by a surety company authorized to do business in the State of Texas, in an amount sufficient to adequately protect the funds of such school district in the hands of such Assessor-Collector, but in no event shall the bond be less than twice the largest amount collected at any one time in the preceding fiscal or calendar year, or Fifty Thousand Dollars (\$50,000), whichever amount is the smaller, to be determined by the governing body of such school district. As amended Acts 1955, 54th Leg., p. 852, ch. 318, § 1.

Emergency. Effective May 24, 1955.

#### 4. TAXES AND BONDS

##### Art. 2784e—1. Maximum tax rate in school districts; maintenance; elections; bond issues

Section 1. The Commissioners Court for the common school districts in its county, and trustees of rural high school districts, and trustees of all other school districts, shall have the power to levy and cause to be collected the annual taxes and to issue the bond herein authorized, subject to the following provisions:

1. In common and independent school districts, rural high school districts, and cities and towns constituting independent school districts, and in all other school districts for the further maintenance of public free schools, an annual ad valorem tax may be levied not to exceed, in districts having a bonded indebtedness of seven per cent (7%) or less of its total assessed value of taxable property, One Dollar and Fifty Cents (\$1.50) on the One Hundred Dollars (\$100.00) assessed value of taxable property in the district. For each one per cent (1%) or major fraction thereof, increase in bonded indebtedness beyond seven per cent (7%) of the assessed value of taxable property in such school district, the maximum maintenance rate shall be decreased by Ten Cents (10¢). The maximum maintenance rates which may be levied annually in any district shall conform to the following schedule:

Bonded indebtedness in the amount of seven per cent (7%) or less of the assessed value of taxable property	\$1.50
Bonded indebtedness in the amount of eight per cent (8%) of the assessed value of taxable property	\$1.40
Bonded indebtedness in the amount of nine per cent (9%) of the assessed value of taxable property	\$1.30
Bonded indebtedness in the amount of ten per cent (10%) of the assessed value of taxable property	\$1.20

Provided, however, that such annual ad valorem tax levied may not exceed the maximum established by a majority vote of the resident qualified taxpaying voters of the district, voting in an election or elections held for such purpose.

2. In common school and independent districts, rural high school districts, and all other school districts, for the purchase, construction, repair or equipment of public free school buildings, and the purchase of necessary sites therefor, said districts may issue bonds and may levy ad valorem taxes in an amount sufficient to pay the interest on and principal of all bonds issued for such purpose, provided that bonds shall never be issued

by any district in an amount which would exceed ten per cent (10%) of the assessed value of taxable property in such school district, according to the then last completed and approved tax rolls of such district.

3. No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district, whose property has been duly rendered for taxation, shall be entitled to vote.

4. All property in a common school district shall be assessed for school purposes at the same value as said property is assessed for State and county purposes.

Sec. 2. Except as otherwise provided in this Act, General Laws applicable to each of the several types and classes of school districts herein named prescribing the manner of calling and holding of tax and bond election shall govern such district in the calling and holding of the election permitted or required under this Act, and the applicable laws prescribing the method and manner of levying, assessing, and collecting taxes and issuing bonds, shall govern the levying, assessing, and collecting of taxes and issuing of bonds authorized herein.

Sec. 3. It is the intention of the Legislature that the provisions of this Act shall be cumulative of all other laws and it is further intended that the provisions hereof shall not apply to any district until such time as the provisions of this Act have been adopted by a majority vote of the qualified voters of such district who own property which has been duly rendered for taxation on the tax rolls of the county for that purpose. Acts 1955, 54th Leg., p. 1635, ch. 528.

Effective 90 days after June 7, 1955, date of adjournment.

Section 3a of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 2790e. Election for school tax in counties of 350,000 or more; number of school trustees**

**Payment of Superintendent's salary, etc., pending authorization and levy of tax**

Sec. 11. Until the tax provided for herein shall be authorized and levied, the salary of the County Superintendent and his assistants, and the expenses of maintaining the office of County Superintendent, shall continue to be paid as otherwise provided by law. As amended Acts 1955, 54th Leg., p. 369, ch. 87, § 1.

Emergency. Effective April 25, 1955.

**Art. 2802—1. Contracts with attorney by independent district for collection of delinquent taxes**

Section 1. Any independent school district of this State may contract with any competent attorney of this State for the collection of delinquent taxes of such independent school district, and he shall receive for his services not to exceed the same amount as allowed attorneys collecting delinquent taxes for the State and county.

Sec. 2. This Act shall be cumulative of other laws and shall be construed to provide an additional method for employment of attorneys by independent school districts for the collection of delinquent taxes. Acts 1955, 54th Leg., p. 843, ch. 310.

Emergency. Effective May 24, 1955.

Employment of attorney to collect delinquent taxes, see, also, art. 7343.

Title of Act:

An Act allowing independent school districts to enter into contracts with any

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

attorney of this State for the collection of all other laws; and declaring an emergency. Acts 1955, 54th Leg., p. 843, ch. 310.

**Art. 2802e—1. Construction and mortgaging of gymnasia, stadia, etc., by districts authorized; self-liquidating; proceedings validated**

**Buildings; mortgages; bonds; franchise to foreclosure purchaser; obligation no debt**

Section 1. All independent school districts or common school districts and all cities which have assumed the control of the public schools situated therein shall have the power to build or purchase buildings and grounds located within or without the district or city, for the purpose of constructing gymnasia, stadia, or other recreational facilities, and to mortgage and encumber the same, and the income, tolls, fees, rents, and other revenues therefrom, and everything pertaining thereto, acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase or to construct the same, including the purchase of equipment and appliances for use therein and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district or city, but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district, or city, to issue bonds for any other purpose authorized by law; provided that no election for the issuance of bonds herein authorized shall be necessary, but the same may be authorized by a majority vote of the board of trustees of such independent school district or common school district or governing body of such city.

**Additions to buildings; mortgages; bonds; franchise to foreclosure purchaser; obligation no debt**

Sec. 2. All independent school districts or common school districts and all cities which have assumed the control of the public schools situated therein shall have the power to build additions to existing gymnasia, stadia, or other recreational facilities owned by the same, and to purchase additional buildings and grounds for the purpose of constructing additions to existing gymnasia, stadia, and other recreational facilities, and to mortgage and encumber said original stadia, gymnasia, and other recreational facilities, together with the additional buildings and grounds and additions to existing gymnasia, stadia, and other recreational facilities, and the income, tolls, fees, rents, and other charges thereof, and everything pertaining thereto acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase the same, including the purchase therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district and/or city, but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district or city, to issue bonds for any other purpose authorized by law; provided that no election for the issuance of the bonds herein authorized shall be necessary, but the same may be authorized by a majority vote of the boards of trustees of such independent school district or common school district or the governing body of such city.

**Projects self-liquidating**

Sec. 3. Projects financed in accordance with this law are hereby declared to be self-liquidating in character and supported by charges other than taxation.

**Bonds provided for in Section 1 payable from revenue**

Sec. 4. Such bonds provided for in Section 1 shall be payable from the net revenues of the project together with all future extensions or additions thereto or replacements thereof, and the governing body of such school district, or city, shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenue, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses a sufficient amount of the revenue remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds plus a reasonable amount as a margin for safety. Such fund shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose.

**Bonds provided for in Section 2 payable from revenue**

Sec. 5. Such bonds provided for in Section 2 shall be payable from the net revenues of the entire project, including the original existing gymnasias, stadia, and other recreational facilities, and the additional buildings and grounds and additions to the existing gymnasias, stadia, and other recreational facilities, together with all future extensions or additions thereto or replacements thereof and the governing body of such city or school district shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenues, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses, a sufficient amount of the revenue remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds, plus a reasonable amount as a margin of safety. Such funds shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose.

**Required clause**

Sec. 6. Every bond issued or executed under this law shall contain the following clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Such bonds shall be presented to the Attorney General for his approval as is provided for the approval of other school bonds and in such cases the bonds shall be registered by the State Comptroller as in the case of other school bonds.

**Land not subject to payment of indebtedness**

Sec. 7. No land upon which is situated any of the school improvements other than as described herein shall ever be subject to the pay-

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

ment of any indebtedness created hereunder, nor shall any encumbrance ever be executed thereon.

#### Validation of acts, proceedings and contracts

Sec. 8. All acts performed, proceedings had and contracts executed by school districts to which this Act is applicable, and by the governing bodies thereof, which acts, proceedings and contracts were unauthorized by law at the time of their performance or execution, but which would have been authorized under the terms of this Act had the same been in force at such time, are hereby validated, ratified, approved and confirmed in all respects as fully as though they had been duly and legally performed, had and executed in the first instance.

#### Refunding revenue bonds

Sec. 8-1/2. All independent school districts and common school districts shall have the right and privilege of issuing refunding revenue bonds for the same purposes as provided by this Act and under the terms and conditions of this Act. As amended Acts 1951, 52nd Leg., p. 747, ch. 405; Acts 1954, 53rd Leg., 1st C.S., p. 49, ch. 17, § 1.

Emergency. Effective April 22, 1954.

### 5. ADDITIONS AND CONSOLIDATIONS

#### Art. 2806e. Trustees of larger district as trustees of consolidated district until terms expire

From and after the effective date of this Act wherever under existing law one (1) or more independent school districts are consolidated with one (1) or more common school districts or two (2) or more independent school districts are consolidated, and one of such independent school districts so consolidated with one (1) or more others, either independent or common school districts, shall have at the time of such consolidation a scholastic enrollment in excess of five (5) times that of the other district, or in excess of five (5) times the combined scholastic enrollment of all the other districts included in such consolidation, the Board of Trustees of said larger district shall serve as the Board of Trustees of the consolidated district until the terms of the respective members thereof shall expire, at which time their successors shall be elected from the consolidated district as provided by law; it being the intention to provide herein that the respective trustees of the larger district shall serve until their current terms expire and their successors are elected from the consolidated district; and it shall not be necessary to elect another new Board for the consolidated district at the next general election following the consolidation, but there shall be elected from such consolidated district at such time only the successors to those members of the Board whose terms expire then. As amended Acts 1955, 54th Leg., p. 81, ch. 52, § 1.

Emergency. Effective April 2, 1955.

Section 2 of the amendatory Act of 1955, provided that all laws or parts of laws in conflict herewith are expressly repealed to the extent of the conflict on-

ly; otherwise this Act shall be cumulative of all other existing laws relative to the consolidation of independent school districts and common school districts.



## 6. DISTRICTS IN LARGE COUNTIES

Art. 2815g—48. Validation; districts; acts of trustees and others; boundaries; taxes; districts involved in litigation

Section 1. All School Districts, including any independent school district controlled by a municipality and including common school districts, independent school districts, consolidated common school districts, consolidated independent school districts, rural high school districts, all county line school districts, including county line common school districts, county line independent school districts, county line rural high school districts, county line consolidated common school districts, county line consolidated independent school districts, and all other school districts, groups or annexations of whole districts, or parts of districts, whether established, organized, and/or created by vote of the people residing in such Districts, or by action of the governing body of any such municipalities, or by action of the county school boards, or by action of the County Judge, or by action of the Commissioners Courts, and whether created by General or Special Law in this State, and heretofore recognized by either state or county authorities as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance.

All acts of the county boards of trustees of any and all counties in rearranging, consolidating, grouping, annexing, changing, detaching and attaching of territory, or subdividing any and all such School Districts, or increasing or decreasing the area thereof, or abolishing School Districts, in any school district of any kind, or in creating new Districts out of parts of existing Districts or otherwise, and all acts of the governing bodies of any such municipalities in annexing territories to such municipally controlled school districts, are hereby in all things validated.

All consolidations, or attempts at consolidation, of School Districts after an election was held and a majority of the legally qualified voters in each such District voting in such election voted in favor of such consolidations, are hereby in all things validated and declared to be duly and legally consolidated or established as though they had been so consolidated or established in the first instance, and shall include, among others, such attempted consolidations where the election proceedings call for the consolidation of one or more common school districts and/or one or more independent school districts with an independent school district, but did not provide for the consolidation of each such common school district and/or independent school district with each other such District.

All acts of the County Judges, and/or the Commissioners Courts, and/or the county boards of school trustees in converting or changing one type of School District into another type of School District, are hereby in all things validated, and all elections called by such officers for such conversion or change, in which election a majority of the qualified voters voting therein voted in favor thereof, are hereby in all things validated, and all such converted or changed School Districts are hereby in all things validated as though they had been legally established in the first instance.

All acts of the governing bodies of municipalities and/or of the boards of trustees of municipally controlled or assumed School Districts and/or cities and towns constituting separate and independent school

districts and/or extended municipal school districts, in ordering elections for the separation or divorcement of such schools and/or Districts from municipal control, jurisdiction or authority, in which elections a majority of the qualified voters voting therein voted in favor of such separation or divorcement, are hereby in all things validated, and the School Districts formed by such separation or divorcement are hereby in all things validated, and the organization and acts of the boards of trustees of any and all such Districts are hereby in all things validated.

The boundary lines of any and all such School Districts are hereby in all things validated. The names of any and all such School Districts are hereby in all things validated.

All acts of the boards of trustees in such School Districts or the governing bodies of such municipalities or the County Judges or the Commissioners Courts ordering an election or elections, declaring the results of such elections, levying, or attempting or purporting to levy taxes for and on behalf of such School Districts, and all bonds issued and now outstanding, and all bonds heretofore voted but not issued, and all tax elections, bond elections, and bond assumption elections following such consolidation, annexation, grouping, attachment or detachment, conversion, change, etc., are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any County or School District or municipality in the creation of any District was omitted, shall in nowise invalidate such District; and the fact that by inadvertence or oversight any act was omitted by the board of trustees of any such District or the County Judge or the Commissioners Court or the governing body of any such municipality in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such Districts, or in the issuance of the bonds of any such District, shall in nowise invalidate any of such proceedings or any bonds so voted or issued by such District. All revenue bonds issued and outstanding, and all revenue bonds authorized but not yet issued for and on behalf of School Districts and all proceedings relating thereto are hereby in all things validated. All acts of the boards of trustees of School Districts or the governing bodies of municipalities or the County Judges or the Commissioners Courts in entering into leases of real estate or other property to such School Districts and all such leases are hereby in all things validated; and all tax or revenue bonds issued or authorized to be issued to construct, erect or purchase improvements for such School Districts on such leased real estate are hereby in all things validated.

Sec. 2. All School Districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax, or not to exceed the rate of tax as heretofore authorized or attempted to be authorized by any act of the District or by any election of the tax-paying voters of said Districts or by any Act whether General or Special, by the Legislature, or as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said Districts, or by any Act, whether General or Special, of the Legislature.

Sec. 3. This law shall not apply to any District which is now involved in litigation in any District Court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, in which litigation the validity of the organization or creation of such District or the consolidation or annexation of territory in or to such District is attacked, or to any District involved in proceedings now pending before the State Board of Education in which proceedings the validity of the organization or creation of such District or the consolidation or annexa-

tion of territory in or to such District is attacked. Provided further, that this Act shall not apply to any District which has heretofore been declared invalid by a court of competent jurisdiction of this State or which may have been established and which was later returned to its original status. Acts 1954, 53rd Leg., 1st C.S., p. 53, ch. 19.

Emergency. Effective April 22, 1954.

Section 4 of the act of 1954 provided that partial invalidity should not affect other parts of the act.

**Art. 2815g—49. Validation; Acts of Trustees and Others; Counties of over 300,000; Annexation Elections**

Section 1. All acts of the county boards of school trustees in counties of more than three hundred thousand (300,000) population, according to the last preceding federal census, in ordering elections under the provisions of Chapter 259, Acts, 1947, Fiftieth Legislature, Regular Session,<sup>1</sup> for the annexation of independent school districts and common school districts to contiguous independent school districts and in annexing territory not included in any existing school district to contiguous independent school districts, as authorized by Chapter 334, Article VIII, Acts, 1949, Fifty-first Legislature, Regular Session,<sup>2</sup> are hereby in all things ratified, confirmed and validated, and any and all elections held pursuant to any such order, where a majority of the qualified voters, voting in such elections, voted in favor of the annexation of such territory to such contiguous independent school districts also are in all things ratified, confirmed and validated.

Sec. 2. All elections ordered and held in such independent school districts following such annexations, for the purpose of authorizing maintenance taxes, assumption of bonded indebtedness and voting of new construction bonds, and which elections resulted favorably to the levy of such taxes, the assumption of bonded indebtedness and the issuance of new construction bonds are hereby ratified, confirmed and validated. The fact that by inadvertence or otherwise the propositions submitted to the qualified electors at any such elections were not in compliance with existing statutes relating to the manner, form and method of submitting such propositions to the appropriate electors shall in nowise invalidate such elections, or the proceedings pertaining thereto or any bonds authorized thereby whether or not serial maturities of principal were set forth in such proposition, and such independent school districts are authorized to assess, levy and collect maintenance taxes at the rate so authorized by the voters, to levy taxes for the payment of bonded indebtedness thus assumed and to authorize, issue and sell new construction bonds so voted and to levy taxes for the payment of the principal of and interest on said new construction bonds.

Sec. 3. This Act shall not apply to any such district which on the effective date hereof is involved in litigation which questions the legality of the creation of such district, or the validity of any election held in the creation thereof or any election held subsequent thereto for the purpose of the levy of maintenance taxes, the assumption of indebtedness or the issuance of new construction bonds. Acts 1955, 54th Leg., p. 17, ch. 14.

<sup>1</sup> Article 2803b.

<sup>2</sup> Article 2922—18.

Emergency. Effective March 1, 1955.

**Art. 2815g—50. Validation of districts; acts; rearrangement, consolidation, etc.; addition of territory; elections; bonds; taxes; boundaries; exceptions**

Section 1. All School Districts, including any independent school district controlled by a municipality and including common school districts, independent school districts, junior college districts, consolidated common school districts, consolidated independent school districts, rural high school districts, all county line school districts, including county line common school districts, county line independent school districts, county line rural high school districts, county line consolidated common school districts, county line consolidated independent school districts, and all other school districts, groups or annexations of whole districts, or parts of districts, whether established, organized, and/or created by vote of the people residing in such Districts, or by action of the governing body of any such municipalities, or by action of the county school boards, or by action of the County Judge, or by action of the Commissioners Courts, and whether created by General or Special Law in this State, and heretofore recognized by either State or county authorities as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance.

All acts of the county boards of trustees of any and all counties in rearranging, consolidating, grouping, annexing, changing, detaching and attaching of territory, or subdividing any and all such School Districts, or increasing or decreasing the area thereof, or abolishing School Districts in any school district of any kind, or in creating new Districts out of parts of existing Districts or otherwise, and all acts of the governing bodies of any such municipalities in annexing territories to such municipally controlled school districts, are hereby in all things validated.

All acts and orders of the county board of trustees of any and all counties in adding territory to any junior college district, which said college was originally created with the same boundary lines as an independent school district and to which independent school district territory has been added, such added territory to such college district being the same that was added to said independent school district and making the boundary lines of such districts identical, are hereby in all things validated, regardless whether such order or orders of the county board were enacted at the time of the addition of territory to the independent school district or subsequent thereto, and whether such orders were entered nunc pro tunc or otherwise. All elections for bonds, the levy and collection of taxes, and/or debt assumption ordered by the governing body of such junior college district and held over the entire enlarged or extended area, in which election a majority of the qualified voters owning taxable property within such junior college district as enlarged or extended and having duly rendered the same for taxation, are hereby in all things validated; and said governing body is hereby authorized to issue such bonds and levy such taxes, and the indebtedness so assumed is hereby declared to be the indebtedness of such enlarged junior college district.

All consolidations, or attempts at consolidation, of School Districts after an election was held and a majority of the legally qualified voters in each such District voting in such election voted in favor of such consolidations, are hereby in all things validated and declared to be duly and legally consolidated or established as though they had been so consolidated or established in the first instance, and shall include, among others, such attempted consolidations where the election proceedings called for the

consolidation of one or more common school districts and/or one or more independent school districts with an independent school district, but did not provide for the consolidation of each such common school district and/or independent school district with each other such District.

All acts of the County Judges, and/or the Commissioners Courts, and/or the county boards of school trustees in converting or changing one type of School District into another type of School District, are hereby in all things validated, and all elections called by such officers for such conversion or change, in which election a majority of the qualified voters voting therein voted in favor thereof, are hereby in all things validated, and all such converted or changed School Districts are hereby in all things validated as though they had been legally established in the first instance.

All acts of the governing bodies of municipalities and/or of the boards of trustees of municipally controlled or assumed School Districts and/or cities and towns constituting separate and independent school districts and/or extended municipal school districts, in ordering elections for the separation or divorcement of such schools and/or Districts from municipal control, jurisdiction or authority, in which elections a majority of the qualified voters voting therein voted in favor of such separation or divorcement, are hereby in all things validated, and the School Districts formed by such separation or divorcement are hereby in all things validated, and the organization and acts of the boards of trustees of any and all such Districts are hereby in all things validated.

The boundary lines of any and all such School Districts are hereby in all things validated. The names of any and all such School Districts are hereby in all things validated.

All acts of the boards of trustees in such School Districts or the governing bodies of such municipalities or the County Judges or the Commissioners Courts ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such School Districts, and all bonds issued and now outstanding, and all bonds heretofore voted but not issued, and all tax elections, bond elections, and bond assumption elections following such consolidation, annexation, grouping, attachment or detachment, conversion, change, etc., are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any County or School District or municipality in the creation of any District was omitted, shall in nowise invalidate such District; and the fact that by inadvertence or oversight any act was omitted by the board of trustees of any such District or the County Judge or the Commissioners Court or the governing body of any such municipality in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such Districts, or in the issuance of the bonds of any such District, shall in nowise invalidate any of such proceedings or any bonds so voted or issued by such District. All revenue bonds issued and outstanding, and all revenue bonds authorized but not yet issued for and on behalf of School Districts and all proceedings relating thereto are hereby in all things validated. All acts of the boards of trustees of School Districts or the governing bodies of municipalities or the County Judges or the Commissioners Courts in entering into leases of real estate or other property to such School Districts and all such leases are hereby in all things validated; and all tax or revenue bonds issued or authorized to be issued to construct, erect, or purchase improvements for such School Districts on such leased real estate are hereby in all things validated.

Sec. 2. All School Districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax, or not to exceed the rate of tax as heretofore authorized or attempted to be authorized by any act of the District or by any election of the taxpaying voters of said Districts or by any Act whether General or Special, by the Legislature, or as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said Districts, or by any Act, whether General or special, of the Legislature.

Sec. 3. This law shall not apply to any district which is now involved, or which within forty-five (45) days from the effective date of this law becomes involved, in litigation in any district court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, in which litigation the validity of the organization or creation of such district or the consolidation or annexation of territory in or to such district is attacked; and this law shall not apply to any district involved in proceedings now pending before the County Boards of Education, State Commissioner of Education or before the State Board of Education in which proceedings the organization or creation of such district or the consolidation or annexation of territory in or to such district is attacked. Provided, further, that this Act shall not apply to any district which has heretofore been declared invalid by a court of competent jurisdiction of this State or which may have been established and which was later returned to its original status. Acts 1955, 54th Leg., p. 396, ch. 115.

Emergency. Effective April 28, 1955.

Section 4 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## 7. JUNIOR COLLEGES

Art. 2815r—1. Buildings, structures and additions; construction, acquisition and equipment; powers of district regents

Authority to construct, acquire and equip buildings and structures; loans and contracts

Section 1. The Board of Regents of any Junior College District heretofore or hereafter organized under the laws of the State of Texas are hereby severally authorized and empowered, each for its respective institution or institutions, to construct, acquire and equip on behalf of such institution, buildings and other structures and additions to existing buildings and other structures and acquire land for said additions, buildings and other structures if deemed appropriate by said governing body. Said construction, equipping and acquisition may be accomplished in whole or in part with proceeds of loans obtained from any private or public source. The said governing boards are also severally authorized to enter into contracts with municipalities and school districts for the joint construction of said facilities.

Approval of cost, type and plans and specifications

Sec. 2. The buildings and structures and additions to buildings and structures constructed pursuant to this authority together with the equipment therein shall be of types and for purposes which the authorizing governing board shall deem appropriate and shall deem to be for the good of the institution, provided such governing board shall approve

the total cost, type and plans and specifications of such construction and equipment.

**Fees and charges**

Sec. 3. Any such governing board is authorized to fix fees and charges to be charged students and other persons for the use of any building or structure, or addition to any building or structure authorized hereunder, or for the use of any other revenue producing building, structure or other property which is a part of the physical plant of said institution. The fees and charges authorized herein shall be in amounts deemed to be reasonable by such governing board, taking into consideration the cost of providing the facilities, the use to be made of them and the advantages to be derived therefrom by the users thereof and by the institution.

**Bonds or notes, authority to issue**

Sec. 4. Any such governing board is authorized and empowered to issue its bonds and notes from time to time and in such amounts as it shall consider necessary or appropriate for the construction, acquisition or equipment of buildings or structures or additions to buildings or structures or the acquisition of land herein authorized. All such bonds and notes shall be fully negotiable and may be made redeemable before maturity, at the option of such governing board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds or notes. Such governing board may not sell such bonds or notes at less than par and accrued interest.

**Pledge of fees, charges or revenues to pay obligations**

Sec. 5. Any such governing board is authorized and empowered to irrevocably pledge the fees, charges and revenues from the buildings and structures and the additions to the existing buildings and structures authorized to be constructed herein and to pledge the revenues from any other revenue producing buildings, structures and other properties to the payment of the interest on and the principal of bonds or notes authorized to be issued hereunder, and to enter into such agreements regarding the imposition of sufficient fees, charges and other revenues and the collection, pledging and disposition of same as it may deem appropriate.

**Revenue bonds or notes**

Sec. 6. The bonds and notes authorized to be issued hereunder shall be special obligations of the governing board issuing the same and shall be payable solely from a pledge of the fees, charges and other revenues authorized hereunder, or from any other source or fund now or hereafter permitted by law to be used for such purposes, and none of the bonds or notes authorized to be issued hereunder shall be an indebtedness of the State of Texas.

**Pledges, priorities as between**

Sec. 7. Any pledge of fees, charges and revenues made under the terms of this Act shall be subject to any previous pledge thereof, but the existence of any such previous pledge shall not prevent the making of the subsequent and inferior pledge, unless such action is prohibited under the resolution or resolutions authorizing the prior obligations.

**Discretion of governing boards as to bonds or notes, occupancy  
and use of properties**

Sec. 8. Subject to the restrictions contained in this Act each such governing board is given complete discretion in fixing the form, conditions

and details of such bonds and notes, and such bonds and notes may be refunded or otherwise refinanced whenever said governing board deems such action to be appropriate or necessary. Each such governing board is authorized and empowered to enter into agreements relating to the maintenance of a maximum percentage of occupancy of dormitories and the maximum use of other properties, the revenues from which are pledged pursuant to this authority.

#### **Approval and registration of bonds and notes**

Sec. 9. Prior to delivery thereof, all bonds and notes authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination; and if he finds that they have been issued in accordance with the Constitution and this Act, and that they will be binding special obligations of the governing board authorizing their issuance, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration they shall be incontestable.

#### **Partial invalidity**

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

#### **Cumulative effect of article; repeal**

Sec. 11. This Act shall not repeal any statute now in effect but shall be cumulative of all other statutes pertaining to any of the institutions affected by this Act, and shall not modify or abridge any powers now held by any said institutions to control or pledge its funds; provided, however, that to the extent that the provisions of this Act may be in conflict with the provisions of any other law, the provisions of this Act shall take precedence and prevail. Acts 1955, 54th Leg., p. 34, ch. 25.

Effective 90 days after June 7, 1955,  
date of adjournment.

### **Art. 2815s—1. Annexation of parts of county line districts to adjacent junior college districts**

Section 1. Where any junior college district as originally created and organized had the same boundaries as a county or as a group of contiguous counties and included all of the territory in such county or group of counties, and did not include a part of any county without including the entire territory of such county in such junior college district, and where such junior college district as originally created and organized included in its boundaries a part or parts of a county line school district, as hereinafter defined in Section 5 of this Act, but where a part or parts of such county line school district was situated in a county or counties not a part of such junior college district and was not included in such junior college district, any such part of any such county line school district which is not included in such junior college district or in any other junior college district may be annexed to such junior college district in which a portion of the county line school district is included in the manner hereinafter provided.

Sec. 2. On the petition of twenty (20) or a majority of the legally qualified voters residing in that part of a county line school district not a part of a junior college district as described in Section 1 of this Act pray-



ing for the annexation of such part of such county line school district to the junior college district in which the remainder of such county line school district is situated for junior college purposes, only the County Judge shall issue an order for an election to be held in that part of such county line school district which is not a part of such junior college district and shall give notice of the date of such election by posting notices of such election at three (3) public places in such part of such county line school district, at which election only those legally qualified voters residing in such part of such county line school district shall be permitted to vote. The Commissioners Court shall at its next meeting canvass the returns of such election and if the votes cast therein show a majority in favor of such annexation then the court shall declare such part of such county line school district annexed to the junior college district for junior college purposes only, and said court shall cause certified copies of such order to be transmitted to the Commissioners Court of every county in which such junior college district and such county line school district has territory and each such court shall make orders concurring in such order and shall cause same to be entered on the minutes of each such Commissioners Court. Provided, that where any such part of any such county line school district not in the junior college district is situated in two or more counties outside the junior college district, then the petition required by this section shall be addressed to the County Judge of the county in which the largest area of such county line school district not included in the junior college district is situated and the County Judge and Commissioners Court of that county shall order such election, give notice of same, canvass the returns and declare the results thereof, and make such orders as may be necessary in connection therewith.

Sec. 3. Where a petition signed by a majority of the legally qualified voters residing in that part of a county line school district not a part of a junior college district as described in Section 1 of this Act praying for the annexation of such part of such county line school district to the junior college district in which the remainder of such county line school district is situated for junior college purposes only is presented to the County Judge together with a certified copy of an order by the governing board of the junior college district approving the proposed annexation of such territory to the junior college district for junior college purposes only, instead of ordering an election to be held as provided in Section 2 of this Act the County Judge shall certify the filing of such petition and order to the Commissioners Court and said court at its next meeting shall pass an order declaring such parts of such county line school district annexed to the junior college district for junior college purposes only, and said court shall cause certified copies of such order to be transmitted to the Commissioners Court of every county in which such junior college district and such county line school district has territory, and each such court shall make orders concurring in such order and shall cause same to be entered on the minutes of each such Commissioners Court. Provided, that where any such part of any such county line school district not in the junior college district is situated in two or more counties outside the junior college district, then the petition required by this section shall be addressed to the County Judge of the county in which the largest area of such county line school district not included in the junior college district is situated and the County Judge and Commissioners Court of that county shall make the necessary orders providing for the annexation of such parts of such county line school district to the junior college district for junior college purposes only.

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

Sec. 4. Whenever any part of a county line school district has been annexed to a junior college district for junior college purposes only in the manner provided by this Act, then within thirty (30) days after such annexation the governing board of the junior college district shall, without the prerequisite of the filing of any petition, order an election to be held in the junior college district as enlarged by the annexation on the question of the levy and collection of taxes for the support and maintenance of such junior college district as enlarged under the provisions of Chapter 70, Acts 1947, 50th Legislature.<sup>1</sup> If said junior college district prior to the annexation issued bonds, any of which bonds are outstanding at the time of such annexation, then the question of the assumption of such bonded indebtedness by said junior college district as enlarged and the levy and collection of taxes in payment thereof shall also be submitted at the same election. The election for the levy and collection of said taxes and the assumption of said bonds shall be in accordance with the provisions of the General Laws relative to independent school districts; provided, however, that no petition shall be necessary.

Sec. 5. The term "county line school district" as used in this Act is defined to mean any common school district, independent school district, consolidated common school district, consolidated independent school district, rural high school district, municipally controlled school district, city or town constituting a separate and independent school district, or any other type of school district created or organized by General or Special Laws in this State, which includes within its boundaries territory located in two or more counties of this State. Acts 1955, 54th Leg., p. 774, ch. 281.

<sup>1</sup> Article 2815h—3b.

Emergency. Effective May 20, 1955.

Section 6 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Title of Act:**

An Act authorizing parts of county line school districts to be annexed to ad-

acent junior college districts for junior college purposes only; defining county line school districts; providing invalidity of portion of the Act shall not affect validity of remainder; and declaring an emergency. Acts 1955, 54th Leg., p. 774, ch. 281.

## CHAPTER FIFTEEN—SCHOOL FUNDS

### Art. 2833. 2773 District treasurer's report

Section 1. District Treasurer's Report. Each treasurer receiving or having control of any school fund of an independent school district shall keep a full and separate itemized account with each of the different classes of school funds coming into his hands, and shall on or before the first day of October of each year file with the board of trustees of such independent school district and with the State Commissioner of Education an itemized report of the receipts and disbursements of the school funds for the preceding school year ending August 31st. Such report shall be on a form prescribed or approved by the State Auditor, and furnished by the Texas Education Agency. The board of trustees shall notify the State Commissioner of Education of its approval of said report within thirty (30) days after receipt of same, should same be approved, and the State Commissioner of Education shall notify the board of trustees of objections or of recommendations concerning same should he desire to make any. All vouchers showing items of the report shall be filed with the board of trustees; the State Commissioner of Education may demand such vouchers when passing on said report, or on an independent audit hereinafter provided for or for the purpose of investigating same.

Sec. 2. In lieu of the submission of a treasurer's report required in Section 1 of this Act, any independent school district which selects its treasurer pursuant to existing laws may at district expense elect to submit an independent audit report prepared and certified by a Texas licensed or certified public accountant. Such independent audit shall meet at least the minimum requirements prescribed by the State Board of Education and approved by the State Auditor. A copy of the independent audit report, approved by the district board of trustees, shall be filed with the Texas Education Agency on or before the first day of November following the preceding school year.

Any eligible district whose board elects to file an audit report under the provisions of this section shall in writing so notify the treasurer of the district not later than August 31st in each school year it so elects. Receipt by treasurer of such required notice shall operate to relieve the treasurer that year from filing the report otherwise required in Section 1 of this Act; provided further, the treasurer's records of the district's itemized accounts and records shall be made available to audit. As amended Acts 1955, 54th Leg., p. 1309, ch. 516, § 1.

Emergency. Effective June 24, 1955.

## CHAPTER SIXTEEN—FREE TEXTBOOKS

### Art. 2875. Requisitions

Requisitions for books shall be made in the following manner: On the first day of April each teacher shall make report to the principal of the maximum attendance of his or her grade, or school, if not a graded school. If the school has only one teacher, said report as to the maximum attendance of pupils of each grade of work shall be made by the teacher to the board of school trustees and to the county superintendent. Reports as to the maximum attendance for the school shall be made not more than one week subsequent to the first school day of April by the principal to the city or town superintendent or by the principal to the county superintendent if the school is not situated in a city or town. The city or town superintendent of schools shall compile reports of principals and make reports to the State Commissioner of Education. The county superintendent shall compile reports of the rural schools in his county and make reports to the State Commissioner of Education. Books needed by the rural schools shall be requisitioned and distributed entirely through the office of the county superintendent, provided that common school districts with a scholastic population of 2500 and above may elect to have their books requisitioned and distributed in the same manner that applies to city and town superintendents. The duties of the county superintendent with reference to the care and distribution of textbooks shall be subject to the approval of the county board of trustees and the State Commissioner of Education. Reports as to the maximum attendance of each school under their direction shall be made to the State Commissioner of Education by the aforesaid superintendent of cities, towns, and counties not later than April 25th; provided that should the school close before this date, it shall be the duty of the teacher to file with the county superintendent and with the board of school trustees reports complying with the provisions of this Act. Blank forms for reports and for requisitions of textbooks shall be furnished to all boards of school trustees by the State Department of Education. Requisitions for books for a subsequent session shall be based on said reports to the maximum number of scholastics in attendance the preceding school session, plus an

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additional ten (10%) percent, and such requisition shall be made through the State Commissioner of Education and by him furnished to the state depository designated by contractors of books not later than June 1st of each year; provided that in cases of unforeseen emergency the state depository shall fill small orders for books on requisition approved by the State Department of Education. One copy of each textbook used in the work taught by the teacher shall be issued by the school trustees, or their representatives, to each teacher as a desk copy, such books to be returned to the trustees or their representatives at the close of the session. As amended Acts 1955, 54th Leg., p. 55, ch. 42, § 1.

Emergency. Effective March 29, 1955.

## CHAPTER SEVENTEEN—TEACHERS' CERTIFICATES AND SALARIES

### 2A. CERTIFICATION OF TEACHERS [NEW].

Art.

2891b. Teacher's Certificates; application; qualifications; classifications.

#### 1. ISSUANCE OF CERTIFICATES

Art. 2880a. Repealed. Acts 1955, 54th Leg., p. 508, ch. 149, § 14. Eff. Sept. 1, 1955

Arts. 2882, 2883. Repealed. Acts 1955, 54th Leg., p. 508, ch. 149, § 14. Eff. Sept. 1, 1955

#### 2. CLASSES OF CERTIFICATE

Arts. 2890, 2891. Repealed. Acts 1955, 54th Leg., p. 508, ch. 149, § 14. Eff. Sept. 1, 1955

### 2A. CERTIFICATION OF TEACHERS

Art. 2891b. Teacher's Certificates; application; qualifications; classifications

#### Guarantees to present certificate holders

Section 1. It is hereby declared that it is the legislative intent that all persons enrolled in a college approved for teacher education and preparing for the teaching profession prior to or on the date this Act becomes effective, and all teachers qualified for teacher certification or certified to teach in the public free schools of this State prior to the effective date of this Act, shall be safeguarded and protected in their present right or privilege to pursue and continue in the teaching profession or training, and shall receive, upon application therefor, the certificate or certificates authorized herein to the extent and in the manner and under the conditions prescribed in Section 12 of this Act.

#### Rules and regulations

Sec. 2. The State Board of Education, with the advice and assistance of the State Commissioner of Education, is hereby authorized to establish

such rules and regulations as are not inconsistent with the provisions of this teacher certification law and which may be necessary to administer the responsibilities vested under the terms of this Act concerning the issuance of certificates and the standards and procedures for the approval of colleges and universities offering programs of teacher education.

In order to secure professional advice in advising or making his recommendations to the State Board of Education, the Commissioner of Education shall consider recommendations of the State Board of Examiners for Teacher Education in all matters covered by this Act.

#### Application; fees

Sec. 3. Any person eligible to obtain a teacher's certificate of any kind or classification hereinafter provided for in this Act, shall make application to the State Commissioner of Education, stating the class of certificate or certificates desired, and shall present to said Commissioner such proof as this and other teacher certification laws require concerning his qualifications and fitness for the class of certificate requested. No applicant shall receive a teacher certificate of any class or kind, except as otherwise hereinafter provided, without first depositing with the State Commissioner of Education the application fee prescribed to be paid under the provisions of this Act for the particular type or class of certificate requested.

All application fees collected under the provisions of the teacher certification laws shall be used to cover the expenses of inspection and identification of approved college or university teacher education programs and of recording and issuing certificates.

#### Qualifications

Sec. 4. No person shall receive a certificate authorizing his employment in the public free schools of Texas without showing to the satisfaction of the State Commissioner of Education that he is a person of good moral character, evidenced by written statements of three good and well-known citizens, or such proof as the Commissioner may require of his moral qualifications; that he will support and defend the Constitutions of the United States and the State of Texas; that he has met the requirements of the laws of this State requiring an applicant to have secured credit from a college or university in this State in a course or courses which give special emphasis upon the Constitutions of the United States and of Texas; and that he has ability to speak and understand the English language sufficiently to use it easily and readily in conversation and teaching. No certificate shall be granted to a person under eighteen (18) years of age.

#### Alien teachers

Sec. 5. No teacher's certificate shall be issued to an alien, authorizing such person to teach in the public free schools of this State, unless proper evidence is produced showing an intention to become a naturalized citizen of the United States of America; and the State Commissioner of Education shall not issue a permanent teacher's certificate to any person who is not a citizen of the United States. It shall be unlawful for any board of trustees to contract with any person who is an alien, to teach in any public free school of this State, unless such person has been naturalized, or has declared his intention to become a citizen of the United States; and all contracts in violation of this provision shall be void and of no effect; provided, however, this section shall not apply to any alien teacher, a subject of any nation, regularly designated by proper

authority to serve as an exchange teacher in the United States and to teach in the public schools of Texas for not more than one year, if a like privilege is currently granted by the nation to any teacher designated by the governing body of a school district in this State to serve as an exchange teacher for a period of not more than one year.

#### Record of Certificates; presentation

Sec. 6. The county superintendent shall keep a record of all certificates held by persons teaching in the public free schools of a common school district, or a school district classified as common, and of the independent school districts of his county. Any person who desires to teach in a public free school of a common school district shall present his certificate for record, before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his contract with the board of trustees of the independent school district shall become valid. A teacher or superintendent who does not hold a valid certificate or emergency permit shall not be paid for teaching or work done before the granting of a valid certificate or permit.

#### Class designation

Sec. 7. Teacher's certificates authorizing the holders thereof to contract to teach, or to be employed in professional teaching service positions in the public free schools of this State, shall be of two classes, designated as follows:

1. Provisional Certificate;
2. Professional Certificate.

#### Provisional certificate

Sec. 8. The provisional certificate shall be issued to each applicant who has acquired, or shall acquire, a bachelor degree conferred by a college or university approved for teacher education by the State Board of Education of this State, and who is otherwise eligible to teach in the public free schools of this State. Provided, however, that vocational teachers in trade and industrial courses shall not be required to have a bachelor degree as a predicate to the issuance of a provisional certificate to them, but must in lieu of the bachelor degree requirement have work experience to the extent and amounts as shall be established in the State Plan for Vocational Education; provided further, that a special service teacher designated as a school nurse shall not be required to have a bachelor's degree as a predicate to the issuance of a provisional certificate to him, but must in lieu thereof have been certified as a registered nurse under the laws of this State.

The provisional certificate shall be permanent, valid, good for life, unless cancelled by lawful authority. An application fee of Two Dollars shall be paid by each applicant for the certificate provided for herein.

#### Professional certificate

Sec. 9. The professional certificate shall be issued to each applicant who has acquired or shall acquire a bachelor degree conferred by a college or university approved for teacher education by the State Board of Education; who has satisfactorily completed at least thirty (30) additional hours of graduate level credit in a college or university which has an approved graduate program of teacher education; and who has at

least three years of teaching experience. Provided, however, that the thirty (30) additional semester hours hereinabove required shall be in accordance with an approved college plan of graduate teacher education designed for the purpose of qualifying the applicant to serve in the area or areas of specialization to appear on his certificate. The State Board of Education acting on recommendation of the State Commissioner of Education shall define by regulations what constitutes a year of teaching experience for purposes of this section. The professional certificate shall be permanent, valid for life, unless cancelled by lawful authority. An application fee of Three Dollars shall be paid by each applicant for the certificate provided for herein.

#### **Specialization areas to appear on certificates**

Sec. 10. The provisional and professional certificates shall show clearly that the holders thereof may teach or perform duties in professional service positions in one or more of the following specialization areas in which the applicant shall have completed the college or university teacher education program approved for said specialization area or areas:

1. In the elementary schools, including kindergartens, grades 1 to 8 inclusive, and in grade 9 in junior high school.
2. In junior high schools, including grades 6 to 10 inclusive.
3. In high schools, including grades 7 to 12 inclusive.
4. In a special subject for all grades.
5. In a professional service position or area provided in the Minimum Foundation Program Act.

The specialization area or areas designated above, to appear on the face of the certificate issued to an eligible applicant, shall be based upon the satisfactory completion by applicant of a college or university teacher education program approved in one or more of the above five (5) areas of specialization by the State Board of Education as recommended by the State Commissioner of Education.

#### **Emergency teaching permit**

Sec. 11. An emergency permit to teach, valid for not more than one (1) scholastic year, may be issued under regulations adopted by the State Board of Education upon the recommendation of the Commissioner of Education. An application fee of One Dollar shall be paid by an applicant for the permit authorized herein, and for each necessary renewal thereof.

#### **Transition certificate issuance**

Sec. 12. (1) A non-degree teacher who, at the time this law becomes effective, holds a valid permanent teacher certificate issued upon prior certification laws of this State, and who is employed as a teacher in any scholastic year following the enactment of this law, shall upon application be issued a provisional certificate marked permanent. "Permanent" as used in all of this section shall mean valid for life unless cancelled by lawful authority.

(2) A non-degree teacher who, at the time this law becomes effective, holds a valid temporary certificate issued under the prior certification laws of this State, and who is employed as a teacher in any scholastic year following the enactment of this law, shall upon application therefor be issued a provisional certificate marked temporary, the validity span of which shall be equal to the remaining years of validity of his present temporary certificate, and which upon expiration may be revived and continued by

complying with the certification laws in effect at the time the temporary certificate was issued. Upon the completion by holder of the requirements entitling him to a permanent certificate, as prescribed in law under which his temporary certificate was issued, the provisional certificate shall be marked permanent.

(3) Any person who, prior to the effective date of this Act, has established his eligibility for any teacher certificate under the certification laws of this State, may apply for and receive the State certificate to which he was entitled under the previously existing certification laws upon the payment of the fees prescribed therein; provided further, such persons may also receive upon application the class of certificate to which the provisions of this section entitle him.

(4) Any teacher having a bachelor degree, who holds a valid Texas teacher certificate, having five (5) years or more of teaching experience, and who is employed as a teacher in any scholastic year following the enactment of this law, shall upon application be issued a professional certificate. Provided, however, such a teacher may substitute six (6) semester hours of college credit earned in a college or university approved for teacher education, acquired subsequent to the conferring of his bachelor degree, in lieu of a year of teaching experience, not to exceed three (3) years (a total of 18 semester hours) in order to qualify for a professional certificate.

(5) Any teacher having a bachelor degree, who holds a valid Texas teacher certificate, having less than five (5) years of teaching experience (and who cannot meet the above requirements in paragraph 4 of college credit in lieu of teaching experience) and who is employed as a teacher in any scholastic year following the enactment of this law shall upon application be issued a provisional certificate marked permanent.

(6) Any teacher having a master degree, who holds a valid Texas teacher certificate and who is employed as a teacher in any scholastic year following the enactment of this law, shall upon application be issued a professional certificate.

(7) Any person who, prior to the effective date of this Act, was enrolled in a college or university approved for teacher education and in a program for teacher education leading to a bachelor degree, may continue to pursue the program established or altered by the college, and upon his completion of the program and the acquisition of the bachelor degree shall be issued upon application and payment of the provided fee therefor the kind of certificate for which such preparation entitled him when his college program was started.

Provided further, that there shall be no fee charged for the application or issuance of the class of new certificate authorized to be issued under the subdivision of this section.

The new classes of certificates authorized to be issued under the subdivisions of this section shall have designated on their face the area or areas of specialization which shall be based on the area or areas of specialization authorized under the teacher certificate acquired or now acquirable under the provisions of the previous certification laws.

(8) Any person now holding a permanent teaching certificate shall upon application be issued a professional certificate. If any part of this Act is in conflict with this subsection, then this subsection shall control.

#### Certificates from other States

Sec. 13. a. The holders of a bachelor or higher degree or a valid teacher certificate based on a bachelor or higher degree from other States,



who desire certificates valid in Texas, shall present such certificates and official college transcripts to the State Commissioner of Education, who shall require the State Board of Examiners for Teacher Education to make investigations as to the value of such transcripts or certificates, as measured by the standards for certificates in this State; and the State Commissioner shall have the power to issue to the holder of a valid certificate or bachelor or higher degree from another State, such Texas certificate as in his judgment the holder is entitled to receive when the value of his degree or certificate is estimated by the standards required for Texas certificates; provided that no certificates may be issued if the said degree or certificates are not estimated to equal the requirements for the lowest State certificate issued in Texas.

b. No temporary or permanent Texas teacher certificate shall be issued to a person from another State, as provided in above subdivision a, until that person has secured credit from a college or university in this State in a course or courses which gives special emphasis upon the Constitutions of the United States and of Texas, which course or courses may be taken by correspondence, extension classes, or in residence.

c. Any person who applies for a Texas teacher certificate on credentials from another State, as provided in subdivision a, may be issued by the State Commissioner of Education an emergency permit, which permit will indicate on its face the area of specialization and the class of certificate which the applicant upon application shall be entitled to receive upon completion of the requirement set out in subsection b. This emergency permit shall entitle the applicant to teach in the area of specialization appearing on its face and shall be valid for a period not exceeding one (1) year. No more than one emergency permit authorized in this section shall be issued to any applicant. Provided further, the applicant shall be required to pay a fee of Two Dollars for the issuance of the permit authorized herein, and a further fee for the issuance of a valid Texas teacher certificate when he qualifies and makes application therefor, and in the amount provided in this Act. Acts 1955, 54th Leg., p. 508, ch. 149.

Emergency. Effective September 1, 1955.

Section 14 of the Act of 1955 was a severability clause. Section 15 provided that all conflicting and inconsistent laws were superseded and expressly repealed Acts 1929, 41st Leg., p. 72, ch. 38, as amended by Acts 1947, 50th Leg., pp. 484, 485, ch.

281, 282, (article 2880a), and articles 2882, 2883, 2890, 2891. Section 16 provided this Act was to become effective September 1, 1955, the day which marked the beginning of the 1955-56 scholastic year for the public free schools. Section 17 was an emergency clause.

## CHAPTER NINETEEN—MISCELLANEOUS PROVISIONS

Art.  
2909b. Additional library facilities; certain rural high school districts or independent districts [New].  
2909c. Construction, acquisition, improvement and equipment of buildings by certain colleges and universities [New].  
2919d. Southern States Regional Compact [New].

Art.  
2919e—1. Military and naval training at state supported institutions of higher learning [New].  
2919e—2. Texas Commission on Higher Education [New].  
2919f. School districts giving military training or instruction; bond covering care and return of federal property [New].

Art. 2909b. Additional library facilities; certain rural high school districts or independent districts

Section 1. Any rural high school district or any independent school district, now or hereafter organized, having boundaries embracing the en-

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tire area of a county of this State, which county has or may hereafter have a valuation in excess of Thirty Million Dollars (\$30,000,000), is hereby authorized and empowered to enter into contracts with such county and with its board of library trustees as hereafter provided under the following terms and conditions.

Sec. 2. Prior to the execution of such contracts, a board of library trustees shall first be appointed by the Commissioners Court of the county, constituted of five members who shall be resident citizens of the county. When such board of trustees shall have been duly organized and shall have appointed a chairman, a secretary and a treasurer, and after a public meeting called for that purpose shall have petitioned by a majority of the membership present the board of school trustees and the Commissioners Court, as to the need of additional library facilities, and their agreement to assume the financial obligation of providing and maintaining an adequate public library building upon or adjacent to such school campus or school grounds, for such county free library for the use and benefit of the school students and the public, thereafter such petition and agreement may be considered by the board of school trustees and the County Commissioners Court at a joint meeting called for that purpose. If such plan of financing be found practicable and feasible and is approved by the majority of the governing body of each political subdivision, a contract may be entered into whereby the Commissioners Court on its part agrees to deliver over to such board of library trustees in trust and keeping the county-owned free library or libraries and such board of trustees of said school district, on its part, agrees and contracts to convey, and is hereby authorized to convey, with or without added consideration, without the necessity of having first secured the consent of the Texas Education Agency, or any officer thereof, fee simple title to any individual lot or tract of land, of any area not greater than two city lots, if any such area owned by such school district on or adjacent to its campus or grounds be not required under existing school plans, conditioned only on, and reserving to such school district the right to repurchase the same, in the event of its abandonment for library purposes, at a price not to exceed any outstanding indebtedness against any building constructed thereon by said board of library trustees.

Sec. 3. After the execution of such joint contracts and receipt of conveyance of such tract of land, such board of library trustees, by a majority vote of such board at a meeting called for that purpose, may employ an architect to prepare plans for construction of a combined library building and an assembly hall, and after approval of each plan by both the school board and the court, said board of library trustees is hereby authorized to enter into all necessary contracts for such building and equipment, and is hereby authorized to mortgage or encumber the same to secure the financing thereof; but the repayment of such indebtedness shall be paid for out of revenue funds produced from the rental of said hall or from private contributions, but shall never be a debt against the county or such school district and no taxes shall be levied therefor.

Sec. 4. The management and control of such building shall be under the supervision and control of said board of library trustees as long as such public free library is maintained therein, subject to the provisions of law as to county free libraries, and a separate room or rooms shall be provided therefor; however, the assembly hall and other parts of said structure shall be set aside for use of educational and civic organizations of the county, and all such organization shall have the right of use thereof, subject to the rules to be made by said board of library trustees, subject to the necessary charges for the use and maintenance, and thereafter may

be employed as a public assembly hall for the use of county civic organizations in keeping with the rules adopted by the board of library trustees. Acts 1955, 54th Leg., p. 938, ch. 367.

Effective 90 days after June 7, 1955, date of adjournment.

Section 5 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict.

**Art. 2909c. Construction, acquisition, improvement and equipment of buildings by certain colleges and universities**

**Construction and equipment authorized; loans**

Section 1. The Board of Regents of the University of Texas, the Board of Directors of the Texas Agricultural and Mechanical College System, the Board of Directors of Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Regents of the Texas State College for Women, the Board of Directors of the College of Arts and Industries, the Board of Regents of North Texas State College, the Board of Regents of Texas Southern University and the Board of Regents of Lamar State College of Technology are hereby severally authorized and empowered, each for its respective institution or institutions, to construct, acquire, improve and equip on behalf of such institution including branch institutions under the control or management of said governing body, buildings and other structures and additions to existing buildings and other structures and acquire land for said additions, buildings and other structures if deemed appropriate by said governing body. Said construction, improvement, equipping and acquisition may be accomplished in whole or in part with proceeds of loans obtained from any private or public source.

**Types of buildings; approval**

Sec. 2. The buildings and structures and additions to buildings and structures constructed or improved pursuant to this authority together with the equipment therein shall be of types and for purposes which the authorizing governing board shall deem appropriate and shall deem to be for the good of the institution, provided such governing board shall approve the total cost, type and plans and specifications of such construction, improvement and equipment; and provided further, that nothing herein shall be construed as applying to classroom buildings. Provided, however, that such buildings and structures and additions to buildings and structures shall not be constructed or equipped for exclusive use by fraternities or sororities or private social clubs.

**Fees and charges for use of buildings or facilities**

Sec. 3. Any such governing board is authorized to fix fees and charges to be charged for the use of any building or structure, or addition to any building or structure authorized to be constructed or improved hereunder, or for the use of any other revenue producing building, structure, facility or other property of said institution. The fees and charges authorized herein shall be in amounts deemed to be reasonable by such governing board, taking into consideration the cost of providing the facilities, the use to be made of them and the advantages to be derived therefrom by the users thereof and by the institution. Provided further, that no fee shall ever be collected hereunder for the use of classrooms; provided further, that the fees authorized to be assessed and collected shall be limited as now provided by Acts of the 44th Legislature, 2nd Called Session, Chapter 459, Section 2, 1935,<sup>1</sup> as applied to Texas Agricul-

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

tural and Mechanical College System, each respective institution, or institutions, the State Teachers' Colleges, Texas State College for Women, the College of Arts and Industries, and Lamar State College of Technology; from and after the effective date of this Act, Texas Southern University, North Texas State College and Texas Technological College shall have the right to provide for a fee to be assessed against a student for the use of a library, or for the use of a student activity building, or for the use of a hospital, or for the use of a gymnasium, and for any one of said purposes for any one semester or for any one summer session may collect a fee not to exceed Four Dollars (\$4.00), except that the fees charged by Texas Technological College shall not exceed Five Dollars (\$5.00); and as to the University of Texas, nothing in this Act shall be construed as repealing Acts of the 53rd Legislature, Chapter 193, 1953.<sup>2</sup>

<sup>1</sup> Article 2603c, § 2.

<sup>2</sup> Articles 2589d, 2589e.

#### **Bonds and notes; issuance and sale**

Sec. 4. Any such governing board is authorized and empowered to issue its bonds and notes from time to time and in such amounts as it shall consider necessary or appropriate for the construction, improvement or acquisition of buildings or structures or additions to buildings or structures, the equipment therefor, or the acquisition of land herein authorized. All such bonds and notes shall be fully negotiable and may be made redeemable before maturity, at the option of such governing board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds or notes. Such governing board may sell such bonds in such manner, either at public or at private sale, and for such price, as it may determine to be for the best interests of the board and the institution, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six (6%) per cent per annum, computed with relation to the absolute maturity of the bonds or notes in accordance with standard tables of bond values, excluding however, from such computation the amount of any premium to be paid on redemption of any bonds or notes prior to maturity.

#### **Pledge of fees, charges and revenues to pay bonds or notes**

Sec. 5. Any such governing board is authorized and empowered to irrevocably pledge the fees, charges and revenues from the buildings and structures and the additions to the existing buildings and structures authorized to be constructed, improved or equipped herein and to pledge the revenues from any other revenue producing buildings, structures, facilities and other properties to the payment of the interest on and the principal of bonds or notes authorized to be issued hereunder, and to enter into such agreements regarding the imposition of sufficient fees, charges and other revenues and the collection, pledge and disposition of same as it may deem appropriate.

#### **Special obligations, bonds or notes as**

Sec. 6. The bonds and notes authorized to be issued hereunder shall be special obligations of the governing board issuing same and shall be payable solely from a pledge of the fees, charges and other revenues authorized hereunder, and none of the bonds or notes authorized to be issued hereunder shall be an indebtedness of the State of Texas.

**Priorities as between pledges of fees and revenues**

Sec. 7. Any pledge of fees, charges and revenues made under the terms of this Act shall be subject to any previous pledge thereof, but the existence of any such previous pledge shall not prevent the making of the subsequent and inferior pledge, unless such action is prohibited under the resolution or resolutions authorizing the prior obligations.

**Discretion and powers of governing boards; form, conditions and details of bonds and notes**

Sec. 8. Subject to the restrictions contained in this Act each such governing board is given complete discretion in fixing the form, conditions and details of such bonds and notes, and such bonds and notes may be refunded or otherwise refinanced whenever said governing board deems such action to be appropriate or necessary. Each such governing board is authorized and empowered to enter into agreements relating to the maintenance of a maximum percentage of occupancy of dormitories and the maximum use of other properties, the revenues from which are pledged pursuant to this authority.

**Approval of bonds and notes by Attorney General; registration**

Sec. 9. Prior to delivery thereof, all bonds and notes authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination and if he finds that they have been issued in accordance with the Constitution and this Act, and that they will be binding special obligations of the governing board authorizing their issuance, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration they shall be incontestable.

**Partial invalidity**

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

**Cumulative of other Acts**

Sec. 11. This Act shall not repeal any statute now in effect but shall be cumulative of all other statutes pertaining to any of the institutions affected by this Act, and shall not modify or abridge any powers now held by any said institutions to control or pledge its funds; provided, however, that to the extent that the provisions of this Act may be in conflict with the provisions of any other law, including Chapter 176, Acts of the Regular Session of the 53rd Legislature (Vernon's Article 2632d) the provisions of this Act shall take precedence and prevail. Acts 1955, 54th Leg., p. 940, ch. 368.

Emergency. Effective May 28, 1955.

**Art. 2911. 2783 Prescribed studies**

All public schools in this State shall be required to have taught in them orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, composition, mental arithmetic, Texas history, United States history, civil government, elementary agriculture, cotton grading, and other branches as may be agreed upon by the trustees or directed by the State Commissioner of Education; provided, that the sub-

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

ject of elementary agriculture shall not be required to be taught in independent school districts having a scholastic population of three hundred (300) or more unless so ordered by the school boards. Suitable instruction shall be given in the primary grades as acts regarding kindness to animals and the protection of birds and their nests and eggs. Elementary agriculture shall include certain practical field studies and laboratory experiments as prescribed by the county school trustees in conformity to law and the requirements of the State Commissioner of Education. Each summer normal institute and each county teachers institute shall employ at least one instructor who shall be selected because of his special preparation to give instruction in agriculture. All of the above-mentioned schools shall be required to have taught in them physiology and hygiene; provided that any child whose parent or guardian shall present to the school principal a signed statement that the teaching of disease, its symptoms, development and treatment, and the viewing of pictures or motion pictures of such subjects conflict with the religious teachings of their church, provided it is a well established church or denomination, shall be exempt from such instruction, and no child so exempt shall be penalized by reason of such exemption. The effects of alcohol and narcotics shall be taught in all grades of the public schools and in all of the colleges and universities that are wholly or in part supported by State funds.

Provided that this shall not require the immediate adoption of textbooks to carry into effect the requirement that the effects of alcohol and other narcotics be taught in all of the public schools and in all colleges and universities that are wholly or in part supported by State funds; and provided further, that at the next adoption of textbooks on physiology and hygiene it be required to be taught in all of the above-mentioned schools. All textbooks on physiology and hygiene purchased in the future for use in the public schools of this State shall include at least one chapter on the effects of alcohol and narcotics, but this shall not be construed as a requirement that duly adopted textbooks in use at the present time be discarded until full use of said books is had as in ordinary cases. As amended Acts 1955, 54th Leg., p. 1169, ch. 450, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 2919d. Southern States Regional Compact

##### Consent to membership of States of West Virginia and Delaware

Sec. 5a. Consent is hereby given by the State of Texas to the membership of the States of West Virginia and Delaware in the Southern Regional Education Compact set out above upon the same terms and conditions as if each had signed, ratified, and approved the same as one of the original contracting States, subject to the approval of the other States party to the Compact, and subject to the execution of a copy of the Compact by the Governor of each of the respective States of West Virginia and Delaware, and subject to the approval of the Compact and acceptance of its terms, agreements, and obligations by their respective Legislatures. Added Acts 1955, 54th Leg., p. 652, ch. 227, § 1.

Emergency. Effective May 16, 1955. sign an enrolled copy of this Act for submission to the Southern Regional Education Board.

Section 2 of the amendatory Act of 1955 provided that the Governor shall

#### Art. 2919e—1. Military and naval training at state supported institutions of higher learning

Section 1. The governing board of any State supported institution of higher learning is hereby authorized to request the Department of De-

fense of the United States of America to establish and maintain courses in military and naval training qualifying men student graduates of such courses for reserve commission awards as a part of its curriculum. The governing board of any State supported institution of higher learning is authorized to enter into mutually agreeable contracts for such purposes. The work of such students enrolling in such courses may be credited toward degree requirements under such regulations as the governing board may prescribe.

Sec. 2. The provisions of this Act shall be cumulative of all other laws. Acts 1955, 54th Leg., p. 370, ch. 89.

Emergency. Effective April 25, 1955.

**Title of Act:**

An Act authorizing the governing board of any State supported institution of higher learning to request the Department of Defense of the United States of America to establish and maintain forces of military and naval training as a part

of the institution's curriculum; authorizing such governing board to prescribe such rules and regulations as are necessary to carry out the provisions of this Act; making the Act cumulative of other laws; and declaring an emergency. Acts 1955, 54th Leg., p. 370, ch. 89.

**Art. 2919e—2. Texas Commission on Higher Education**

**Purpose of Act**

Section 1. The purpose of this Act is to establish in the field of public higher education in the State of Texas an agency of the State through which additional leadership and coordinating services can be provided for the senior higher education systems and institutions and their governing boards, to the end that an efficient and effective State system of higher education may be developed.

**Creation of Commission; functions**

Sec. 2. There is hereby established the Texas Commission on Higher Education, hereinafter referred to as the Commission, which shall have its office in Austin, Texas. It shall carry out only such functions as are herein enumerated and such other functions as the Legislature may assign to it. Functions vested in the governing boards of the respective institutions of higher education, not specifically delegated to the Commission, shall be performed by such boards. The coordinating functions and other duties delegated to the Commission in this Act shall apply to all institutions, branches, and activities under the jurisdiction of the several governing boards of the State higher education institutions and systems.

**Number of members; appointment; terms of office**

Sec. 3. The Texas Commission on Higher Education shall consist of fifteen (15) members. The members shall be appointed by the Governor with the advice and consent of the Senate. In making appointments to the Commission, the Governor shall give representation to the various geographical sections of the State, but the members shall not be considered as representatives of any one section. The initial appointments of five (5) members shall expire March 31, 1957. The initial appointments of five (5) other members shall expire March 31, 1959. The initial appointments of the remaining five (5) members shall expire March 31, 1961. All regular appointments shall be for terms of six (6) years. The terms of members shall begin on April 1st of odd-numbered years. No member shall be engaged professionally in education work during his term of office. The initial appointments of the Commission shall be made immediately following the effective date of this Act.

#### Organization of Commission

Sec. 4. The first meeting of the Commission shall be called by the Governor as soon as the membership of the Commission is completed. At the first meeting, and subsequently at the first meeting following March 31st of each odd-numbered year, the Commission shall elect a Chairman, a Vice-Chairman, and designate a secretary. A majority of the membership of the Commission shall constitute a quorum authorized to transact business of the Commission. The Commission shall function as a whole without prior recommendations from standing committees of its own membership, but it may appoint such advisory committees as it may deem necessary from without its membership.

#### Compensation and expenses of members

Sec. 5. Members of the Commission shall serve without pay but shall be reimbursed for their actual expenses incurred in attending to the work of the Commission, subject to the approval of the Chairman.

#### Meetings; rules and regulations

Sec. 6. The Commission shall hold regular meetings in the City of Austin, Texas, on the second Monday in January, April, July, and October. It may hold other meetings at such places and times as shall be scheduled by it in formal sessions and as shall be called by the Chairman. The Commission shall establish rules and regulations not inconsistent with and limited to carrying out the provisions of this Act.

#### Professional and clerical personnel; employment

Sec. 7. The Commission may employ such professional and clerical personnel as is necessary to assist the Commission in administering the provisions of this Act. The number of employees, their compensation, and other expenditures shall be within the limits and in compliance with the appropriations made therefor by the Legislature. The Commission shall appoint a Director to supervise the staff in the performance of the administrative functions of the Commission. The Director shall serve for a period of four (4) years, his term beginning on June 1st and ending on May 31st; he may be reappointed for successive terms of four (4) years. The term of the initial Director shall be from the time of appointment to May 31, 1959. The Director shall be a person of high professional qualifications having a thorough grounding by training and experience in the field of higher education and having had organizational experience.

#### Advisory committee

Sec. 8. Representatives appointed by the governing boards of the State institutions of higher education (currently numbering eighteen) shall constitute an advisory committee to the Commission. The committee shall be composed of one (1) representative from each of said institutions plus one (1) from each system of higher education where such system is headed by a chief administrative officer. This advisory committee shall furnish such information, assistance, and advice as the Commission through its Director shall request. Members of the committee shall serve without additional compensation but may receive from the institutions which they serve traveling expenses as otherwise provided by law.

#### Appropriation requests; powers of Commission as to recommending, etc.

Sec. 9. The Commission shall notify the governing boards and the chief administrators of the respective institutions and systems and the



Legislative Budget Board and the Executive Budget Office of formulas designated by the Commission to be used by the several institutions in making appropriation requests and shall certify to these budget offices and to the Legislature that each institution has prepared its appropriation request in accordance with such designated formulas. With the view to securing an equitable distribution of State funds deemed to be available for higher education the Commission may establish or revise such formulas to be used in making appropriation requests to the Legislature. Budget requests of whatever nature by the governing boards of the several higher education institutions shall be routed first to the Commission. The Commission shall then make recommendations thereon and transmit such requests to the budget offices and the Legislature. It is specifically provided that the Commission shall have broad powers to recommend to the budget offices and to the Legislature concerning all phases of higher education appropriation requests. The Commission shall make continuing studies of the financial needs of higher education as applied to all services and activities of the several institutions.

**Supplemental contingent appropriation; recommendation by Commission;  
allocation of funds**

Sec. 10. The Commission shall recommend to the budget offices and to the Legislature a supplemental contingent appropriation to provide for increases in enrollment at the wholly State-supported academic institutions of higher education. This contingent appropriation may be made directly to the several institutions, or to the Commission, as the Legislature may direct in each biennial appropriation. In the event the contingent appropriation is made to the Commission, the funds shall be allocated and distributed by the Commission to the several institutions as it may determine, subject only to such limitations or conditions as the Legislature may prescribe.

**Duties of Commission; continuing studies; reports to Legislature  
and Governor**

Sec. 11. The Commission shall make a continuing study of the program and degree offerings of wholly State-supported colleges and universities in relation to the needs of the State and shall report the results of the studies to the governing boards. No new department, degree program, or certificate program shall be added at any State-supported college or university after September 1, 1956, except by specific prior approval by the Commission. The Commission shall order the consolidation or elimination of programs where such action is in the best interests of the institutions themselves and the general requirements of the State of Texas; provided, however, that the governing board concerned may by formal affirmative action, and notice thereof to the Commission by June 1st, following direction from the Commission to consolidate or eliminate such activities, continue the activity in question. Notice of action of the Commission in eliminating or consolidating activities shall be given to the governing board concerned by April 1st preceding the fall term in which the action is to take effect. The Commission shall make a report to the Legislature and the Governor in the event of non-compliance of a governing board in regard to an order or action of the Commission. Any bill which would create an additional senior institution of higher education shall be submitted, either prior to introduction or by the standing committee considering same, to the Commission for its opinion as to need by the State therefor, and the Commission shall report its findings to the State Budget Offices and the Legislature.

**Research and extension of public services; duties of Commission**

Sec. 12. The Commission shall make a continuing study of the needs of the State, for research and for extension and public services, and shall have the authority to designate the institutions to carry out research, extension and public service programs in so far as these functions are paid for with State funds. The Commission shall maintain an inventory of all research programs and extension and public service activities being conducted by the various institutions, whether State-financed or not, within the limits imposed by security regulations governing defense contracts for research.

**Continuing study of all phases of senior public higher education**

Sec. 13. The Commission shall make a continuing study of all phases of senior public higher education in Texas, whether expressly enumerated herein or not, for the purpose of improving its effectiveness and efficiency, and make appropriate reports thereon.

**Annual reports to Governor and Legislature**

Sec. 14. The Commission shall make a report of its activities to the Governor annually and to the Legislature by December 1st prior to the regular meeting of the Legislature, including a summary of its reports to the various governing boards and the actions taken by them.

**Uniform system of reporting**

Sec. 15. Under the leadership of the Commission, the Commission, the State Auditor, the Texas Education Agency, the Legislative Budget Office, and the Executive Budget Office shall prescribe a uniform system of reporting in the field of higher education. The Commission shall serve as the single State facility through which all State reports on higher education shall be channeled, and the officials of the several institutions of higher education shall comply with such requests for reports or information as may be made by the Commission or its Director.

**Agenda of meetings; hearing; notice**

Sec. 16. An agenda for the meetings of the Commission in sufficient detail to indicate the items on which final action is contemplated shall be mailed to the Chairman of each governing board and to the chief administrative officer of each State institution, or system, of higher education at least thirty (30) days prior to the meetings. The Commission shall grant any State institution the privilege of a hearing upon reasonable notice.

**Conflicting laws repealed**

Sec. 17. All laws in conflict herewith are hereby repealed to the extent of such conflict only; provided that the present authority resting with the Central Education Agency in the matter of teacher education and teacher certification shall be left with that agency. Acts 1955, 54th Leg., p. 1217, ch. 487.

Emergency. Effective June 22, 1955. that partial invalidity should not affect  
Section 18 of the Act of 1955 provided the remaining portions of the Act.

**Art. 2919f. School districts giving military training or instruction; bond covering care and return of federal property**

In all school districts now existing or hereafter created wherein military training or instruction is or shall be conducted pursuant to

any law of the State of Texas or of the United States and such law provides that the school district shall give a bond or otherwise indemnify the State or the United States or any authorized agency of either in an amount and upon the conditions determined by any agency under authority of and pursuant to such law, for the care, safe-keeping and return of property furnished by the State or the United States for such military training or instruction, the trustees of the school district shall have authority to make contracts with the proper governmental agency with respect thereto and to execute, as principal or surety, a bond or bonds to secure said contracts for the purpose of procuring arms, ammunition, animals, uniforms, equipment, supplies, means of transportation, or other needed property, and as surety may expend available school funds for the procurement of such bond or bonds from any guaranty or surety company in such amount and on such conditions as may be required, or to reimburse the State or the United States for any loss pursuant to the terms of any contract entered into. Acts 1955, 54th Leg., p. 464, ch. 129, § 1.

Emergency. Effective April 30, 1955.

Title of Act:

An Act authorizing all school districts now or hereafter created wherein military training or instruction is conducted pursuant to any law of Texas or the United States, which law requires that the district shall give a bond or otherwise indemnify the State or the United States or

any authorized agency to insure the care, safe-keeping and return of any property furnished by the State or the United States pursuant to such law, to execute such bond or furnish such indemnity as principal or surety and to expend school funds in connection therewith; and declaring an emergency. Acts 1955, 54th Leg., p. 464, ch. 129.

CHAPTER NINETEEN A—RURAL HIGH SCHOOLS

Art.

29221(7). Consolidation of rural high school districts with independent school districts [New].

Art.

29221(8). Collector of taxes in certain districts; appointment; duties; compensation; bonds [New].

Art. 29221(6). Assessment and equalization of taxes in counties of 350,000 or more

Section 1. In lieu of the manner of assessment and collection of taxes, as provided in Section 12 of House Bill No. 38, Acts 39th Legislature, Regular Session, 1925, as amended, (Article 2922L, Vernon's Civil Statutes, as amended), the board of trustees of any rural high school district in counties having a population of three hundred fifty thousand (350,000) or more inhabitants according to the last preceding Federal Census, and the board of trustees of any county line rural high school district subject to the jurisdiction of any county having a population of three hundred fifty thousand (350,000) or more inhabitants according to the last preceding Federal Census, may by majority vote of such board of trustees choose to have the taxes of their district assessed and collected by an Assessor-Collector for such rural high school district and have such taxes equalized by the board of equalization of such district. The board of trustees of any such rural high school district may appoint an Assessor-Collector who shall assess the taxable property within the limits of the district within the time and manner provided by existing laws, insofar as they are applicable, and collect such tax. He shall receive such compensation for his services as the board of trustees may allow. Such Assessor-Collector shall give bond, to be executed by a surety company authorized to do business in the State of Texas, in an amount to be determined by the board of trustees of any such school district which will in the opinion of such board of trustees be sufficient to adequately protect the funds of such school dis-

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trict. Such bond shall be payable to the president of the board of trustees of such district and shall be approved by the board of trustees of such district. Such bond shall be conditioned on such Assessor-Collector depositing in the county depository to the credit of such rural high school district all funds coming into his hands by virtue of his office as such Assessor and Collector, and shall also be conditioned on the faithful discharge of his duties. The board of trustees may appoint also one or more Deputy Tax Assessors-Collectors for the district, who shall receive for their services such compensation as the board may allow. As amended Acts 1955, 54th Leg., p. 647, ch. 223, § 1.

Emergency. Effective May 16, 1955.

#### Art. 2922l(7). Consolidation of rural high school districts with independent school districts

Section 1. In the manner prescribed by Article 2806, Revised Civil Statutes of Texas, 1925, as amended, providing for the consolidation of school districts by election by a majority vote in each district, any one or more rural high school districts formed under the provisions of Acts of the Thirty-ninth Legislature, Chapter 59 (codified as Article 2922a et seq., Revised Civil Statutes, 1925), as originally enacted or as amended, may be consolidated with any one or more independent school districts where all of such rural high school districts and independent school districts constitute as a whole one continuous territory, and such districts, either rural high school districts or independent school districts or both, may include districts situated wholly in one county, or of districts situated one or more in one county and one or more in an adjoining county or counties, or of any combination of such school districts containing territory in one or more counties.

Sec. 2. For the purposes of this Act and of Article 2806, Revised Civil Statutes of Texas, 1925, rural high school districts shall be classed as common school districts.

Sec. 3. Districts formed by consolidation under the provisions of this Act shall be independent school districts, and the names of such districts and the boards of trustees of such independent school districts shall be determined in the manner provided by Article 2806, Revised Civil Statutes of Texas, 1925, as amended. Acts 1955, 54th Leg., p. 383, ch. 104.

Emergency. Effective April 26, 1955.

Section 4 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

##### Title of Act:

An Act authorizing the consolidation of rural high school districts with independent school districts by election by a majority vote in each district; classifying rural high school districts as common

school districts for certain purposes; providing that school districts formed under the provisions of this Act shall be independent school districts; making provision for the names of and trustees for such school districts; providing invalidity of a portion of this Act shall not invalidate any other part of the Act; and declaring an emergency. Acts 1955, 54th Leg., p. 383, ch. 104.

#### Art. 2922l(8). Collector of taxes in certain districts; appointment; duties; compensation; bonds

Section 1. In any rural high school district having an assessed valuation in excess of Four Million Dollars (\$4,000,000) according to the last preceding assessment roll and having an average daily attendance of more than five hundred and fifty (550) students during the preceding school year, the board of trustees may appoint a collector of taxes, who shall perform the duties in the collection of taxes of the district which are now re-

quired of the county tax collector. The collector of taxes shall receive such compensation for his services as the trustees of the district may allow, not to exceed four per cent (4%) of the total amount of taxes received by him. He shall give bond in the estimated amount of taxes coming annually into his hands, payable to and to be approved by the president of the board, conditioned for the faithful discharge of his duties and that he will pay over to the depository for such rural high school district all funds coming into his hands by virtue of his office as such collector. Any premium on his bond shall be payable out of funds of the district.

Sec. 2. This Act shall be construed as providing an additional method for the collection of taxes in rural high school districts coming within its provisions. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict. Acts 1955, 54th Leg., p. 892, ch. 343.

Emergency. Effective May 24, 1955.  
Section 3 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

Title of Act:

An Act authorizing certain rural high

school districts to appoint a collector of taxes; providing for his duties, compensation, and bonds; stating the effect of this Act on other laws; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 892, ch. 343.

## CHAPTER TWENTY—TEACHERS' RETIREMENT

### Art. 2922—1. Teachers' Retirement System

*Acts 1955, 54th Leg., p. 1638, ch. 530, Art. I, amended Acts 1937, 45th Leg., p. 1178, ch. 470, as amended, to read as set out below. The effectiveness of this amendment is conditioned on the adoption of amendment to Const. art. 3, § 48a proposed by S.J.R. No. 5, Acts 1955, 54th Leg., p. 1814, in view of Article II of the amendatory Act of 1955 which provides:*

*"Article II. This Act shall become effective and operative as a law only upon the condition that the constitutional amendment to be known as Section 48a, Article III of the Constitution of Texas, which is proposed by Senate Joint Resolution No. 5 of the 54th Legislature, 1955, or as proposed by House Joint Resolution No. 24, of the 54th Legislature, 1955, shall be adopted and become a part of the Constitution of Texas; and in the event of adoption of said constitutional amendment, this Act shall become operative as a law upon the date such constitutional amendment is effective. In the event the proposed constitutional amendment shall fail to be adopted, then in such event this Act shall never become effective or operative in whole or in part."*

#### Definition of Certain Words and Terms

"Section 1. The following words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Retirement System" shall mean the Teacher Retirement System of Texas as defined in Section II of this Act.

2. "Public School" shall mean any educational institution or organization in this State which under the laws of Texas are entitled to be supported wholly or partly from public funds by the State of Texas or by any county, school district or other municipal corporation of the State of Texas.

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

3. "Teacher" shall mean a person employed to render teaching service on a full time, regular salary basis by the governing boards of any school district created under the laws of this State, or by any county school board, the State Board of Trustees of the Retirement System, or the State Board of Education, or the Texas Education Agency, or by the board of regents of any college or university, or by any other legally constituted board or agency of any public school. "Teaching service" shall mean rendering service to organized public education in this State in professional or business administration, or in supervision or instruction.

In case of doubt, the State Board of Trustees shall determine whether a person is a "teacher" within contemplation of this Act.

4. "Auxiliary Employee" shall mean a person, other than a "teacher" as hereinabove defined, employed on a full-time regular salary basis by any school district created under the laws of this State, or by a county school board, the Teacher Retirement System of Texas, the State Board of Education, the Texas Education Agency or by the board of regents of any college or university, or by any other legally constituted board or agency of an educational institution, organization or other public school. Provided, however, that no person who is employed by the State Board of Control in eleemosynary institutions under its control shall be considered to be an "auxiliary employee" hereunder. In all cases of doubt, the State Board of Trustees shall determine whether a person is an auxiliary employee as defined by this Act.

5. "Taught" shall mean all regular services rendered by teachers and by auxiliary employees, contributing directly or indirectly to instruction offered by and in the public schools of this State.

6. "Employer" shall mean the State of Texas and any of its designated agents or agencies with responsibility and authority for public education, such as the common and independent school district boards, the boards of regents of State colleges and universities, and the county school boards, or any other agency of and within the State by which a person may be employed for service in public education.

7. "Member" shall mean any teacher or auxiliary employee included in the membership of the Retirement System in accordance with this Act.

8. "State Board of Trustees" shall mean the Board hereinafter established to administer the Retirement System under the terms of this Act.

9. "Service" shall mean service as a teacher or as an auxiliary employee in the public schools of the State of Texas, or in one of the other departments, institutions or agencies of the public school system of Texas.

10. "Prior Service".

(a) As to any person who became a member of the Retirement System or who at any time on or before August 31, 1949, was eligible for membership in the Retirement System, the term "Prior Service" as used in this Act shall mean service by such person as a teacher and as an auxiliary employee rendered prior to September 1, 1937.

(b) As to any person who for the first time became eligible for membership in the Retirement System on or after September 1, 1949, the term "prior service" as used in this Act shall mean service by such person as a teacher and as an auxiliary employee rendered prior to September 1, 1949.

11. "Membership Former Service" shall mean service rendered as a teacher or as an auxiliary employee, or both, while a member of the Retirement System prior to September 1, 1955.

12. "Current Membership Service" shall mean service rendered as a teacher or as an auxiliary employee, or both, while a member of the Retirement System on and subsequent to September 1, 1955.

13. "Creditable Service" shall mean the "prior service," "membership former service," "military leave service" and "current membership service" for which a member of the Retirement System is entitled to credit under the provisions of this Act.

14. "Former Service" shall mean the "prior service" plus the "membership former service" for which a member is entitled to credit under the provisions of this Act.

15. "Accumulated Contributions" shall mean the sum of all the amounts deducted from the compensation of a member, and credited to his individual account in the Teacher Saving Fund, together with the interest credits made and allowed on such accounts as hereinafter authorized.

16. "Annual Compensation" shall mean the full rate of the compensation that is paid by or that would be payable by his employers to a teacher or auxiliary employee if he worked the full normal working time. In cases where the compensation includes maintenance, the State Board of Trustees shall fix the value of that part of the compensation not paid in money. Any compensation or salary in excess of Eight Thousand Four Hundred Dollars (\$8,400.00) in any one year is not included within the term "annual compensation" or "earnings" as used in this Act, and shall not be considered in determining amounts to be deposited by members, or in calculating or determining any benefits payable under this Act.

17. "Average Former Service Compensation" shall mean the average annual compensation of such person as a teacher or an auxiliary employee, or both, during the five (5) years immediately preceding September 1, 1955; or if he had less than five (5) years of such service, then his Average Former Service Compensation shall be computed for his total years of such former service within such five-year period; or if he had no service during such five-year period, his Average Former Service Compensation shall be the annual compensation paid such person for service as teacher or as auxiliary employee during the year nearest preceding September 1, 1950, in which the member rendered service. Compensation in excess of Eight Thousand Four Hundred Dollars (\$8,400.00) in any year shall be excluded in calculating the Average Former Service Compensation of the member.

18. "Military Duty" as used in this Act shall mean active duty rendered by a person in World War I and/or while a member of the Retirement System and during the time the United States was or is involved in organized conflict, whether in a state of war or in a police action involving conflict with foreign forces, and within a period of twelve (12) months thereafter: (a) in the Armed Forces of the United States or any of their auxiliaries, or in the Armed Forces Reserve of the United States or any of their auxiliaries, or in the American Red Cross, as a result of having volunteered or having been drafted or conscripted into such duty; and/or (b) in war work as a direct result of having been drafted or conscripted into said war work. The State Board of Trustees shall determine and by order define the period or periods which shall be recognized as involving organized conflict within the contemplation of this Act.

19. "Retirement" shall mean withdrawal from service with a retirement benefit or allowance granted under the provisions of this Act.

20. "Beneficiary" shall mean any person in receipt of an annuity, a retirement benefit or allowance, or other benefit as provided by this Act.

21. "Designated Beneficiary" shall mean any person nominated by a member to receive in case of death of the member, any benefit which under the provisions of this Act may be paid upon or after death of member.

22. A "Standard Annuity" shall mean an annuity, payable in equal monthly installments, aggregating in twelve months the following sum:

(a) One per cent (1%) for each year of prior service credit certified in a member's prior service certificate, multiplied by the member's Average Former Service Compensation; plus

(b) One and one-half per cent (1½%) for each year of Membership Former Service Credit to which the member is entitled, multiplied by the member's Average Former Service Compensation; plus

(c) One and one-half per cent (1½%) of the annual compensation of the member for each year of Current Membership Service Credit earned by the member after August 31, 1955.

23. "School Year" shall mean the year beginning on or about September 1st of any calendar year, and ending on or about the 31st day of August of the following calendar year.

#### Establishment, Name, Powers and Purpose

Sec. 2. 1. The Teacher Retirement System of Texas heretofore established under the laws of this State is hereby continued in corporate existence; but rights of membership in such System, retirement privileges and benefits thereunder, and the management and operation of said System from the effective date of this Act shall be governed by the provisions of this Act.

2. Said System shall continue to be known as the Teacher Retirement System of Texas, and by such name all of its business shall be transacted, all its funds invested, and all its cash, securities and other properties shall be held.

3. The Retirement System herein provided for shall be maintained and administered in accordance with the provisions of this Act, to provide for the payment of retirement annuities and other benefits to employees and to beneficiaries of employees of the several departments, institutions, subdivisions and agencies now or hereafter comprising the public school system of this State.

4. The Retirement System shall have the powers and privileges of a corporation and shall have also the powers, privileges and immunities hereinafter conferred.

#### Membership

Sec. 3. The membership in said Retirement System shall be composed as follows:

1. All persons who on August 31, 1955 are members of the Teacher Retirement System of Texas shall continue to be members of this System, subject to the provisions of this Act.

2. (a) Every person who on September 1, 1955 or thereafter shall be employed as a teacher or as an auxiliary employee in any public school, or in any other branch or unit of the public school system of this State shall become a member of the Retirement System as a condition of his employment.

(b) The provisions of paragraph (a) of this subsection shall not be construed as requiring membership of any person who has heretofore, pursuant to authority of former laws, executed and filed a waiver of membership in the Retirement System; however, any such person may elect to become a member at the beginning of any school year, but shall not be entitled to credit for prior service, except in the instances and upon the terms and conditions set forth in Subsection 5 of Section 4, hereinbelow.



(c) the provisions of paragraph (a) of this subsection shall not apply to require membership of any person who for the first time in Texas is employed on or after September 1, 1955 as a teacher or auxiliary employee, and who at the time of such first employment is more than sixty (60) years of age; but such person may elect to become a member of the Retirement System as of the effective date of employment by notifying the employer and the Board of Trustees of his election to do so within ninety (90) days from the effective date of employment.

3. Termination of Membership.

Membership in the Retirement System shall cease and terminate if:

(a) The member dies; or

(b) The member, while absent from service, withdraws his accumulated deposits; or

(c) The member accepts retirement under this Act; or

(d) The member, within any period of six (6) consecutive years after becoming a member, shall be absent from service more than five (5) consecutive years.

Provided, however, that performance by a member of a period of active "military duty" as hereinabove defined, shall not be construed as an absence from service within the contemplation of this subsection; and

Provided further, that absence shall not terminate membership if the member does not withdraw his accumulated contributions and: (1) if at or before the beginning of such absence from service, the member had sufficient creditable service and attained age to have permitted his retirement at or before his leaving service; or (2) had twenty-five years of creditable service, regardless of age; or (3) if during such absence from service, and while such person is still a member in good standing, he shall attain an authorized retirement age and has sufficient creditable service to allow him to retire under the provisions of this Act at such attained age.

4. Effect of Membership Termination.

If the membership of any member shall be terminated, the prior service certificate of such person shall automatically become void, and all creditable service theretofore allowed or earned by him shall be forfeited.

Should a person whose membership has been terminated again become a member, he shall enter the Retirement System upon the same terms as a person entering service for the first time on that date, and he shall not be entitled to credit for prior service or former service, except in the instances and upon the terms and conditions set out in subsection 5 of Section 4 hereinbelow.

#### Creditable Service

Sec. 4. 1. Prior Service Credits.

(a) Under such rules and regulations as the State Board of Trustees shall adopt, each person upon becoming a member of the Retirement System for the first time shall file a detailed statement of all his prior service as a teacher or auxiliary employee in Texas.

(b) The State Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one school year.

(c) Subject to the above restrictions and to such other rules and regulations as the State Board of Trustees may adopt, the State Board of Trustees shall verify and adjust, as soon as practicable after the filing of such statements of service, the service therein claimed.

(d) Upon adjustment and verification of the statements of service, the State Board of Trustees shall issue prior-service certificates certifying to each member the number of years of prior service with which he is credited. So long as membership continues, a prior-service certificate shall be final and conclusive for retirement purposes as to such service; provided, however, that any member may, within one (1) year from the date of issuance or modification of such certificate, request the State Board of Trustees to modify or correct his prior-service certificate.

(e) Prior service certificates which have heretofore been issued to members shall, if the said certificates are unrevoked and are in full force and effect on August 31, 1955, continue in full force and effect hereunder; and nothing herein contained shall be construed as requiring the filing of new claims for such credits as to members holding such certificates.

(f) Anyone who has taught in the State of Texas prior to September 1, 1937 (within the meaning of this Act) but who was not in service in the 1937-38 school year, and who has not heretofore waived membership in the Retirement System, if he subsequently became or hereafter becomes a teacher or auxiliary employee and continues as such for a period of five (5) consecutive years of creditable service, shall thereupon be entitled to receive credit for such prior service.

(g) Any person who has service as an auxiliary employee of the public schools of this State prior to September 1, 1949, but who is not in service on that date, or within ninety (90) days thereafter, and who has not heretofore waived membership in the Retirement System, if he subsequently became or hereafter becomes a member of the Retirement System and continues as such for a period of five (5) consecutive years of creditable service, shall be entitled to receive credit for such prior service.

(h) Any member of the Retirement System who became a member after September 1, 1937 and prior to September 1, 1949, and who prior to becoming a member rendered one or more years of creditable service as an auxiliary employee after September 1, 1937, shall be entitled to prior service credit for his service as an auxiliary employee rendered prior to his becoming a member, provided he has not heretofore terminated his membership.

(i) Any person holding a prior service certificate which has been issued to him in accordance with the foregoing provisions, and which is in full force and effect at the time of his retirement, shall be entitled to credit, in the determination of eligibility for and the amount of service or other benefits payable to him hereunder, for each year of prior service certified in such certificate.

## 2. Membership Former Service Credits.

(a) Every person who is a member of the Retirement System in good standing at the close of August 31, 1955, shall be entitled to "membership former service credit" for each year of creditable service rendered by him while a member of the Retirement System prior to September 1, 1955, and for which he has made and has continuously maintained with the Retirement System the deposits and payments required of him as a member under the laws heretofore existing.

(b) Any person who, heretofore, while a member of the Retirement System, performed one or more years of military duty, as hereinabove defined, shall be permitted prior to September 1, 1958 to deposit with the Retirement System for each year he was engaged in said military duty, an equivalent amount to the deposits theretofore made with the Retirement System by reason of his service as a teacher or auxiliary employee during the latest preceding full year of such service; and he shall thereupon be

entitled to one year of "membership former service credit" for each year spent in such military duty.

**3. Current Membership Service Credit.**

(a) Under such rules and regulations as the State Board of Trustees may adopt, members shall be allowed current membership service credit for each year of creditable service rendered in accordance with the provisions of this Act after August 31, 1955.

(b) Any member of the Retirement System who hereafter is engaged in the performance of active "military duty," as that term is hereinabove defined, shall be permitted to contribute each year to the Retirement System a sum equal to the amount contributed by him to said System during the last preceding full year he was employed as a teacher or auxiliary employee under the provisions of this Act; the sum so contributed shall be deposited to the member's individual account in the Teacher Savings Fund; and for each such year during which the equivalent contribution is made, the member shall be given one year's current membership service credit.

**4. Military Leave Credit.**

Any member who has heretofore performed, or who may hereafter perform, a period of military duty, but who shall fail to make such deposits as to entitle him under the foregoing provisions to "membership former service credit" or to "current membership service credit" therefor, shall nevertheless be entitled to credit for each such year of military duty as a year of service, in determining his eligibility for retirement under this Act; but such period shall in no event be included in calculating the amount of benefits payable to such person upon retirement.

**5. Reinstatement of Former Service Credits.**

(a) Any teacher who was teaching in the public schools of Texas during the school year beginning September 1, 1950, and who had theretofore executed a waiver of membership in the Retirement System, shall have the privilege of electing to receive full former service credit, provided such teacher after becoming a member of the Retirement System shall deposit before August 31, 1956, all back deposits, assessments and dues which he would have paid to or deposited had he been a member of the System during each of the years following September 1, 1937 that he actually taught in the public schools, together with interest from the date each amount was payable at the rate of two and one-half per cent (2½%) per annum.

(b) Any person who heretofore became a member of the Retirement System, and who thereafter terminated such membership prior to June 13, 1953 and withdrew his accumulated deposits, but who has since returned to service as a teacher or who returns to service as a teacher prior to September 1, 1957, and who following such resumption of membership renders service for five (5) consecutive years, shall have the privilege of depositing the total amount withdrawn plus all back assessments and dues together with simple interest thereon at two and one-half per cent (2 1/2%) per annum from date of withdrawal of the same to date of re-deposit, and thereupon such member shall be entitled to credit for all prior service and membership former service to which he was entitled prior to such termination and withdrawal. The amounts to be deposited shall be determined in each case by the Board of Trustees; and in no event shall any such person be granted retirement upon such former service credits until the amount so determined shall have been paid in full.

**6. Creditable service at retirement on which amount of the retirement benefit or allowance of a member shall be based shall consist of the num-**

ber of years of current service credits earned by him after August 31, 1955, the number of years of membership former service credits to which he is entitled since last becoming a member of the Retirement System, and if he has a prior service certificate in full force and effect, the number of years of prior service credit therein allowed.

#### Service Retirement Benefits

##### Sec. 5. 1. Eligibility to and Allowances for Service Retirement.

Any member desiring service retirement shall make written application therefor to the State Board of Trustees. A member who satisfies the following conditions and minimum requirements shall be eligible for service retirement upon the terms and at the times here stated:

(a) At the last day of any month in which the member shall have attained the age of sixty-five (65) years, or more, and shall have completed ten (10) or more years of creditable service, the member shall be entitled to retire with a standard service retirement benefit, consisting of a standard annuity (calculated as provided in subsection 22 of Section 1), the monthly installments of which shall be payable during the life of the annuitant.

(b) At the last day of any month after the member shall have attained the age of fifty-five (55) years and shall have completed fifteen (15) years of creditable service, the member shall be entitled to retire with a service retirement allowance which is the reduced actuarial equivalent of the standard service retirement benefit which would be allowable under paragraph (a), above, for a like amount of creditable service at the normal retirement age of sixty-five (65) years.

(c) At the last day of any month after the member shall have attained the age of sixty (60) years and shall have completed twenty (20) or more years of creditable service, the member shall be entitled to retire with a standard service retirement benefit, consisting of a standard annuity (calculated as provided in subsection 22 of Section 1) the monthly installments of which shall be continued during the life of the annuitant.

(d) At the last day of any month after the member shall have completed twenty-five (25) years of creditable service, and has attained the age of fifty-five (55) years, the member shall be entitled to retire with a service retirement allowance which is the reduced actuarial equivalent of a standard service retirement benefit which would be allowable for a like amount of service at attained age sixty (60) as provided in paragraph (c) above.

(e) At the last day of any month after the member shall have completed thirty (30) years of creditable service, the member shall be entitled to retire with a service retirement allowance which is the reduced actuarial equivalent of the standard service retirement benefit which would be allowable for a like amount of creditable service at attained age sixty as provided in paragraph (c) above.

##### 2. Optional Service Retirement Benefits.

In lieu of any service retirement benefit allowable under the preceding subsection, and provided he shall make such election and nomination at least thirty (30) days before the date fixed for retirement, the member may elect to receive the actuarial equivalent thereof in the form of a reduced monthly benefit payable throughout his lifetime, with the provision that:

Option One: Upon his death, the same monthly payments shall be continued throughout the life of, and be paid to, such person as the mem-

ber shall have nominated by written designation filed with the State Board of Trustees prior to his retirement; or

Option Two: Upon his death, one-half of the amount of such monthly payments shall be continued throughout the life of, and be paid to, such person as the member shall have nominated by written designation filed with the State Board of Trustees prior to his retirement; or

Option Three: In the event of his death before sixty (60) monthly payments of such annuity have been made, such payments shall be continued to such person as he may nominate in writing, or to the executor or administrator of his estate, until the remainder of the sixty (60) payments have been made; or

Option Four: In the event of his death before one hundred twenty (120) monthly payments of such annuity have been made such payments shall be continued to such person as he may nominate in writing, or to the executor or administrator of his estate, until the remainder of the one hundred twenty (120) payments have been made; or

Option Five: Such other benefit arrangement as may be approved by the Board, and the whole of which benefit is certified by the actuary to constitute the reduced actuarial equivalent of the retirement benefit to which the member is entitled under Subsection 1 of this Section.

### 3. Minimum Service Retirement Benefits.

(a) A teacher member who retires from service at or after attaining sixty (60) years of age and after having completed twenty (20) or more years of creditable service shall at all events be entitled to receive the equivalent of a standard service retirement benefit of One Thousand Two Hundred Dollars (\$1,200.00) per year; and a teacher member who takes service retirement at or after attaining sixty-five (65) years of age with more than ten (10) but less than twenty (20) years of creditable service, shall in all events be entitled to a standard service retirement benefit of Nine Hundred Dollars (\$900.00) per year, or its equivalent.

(b) An auxiliary member who retires at or after attaining sixty (60) years of age and after having completed twenty (20) or more years of creditable service shall at all events be entitled to receive the equivalent of a standard service retirement benefit of Nine Hundred Dollars (\$900.00) per year; and an auxiliary member who takes service retirement at or after attaining sixty-five (65) years of age with more than ten (10) but less than twenty (20) years of creditable service, shall in all events be entitled to a minimum standard service retirement benefit of Six Hundred Dollars (\$600.00) per year, or its equivalent.

(c) No member who is entitled to service retirement and who retires on or before August 31, 1963 shall receive as a standard service retirement benefit, or its actuarial equivalent, an amount which is less than he would have been entitled to receive at the date of his retirement in an equivalent benefit calculated under the laws governing the Teacher Retirement System of Texas, as effective August 31, 1955.

(d) Nothing in this Act contained shall be construed as reducing the annuities or benefit allowances heretofore approved for or awarded to any person prior to September 1, 1955 in accordance with the laws relating to the Retirement System in effect August 31, 1955; provided, that if the service retirement benefit of any such retired beneficiary is less than the minimum prescribed in paragraphs (a) or (b) of this subsection, as applicable, then from and after the effective date of this Act, such benefits shall be increased to the minimum prescribed for equivalent service in paragraphs (a) or (b) of this subsection.

**Disability Benefits**

Sec. 6. 1. Upon application of the member, or (where the member is unable to make application) of his employer or legal representative acting on behalf of the member, the State Board of Trustees may, not less than thirty (30) nor more than ninety (90) days after the filing of said application, retire such member upon the applicable disability benefit set out below, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically disabled for the further performance of duty and that such disability is likely to be permanent. In such event, the member shall retire subject to the provisions of this Act, upon a disability retirement benefit as follows:

(a) If the member has less than ten (10) years of creditable service at date of such retirement, he shall be paid a disability benefit of Fifty Dollars (\$50.00) per month, for the duration of such disability, or for the duration of his life, or for a period of months equal to the number of months of creditable service rendered by such member prior to date of such retirement, whichever term is shorter.

(b) If the member has more than ten (10) years of creditable service, but is not eligible for service retirement, he shall receive the standard annuity calculated on the basis of his creditable service to date of retirement, or the sum of Fifty Dollars (\$50.00) per month, whichever amount is greater, for the duration of his disability; and in the event the disability retirement occurs after or shall continue until such person attains sixty (60) years of age, the total disability shall thereafter be conclusively presumed continuous for the remainder of his life.

2. Beneficiaries Retired on Account of Disability.

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the State Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or any other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of sixty (60) years refuse to submit to at least one medical examination in any such periods by a physician or physicians designated by the State Board of Trustees, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his allowance shall be revoked by the State Board of Trustees.

(a) Should the Medical Board report and certify to the State Board of Trustees that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, or that such disability beneficiary is engaged in or is able to engage in a gainful occupation, and should the State Board of Trustees by a majority vote concur in such report, then the amount of his allowance shall be discontinued or be reduced to an amount by which the amount of the salary earned during his latest year of creditable service exceeds his present earning capacity.

Should his earning capacity be later changed, the amount of his allowance may be further modified; provided, that the revised allowance shall not exceed the amount of the allowance originally granted, nor shall it exceed an amount which, when added to the amount earnable by the bene-

fiary, equals the amount of his compensation for the last year prior to retirement.

(b) Should a disability beneficiary under the age of sixty (60) years be restored to active service, his retirement allowance shall cease, he shall again become a member of the Retirement System, and there shall be retransferred from the Retired Reserve Fund to his individual account in the Teacher Savings Fund the sum which was in his account before his disability retirement, less the aggregate of disability benefits paid out to such person. Upon restoration to membership, any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his membership service. No member eligible to retire for service shall be allowed to retire on a disability allowance.

#### **Death and Survivor Benefits**

##### **Sec. 7. 1. Designation of Surviving Beneficiaries.**

Any member may, by written designation in such form as the State Board of Trustees may prescribe, provide that the benefits payable under this Act in event of his death shall be paid to the designated beneficiary named therein. The member may change the designated beneficiary, or revoke a designation previously made, by filing with the State Board of Trustees, in such form as the Board may require, a notice of such change or revocation.

##### **2. Death Benefits.**

(a) If a member shall die before retirement and during any school year in which he is in service, there shall be paid to his designated beneficiary the greatest of the following amounts, payable at the election of the designated beneficiary, and in such manner as the Board by rule may prescribe:

(1) The annual compensation of the member for the preceding school year; or

(2) The rate of annual compensation of the member for the current school year; or

(3) Sixty (60) monthly payments of the same amount as the monthly installments of a standard annuity (calculated as provided in subsection 22 of Section 1); or,

(4) An annuity payable for life of the said designated beneficiary, which would have been payable to the designated beneficiary had the member retired on the thirty-first day preceding his death upon a lower benefit payable for life of the member, with a like amount payable throughout the life of the designated beneficiary; or

(5) The accumulated contributions standing to the account of the member in the Teacher Savings Fund.

(b) If a member shall die during an absence from service, there shall be payable to his designated beneficiary:

(1) If the absence of the member from service is due to sickness or accident or other cause which the State Board of Trustees shall determine was not voluntary or was in furtherance of the objectives of or welfare of the public school system, the same benefits payable upon the death of a member in active service; or

(2) If the absence of the member from service was not the result of sickness or accident or other justifiable cause as above defined, then there shall be paid to his designated beneficiary the accumulated contributions standing to the individual account of the member.

(c) If a member shall be retired upon a disability retirement benefit, and while drawing such annuity shall die, there shall be paid to his designated beneficiary the same death benefit which would have been paid had the deceased been in active service at death, less the sum total of disability payments theretofore made to the deceased.

### 3. Survivor Benefits.

(a) After a teacher member shall have completed one year of creditable service after the effective date of this Act, if he shall die before retirement, his designated beneficiary (if eligible and otherwise entitled to a death benefit other than return of the accumulated contributions of the member), may elect, in lieu of the applicable death benefit authorized under the preceding subsections, to receive the applicable of the following survivor benefits plus a lump-sum payment of Five Hundred Dollars (\$500.00), viz:

(1) If such designated beneficiary is the widow, dependent widower, or dependent parent of the deceased, said designated beneficiary may elect to receive for life a monthly benefit of Seventy-five Dollars (\$75.00), commencing immediately if said beneficiary is sixty-five (65) years of age or more, or commencing at age sixty-five (65) if said beneficiary is less than sixty-five (65) at the time of such election; or

(2) If such designated beneficiary is the widow or dependent widower of the deceased, and has one or more children under eighteen (18) years of age, said beneficiary may elect to receive a monthly benefit of One Hundred Fifty Dollars (\$150.00) until the youngest child attains the age of eighteen (18) years, and thereafter all payments shall cease until said widow or dependent widower attains age sixty-five (65), following which he shall receive a monthly benefit of Seventy-five Dollars (\$75.00); or

(3) If such designated beneficiary or beneficiaries are dependent children of the deceased, and they are under the age of eighteen (18) years, they may, upon election of their guardian, elect to receive a monthly benefit of One Hundred Fifty Dollars (\$150.00) per month so long as there are two or more such children under eighteen (18) years of age, and thereafter when there is only one child remaining under eighteen (18) years of age to receive Seventy-five Dollars (\$75.00) per month until said youngest child attains eighteen (18) years; Provided, that if the designated beneficiary is a widow, dependent widower, or dependent parent of the deceased, the benefits payable under paragraphs (1) and (2) of this subsection shall cease upon his death or remarriage, but in such an event there shall begin to be paid in lieu of the terminated benefits, the benefits authorized under paragraph (3), if then applicable.

(b) After an auxiliary employee member shall have completed one year of creditable service after the effective date of this Act, if he shall die before retirement, his designated beneficiary shall be entitled to the same elections as are under the provisions of the foregoing subsection 1, except that the monthly benefits shall be two-thirds of the amounts allowed to surviving beneficiaries of deceased teacher members.

(c) If a member shall die subsequent to his retirement, the designated beneficiary surviving him shall be entitled to the same survivor benefits as are authorized to be paid to designated beneficiaries who survive members who are in active service at death; and moreover, any benefit payable to the designated beneficiary under the service retirement option elected by the deceased shall not be forfeited or changed because of any election as to survivor benefits selected by such designated beneficiary; and provided further, that the lump-sum payment of Five Hundred Dollars (\$500.00) shall be paid to such designated beneficiary regardless of eligibility for survivor benefits, or for any other death benefit payments.



(d) In the event the member of the Retirement System fails to nominate a designated beneficiary, or in the event the designated beneficiary predeceases the member and there is no designation effective at date of death, then in such event the death benefits and right of election as to survivor benefits shall pass to and vest in the following persons, in the order following:

(1) To the surviving widow, or surviving dependent widower of the deceased;

(2) To the children of the deceased, in equal portions;

(3) To a dependent parent, or parents, in equal portions; and if there be no such survivors, then the accumulated contributions of the member shall be paid to his estate, or to his heirs, in full and complete discharge of all claims for death and survivors benefits hereunder.

4. Beneficiary With No Insurable Interest.

In the event the designated beneficiary shall have no insurable interest in the deceased member, the benefits payable to such designated beneficiary under the provisions of this Act shall be limited to the accumulated contributions standing to the account of the member in the Teacher Savings Fund.

**Return of Accumulated Contributions Upon Cessation of Membership**

Sec. 8. 1. Should a member ceased to be a teacher or auxiliary employee, except by death or by retirement under the provisions of this Act, he shall, upon application in writing as prescribed by the State Board of Trustees, be paid in full the amount of the accumulated contributions standing to the credit of his individual account in the Teacher Savings Fund, and his account shall thereupon be closed and his membership (if not previously ended) shall be terminated.

2. The accumulated contributions standing to the credit of any member at the date of termination of membership, shall bear no interest from date of such termination of membership.

3. Seven years after cessation of service, if no previous demand has been made, any accumulated contributions of a contributor shall be returned to him or to his heirs. If the contributor or his heirs cannot be found, his accumulated contributions shall be escheated to the Retirement System and credited to the Retired Reserve Fund.

**Revenue**

Sec. 9. 1. Member Contributions.

In addition to the deposits heretofore required of and made by members on account of service rendered prior to September 1, 1955, each member of the Retirement System shall be required to deposit with the Retirement System five per cent (5%) of his annual compensation, or One Hundred Eighty Dollars (\$180.00), whichever is the lesser, for service rendered between September 1, 1955 and September 1, 1957, and six per cent (6%) of his annual compensation for service rendered on and subsequent to September 1, 1957; and upon maturity of and approval for payment of any benefit (other than return of his accumulated contributions) payable to such member, or to his designated beneficiary, or to his survivors, or other person nominated by him, his accumulated deposits shall be transferred to, and shall become the property of the Retired Reserve Fund herein established. The deposits (other than membership fees) required of members shall be made as hereafter provided, and deposited in the Teacher Savings Fund.

Every member shall also pay toward the operation of the System the annual membership fees hereinafter prescribed.

## 2. State Contributions.

There shall be allocated and contributed by the State of Texas during each year beginning September 1, 1955, an amount equal to the collective deposits which, under this Act, are required of and made by all of the members of the Retirement System for and during the same period. All funds and monies heretofore contributed by the State to the Retirement System, together with the contributions hereafter made, shall be held, credited, transferred and expended as hereinafter provided, in the payment of authorized benefits under this Act.

### Method of Financing

Sec. 10. All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one (1) of five (5) funds, namely: the Teacher Savings Fund, the State Contribution Fund, the Retired Reserve Fund, the Interest Fund, and the Expense Fund.

#### 1. The Teacher Savings Fund.

(a) The Teacher Savings Fund shall be a fund in which shall be accumulated the regular percentage contributions heretofore made, or which hereafter are made from the compensation of members as required by this Act, together with interest earnings allowable on such deposits hereunder. Contributions to and payments from the Teacher Savings Fund shall be made as follows:

(b) Each employer on each of its payrolls shall cause to be deducted from the salary of each member, five per cent (5%) of his earnable compensation for each payroll period prior to September 1, 1957, and six per cent (6%) of his earnable compensation for each payroll period thereafter; provided that the sum of the deductions made during any one year shall not exceed five per cent (5%) of the member's annual compensation, or One Hundred Eighty Dollars (\$180.00), whichever is the lesser, for any year ending on or before August 31, 1957, nor more than six per cent (6%) of his annual compensation, or Five Hundred Four Dollars (\$504.00), whichever is the lesser, for any year ending after September 1, 1957. In determining the amount earnable by a member within a payroll period, the State Board of Trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such period, and it may omit deduction from compensation for any period less than a full payroll period if the person was not a member on the first day of such period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of such one per centum (1%) of the annual compensation upon the basis of which such deduction is to be made.

(c) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation; and the payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The employer shall certify to the State Board of Trustees on each and every pay roll, or in such other manner as said Board of Trustees may prescribe, the amounts to be deducted;

and each of said amount shall be deducted, and when deducted shall be paid into said Teacher Savings Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

(d) Interest on members' contributions shall be allowed at the rate of two and one-half per cent (2 1/2%) per annum, and shall be credited annually as of August 31st, and shall be allowed on the amount of the accumulated contributions standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year.

(e) Upon the retirement of a member, or the approval for payment of any other benefit arising under this Act (except the return of his accumulated contributions) his accumulated contributions shall be transferred from the Teacher Savings Fund to the Retired Reserve Fund.

## 2. State Contribution Fund.

The State Contribution Fund shall be the fund in which shall be accumulated all contributions hereafter made to the Teacher Retirement System by the State of Texas as provided in Section IX hereof, and to which there also shall be credited such portion of the existing funds of the Retirement System as hereinafter provided, and together with accumulations of interest hereafter earned and allowed on such contributions and funds; and from which fund there shall be transferred to the Retired Reserve Fund (upon approval for payment of any benefit, other than return of accumulated contributions) the amount certified by the Actuary as the reserves required, in excess of the member's accumulated contributions, to provide for the discharge of such benefit.

## 3. Retired Reserve Fund.

The Retired Reserve Fund shall be the fund in which shall be held all reserves for benefits heretofore or hereafter granted under the Retirement System, and from which shall be paid all such membership annuities, all benefits in lieu of membership annuities, and all death or survivor benefits payable as provided in this Act. This Retired Reserve Fund shall be made up of transfers as follows:

(a) There shall be transferred to the credit of Retired Reserve Fund all funds and assets held by or standing to the credit of the Prior Service Annuity Reserve Fund on the effective date of this Act, or as soon thereafter as practicable; and the Prior Service Annuity Reserve Fund shall thereupon be closed and discontinued.

(b) There shall be transferred to the credit of the Retired Reserve Fund all funds and assets held by or standing to the credit of the Membership Annuity Reserve Fund on the effective date of this Act; and the Membership Annuity Reserve Fund shall thereupon be closed and discontinued.

(c) There shall be transferred to the credit of the Retired Reserve Fund, as soon after the effective date of this Act as shall be practicable (in the determination of the State Board of Trustees) such portion of the funds and assets of the State Membership Accumulation Fund as the Actuary shall determine may be necessary, when combined with the transfers provided for in paragraphs (a) and (b) of this subsection, to provide the reserves required to discharge as they become due the benefits theretofore approved for payment under the Retirement System.

(d) Upon retirement of a member, or approval for payment of any other benefit authorized under this Act, after the effective date of this Act, there shall be transferred to the Retired Reserve Fund the accumulated contributions standing to the credit of the individual account of the member in the Teacher Savings Fund; and there shall be transferred from

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

the State Contribution Fund the reserves which, together with the accumulated contributions of the member, shall be certified by the Actuary to be necessary to provide for the payment of the approved benefits, as they become due.

#### 4. Interest Fund.

The Interest Fund is hereby created to facilitate the crediting of interest to the various other funds. All income, interest, and dividends derived from the deposits and investments authorized by the Act, shall be paid into the Interest Fund. Once each year on August 31st, interest shall be allowed and transferred to the Teacher Savings Fund, in the amount requisite to allow crediting of interest at the rate of two and one-half per cent (2½%) (as above provided) upon the accumulated contributions of the several members. Likewise on August 31st of each year, additional transfers from the Interest Fund shall be made as follows: (1) to the Retired Reserve Fund the amount requisite to allow, on the mean balance of said Reserve Fund for the year ending on said date, interest at the rate of three per cent (3%) per annum; (2) to the Expense Fund, such sum as the State Board of Trustees under subsection 5 hereof may direct, but not in excess of Fifty Cents (50¢) per member of record on such date; and (3) the balance then remaining in the Interest Fund shall be transferred as interest to the State Contribution Fund.

#### 5. Expense Fund.

The Expense Fund shall be the fund from which the expenses of administration and maintenance of the Retirement System shall be paid. Transfers to and payments from this fund shall be made as follows:

(a) The Executive Secretary shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the State Board of Trustees for its review and adoption.

(b) Each member shall pay with the first payment to the Teacher Savings Fund each year, and in addition thereto, the sum of Two Dollars (\$2.00), which amount shall be credited to the Expense Fund. Said payments for the Expense Fund shall be made to the State Board of Trustees in the same way as payments to the Teacher Savings Fund shall be made, as provided for in this Act; provided, however, that if said payment for the Expense Fund of any member is not made with said first payment of said member, the State Board of Trustees may deduct the amount of the payment for the Expense Fund from said first payment of said member.

(c) If the amount estimated to be required to meet the expenses of the State Board of Trustees is in excess of Two Dollars (\$2.00) per contributor for the year, the State Board of Trustees, as evidenced by a resolution of that Board recorded in its minutes, shall transfer to the Expense Fund, from the Interest Fund, an amount necessary to cover the expenses as estimated for the year; but in no event shall the amount so transferred exceed, in any one year, Fifty Cents (50¢) per member of record as of August 31st of that year.

#### 6. Transfer of Balance of State Membership Accumulation Fund; Discontinuance of that Fund and of the Permanent Retirement Fund.

After transfer of such portion of the State Membership Accumulation Fund (as heretofore existing) to the Retired Reserve Fund as is provided for in subsection 3 of this Section, the balance of assets then standing to the credit of said State Membership Accumulation Fund shall be transferred to credit the State Contribution Fund (as herein established), and

the State Membership Accumulation Fund shall thereupon be closed and discontinued.

The Permanent Retirement Fund account, provided for by the laws heretofore existing, but which has no balance, is hereby abolished and discontinued.

#### Collection of Contributions

Sec. 11. 1. The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every pay roll of a member for each and every pay roll period subsequent to the date of establishment of the Retirement System the contributions payable by such member, as provided in this Act. Each employer shall certify to the treasurer of said employer on each and every pay roll a statement as vouchers for the amount so deducted.

(b) The treasurer or proper disbursing officer of each employer on authority from the employer shall make deductions from salaries of members as provided in this Act, and shall transmit monthly, or at such time as the State Board of Trustees shall designate, a certified copy of the pay roll, and the amount specified to be deducted shall be paid to the Executive Secretary of the State Board of Trustees; and after making a record of all receipts, the said Board shall pay them to the Treasurer of the State of Texas, and by him be credited to Teacher Savings Fund, and such funds shall be deemed as appropriated for use according to the provisions of this Act. For the purpose of collecting contributions of persons who are employed in common school districts, the county superintendent or ex officio county superintendent of each county of this State is hereby designated to perform the duties of employer of all common school districts over which he has jurisdiction, and he is hereby authorized and empowered to retain the amounts so deducted from pay rolls of members and have a corresponding amount deducted from any funds available for paying employees' salaries, and transmit same to the Executive Secretary of the State Board of Trustees as provided for in this Act. Any college or university or other educational institution or agency supported in whole or in part by the State shall have the amount retained or deducted from the funds regularly appropriated by the State for the current maintenance for such educational departments and institutions.

(c) Any member of the Teacher Retirement System from whose salary prior to August 31, 1943, a deduction or deductions have not been made, but which should have been made, in accordance with the provisions of this Act, may elect to pay such sums that should have been deducted, on such terms as are determined by the State Board of Trustees, and thus receive the credit for prior service and membership service to which the member may be entitled for teaching under the provisions of this Act prior to August 31, 1943, or not to pay such sums and thus acquire the status of a beginning teacher as of September 1, 1943, or if said member is not teaching at that time, as of the date when the member resumes teaching under the Act. Provided, the provisions of this Act shall apply only to deductions which should have been made from salaries of teachers prior to August 31, 1943, and to no other time.

(d) For the purpose of enabling the collection of six per cent (6%) of the salaries of the members of the Retirement System to be made as simple as possible, the State Board of Trustees shall require the secretary or other officer of each employer-board or agency, within thirty (30) days after the beginning of each school year, to make up a list of all teachers or auxiliary employees in its employment, who are members of the Retirement System, set out their salaries by the month and by the year, make an

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affidavit to the correctness of this statement, and file the same with the Executive Secretary of the State Board of Trustees of the Teacher Retirement System. If additions to or deductions from this list should be made during the year, such additions or deductions shall likewise be certified under oath to the State Board of Trustees.

(e) The State Treasurer shall furnish annually to the State Board of Trustees a sworn statement of the amount of the funds in his custody belonging to the Retirement System. The records of the State Board of Trustees shall be open to public inspection, and any member of the Retirement System shall be furnished with a statement of the amount to the credit of his individual account upon his written request, provided that the State Board of Trustees shall not be required to answer more than one such request of a member in any one year.

2. The depositing of the State's contributions shall be made as follows:

(a) On or before the first day of November, next preceding each Regular Session of the Legislature, the State Board of Trustees shall certify to the State Comptroller for his review and adoption the amount necessary to pay the matching contributions of the State of Texas to the Teacher Retirement System for the ensuing biennium. This amount shall be included in the budget of the State which the Governor submits to the Legislature. The State Board of Trustees shall certify on or before August 31st of each year to the State Comptroller of Public Accounts and to the State Treasurer the estimated amount of contributions to be received from members during the ensuing year.

(b) All monies allocated and appropriated by the State to the Teacher Retirement System shall be paid to the Teacher Retirement System in monthly installments as provided in House Bill No. 8, Acts of the Regular Session, 47th Legislature. Each of said monthly installments shall be paid into the State Contribution Fund.

#### Administration

##### Sec. 12. 1. State Board of Trustees.

(a) The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of this Act are hereby vested in a State Board of Trustees, which shall consist of seven members who shall be appointed as follows:

(1) Three members who shall be appointed by the Governor, with the advice and consent of the Senate, one to hold office for the term of two years ending August 31, 1957, one to hold office for the term of four years ending August 31, 1959, and the third to hold office for the term of six years ending August 31, 1961; and appointments of trustees after expiration of such original terms shall be made for a term of six years.

(2) One member shall be nominated by the State Board of Education, subject to confirmation by two-thirds of the Senate, to serve for a term of six (6) years ending August 31, 1961.

(3) Three (3) of the trustees shall be members of the Retirement System, and each shall be appointed by the Governor, with the advice and consent of the Senate, from a slate of three (3) teacher members nominated by the membership of the Retirement System at an election by written ballot, conducted under the rules and regulations adopted by, and under the supervision of, the State Board of Trustees.

(4) All of the members of the Board of Trustees in office at the effective date of this Act, excepting those who are ex officio members, shall continue to hold office to the end of their respective terms, and until their successors are selected and qualified.

(5) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(b) The trustees shall serve without compensation, but they shall be reimbursed from the Expense Fund for all necessary expenses that they may incur through service on the Board.

(c) Each trustee shall, within ten (10) days after his appointment, in addition to the constitutional oath, subscribe to the following oath of office: "I do solemnly swear that I will, to the best of my ability, discharge the duties of a trustee of the Teacher Retirement System and will diligently and honestly administer the affairs of the Board of Trustees of said Retirement System and that I will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to said Retirement System." This oath shall be subscribed to by members making it before any officer qualified to administer oaths in Texas, and duly filed in the office of the Secretary of State.

(d) Each trustee shall be entitled to one vote in the decisions of the Board. A majority of the State Board of Trustees shall constitute a quorum and a majority vote of those present shall be necessary for a decision by the trustees at any meeting of said Board.

(e) Subject to the limitations of this Act, the State Board of Trustees shall, from time to time, establish rules and regulations for eligibility of membership and for the administration of the funds created by this Act and for the transaction of its business.

(f) The State Board of Trustees shall elect from its membership a Chairman and shall by a majority vote of all its members appoint an Executive Secretary who shall not be one of its members. Provided that the Executive Secretary appointed under the provisions of this Act shall be confirmed by a two-thirds vote of the Senate present; and provided further, that said Executive Secretary shall have been a citizen of Texas three (3) years immediately preceding his appointment. He shall recommend and nominate to the State Board of Trustees such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the State Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the State Board of Trustees shall approve, provided that in no case shall they be greater than that paid for like or similar service of the State of Texas.

(g) The State Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System and for checking the expenses of the System.

(h) The State Board of Trustees shall keep a record of all of its proceedings, which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding school year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

## 2. Legal Advisor.

The Attorney General of the State of Texas shall be the legal advisor of the State Board of Trustees, and shall represent it in all litigation.

## 3. Medical Board.

The State Board of Trustees shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the Retirement System. The Physicians so appointed by the State Board of

Trustees shall be legally qualified to practice medicine in Texas and shall be physicians of good standing in the medical profession. If required, other physicians may be employed to report on special cases. The Medical Board shall pass upon all medical examinations required under the provisions of this Act, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the State Board of Trustees its conclusion and recommendation upon all the matters referred to it.

4. Actuary; Duties of Actuary.

(a) The State Board of Trustees shall designate an Actuary who shall be the technical advisor of the State Board of Trustees on matters regarding the operation of the funds created by the provisions of this Act, and shall perform such other duties as are required in connection therewith.

(b) The Actuary shall make such investigation of the mortality, service, and compensation experience of the members of the System as may be necessary and the State Board of Trustees may authorize, and on the basis of such investigation he shall recommend for adoption by the State Board of Trustees such tables and such rates as are required. The State Board of Trustees shall adopt tables and certify rates, and the Actuary shall make a valuation based on such tables and rates, of the assets and liabilities of the funds created by this Act.

(c) In the year 1955, and at least once in each five-year period thereafter, the Actuary shall make, under the direction of the Board, an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the State Board of Trustees shall adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary.

(d) On the basis of such tables as the State Board of Trustees shall adopt, the Actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Act.

**Investment and Management of Funds and Assets**

Sec. 13. 1. The State Board of Trustees shall be the trustees of the several funds as herein created by this Act, and of all securities, monies and other assets of the Retirement System, and shall have full power to invest and reinvest such funds, subject to the limitations and restrictions following. All retirement funds and monies, including those received into the Treasury of the State of Texas as deposits and contributions of teachers and employers, may be invested only in bonds and other evidence of indebtedness of the United States, and all other bonds and evidences of indebtedness which are guaranteed as to both principal and interest by the United States; in bonds and other evidences of indebtedness, both general and special obligations, of the State of Texas or any of its agencies; in bonds and other evidences of indebtedness of municipal corporations and political subdivisions of the State of Texas, both general and special obligations, which have been approved as to legality by the Attorney General of the State of Texas; and in securities in which the State Permanent School Fund of Texas or the Permanent University Fund of the University of Texas may be invested under present or hereafter enacted laws. The State Board of Trustees shall have full power by proper resolution to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said invest-



ments and any monies belonging to said funds, provided that any money on hand shall be subject to the State Depository Laws of Texas.

2. The assets and monies of the Retirement System, from whatever source derived, shall be invested as a single fund, and all securities hereafter acquired as well as those heretofore purchased, shall be held collectively for the proportionate benefit of all funds and accounts of the Retirement System.

3. The Treasurer of the State of Texas shall be the custodian of all bonds, securities, and funds. All payments from said funds shall be made by him on warrants drawn by the State Comptroller of Public Accounts supported only upon vouchers signed by the Executive Secretary of the Retirement System. A duly attested copy of a resolution of the State Board of Trustees designating such person shall be filed with said Comptroller as his authority for issuing such warrants.

4. For the purpose of meeting disbursements for annuities and other payments, there may be kept available cash, not exceeding ten per cent (10%) of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer.

5. No trustee and no employee of the State Board of Trustees shall have any direct or indirect interest in the gains or profits of any investment made by the State Board of Trustees, nor as such receive any pay or emolument for his service other than his designated salary and authorized expenses, except such interest as such person or persons may have in the retirement funds as a member in the Retirement System.

#### **Purchase of Credit For Out-of-State Teaching**

Sec. 14. 1. Where any member of the Retirement System has been employed by and has worked one (1) or more years as a teacher in any public school system maintained in whole or in part at public expense in any of the other States of the United States or the District of Columbia, or Panama Canal Zone, such member may within three (3) years from the effective date of this Act or from date of membership in the Retirement System, whichever is later, purchase equivalent current service credits under this Retirement System for each year of such out-of-state teaching, upon the terms and conditions set out below.

(a) Initial application must be made not less than one (1) year nor more than three (3) years after the effective date of this Act, as to any person who is a member of the System on September 1, 1955; or

(b) Such application must be made not less than one (1) year nor more than three (3) years from date of membership, as to persons who become members after September 1, 1955.

2. For each year for which credit for out-of-state service is desired, the member shall deposit with the Retirement System to his individual account, (a) twelve per cent (12%) of the annual compensation received by him during the first year following the effective date of this Act as to persons who are members on September 1, 1955; or (b) as to persons becoming members subsequent to the effective date of this Act, twelve per cent (12%) of the annual compensation received during his first year as a teacher in this State. Deposit for at least one (1) year's credit must be made on initial application; and failure to make the remaining deposits required, within the next two (2) consecutive years, shall forfeit the privilege of purchasing any credits for which deposits have not been made.

3. For each year for which the deposits are made as above authorized, the member will be granted one (1) year's current membership service

credit under this Act, subject, however, to the special conditions of this Section.

4. No such person shall be allowed to acquire credits on the basis of teaching employment outside of the State of Texas, in excess of one (1) year of such credit for at least two (2) years of service in Texas, nor more than ten (10) years total credit so to be purchased. In the event the amount deposited for employment outside of the State of Texas must be disallowed in part because of failure of the member to comply with the requirement that he have at least two (2) years of Texas service for each year of non-Texas service, his deposits made for the years disallowed will be refunded to him; and disallowed years shall be considered to be those last purchased.

5. No member by reason of any credits purchased for non-Texas teaching employment shall be entitled to service retirement benefits under this Act until he has actually rendered at least ten (10) years of creditable service in Texas, and excluding any credit deposits for non-Texas employment in such determination.

6. All such deposits shall be credited, pending retirement, in the individual account of the member in the Teacher Savings Fund.

#### Right to Amend Reserved

Sec. 15. The Legislature hereby reserves the right to amend any section, paragraph or any and all provisions of this Act as it may from time to time deem necessary.

#### Miscellaneous

Sec. 16. 1. Exemptions from Execution.

The right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the monies in the various funds created by this Act, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Act specifically provided.

2. Surety Bonds. The Treasurer of the State of Texas shall, upon becoming custodian of the Teacher Retirement Fund, give a bond in the sum of Fifty Thousand Dollars (\$50,000.00); the Executive Secretary shall give bond in the sum of Twenty-five Thousand Dollars (\$25,000.00), and the State Board of Trustees shall require any other employees and members of the State Board of Trustees to give bond in such amounts as the Board may deem necessary, conditioned that said bonded persons will faithfully execute the duties of the respective offices. All bonds shall be made with a good and solvent surety company, authorized to do business in the State of Texas, said bonds shall be made payable to the State Board of Trustees, and shall be approved by it and the Attorney General of Texas. All expense necessary and incident to the execution of such bonds, including premiums thereon, shall be paid by the State Board of Trustees from the Expense Fund.

3. Actuarial Equivalence. The "actuarial equivalent" of any benefit means a benefit of equal monetary value, when computed upon the basis of such annuity or mortality tables as shall be adopted by the Board, and interest or discount at the rate of three per cent (3%) per annum, compounded annually.

4. No Benefits for Fraction of Month. No payment of any annuity shall be made for any fraction of a month in which the annuitant dies.

#### Penalties

Sec. 17. Any person who shall confiscate, misappropriate, or convert monies representing deductions from salaries of teachers or auxiliary employees of the Retirement System, before such monies are received by the Retirement System, or monies of the Retirement System, shall be guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than five (5). Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System, as a result of such act shall be guilty of a felony and upon conviction shall be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than five (5). Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the State Board of Trustees shall correct such error, and so far as practicable shall adjust the payment in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

Violation of Provisions. Any person, including any county superintendent or ex officio county superintendent, and any member of the employer and/or its treasurer or proper disbursing officer, who violates any of the provisions of this Act other than those to which the first paragraph of this Section applies shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00). Any member of the System who knowingly receives money as salary, which money should have been deducted from his salary under the provisions of this Act, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00). The teacher's certificate of any person who violates the provisions of this Act may be cancelled by the State Superintendent of Public Instruction after the State Superintendent has been notified of such violation by the State Board of Trustees of the Teacher Retirement System and after the holder of the certificate has been notified by the State Superintendent and given an opportunity to be heard. Appeal from the decision of the State Superintendent shall, if made, be to the State Board of Education, the decision of which shall be final. Provided that it shall not be a prerequisite for action by the State Superintendent and/or the State Board of Education, as outlined, that any such holder shall first have been prosecuted and/or fined.

#### Severability; Repeal of Inconsistent Laws

Sec. 18. If any section or part of any section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency; provided, however, that this Act shall not be construed as repealing or affecting the provisions of any statute which may be enacted by the 54th Legislature to make effective the provisions of Section 63 of Article XVI of the Constitution of Texas; but such statutes shall be construed as being definitive of the retirement rights and benefits of the persons to whom they appertain. As amended Acts 1951, 52nd Leg., p. 257, ch. 152,

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

§§ 1, 2; Acts 1953, 53rd Leg., p. 565, ch. 210, § 1; Acts 1953, 53rd Leg., p. 1022, ch. 422, §§ 1-4; Acts 1953, 53rd Leg., p. 1024, ch. 423, § 1; Acts 1955, 54th Leg., p. 1638, ch. 530, art. I.

*Effective upon adoption of amendment to Const. art. 3, § 48a, proposed by S.J.R. No. 5, Acts 1955, 54th Leg., p. 1814, to be voted on at election to be held on Nov. 6, 1956. See explanatory note at beginning of this Article.*

Service credit based on employment as officer or employee of state for retirement benefits under Teachers' Retirement System, see article 6228a-2; Const. art. 16, § 63.

## CHAPTER TWENTY-TWO—FOUNDATION SCHOOL PROGRAM

### Art. 2922—14. Salaries

#### Additions to salary; minimum salary

Sec. 1-a. For the 1954-55 school year and for each school year thereafter, there shall be added to the annual salary schedule for each classroom teacher, vocational teacher, special service teacher, teacher of exceptional children, supervisor and/or counselor, principal, and superintendent, as provided for in Article IV, Section 1, sub-divisions 1, 2, 3, 4, 5, 6, and 7 respectively, the sum of Four Hundred and Two (\$402.00) Dollars; the minimum salary as herein above provided when added to the Four Hundred and Two (\$402.00) Dollars additional salary herein provided shall be the total minimum annual salary for each such professional position. Added Acts 1954, 53rd Leg., 1st C.S., p. 13, ch. 5, § 1.

Emergency. Effective April 22, 1954.

Section 5 of the amendatory act of 1954 provided that partial unconstitutionality should not affect remaining portions of the act. Section 6 appropriated moneys allocated to the Foundation School Fund by

Acts 1949, p. 683, ch. 335, and balances remaining in the Foundation School fund at the end of the 1953-1954 fiscal year, to pay the state's part of the Foundation School Program.

#### Additions to salary; vocational teachers

Sec. 1-b. For the 1955-56 school year and for each school year thereafter, there shall be added to the annual salary schedule for each vocational teacher, as provided for in Article IV, Section 1, Subdivision 2, and in Section 1-a, the sum of Forty-four Dollars and Sixty-seven Cents (\$44.67) multiplied by the number of months that the teacher conducts a vocational program in excess of nine (9) months. Added Acts 1955, 54th Leg., p. 1152, ch. 436, § 1.

#### Vocational teachers in distributive adult education excepted

Sec. 1-c. None of the provisions of this Act<sup>1</sup> shall apply to the vocational teachers in distributive adult education. Acts 1955, 54th Leg., p. 1152, ch. 436, § 2.

<sup>1</sup> Sections 1-b and 1-c of this article.

Effective 90 days after June 7, 1955, date of adjournment.

#### Title of Act:

An Act relating to the annual minimum base salary of vocational teachers under the Foundation School Program Act; amending Article IV of the Foundation

School Program Act by adding a new section providing for an increase in the minimum annual salary of vocational teachers conducting vocational programs in excess of nine (9) months; making certain exception; and declaring an emergency. Acts 1955, 54th Leg., p. 1152, ch. 436.

**Art. 2922—16. Finances****Total local school funds to be charged to all school districts in the state**

Sec. 2. The sum of the amounts to be charged for the 1954-55 school year against the local school districts of the State toward such Foundation School Program shall be Fifty-one Million, Six Hundred Thousand (\$51,600,000.00) Dollars. For the 1955-56 school year, and for each school year thereafter, the sum of the amounts to be charged against the local school districts of the State toward such Foundation School Program shall be twenty (20%) per cent of the estimated total cost of the Foundation School Program for the immediately preceding school year. At its regular meeting in March, 1955, and at each regular meeting in March thereafter, the State Board of Education, after receiving the recommendation of the State Commissioner of Education, shall estimate the total cost of the Foundation School Program for the then current school year, based upon laws and approved school budgets in effect on the date when such estimate is made. Within thirty (30) days after such estimate has been made, the State Commissioner of Education, subject to the approval of the State Board of Education, shall assign each school district according to its tax paying ability, as determined in this Act, its proportionate part of such total to be raised locally for the next school year and applied towards the financing of its Minimum Foundation School Program. As amended Acts 1954, 53rd Leg., 1st C.S., p. 13, ch. 5, § 2.

**Local funds available in each county**

Sec. 4. The State Commissioner of Education shall calculate and determine the total sum of local funds that the school districts of a county shall be assigned to contribute toward the total cost of the Foundation School Program for the school year 1954-1955 by multiplying Fifty-one Million Six Hundred Thousand (\$51,600,000.00) Dollars by the Economic Index determined for each county; provided, however, that for the 1954-1955 school year, forty-five Million (\$45,000,000.00) Dollars only of the said Fifty-one Million Six Hundred Thousand (\$51,600,000.00) Dollars shall be distributed in compliance with the provisions of the second paragraph of Section 3 of Article VI of Senate Bill 116, Acts of 51st Legislature, as amended in Senate Bill 163, Chapter 174, 53rd Legislature; the remaining Six Million Six Hundred Thousand (\$6,600,000.00) Dollars shall be distributed without imposing the ten (10%) per cent limitations provided in said Section 3 of Article VI, the legislative intent being to allow for the 1954-1955 year the ten (10%) per cent limitation but the same to be restricted or applicable only to Forty-five Million (\$45,000,000.00) Dollars.

Provided, further, that for the school year beginning 1955-56 and each school year thereafter, the State Commissioner of Education shall calculate and determine the total sum of local funds that the school districts of a county shall be assigned to contribute toward the total cost of the Foundation School Program by multiplying twenty (20%) per cent of the estimated Foundation Program cost for the immediate preceding school year, as determined under the provisions of this Act, by the Economic Index determined for each county. The product shall be regarded as the local funds available in each respective county toward the support of the Foundation School Program and shall be used in calculating the portion of said amount which shall be assigned to each school district in the county. As amended Acts 1954, 53rd Leg., 1st C.S., p. 13, ch. 5, § 3.

**Local funds to be charged to each district**

Sec. 5. The State Commissioner of Education shall determine the amount of local funds to be charged to each school district and used therein toward the support of the Foundation School Program, which amount shall be calculated as follows:

Divide the State and county assessed valuation of all property in the county subject to school district taxation for the next preceding school year into the State and county assessed valuation of the district for the next preceding school year, finding the district's percentage of the county valuation. Multiply the district's percentage of the county valuation by the amount of funds assigned to all of the districts in the county. From this product deduct One Hundred (\$100.00) Dollars per approved professional Foundation Program unit. The remainder shall be the amount of local funds that the district shall be assigned to raise toward the financing of its Foundation School Program.

Provided, however, that in any district containing State University-owned land, State-owned prison land, Federal-owned forestry land, Federal-owned military reservations or Federal-owned Indian reservations, the amount assigned to such school district shall be reduced in the proportion that the area included in the above-named classification bears to the total area of the district. Provided, further, that no local fund assignment shall be charged to the Boys Ranch Independent School District in Oldham County, Texas.

Provided that if the revenue that would be derived from the legal maximum local maintenance school tax is less than the amount that is assigned to a school district according to the economic index, and if such property valuation is not less than said property is valued for State and county purposes such lesser amount shall be the amount assigned to be raised by such school district.

Provided further, that if a school district is unable or for any reason fails to collect local maintenance school funds equal to the amount assigned to it as determined by this Act, such failure will not make the district ineligible for full State per capita apportionment and full Foundation School Fund grants, but the amount as determined by this Act shall be charged against the district as budgetary receipts whether such amount is collected or not.

Provided that the amount of local funds assigned to a contract district, as provided for in Article III of this Act,<sup>1</sup> shall be assigned to the receiving district and all local taxes, except those required for the interest and sinking fund, shall be credited as collected to the receiving school district.

If a district other than such a contract district has no school, the amount of local funds assigned to such district shall be assigned for the current year to the receiving district in which such children attend school and the local tax funds collected shall be transferred to such receiving district; provided that if pupils from such a district attend schools in more than one receiving district, such local fund assignments and local tax funds shall be divided for the current year between such receiving districts proportionately according to the number of transfers to each receiving district.

If any school district which has a budgetary income, as provided in Article VI, Section 1, Subsections a and b, in excess of the amount needed to operate a Minimum Foundation School Program as provided herein and transfers pupils to another district, such sending district shall pay

a proportionate part of such excess based upon the ratio of the number transferred to the number of enumerated scholastics, to the district or districts to which such pupils are transferred, and such amount shall be charged to the receiving school.

The sum of the amounts assigned to the several portions of a county-line school district shall be the amount assigned to be raised by such district toward the financing of its Foundation School Program.

The County Tax Assessor-Collector in each county, in addition to his other duties prescribed by law, shall certify to the State Commissioner of Education in Austin, Texas, not later than December 1st of each year, the following information:

(1) The assessed valuation, on a State and county valuation basis, of all property subject to school district taxation in each school district or portion of school district in such county, and the total assessed valuation of all property subject to the school district taxation in the county;

(2) The total area of each school district; and

(3) The area within each school district comprised of State University-owned land, State-owned prison land, Federal-owned forestry land, Federal-owned military reservations, and Federal-owned Indian reservations.

Should any County Tax Assessor-Collector fail to submit such certificates to the State Commissioner of Education as provided for herein, the State Comptroller of Public Accounts is hereby directed to submit such information, estimating when necessary. As soon after the receipt of such certificates as practicable, and prior to the time that the respective tax rates for the school districts of the county have been set, the State Commissioner of Education shall notify each school district as to the amount of local funds that such district is assigned to raise for the succeeding school year.

If there has been a marked increase or decrease in the assessed valuation of a school district within a county, and if the County School Board certifies that the use of the county and school district valuations for the preceding year in determining local fund assignments to the school districts in the county would be inequitable, and recommends a different distribution of the county total than that made by the State Commissioner of Education, such recommendations, subject to the approval of said Commissioner, shall become and be the lawful local fund assignments to such districts.

Provided, further, that any local maintenance funds in excess of the amount assigned to a district as determined by this Section may be expended for any lawful school purpose or it may be carried over as a balance into the next school year. As amended Acts 1954, 53rd Leg., 1st C.S., p. 13, ch. 5, § 4.

<sup>1</sup> Article 2922—13.

Emergency. Effective April 22, 1954.

## ELECTION CODE

## CHAPTER SIX—OFFICIAL BALLOT

## Art. 6.01. Official Ballot

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two (2) or more offices permitted by the Constitution to be held by the same person. The name of no candidate of any political party that cast two hundred thousand (200,000) votes or more cast for its candidate for governor at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided. As amended Acts 1955, 54th Leg., p. 48, ch. 34, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## Art. 6.07. Constitutional amendment and other questions

When a proposed constitutional amendment or other question submitted by the Legislature is to be voted on, the form in which it is submitted, if the Legislature has failed to prescribe the same, shall be prescribed by the Governor in his proclamation, describing the same in such terms as give a clear idea of the scope and character of the amendment in question. When more than one (1) proposed constitutional amendment or other question is submitted by the Legislature at one (1) election, the Secretary of State shall give to each such proposition and question a separate number, and shall certify the same together with its separate number to the county clerk of each county in the State. The number given to each such proposition, question or proposed amendment shall be determined by lot. The Secretary of State shall hold such drawing at a time and place designated by him and such drawing shall be open to the public. The propositions and questions so submitted shall be printed and numbered on the official ballot in the serial order in which they are numbered by the Secretary of State. On each official ballot used for constitutional amendments there shall be printed just above the amendments to be voted on this instruction note: "Scratch or mark out one statement so that the one remaining shall indicate the way you wish to vote."

Such constitutional amendments shall be published, under the authority of the Secretary of State as required by the Constitution. The Secre-



tary of State shall apportion the amendments to the contracting newspapers; shall furnish affidavit forms, in duplicate, to be executed by the owner, editor or publisher of the newspaper, when four (4) publications shall have been made; shall furnish one (1) approved copy of each executed affidavit to the Comptroller, who shall then authorize the Treasurer to issue warrant in the amount specified. Executed affidavits must be returned from the owner, editor or publisher of the newspaper, to the Secretary of State within thirty (30) days from the date of the last publication; unless this time limit is observed, the Secretary of State shall refrain from approving affidavits for payment. Provided, however, if the Secretary of State shall deem it more expeditious or economical he may apportion such amendments and make a written contract with any state-wide association of daily and weekly newspapers in Texas for the publication of such constitutional amendments in newspapers designated by him. Such association shall cause such amendments to be published in said newspapers in the manner required by the Constitution; shall furnish such materials as are necessary for a correct and uniform publication of such amendments in said newspapers; shall furnish affidavit forms, in duplicate, to such newspapers, to be executed by the owner, editor, or publisher thereof, when four (4) publications shall have been made; shall make an itemized report to the Secretary of State showing the names of all the newspapers in which such amendments were published, the number of column inches submitted to each publication, the cost of publication in each newspaper, together with a clipping for such newspaper, and any other information desired by the Secretary of State pertaining to such task; shall return within thirty (30) days from the date of the last publication all affidavits executed by the owner, editor, or publisher of such newspapers, together with an affidavit executed in duplicate by the general manager of such association that the amendments have been published by said newspapers as required by the Constitution, to the Secretary of State, who shall, after satisfying himself as to the proper publication of such amendments, furnish one (1) approved copy of the executed affidavit of the general manager of the association to the Comptroller, who shall authorize the Treasurer to issue warrant in the amount specified to the association. The Comptroller and Treasurer shall forthwith perform their duties in this connection, so that undue length of time shall not elapse between publication and payment therefor. The Legislature shall appropriate a sufficient fund for such publication, such fund to be estimated by the Secretary of State.

The form in which any proposition or question to be voted on by the people of any city, county or other subdivision of the State shall be submitted, shall be prescribed by the local or municipal authorities submitting it. As amended Acts 1955, 54th Leg., p. 907, ch. 357, § 1.

Emergency. Effective May 25, 1955.

Section 2 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER SEVEN—ARRANGEMENT AND EXPENSES OF ELECTION

### Art. 7.14. Providing for voting machines

Sec. 10a. Certificate of convenience to transport voting machines not required. No necessity shall exist for the issuance of a certificate of convenience as provided by Article 911b, Section 5a, Revised Civil Statutes,

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

for the transporting of voting machines within the county. Such transporting of said voting machines is exempted from Article 1690b(a) of the Penal Code of the State of Texas. Added Acts 1955, 54th Leg., p. 889, ch. 340, § 1.

Emergency. Effective May 24, 1955.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws.

## CHAPTER THIRTEEN—NOMINATIONS

### 1. BY PARTIES OF TWO HUNDRED THOUSAND (200,000) VOTES OR OVER

Art.

13.04A Voting places of political parties in counties of 800,000 population [New].

### 1. BY PARTIES OF TWO HUNDRED THOUSAND (200,000) VOTES OR OVER

Art. 13.04A. Voting places of political parties in counties of 800,000 population

In Counties having a population in excess of eight hundred thousand (800,000) inhabitants, according to the last preceding Federal Census, the places of holding primary elections of political parties in the various precincts of the State may be within one hundred (100) yards of the place at which such elections or conventions of a different political party are held, provided that the voting machines, ballots, election supplies, and election judges and officials of one primary election or convention shall not be used in the convention or election of another political party, and provided that said elections or conventions shall be held in separate rooms if held within the same building, and provided further that if such primary elections or conventions are held in adjoining rooms, then there shall be no avenue of communication from one such room to the other. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 182A, added Acts 1954, 53rd Leg., 1st C.S., p. 85, ch. 36, § 1.

Emergency. Effective April 22, 1954.

### Art. 13.08. Expenses of primary

Prior to the assessment of the candidates, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, and report the result in each precinct to the county chairman, as provided for herein, and all other necessary expenses of holding such general and second primaries in such counties and, on the second Monday in May preceding each general primary, shall apportion such cost among the various candidates for nomination for district, county and precinct offices only as herein defined, and offices to be filled by the voters of such district, county or precinct only in such manner as in their judgment is just and equitable; provided that where a district office, except for Members of the Legislature, covers more than one (1) county, the assessment of such a candidate by that county shall not be more than a sum which is the quotient of the

amount which he would be assessed if he represented only one (1) county determined by the formula used to assess county candidates, when divided by the number of counties in his district. However, where a member of the State Board of Education is elected from a congressional district, the filing fee for any such candidate for the State Board of Education shall not be more than Fifty Dollars (\$50). In making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made and shall, by resolution, direct the chairman to mail immediately to each person whose name has been requested to be placed on the official ballot a statement of the amount of such expenses so apportioned to him, with the request that he pay the same to the county chairman on or before the Saturday before the third Monday in May thereafter. Candidates filing subsequently shall pay the same assessment prescribed for other candidates for the office they seek, and shall have one (1) week from the date they file in which to pay said assessment. It shall be sufficient to meet the requirements of this law to mail by registered letter to the chairman before the deadline herein provided, as shown by the postmark on the letter, a money order, a certified check, or a good personal check. As amended Acts 1955, 54th Leg., p. 1131, ch. 424, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

*Amendment by Acts 1955, 54th Leg., p. 1295, ch. 513, § 1, see act 13.08, post.*

#### Art. 13.08. Expenses of Primary

Prior to the assessment of the candidates, on the third Monday in June preceding each general primary, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, to report the result in such precinct to the county chairman, as provided for herein, and all other necessary expenses of holding the general and second primaries in such county, and shall apportion such cost, in such manner as in their judgment is just and equitable, among the various candidates for nomination for district, county and precinct offices only as herein defined, and offices to be filled by the voters of such district, county or precinct only, except the office of Justice of the Court of Civil Appeals, but in making the apportionment the committee shall take into consideration the amount which it has received or expects to receive from filing fees of candidates for Justice of the Court of Civil Appeals; provided, that where the district office, except members of the Legislature and Justices of the Courts of Civil Appeals, covers more than one county, the assessment of such a candidate by the county shall not be more than a sum which is the quotient of the amount which he would be assessed if he represented only one county determined by the formula used to assess county candidates, when divided by the number of counties in his district. However, where a member of the State Board of Education is elected from a congressional district, the filing fee for any such candidate for the State Board of Education shall not be more than Fifty Dollars (\$50.00). In making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made. The committee shall, by resolution, direct the chairman to immediately mail to each person against whom

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

an assessment is made a statement of the amount of such expenses so apportioned to him, with the request that he pay the same to the county chairman on or before the Saturday before the fourth Monday in June thereafter. It shall be sufficient to meet the requirements of this law to mail by registered letter to the chairman before the deadline herein provided, as shown by the postmark on the letter, a money order, a certified check, or a good personal check. As amended Acts 1955, 54th Leg., p. 1295, ch. 513, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

*Amendment by Laws 1955, 54th Leg., p. 1131, ch. 424, § 1, see art 13.08, ante*

### Art. 13.15. Filing Fees for Certain Offices

(a) No person's name shall be placed on the ballot for a district, county or precinct office who has not paid to the county executive committee the amount of the estimated expense of holding such primary apportioned to him by the county executive committee as hereinbefore provided.

(b) Candidates for United States Senator or for Congressman-at-Large or for Justice of the Court of Civil Appeals and all those who are candidates for State offices to be voted upon by the qualified voters of the whole State, except the office of Lieutenant Governor, shall pay to the chairman of the State Executive Committee five per cent (5%) of one year's salary. Candidates for the office of Lieutenant Governor shall pay to the chairman of the State Executive Committee the sum of Six Hundred Dollars (\$600.00). A candidate who is required to pay a filing fee as herein provided shall not be required to pay any other sum or sums to any other person or committee to have his name placed on the ticket as such candidate. Payment of the fee herein required must be made within three days after the candidate files his application for a place on the ballot and the name of no person who is required to pay a filing fee to the chairman of the State Executive Committee shall be placed on the ballot unless he has paid the fee in accordance with these provisions; but it shall be sufficient to meet the requirements of these provisions to mail a money order, a certified check, or a good personal check to the chairman of the State Executive Committee by registered letter within the time herein stated, as shown by the postmark on the letter.

(c) All sums paid to the chairman of the State Executive Committee by candidates for the office of Justice of the Court of Civil Appeals shall be distributed among the party executive committees of the respective counties making up the district in such equitable manner as may be determined by the State Executive Committee. Candidates for this office shall not be entitled to participate in the distribution of the surplus in the county executive committee's primary fund. The chairman of the State Executive Committee shall certify to the proper county chairmen the names of the candidates for Justice of the Court of Civil Appeals who have paid the filing fee, at the same time that he certifies the names of other candidates under Section 190 of this Code.<sup>1</sup> As amended Acts 1955, 54th Leg., p. 1295, ch. 513, § 2.

<sup>1</sup> Article 13.12.

Effective 90 days after June 7, 1955, date of adjournment.

## CHAPTER FOURTEEN—LIMITING CAMPAIGN EXPENDITURES

## Art. 14.08. Records and Sworn Statement

(b) Each candidate whose name appears on the ballot at a first primary election or a special election and each opposed candidate whose name and whose opponent's name appear on the ballot at a general election shall file a sworn statement, not less than seven (7) nor more than ten (10) days prior to the day of each such election, of all gifts and loans previously received and of all gifts, loans and payments made and all debts incurred and obligations incurred or contracted for future use in behalf of such person's candidacy for office. The statement must include all such gifts, loans, payments, debts and obligations made or incurred, whether before or after the announced or filed candidacy of such person. Not more than ten (10) days after the election the candidate shall also file a supplemental sworn statement of all gifts and loans received prior to the election and of all gifts, loans and payments made and debts and obligations incurred prior to the election not specifically included in the sworn statement filed prior to the election. As amended Acts 1955, 54th Leg., p. 503, ch. 145, § 1.

(c) Each candidate whose name appears on the ballot at a second primary election shall file a similar sworn statement not less than seven (7) nor more than ten (10) days prior to the day of the election and a similar supplemental sworn statement not more than ten (10) days after the day of the election. As amended Acts 1955, 54th Leg., p. 503, ch. 145, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 51—ELEEMOSYNARY INSTITUTIONS

### CHAPTER ONE—GENERAL PROVISIONS

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| <p>Art.<br/>3174b-1. Nonresident patients and students; power of Board to discharge on escape, etc. [New].</p> <p>3174b-2. Medical treatment and services, power to provide without consent of relatives, etc. [New].</p> | <p>Art.<br/>3174b-3. Occupational therapy; equipment; sale of goods produced [New].</p> <p>3183e. Contracts with public schools for education of inmates [New].</p> |
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**Art. 3174b-1. Nonresident patients and students; power of board to discharge on escape, etc.**

The Board for Texas State Hospitals and Special Schools may discharge all nonresident patients and students committed to its care when such patient or student shall have been on escape or furlough for more than thirty (30) days; provided, however, the provisions of this Act shall not apply to any person committed under the provisions of Acts 1937, Forty-fifth Legislature, page 1172, Chapter 466, being codified as Article 932a, Vernon's Code of Criminal Procedure of the State of Texas. Acts 1955, 54th Leg., p. 52, ch. 38, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act providing for authorization for the Board for Texas State Hospitals and Special Schools to discharge any nonresi-

dent patient or student; and declaring an emergency. Acts 1955, 54th Leg., p. 52, ch. 38.

**Art. 3174b-2. Medical treatment and services, power to provide without consent of relatives, etc.**

The Board for Texas State Hospitals and Special Schools, directly or through its authorized agent or agents, shall provide or perform recognized medical treatment or services to persons admitted or committed to its care. Where the consent of any person or guardian is considered necessary, and is requested, and such person or guardian shall fail to immediately reply thereto, the performance or provision for the treatment or services shall be ordered by the superintendent upon the advice and consent of three (3) medical doctors, at least one of whom must principally be engaged in the private practice of medicine. Where there is no guardian or responsible relative to whom request can be made, treatment and operation shall be performed on the advice and consent of three (3) physicians licensed by the State Board of Medical Examiners. This authority shall not allow the performance of any operation involving sexual sterilization or frontal lobotomies. Acts 1955, 54th Leg., p. 86, ch. 54, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

The Act of 1955 contained the following preamble:

**"PREAMBLE OF PUBLIC POLICY**

"It is the sense of the Legislature that laws are insufficient or nonexistent which regulate the duties of the Board for Texas State Hospitals and Special Schools with respect to the performance of operations, surgery, and treatment of persons com-

mitted to the care of such Board; and that this condition causes undue and harmful delay, while the consent of such persons is being secured for such purposes, to the detriment of health and impairment of life of persons being treated in hospitals controlled by the Board for Texas State Hospitals and Special Schools; and that it would be advantageous to have specific authority to perform such services."

**Title of Act:**

An Act permitting the Board for Texas State Hospitals and Special Schools to provide or perform necessary treatment and medical services to persons admitted

or committed to its care without the consent of responsible relatives or guardians in certain cases; and declaring an emergency. Acts 1955, 54th Leg., p. 86, ch. 54.

**Art. 3174b—3. Occupational therapy; equipment; sale of goods produced**

The Board for Texas State Hospitals and Special Schools may furnish equipment, materials, and merchandise at any institution under the control and management of said Board, for occupational therapy programs. The finished goods and products produced in these programs may be sold, and the proceeds thereof may be placed in the patients' benefit fund, patients' trust fund, or a revolving fund for their further use; or the patient may purchase from the State the material to be used and keep the finished product. The Board is authorized to accept donations in money or materials to be used in these programs and may use and expend the donations in the manner requested by the donor, if not contrary to the policy of the Board for Texas State Hospitals and Special Schools. Acts 1955, 54th Leg., p. 1183, ch. 462, § 1.

Emergency. Effective June 15, 1955.  
**Title of Act:**

An Act providing for the furnishing, use, and disposition of equipment, materials, and merchandise for use in occupational

therapy programs; providing for the sale of goods so produced; providing for disposition of funds realized from such sales; and declaring an emergency. Acts 1955, 54th Leg., p. 1183, ch. 462.

**Art. 3183e. Contracts with public schools for education of inmates**

**Section 1.** The Board for Texas State Hospitals and Special Schools may negotiate and enter into contracts with public schools in counties where Special Schools are located to accept and educate inmates of the Special Schools in the public schools. The Board is authorized to pay tuition to the public schools out of any appropriated funds it has available.

**Sec. 2.** Children admitted or committed to the Special Schools may be placed in public schools by the superintendent, and the Special School may pay a reasonable rate for the tuition of such children. Acts 1954, 53rd Leg., 1st C.S., p. 64, ch. 25.

Emergency. Effective April 22, 1954.

**Title of Act:**

An Act to authorize the Board for Texas State Hospitals and Special Schools to contract with public schools in the State of

Texas to educate inmates of Special Schools and to pay tuition to the public schools; and declaring an emergency. Acts 1954, 53rd Leg., 1st C.S., p. 64, ch. 25.

**CHAPTER TWO—STATE HOSPITALS**

**Art.**

**3193—1.** Initial admissions; mode and procedure; Abilene State Hospital excepted [New].

**Art.**

**3201b—1.** Legion State Sanatorium; name changed to Legion Branch of the San Antonio State Tuberculosis Hospital [New].

**Art. 3193—1. Initial admissions; mode and procedure; Abilene State Hospital excepted**

**Section 1.** All persons admitted to a State hospital for the insane or mentally ill for the first time shall be admitted under the provisions of the following Acts, and not otherwise:

1. Acts 1925, page 407, 39th Legislature, Chapter 174, Section 25, being codified as Article 3193g, Vernon's Civil Statutes of the State of Texas;

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

2. As amended, Acts 1943, 48th Legislature, page 251, Chapter 152, Section 1, being codified as Article 3193h, Vernon's Civil Statutes of the State of Texas;

3. Acts 1937, 45th Legislature, page 542, Chapter 268, being codified as Article 3193o—1, Vernon's Civil Statutes of the State of Texas;

4. Acts 1951, 52nd Legislature, page 691, Chapter 398, being codified as Article 3196c, Vernon's Civil Statutes of the State of Texas;

5. Acts 1937, 45th Legislature, page 1172, Chapter 466, being codified as Article 932a, Vernon's Code of Criminal Procedure of the State of Texas.

Sec. 2. All persons committed to a State hospital for the insane or mentally ill for the first time shall be committed under the provisions of the following Acts, and not otherwise:

1. Acts 1937, 45th Legislature, page 542, Chapter 268, being codified as Article 3193o—1, Vernon's Civil Statutes of the State of Texas;

2. Acts 1937, 45th Legislature, page 1172, Chapter 466, being codified as Article 932a, Vernon's Code of Criminal Procedure of the State of Texas.

Sec. 3. Prior to the release of any person committed to a State hospital for the insane or mentally ill under the provisions of Acts 1937, 45th Legislature, page 542, Chapter 268, being codified as Article 3193o—1, Vernon's Civil Statutes of the State of Texas, and prior to the termination of the period of commitment, the superintendent shall cause such person to be examined by his staff; and a certified copy of their opinion and findings as to the mental state of such person shall be mailed to the judge of the committing County Court.

Sec. 3a. This Act shall not apply in any way to the Abilene State Hospital. Acts 1955, 54th Leg., p. 1113, ch. 411.

Effective 90 days after June 7, 1955, date of adjournment.

Section 4 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Title of Act:**

An Act providing for initial admissions to State mental hospitals; providing that

notification as to findings be given County Court; providing that this Act shall not apply in any way to the Abilene State Hospital; providing for partial invalidity; and declaring an emergency. Acts 1955, 54th Leg., p. 1113, ch. 411.

**Art. 3201b—1. Legion State Sanatorium; name changed to Legion Branch of the San Antonio State Tuberculosis Hospital**

Section 1. The name of "Legion State Sanatorium," created by House Bill No. 68, Chapter 30, Acts of the Fifty-third Legislature, Regular Session, 1953,<sup>1</sup> is hereby changed to Legion Branch of the San Antonio State Tuberculosis Hospital.

Sec. 2. All laws heretofore or hereafter enacted by the Legislature applicable or relating to "Legion State Sanatorium" shall hereafter be applicable and relate to Legion Branch of the San Antonio State Tuberculosis Hospital.

Sec. 3. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of "Legion State Sanatorium" shall be available for the use and benefit of Legion Branch of the San Antonio State Tuberculosis Hospital.

Sec. 4. All contracts heretofore entered into in behalf of "Legion State Sanatorium" are hereby ratified, confirmed, and validated for and in behalf of Legion Branch of the San Antonio State Tuberculosis Hospital Acts 1955, 54th Leg., p. 1142, ch. 429.

<sup>1</sup> Article 3201b.

Emergency. Effective June 14, 1955.



## CHAPTER THREE—OTHER INSTITUTIONS

McKNIGHT STATE TUBERCULOSIS  
HOSPITAL

Art.

3238c. McKnight State Tuberculosis Hos-  
pital, name changed to [New].

## AUSTIN STATE SCHOOL

Arts. 3233–3238. Repealed. Acts 1955, 54th Leg., p. 438, ch. 119, § 25,  
eff. Sept. 6, 1955

Mentally Retarded Persons Act, see art.  
3871b.

## McKNIGHT STATE TUBERCULOSIS HOSPITAL

## Art. 3238b. Name

Name changed to McKnight State Tuberculosis Hospital, see art. 3238c.

## Art. 3238c. McKnight State Tuberculosis Hospital, name changed to

Section 1. The name of "McKnight State Sanatorium," created by House Bill No. 373, Chapter 343, Acts of the Fifty-second Legislature, Regular Session, 1951,<sup>1</sup> is hereby changed to McKnight State Tuberculosis Hospital.

Sec. 2. All laws heretofore or hereafter enacted by the Legislature applicable or relating to "McKnight State Sanatorium" shall hereafter be applicable and relate to McKnight State Tuberculosis Hospital.

Sec. 3. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of "McKnight State Sanatorium" shall be available for the use and benefit of McKnight State Tuberculosis Hospital.

Sec. 4. All contracts heretofore entered into in behalf of "McKnight State Sanatorium" are hereby ratified, confirmed, and validated for and in behalf of McKnight State Tuberculosis Hospital. Acts 1955, 54th Leg., p. 18, ch. 15.

<sup>1</sup> Article 3238b.

Emergency. Effective March 1, 1955.

## Art. 3266. 6507–28 General provisions

3. Commissioners shall receive for their services Three Dollars (\$3), for each day they may be engaged in the performance of their duties, except that in counties of over five hundred thousand (500,000) population, according to the last preceding or any future Federal Census, the County Judge shall set the fee of the Commissioners at any amount he may deem reasonable, not less than Ten Dollars (\$10). Commissioners may withhold their decision until their fees are paid. As amended Acts 1955, 54th Leg., p. 537, ch. 166, § 1.

Emergency. Effective May 6, 1955.

**TITLE 54—ESTATES OF DECEDENTS**

**Arts. 3290-3703. Repealed. Acts 1955, 54th Leg., p. 88, ch. 55. § 434.**  
**Eff. Jan. 1, 1956.**

Saving clause and application of Probate Code, see Probate Code § 2.

**Art. 3737d. Repealed. Acts 1955, 54th Leg., p. 860, ch. 323, § 3, eff. May 24, 1955**

From Acts 1949, 51st Leg., p. 49, ch. 28. See art. 3737d-1.

**Art. 3737d-1. Court interpreters in certain judicial districts in counties bordering International Boundary**

**Section 1.** In any county, which is a part of two (2) or more Judicial Districts and in which there are two (2) or more District Courts, having regular terms, one county of said district bordering on the International Boundary between the United States and the Republic of Mexico, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, which said county forms a part of a Judicial District composed of four (4) counties, the Commissioners Court of said county, upon request of the District Judge, or District Judges, after determination by said Judges of the need therefor, shall appoint such court interpreters on a full or part time basis as may be necessary to properly carry out the function of said Courts; that such interpreters shall be well versed in and competent to speak the Spanish language, as well as the English language; and shall each receive a salary as fixed by the Commissioners Court of said county, but not to exceed Forty-eight Hundred Dollars (\$4800) per year, payable in equal monthly payments, out of the General Fund of such county.

**Sec. 2.** The Commissioners Court shall appoint such interpreter or interpreters as shall be designated by the District Judges requesting such appointment. Acts 1955, 54th Leg., p. 860, ch. 323.

Emergency. Effective May 24, 1955.

Section 3 of the Act of 1955, repealed art. 3737d.

**Title of Act:**

An Act providing for the appointment of court interpreters in certain Judicial Dis-

tricts; providing for payment of salaries to such interpreters; repealing Acts, Fifty-first Legislature, 1949, Chapter 28, and other laws in conflict; and declaring an emergency. Acts 1955, 54th Leg., p. 860, ch. 323.

**TITLE 59—FEEBLE MINDED PERSONS—PROCEEDINGS  
IN CASE OF**

Art.

3871a. Return to home county of persons released from state schools for feeble-minded [New].

Art.

3871b. Mentally retarded persons [New].

**Arts. 3867-3871. Repealed. Acts 1955, 54th Leg., p. 438, ch. 119, § 25, eff. Sept. 6, 1955**

Mentally Retarded Persons Act, see art. 3871b.

**Art. 3871a. Return to home county of persons released from state schools for feeble-minded**

Upon determination of a State school for the feeble-minded or mentally retarded that a person who has been committed to its care and custody is no longer in need of special training, special education, treatment, care or control, it shall be the duty of the superintendent to notify the county judge of the county from which such person was committed. It shall be the duty of the county judge, upon receipt of such notification, to provide for the transportation and return of such person to the county from which such person was committed, or to the county where the parents live. Acts 1955, 54th Leg., p. 53, ch. 39, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act providing for the return of persons released from State schools for the

feeble-minded or mentally retarded to the committing county or to the county where the parents live; and declaring an emergency. Acts 1955, 54th Leg., p. 53, ch. 39.

**Art. 3871b. Mentally retarded persons**

**Short Title**

Section 1. This Act may be referred to as "The Mentally Retarded Persons Act".

**Purpose**

Sec. 2. It is the purpose of this Act to afford mentally retarded Texas citizens an opportunity to develop to the fullest practicable extent their respective mental capacities.

**Definitions**

Sec. 3. As used in this Act:

(1) "Mentally retarded person" means any person, other than a mentally ill person, so mentally deficient from any cause as to require special training, education, supervision, treatment, care or control for his own or the community's welfare.

(2) "Texas citizen" means a person who has resided in this State for at least twelve months next preceding the date on which determination is made of whether he is a Texas citizen, or a minor whose parent or guardian has been domiciled in Texas for a like period.

(3) "Board" means the Board for Texas State Hospitals and Special Schools.

(4) "Department" means the State Department of Public Welfare.

#### Admission

Sec. 4. Mentally retarded persons shall be admitted to the jurisdiction of the Board by the procedures prescribed in this Act. The judicial procedure for admission established by this Act may be used in all cases. The administrative procedure established by this Act may be used only in certain cases. Nothing herein shall be held to affect or repeal the provisions of any law now existing relating to the appointment of guardians of insane persons or persons of unsound mind. No Texas citizen alleged to be mentally retarded shall be admitted to the jurisdiction of the Board as a mentally retarded person until he has been examined at a diagnostic center of the Board or a diagnostic center approved by the Board.

#### Judicial Procedure for Admission

Sec. 5. The county court shall have original jurisdiction of all judicial proceedings for admission of mentally retarded persons to the jurisdiction of the Board. The county courts shall be deemed to be in session at all times for the disposition of these cases. In all applications for judicial admissions any interested person may demand a jury, or the judge of the court on his own motion may order a jury. Any person interested in the application has the right to appear and be represented by counsel.

#### Application for Admission

Sec. 6. Any person in the county of residence of an alleged mentally retarded person may file with the county clerk of that county an application to have the alleged mentally retarded person declared mentally retarded and admitted to the jurisdiction of the Board. The application shall be under oath. Upon the filing of the application the county judge shall set a date for a hearing on the application. The parents or spouse or guardian or nearest relative of the person alleged to be mentally retarded shall be served with a notice of the time and place of the hearing together with a brief statement of the matters stated in the application. If no parent or spouse or guardian or relative of the alleged mentally retarded person can be found, the court shall appoint an attorney to represent the person alleged to be mentally retarded and the notice shall be served upon the attorney.

#### Hearing

Sec. 7. The hearing of the application may be either in the courthouse or at the residence of the alleged mentally retarded person, or that of his parents or spouse or guardian or nearest relative, or at any other place in the county the county judge may regard as best for the welfare of the person alleged to be mentally retarded. It shall be the duty of the county attorney when requested by the court to appear at the hearing on behalf of the person making the application. An affidavit of the person in charge of the examination of the alleged mentally retarded person at the diagnostic center setting forth the conclusions reached as a result of the examination is admissible in evidence at the hearing. The court shall cause this affidavit to be introduced in evidence at the hearing, and shall not render judgment in the matter unless this evidence is available and introduced.

#### Order

Sec. 8. If the person alleged to be mentally retarded is found to be mentally retarded, the court shall enter an order declaring that fact and that the person is admitted to the jurisdiction of the Board. The judge shall cause to be prepared a transcript of the proceedings and evidence, all of which he shall certify to be correct, and shall transmit the same to the Board. If facilities are available for the reception of the mentally re-

tarded person, the Board through its authorized agents shall notify the county judge concerned. The county judge shall arrange to send the mentally retarded person to any institution the Board shall designate.

#### **Voluntary Admission for Special Training**

Sec. 9. The administrative procedure of voluntary admission for special training only may be used where a written request for admission of the person alleged to be mentally retarded is received by the Board from the parent or spouse or guardian of the person of the alleged mentally retarded person, if one has been appointed.

When the written request is received by the Board, the Board shall set the matter for hearing and determination. The results of the examination at a diagnostic center of the Board or a diagnostic center approved by the Board and whose diagnosis has been accepted in writing by the Board must be introduced at the hearing. Other evidence may be gathered if necessary. The parents, spouse or guardian of the alleged mentally retarded person shall be given reasonable notice of the time and place of the hearing and a fair opportunity to be heard. The Board shall enter written findings and conclusions in admitting or denying the person admission to its jurisdiction for special training only.

#### **Order of Admission**

Sec. 10. In determining the order in which eligible persons are admitted to its available facilities the Board shall consider the following factors:

- (1) The relative need of the person for special training, education, supervision, treatment, care or control;
- (2) The impact of the person upon the community; and
- (3) The ability of the person's family to assimilate him effectively into family life.

The provisions of this section shall apply to both judicial and administrative admissions under this Act.

#### **Attendance in Public Schools**

Sec. 11. Eligibility of a mentally retarded person for admission to the Board's jurisdiction or previous admission to the Board's jurisdiction and subsequent furlough or discharge does not disqualify that person from admission to special education classes in the public schools if the mentally retarded person is of school age and can profit from the course of instruction offered in public school special education classes.

#### **Facilities for Mentally Retarded**

Sec. 12. The Board shall maintain facilities for mentally retarded persons under its jurisdiction. It may designate the institution in which any mentally retarded person under its jurisdiction is placed, and may designate any institution or part thereof under its management and control as a special facility for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons. The Austin State School and its branches are hereby expressly continued as State facilities under the management and control of the Board. The Board shall be authorized to maintain in the Austin State School and its branches, and in other special schools under its supervision, day classes for the convenience and benefit of the mentally retarded persons of the communities in which such schools are located when such mentally retarded persons are not capable of being enrolled in regular or special classes of the public school system of such communities.

### Diagnosis

Sec. 13. The Board shall establish and maintain diagnostic centers in its own institutions. It may approve as diagnostic centers facilities operated by public or private agencies. The Board shall prescribe by regulation the requirements for approval of diagnostic centers not its own. Diagnosis from approved diagnostic centers, when accepted in writing by the Board, shall be equal to diagnosis made by the Board in its own diagnostic centers. The State shall charge for the services rendered in its diagnostic centers, but if the person seeking the services, or his parents, or spouse or guardian are unable to pay the charges the Board shall nevertheless provide the services.

Texas citizens may be admitted to diagnostic centers of the Board or to approved diagnostic centers under regulations to be prescribed by the Board.

After a person alleged to be mentally retarded is examined at a diagnostic center of the Board, or at an approved diagnostic center and the diagnosis of the person made at the approved diagnostic center is accepted in writing by the Board, the Board, through its authorized agents, may if it desires and the diagnosis warrants:

(1) Inform the county judge of the person's county of residence that the person is eligible for admission to the jurisdiction of the Board as a mentally retarded person and forward to the county judge a copy of the findings and diagnosis. In this case the mentally retarded person's parents or spouse or guardian shall likewise be notified of the person's eligibility; or

(2) Inform the parents, or spouse or guardian or responsible relative of the person that the person is eligible for admission to the jurisdiction of the Board for the purpose of receiving special training only. Admission for special training only is to be made under Section 9 of this Act; or

(3) Inform the parents or guardian of the person that the person should be placed in a special education class in the public schools; or

(4) Inform the parents or spouse or guardian of the person of the results of the examination and any recommendations of the staff conducting the examination and rendering the diagnosis.

### Research

Sec. 14. The Board may, with funds available for such purpose from any source, contract with any public or private agency in research and study of the causes, treatment and alleviation of mental retardation or mental illness.

### Employment

Sec. 15. When the Board determines that a mentally retarded person under its jurisdiction may profit from being placed on furlough in a work situation, the Board may place this person in employment. The Texas Employment Commission and the Department may cooperate with the Board in the administration of the employment program. The Board shall regulate the terms of the employment and shall supervise the mentally retarded persons so employed.

### Discharge and Furlough

Sec. 16. All mentally retarded persons admitted to the jurisdiction of the Board shall remain under its control until discharged. Where the Board determines that a mentally retarded person admitted to its jurisdiction is no longer in need of special training, education, supervision, treatment, care or control, the Board may discharge the person. Where

the only basis for the Board's jurisdiction over a person is that he is a mentally retarded person and it is found that he is not a mentally retarded person, the Board shall discharge him. The Board may furlough any mentally retarded person admitted to its jurisdiction to that person's parents or spouse or guardian or relatives or other suitable persons for such periods and under such conditions as the Board may prescribe. Persons of school age placed on furlough are eligible to attend public school special education classes if they can profit from the course of instruction offered in public school special education classes.

#### **Foster Home Care**

Sec. 17. When the Board determines that the welfare of any mentally retarded person under its jurisdiction requires that the person be placed in a foster home for care, the Board shall notify the State Department of Public Welfare. The Department shall endeavor to place the mentally retarded persons referred to it by the Board in suitable foster homes. The owners or operators of approved foster homes shall be instructed by the Department in the matters necessary to insure proper care for the mentally retarded persons.

The Department may render other field and staff services to the Board in a foster home care program. Unless the cost to the Department for services to the Board is provided for by funds expressly appropriated for that purpose, the Board shall reimburse the Department for services rendered under the provisions of the Interagency Cooperation Act, Acts 1953, 53rd Legislature, Chapter 340.<sup>1</sup>

The Board may pay the person or organization furnishing foster home care to any person under this Act a reasonable sum for the care furnished to mentally retarded persons within the limitations of the biennial appropriation Act. The rights of the Board to collect for support, maintenance and treatment of mentally retarded persons admitted to its jurisdiction shall not be affected by the provisions of this section.

<sup>1</sup> Article 4413(32).

#### **Absences**

Sec. 18. Any mentally retarded person under the jurisdiction of the Board who is absent from his assigned institution, foster home, employment or special school without permission from the proper authority may be detained by any peace officer. Upon the order of the superintendent of the institution to which the person was assigned or from which he was furloughed any peace officer having custody of the absent person shall return the person to the institution or cause him to be returned.

#### **Cooperation with Other Agencies**

Sec. 19. The Board shall at all times seek to utilize the most promising and useful methods for the education and training of the mentally retarded. It shall utilize the services and findings of other State and Federal agencies.

#### **Rules and Regulations**

Sec. 20. The Board shall establish rules and regulations to enable its personnel to carry out the provisions of this Act; provided, however, that all such rules and regulations shall be approved by and filed with the Attorney General of the State of Texas.

#### **Support and Maintenance**

Sec. 21. The parents, spouse, and the estate of a mentally retarded person admitted to the jurisdiction of the Board shall pay, if able to do so, for the support, maintenance and treatment of the person while under the jurisdiction of the Board. The rates for support, maintenance and treat-

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ment shall be established by the Board and shall not exceed the actual cost of support, maintenance and treatment. The Board shall not include in this cost the cost of education provided by the Board to mentally retarded children which in the case of children of school age being trained and educated by the Board is the substitute for education generally provided in the public schools.

#### Persons Previously Committed

Sec. 22. Persons admitted or committed to the Austin State School or any other institution under the jurisdiction of the Board as feeble minded, under laws previously in force, may be retained under the jurisdiction of the Board. The provisions of this Act shall apply to such persons as far as they may be applicable.

#### Severability

Sec. 23. If any provision of this Act or the application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

#### Savings Clause

Sec. 24. The repeal of any statute by this Act shall not affect or impair any act done, right existing or accrued, or conveyance made under the authority of the law repealed; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right or conveyance. Proceedings begun before the effective date of this Act under prior provisions of the law relating to persons who would be deemed mentally retarded under this Act shall not be affected by the provisions of this Act. Acts 1955, 54th Leg., p. 438, ch. 119.

Emergency. Effective September 6, 1955.

Section 25 of the Act of 1955 repealed articles 3233-3238, 3867-3871.

#### Title of Act:

An Act concerning mentally retarded persons and their diagnosis, admission, special training, education, supervision, treatment and maintenance under State

auspices; giving certain duties and powers to the Board for Texas State Hospitals and Special Schools and the State Department of Public Welfare; repealing Articles 3233, 3234, 3235, 3236, 3237, 3238, 3867, 3868, 3869, 3870, 3871 of the Revised Civil Statutes of 1925; and declaring an emergency. Acts 1955, 54th Leg., p. 438, ch. 119.



## TITLE 61—FEES OF OFFICE

## CHAPTER ONE—GENERAL PROVISIONS

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| <p>Art.<br/>3883h. Maximum compensation on fee basis of certain officers; counties of less than 20,000 [New].</p> <p>3883i. Maximum and minimum salaries; certain precinct, county and district officials in certain counties [New].</p> <p>3902h—2. Chief deputy assessor and collector in counties over 150,000 [New].</p> | <p>Art.<br/>3912e—4d. Counties of 500,000 or more, district, county and precinct officers, deputies and employees [New].</p> <p>3912e—5a. Additional compensation for county judge of Bexar county as member of Juvenile Board [New].</p> <p>3912e—5b. Additional compensation to Lubbock County Judge as member of Juvenile Board [New].</p> |
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**Art. 3883. 3881 to 3883 Maximum fees**

*Article 3883, as amended, is repealed in so far as the provisions of Acts 1955, 54th Leg., p. 1134, ch. 426 (article 3883h, post), are applicable to the officers named in such Act. See article 3883h, § 6, post.*

Justice of the peace in county containing main unit of Texas Prison System, see art. 3936d.

**Art. 3883h. Maximum compensation on fee basis of certain officers; counties of less than 20,000**

**Counties to which applicable; authority of commissioners courts; sheriffs excepted**

Section 1. In all counties in this State having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census and in which counties the Commissioners Courts have determined that the county officials shall be compensated on a fee basis, with the exception of the sheriffs whom Section 61, of Article XVI of the Constitution of Texas requires shall be compensated on a salary basis, the Commissioners Courts are authorized to fix the maximum compensation of the county and district officials compensated on a fee basis at any reasonable sum so long as the maximum compensation allowed any county official named in this Act shall not exceed the sum of Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum.

**Ex-officio services**

Sec. 2. The Commissioners Courts are hereby debarred from allowing compensation for ex-officio services to the officials named in this Act who are compensated on a fee basis when the compensation, commissions and fees which they are allowed to retain shall reach the maximum sum provided for in Section 1 of this Act. In cases where the compensation, commissions and fees which the officers compensated on a fee basis are allowed to retain shall not reach the maximum provided for in this Act, the Commissioners Courts may allow ex-officio compensation when in their judgment such compensation is necessary, providing such compensation for ex-officio services allowed shall not increase the compensation of the officials beyond the maximum compensation allowed to be retained under Section 1 of this Act. However, county judges serving as members of the

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Juvenile Board, county judges acting as ex-officio county superintendents and county assessors and collectors of taxes serving as designated agents of the Motor Vehicle Division of the State Highway Department shall be entitled to retain the compensation provided by law for these services in addition to the maximum prescribed in Section 1 of this Act.

#### County commissioners

Sec. 3. Since the County Commissioners do not collect any fees or commissions for the officials' services performed by them, the Commissioners Courts are hereby authorized to set their compensation at any reasonable sum so long as the maximum compensation allowed any County Commissioner does not exceed the sum of Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum. The compensation of the County Commissioners may be paid in accordance with the provisions of Section 2 of House Bill No. 84, Acts of the Forty-ninth Legislature, Regular Session, 1945 (Article 2350(1), Vernon's Civil Statutes).

#### Sheriffs' salaries, duty to fix

Sec. 4. In all counties in this State having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census where the Commissioners Courts have elected to pay all the county officials on a fee basis, with the exception of the sheriffs whom Section 61 of Article XVI of the Constitution of Texas requires to be paid on a salary basis, the Commissioners Courts shall fix the salaries of sheriffs in such counties at any reasonable sum so long as the maximum salary paid any sheriff does not exceed the sum of Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum. The salary of each sheriff shall be paid out of the General Fund of such county.

#### Application of article to certain officers

Sec. 5. The provisions of this Act shall be applicable to District Clerks, County Clerks, County Judges, Judges of the County Courts at Law, Judges of the County Criminal Courts, Judges of the County Probate Courts, Judges of the County Domestic Relations Courts, County Treasurers, Criminal District Attorneys, Inspectors of Hides and Animals, Sheriffs, Assessor-Collectors of Taxes, County Attorneys, County Commissioners, Sheriffs who also perform the duties of Assessor-Collectors of Taxes, County Clerks who also perform the duties of District Clerks, and County Commissioners who act as Road Commissioners.

#### Repealer

Sec. 6. Articles 3883 and 3891, Revised Civil Statutes of Texas, 1925, as amended, are hereby expressly repealed in so far as their provisions are applicable to the officers named in this Act, and all other laws pertaining to the compensation of the county officials governed by the provisions of this Act are hereby expressly repealed with the exception of those laws which provide for extra compensation of county judges who serve as members of the Juvenile Boards, county judges who also serve as ex-officio county superintendents and for assessors and collectors of taxes who also serve as designated agents for the Motor Vehicle Division of the State Highway Department. The provisions of this Act shall not be construed as repealing any valid Road and Bridge Law of any county in this State.

#### Financial condition of county to be considered

Sec. 7. In arriving at the compensation to be paid the officials governed by the provisions of this Act, the Commissioners Courts shall consider the financial condition of their respective counties and the duties and

needs of their officials, but in no event shall any Commissioners Court set the compensation of any official at any figure in excess of the maximum compensation prescribed for the officials of that county by this Act.

**Commissioners Courts, fixing salaries of; restrictions**

Sec. 8. In setting the compensation of the officials named in the provisions of this Act, the Commissioners Courts shall not set their own salaries at a figure higher than the compensation of the highest paid official within their respective counties. Acts 1955, 54th Leg., p. 1134, ch. 426.

Emergency. Effective June 14, 1955.

Section 9 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 3883i. Maximum and minimum salaries; certain precinct, county and district officials in certain counties**

**Counties of less than 20,000; county and district officials**

Section 1. In each county in the State of Texas having the population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census where all county and district officials are compensated on a salary basis, the Commissioners Courts shall fix the salaries of the officials named in this Act at not more than Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Counties of 20,000 to 46,000**

Sec. 2. In each county in the State of Texas having a population of at least twenty thousand (20,000) and not more than forty-six thousand (46,000) inhabitants according to the last preceding Federal Census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Eight Thousand, Five Hundred Dollars (\$8,500) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Counties of 46,001 to 98,000**

Sec. 3. In each county in the State of Texas having a population of at least forty-six thousand and one (46,001) and not more than ninety-eight thousand (98,000) inhabitants according to the last preceding Federal Census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Ten Thousand Dollars (\$10,000) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Counties of 98,001 to 195,000**

Sec. 4. In each county in the State of Texas having a population of at least ninety-eight thousand and one (98,001) and not more than one hundred and ninety-five thousand (195,000) inhabitants according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the county and district officials named in this Act at not more than Eleven Thousand Dollars (\$11,000) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Counties of 195,001 to 600,000**

Sec. 5. In each county in the State of Texas having a population of at least one hundred, ninety-five thousand and one (195,001) inhabitants

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and less than six hundred thousand (600,000) inhabitants according to the last preceding Federal Census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Twelve Thousand Dollars (\$12,000) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Officials to which statute applies**

Sec. 6. The provisions of Sections 1, 2, 3, 4 and 5 of this Act shall be applicable to district clerks, county clerks, county judges, judges of the county courts at law, judges of the county criminal courts, judges of the county probate courts, judges of the county domestic relations court, county treasurers, criminal district attorneys, inspectors of hides and animals, sheriffs, assessors and collectors of taxes, county attorneys, county commissioners, sheriffs who also perform the duties of assessor-collector of taxes, county clerks who also perform the duties of district clerks, and county commissioners who act as road commissioners.

**County commissioners; restrictions on fixing maximum of salaries for**

Sec. 7. In setting the compensation of the officials governed by Sections 1, 2, 3, 4, 5 and 6 of this Act, the County Commissioners shall not fix their own salaries at any higher rate by percentage than the highest percentage raise fixed for any other official or officials prescribed for the officials of their respective counties by this Act.

**Counties of 600,000 or more; enumeration of salaries and restrictions**

Sec. 8. In all counties of this State having a population of six hundred thousand (600,000) or more inhabitants according to the last preceding Federal Census, the Commissioners Court of such counties shall fix the salaries of county officials in the following manner:

The salary of the County Judge shall be Fifteen Thousand Dollars (\$15,000) per annum; the County Commissioners, Twelve Thousand Dollars (\$12,000); Criminal District Attorney and District Attorney, not less than Ten Thousand Dollars (\$10,000) nor more than Thirteen Thousand, Five Hundred Dollars (\$13,500); County Attorney, Probate Judge, Sheriff, County Clerk, District Clerk and Tax Assessor and Collector, any amount not less than Ten Thousand Dollars (\$10,000) nor more than Twelve Thousand, Eight Hundred Dollars (\$12,800); Judges of the County Courts at Law and County Criminal Courts, not less than Ten Thousand Dollars (\$10,000) nor more than Twelve Thousand Dollars (\$12,000); each of such salaries shall be payable in equal monthly installments; provided, however, that the total salary received by the Tax Assessor-Collector, including all additional fees and compensation shall not exceed Fourteen Thousand, Eight Hundred Dollars (\$14,800) per annum in the aggregate.

**Counties of 600,000 or more; justices of peace and constables**

Sec. 9. In all counties of this State having a population of six hundred thousand (600,000) or more inhabitants according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the Justices of the Peace and the Constables at not to exceed Ten Thousand Dollars (\$10,000) per annum, to be paid in equal monthly installments; provided, however, that the Justices of the Peace and Constables whose precincts lie wholly or in part in cities having a population of four hundred and thirty thousand (430,000) or more, according to the last preceding Federal Census, shall receive not less than Eight Thousand, Two Hundred Dollars (\$8,200) per annum.

**Counties of 600,000 or more; Judges of district courts**

Sec. 10. In all counties of this State having a population of six hundred thousand (600,000) or more inhabitants according to the last preceding Federal Census, the Judges of the several District Courts in such counties shall each receive for all judicial and administrative services required of them an annual salary of Fifteen Thousand Dollars (\$15,000). The difference in the amount of salary paid to each of such District Judges by the State of Texas and the total annual salary of Fifteen Thousand Dollars (\$15,000) shall be paid out of the general fund of said counties in equal monthly installments. Any District Judge of the State who may be assigned to sit for the Judge of any District Court in such counties under the provisions of Article 200-A, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount to be set by the Commissioners Court not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by District Judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding Judge in which said Court is located.

**Repeal of certain laws**

Sec. 11. All other salary and compensation laws applicable to the compensation of the officials named in this Act are hereby repealed with the exception of those laws which provide for extra compensation for county judges who serve as members of the juvenile boards and for county judges who also serve as ex-officio county superintendents, and providing further that this Act shall not repeal any statute which allows the assessors and collectors of taxes additional or supplemental salaries for services performed in the administration of the Certificate of Title Act. Further, the provisions of this Act are not to be construed as repealing any valid road and bridge law of any county in this State.

**Source of salary payments**

Sec. 12. The salaries of the officials named in this Act shall be paid out of the Officers' Salary Fund and/or General Fund of their respective counties with the exception that the salaries of county commissioners and county judges may be paid in accordance with the provisions of Section 2 of House Bill No. 84, Acts of the Forty-ninth Legislature, Regular Session, 1945 (Article 2350(1) of Vernon's Civil Statutes).

**Financial condition of county to be considered**

Sec. 13. In arriving at the compensation to be paid the officials governed by the provisions of this Act the Commissioners Courts shall consider the financial condition of their respective counties and the duties and needs of their officials, but in no event shall any Commissioners Court set the salary of any official at a figure in excess of the maximum compensation prescribed for the officials of that county by this Act.

**Fees and commissions earned; payment into county treasury**

Sec. 14. All of the fees and commissions earned and collected by the officials named in this Act shall be paid into the County Treasury in accordance with the provisions of Section 61 of Article XVI of the Constitution of Texas.

**Exercise of authority by commissioners courts; meetings; notice**

Sec. 15. The Commissioners Court shall not exercise the authority vested in said Court by virtue of this Act, except at regular meeting of said Court and after ten (10) days notice published in a paper of general cir-

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ulation in the county to be affected thereby of the intended salaries to be raised and the amount of such proposed raise. Acts 1955, 54th Leg., p. 1137, ch. 427.

Effective 90 days after June 7, 1955, date of adjournment.

Section 16 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

#### Art. 3886f. Compensation of district attorneys

Section 1. From and after September 1, 1955, in all judicial districts of this State, the district attorney in each such district shall receive from the State as pay for his services the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) per year. Such salary shall be paid in twelve (12) equal monthly installments upon warrants drawn by the Comptroller of Public Accounts upon the State Treasury. Provided that this Act shall not be construed as repealing any Act which allows the district attorneys travelling expenses or any other allowances. As amended Acts 1955, 54th Leg., p. 871, ch. 329, § 1.

Sec. 3a. This Act<sup>1</sup> shall not repeal any Act which permits or requires any county in this State to pay its district attorney any supplemental or additional salary out of the county funds. Acts 1955, 54th Leg., p. 871, ch. 329, § 2.

<sup>1</sup> Acts 1955, 54th Leg., p. 871, ch. 329, amending section 1 of this article.

Effective 90 days after June 7, 1955, date of adjournment.

Section 3 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict.

#### Art. 3891. 3889 Disposition of fees, increase of compensation of officers

*Article 3891, as amended, is repealed in so far as the provisions of Acts 1955, 54th Leg., p. 1134, ch. 426 (article 3883h, post), are applicable to the officers named in such Act. See article 3883h, § 6, post.*

#### Art. 3902h—2. Chief deputy assessor and collector in counties over 150,000

Section 1. The assessor and collector of taxes in each county of this State having a population of one hundred and fifty thousand (150,000) inhabitants or more is authorized to appoint two chief deputies to assist him in carrying out the duties of his office. One chief deputy shall be known as the chief deputy assessor and the other chief deputy shall be known as the chief deputy collector. Each chief deputy shall be entitled to the compensation provided by law for the chief deputy to the tax assessor and collector.

Sec. 2. This Act shall be cumulative of all other laws relating to the appointment of deputies for the tax assessor and collector in counties having a population of one hundred and fifty thousand (150,000) inhabitants or more and the method of appointing such deputies shall be governed by existing laws. Acts 1955, 54th Leg., p. 518, ch. 154.

Emergency. Effective May 6, 1955.

##### Title of Act:

An Act authorizing the appointment of two chief deputies for the assessor and collector of taxes in each county of this State having a population of one hundred and fifty thousand (150,000) inhabitants

or more, to be known as the chief deputy assessor and the chief deputy collector; providing for their compensation and method of appointment; providing that this Act shall be cumulative of existing laws; and declaring an emergency. Acts 1955, 54th Leg., p. 518, ch. 154.

**Art. 3912e. Method of compensation of district and certain designated county and precinct officers**

**Provision applicable to counties in excess of 190,000**

**Sec. 19.**

(q) Each district, county, and precinct officer, at the close of each fiscal year (December 31st), shall make to the district court of such county a sworn statement in triplicate (on forms designed and approved by the State Auditor), a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within fifteen (15) days after the same has been filed in his office, and one (1) copy shall be filed with the county auditor. Said report shall show the amount of all fees, commissions, and compensations whatever earned by said officer during the fiscal year; and the amount of fees, commissions, and compensations collected by him during the fiscal year and their disposal. Said report shall contain an itemized statement of all fees, commissions, and compensations earned during the fiscal year which were not collected, together with the style of the case and number, the name of the party owing said fees, commissions, and compensations, the nature of the security for costs, and the reason for non-collection. Said report shall show the names of the deputies and assistants employed by him during the year, the time served, and the amount paid or to be paid each. Said reports shall be filed not later than February 1, following the close of the fiscal year. For failure to file said report said officer shall be subject to removal from office. The county auditor shall audit such report and file his report with the Commissioners Court, and said county auditor also shall prepare and file with the district or criminal district attorney a detailed report of all fees, commissions, and compensations uncollected which have been due and payable to any officer of the county for a period of more than six (6) months; and a similar report of all fees, commissions, and compensations collected by said officers and not reported by them and a list of cases filed since January 1, 1936, in which any county or district clerk or justice of the peace has not taken adequate security for costs or required a pauper's oath. It shall be the duty of the district or criminal district attorney to institute proceedings for the collection of such fees, commissions, and compensations, all of which are declared to be the property of the county and shall be deposited in the general fund. As amended Acts 1955, 54th Leg., p. 598, ch. 205, § 1.

Emergency. Effective May 12, 1955.

**Art. 3912e—4d. Counties of 500,000 or more; district, county and precinct officers, deputies and employees**

**Salaries fixed by Commissioners Court**

**Section 1.** In all counties in this State having a population of five hundred thousand (500,000) or more according to the last preceding Federal Census, the Commissioners Court of such counties shall fix the salaries of county officials in the following manner:

**Counties of 500,000 to 600,000**

**Sec. 2.** In all counties in this State having a population of five hundred thousand (500,000) but not exceeding six hundred thousand (600,000) according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the County Judge, Sheriff, County Clerk, District or Criminal District Attorney, Tax Assessor-Collector and District Clerk at Ten Thousand, Eight Hundred Dollars (\$10,800) per

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annum; the Judges of the County Courts at Law at Nine Thousand, Six Hundred Dollars (\$9,600) per annum; the County Commissioner at Eight Thousand, Four Hundred Dollars (\$8,400) per annum; and the County Treasurer at Eight Thousand, Two Hundred Dollars (\$8,200) per annum. As amended Acts 1954, 53rd Leg., 1st C.S., p. 92, ch. 42, § 1.

Emergency. Effective April 22, 1954.

Section 2 of the amendatory act of 1954 read as follows: "Sec. 2. The Commissioners Court in such counties is hereby authorized and shall amend the present order of said Court fixing the maximum salary of said County Clerk and to amend the budget for the fiscal year, 1954, from and at the effective date of this Act for

the balance of the said fiscal year in order to grant any increases in salaries authorized by this Act. Provided, however, that nothing except as herein provided shall be construed as in any manner modifying or changing the provisions of the present rule or any amendments thereto provided for the preparation of the County Budget."

#### Art. 3912e—5a. Additional compensation for county judge of Bexar county as member of Juvenile Board

Section 1. The County Judge of Bexar County, Texas, may be allowed the additional compensation of Fifteen Hundred Dollars (\$1,500) per annum for serving as a member of the County Juvenile Board which shall be paid in twelve (12) equal monthly installments out of the general fund of such county.

Sec. 2. This Act shall be cumulative of the existing laws and shall not be construed as repealing any law fixing the compensation of the County Judge of Bexar County, Texas. Acts 1955, 54th Leg., p. 736, ch. 266.

Emergency. Effective May 18, 1955.

##### Title of Act:

An Act providing for additional compensation for the County Judge of Bexar county for serving as a member of the County Juvenile Board; naming the fund

out of which the additional compensation shall be payable; providing that this Act shall be cumulative of existing laws; providing for a severability clause; and declaring an emergency. Acts 1955, 54th Leg., p. 736, ch. 266.

#### Art. 3912e—5b. Additional compensation to Lubbock County Judge as member of Juvenile Board

Section 1. The County Judge of Lubbock County, Texas, may be allowed the additional compensation of Fifteen Hundred Dollars (\$1500) per annum for serving as a member of the County Juvenile Board which shall be paid in twelve (12) equal monthly installments out of the General Fund of such County.

Sec. 2. This Act shall be cumulative of the existing laws and shall not be construed as repealing any law fixing the compensation of the County Judge of Lubbock County, Texas. Acts 1955, 54th Leg., p. 1238, ch. 495.

Emergency. Effective June 22, 1955.

Section 3 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

##### Title of Act:

An Act providing for additional compensation for the County Judge of Lubbock County for serving as a member of the

County Juvenile Board; naming the fund out of which the additional compensation shall be payable; providing that this Act shall be cumulative of existing laws; providing for a severability clause; and declaring an emergency. Acts 1955, 54th Leg., p. 1238, ch. 495.



## CHAPTER TWO—ENUMERATION

## Art. 3918. 3842, 2441, 2376 Land Commissioner

The Land Commissioner is authorized and required to charge, for the use of the State, the following fees:

## FILING FEES

Deed transferring one tract of land or a decree of court relating to one tract of land—for each file affected	\$ 1.00
Affidavit of Ownership	1.00
Original Field Notes	1.00
Transfer or Relinquishment of each Mineral Award, Mineral Prospect Permit, Grazing Lease, or Mineral Lease or part thereof, except those transfers subject to 10¢ per acre transfer fees, and those Relinquishments subject to \$1.00 per area relinquishment fees	\$ 1.00
Transfer or Relinquishment of Mineral Leases or parts thereof, which transfers are subject to 10¢ per acre transfer fees, and which Relinquishments are subject to \$1.00 per area relinquishment fees	1.00
Certificates of Facts involving examination of one file	3.00
Each additional file	1.00
Each other certificate not otherwise provided for	2.00

## CERTIFIED PHOTOSTATIC COPIES

Certificate of the class of Toby Scrip	2.50
All other Land Certificates	1.00
Applications for Survey	1.50
Field Notes, 2 pages or less	1.50
Each additional page of field notes	.50
Certificate of Correction	1.00
Surveyors' Report 50¢ per page, provided no charge shall be less than	1.00
Mineral Application	1.50
Vacancy Application	2.00
Mineral Permit or Mineral Lease	2.50
Purchase Application and Obligation	1.50
Purchase Application, surveyed land	1.00
Obligation for Deferred Payment on Land	1.00
File Wrapper	1.00
Proof of Occupancy	1.50
Deed, Bond for Title, Power of Attorney, Decree of Court or other similar instrument, 4 pages or less	2.50
Each additional page	.50
Patent	1.50
Deed of Acquittance	1.50
Affidavit of Settlement, Non-settlement and Rebuttal Affidavits, each	1.00
Other Affidavits	1.50
Grazing Lease Application or Contract	1.50
Letters and Impressions of Letters	1.00
Extract of Muster Roll, Traveling Land Board Reports, Clerk's returns relating to Land Certificates, Patent Delivery Books, School Land Sales, records and books and other similar records, each	2.50

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

Copy of any record, document or papers in the English language not otherwise provided for herein, 50¢ per page, provided that no charge shall be less than \$ 1.00

Plain or certified copy of any other paper, document or record in any other language than the English, 50¢ per page, provided no charge shall be less than 1.00

Veterans Purchase Contract	2.00
Veterans Title Policy	1.50
Title Opinions, 2 pages or less	1.00
Each additional page	.50

#### MAPS

Blue Print, White Print, or other Cloth Map of any county	\$ 6.00
Blue or White Print Paper Map of any county	3.00
Blue Print, White Print, or other Cloth Map of an inland bay	7.00
Blue or White Print Paper Map of an inland bay	3.50
Blue Print, White Print, or other Cloth Map of Gulf of Mexico	10.00
Blue or White Print Paper Map of Gulf of Mexico	5.00
Certificate on either Cloth or Paper Map	1.00

Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch, the fee shall be determined by the amount of material used and the time consumed, at the rate of, per hour 2.00

When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one person or where search is necessary to compile information, minimum fee to be charged of \$1.00; and if the information is extended beyond thirty minutes, an additional sum shall be charged at the rate of, per hour (except where examination is for the purpose of purchasing copies) 2.00

#### MAPS and SKETCHES

18" x 10"	1.00
18" x 12"	1.25
18" x 15"	1.50
18" x 20"	2.00
18" x 24"	2.50

#### SPANISH TRANSLATIONS

Translation of any Spanish document such as Titles and field notes, 2¢ per word, provided that no charge shall be less than	5.00
Certificate of Facts concerning Spanish Titles	5.00

#### PATENT AND DEED OF ACQUITTANCE FEES

Patent Fee	10.00
Deed of Acquittance Fee	10.00

As amended Acts 1955, 54th Leg., p. 1120, ch. 416, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 67—FISH, OYSTER, SHELL, ETC.

## CHAPTER TWO—FISH AND OTHER MARINE LIFE

**Art.**  
4026b. Sabine River; upper portion dis-  
closed non-navigable; hunting  
and fishing rights; title of State  
not divested [New].

**Art.**  
4032c. Residents over 65 and persons un-  
der 16 exempt from hunting and  
fishing license requirements  
[New]

**Art. 4026b.** Sabine River; upper portion declared non-navigable; hunt-  
ing and fishing rights; title of State not divested

That portion of the Sabine River located between its source and its juncture with the east boundary line of Hunt County shall hereafter be considered not a navigable stream, anything in Article 5302, Revised Civil Statutes of Texas, to the contrary notwithstanding; provided, however, that this Act is not intended in any way to divest the State of Texas of whatever title it may have to the bed or waters of said stream; and provided that the above described upper portion of said stream shall only be considered non-navigable, as a result of this Act, in so far as all hunting and fishing rights on and along said stream are concerned. Acts 1955, 54th Leg., p. 949, ch. 371, § 1.

Emergency. Effective May 28, 1955.

**Title of Act:**

An Act providing that a portion of the Sabine River from its source to its junction with the east boundary line of Hunt County shall hereafter be deemed a non-navigable stream in so far as hunting and fishing rights on and along said stream

are concerned; providing that whatever title the State of Texas may have to the bed or waters of said stream shall not be divested hereby; and declaring an emergency. Acts 1955, 54th Leg., p. 949, ch. 371.

**Art. 4032c.** Residents over 65 and persons under 16 exempt from hunt-  
ing and fishing license requirements

All residents of this State who are sixty-five (65) years of age or over and all persons who are under sixteen (16) years of age shall be entitled to all hunting and fishing privileges for which a commercial license is not required, without obtaining a license for such non-commercial privileges and without payment of any fee. Acts 1955, 54th Leg., p. 797, ch. 289, § 1.

Emergency. Effective May 20, 1955.

**Title of Act:**

An Act exempting all residents over a certain age and all persons under a certain age from payment of any fees for any non-

commercial hunting or fishing license; repealing all laws in conflict; and declaring an emergency. Acts 1955, 54th Leg., p. 797, ch. 289.

## TITLE 68—GARNISHMENT

**Arts. 4102-4329.** Repealed. Acts 1955, 54th Leg., p. 88, ch. 55, § 434.  
Eff. Jan. 1, 1956

Saving clause and application of Probate Code, see Probate Code § 2.

## TITLE 70—HEADS OF DEPARTMENTS

## CHAPTER THREE—STATE TREASURER

## Art.

4386c. Special Department of Agriculture  
Fund [New].

## Art. 4386c. Special Department of Agriculture Fund

## Consolidation of funds

Section 1. All moneys now on deposit in the State Treasury to the credit of the Citrus Fruit Inspection Fund, the Pure Bred Cottonseed Inspection Fund, and 2-4-D License Fund, the Herbicide Fund, the Texas Vegetable Certification Fund, the Seed Laboratory Fee Account, the Nursery Inspection Fee Account, the Weights and Measures Fee Account, the Charter Filing Fee Account, the Anti-freeze Registration Fee Account, the Insecticide and Fungicide Fee Account, Fees for Milk and Cream Tester Licenses, the State Department of Agriculture Grain and Field Seed Warehouse Inspection Fund, and the Texas Seed Act Fund, together with all moneys owing or due said Funds and Fee Accounts, shall be transferred, deposited, and consolidated into a single Fund, in the State Treasury to be known as the Special Department of Agriculture Fund. As amended Acts 1955, 54th Leg., p. 539, ch. 168, § 1.

Emergency. Effective September 1, 1955.

Section 2 of the amendatory Act of 1955  
makes the Act effective Sept. 1, 1955.

Section 3 was the severability clause.

TITLE 71—HEALTH—PUBLIC

CHAPTER ONE—HEALTH BOARDS AND LAWS

<p>Art. 4418b—1. Office of State Health Officer abolished; Commissioner of Health, office created; trans-</p>	<p>fer of powers and duties [New].</p>
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Art. 4418b—1. Office of State Health Officer abolished; Commissioner of Health, office created; transfer of powers and duties

Section 1. There is hereby created in the Department of Health the office of Commissioner of Health and the office of State Health Officer is hereby abolished.

Sec. 2. All those powers and duties heretofore assigned to the State Health Officer shall be vested in the Commissioner of Health. Nothing in this Act shall be construed as removing any authority, duty or responsibility now vested in the State Health Officer. The only purpose is to change the name from State Health Officer to Commissioner of Health.

Sec. 3. All other laws or parts of laws now in force, relating to the State Health Department, the State Board of Health and the State Health Officer, and all other laws relating to public health, sanitation and the control and prevention of communicable, contagious and infectious diseases, shall remain in full force and effect, except in so far as the same may be in conflict with the provisions of this Act. Acts 1955, 54th Leg., p. 586, ch. 195.

Emergency. Effective May 12, 1955.

Title of Act:

<p>An Act, creating the office of Commissioner of Health and abolishing the office of State Health Officer; defining duties;</p>	<p>repealing conflicting laws; and declaring an emergency. Acts 1955, 54th Leg., p. 586, ch. 195.</p>
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Art. 4437a. Hospital control in counties of 200,000 or over; tuberculosis control

Tuberculosis control

Sec. 6A

(e) The Board shall have power to carry out the terms of this Section in order to alleviate, suppress and prevent the spread of tuberculosis within the county, as a public health function, subject to the provisions hereof. The funds derived from the special taxes herein authorized shall be combined together by joint action of the county and city or cities and be expended by or under the direction of such Board subject to the limitations herein; provided that such funds shall be expended to provide necessary economic aid to indigent persons suffering from tuberculosis and dependent members of their immediate family, upon certification in each case to the Board by the city or county health officer, to the effect that the persons receiving such aid are indigents, and that they are bona fide residents of the county and have been for more than six (6) months; and such funds may also be expended to provide for administration expenses hereunder, including case investigation and necessary equipment and services, but for no other purposes. By the term 'bona fide residents of the county' as used herein is meant persons who have been inhabitants of the county for at least six (6) months before receiving aid or assistance for support

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of themselves or their families from a public or private charity or service. As amended Acts 1955, 54th Leg., p. 594, ch. 202, § 1.

Emergency. Effective May 12, 1955.

### CHAPTER THREE—FOOD AND DRUGS

#### Art. 4476—3. Meat inspection

##### Payment for inspection service by users of label; disposition of proceeds

Sec. 14a. Any person, firm, association, or corporation desiring to use the "Texas State Approved" meat label in representing, publishing, or advertising any meat or meat food products offered for sale or to be sold in this State for human consumption shall pay for the necessary inspection service, and the State Board of Health shall adopt rules and regulations relating to such inspection charges which will, in effect, provide that the fees charged shall be fixed as nearly as possible with reference to the cost of maintaining the inspection service by the State Health Department which is necessary to permit the use of the "Texas State Approved Meat for Human Food" label. Any such moneys charged and collected for such inspection service shall be payable to the State Health Department and shall be deposited in the State Treasury in a special account to the credit of the State Health Department and used for the purpose of carrying out the program of inspection which is necessary before the issuing of permits for the use of the "Texas State Approved Meat for Human Food" label. Added Acts 1955, 54th Leg., p. 1116, ch. 413, § 1.

Emergency. Effective June 14, 1955.

Section 2 of the amendatory Act of 1955 read as follows: "All moneys collected under the Meat Inspection Law during the remainder of the fiscal year ending August 31, 1955, are hereby appropriated to the State Health Department for the purpose of paying salaries, traveling expenses, and other costs of administering the Meat Inspection Law.

"All moneys collected under the Meat Inspection Law during each fiscal year of the biennium beginning September 1, 1955, and any unexpended balance in the

special account for the deposit of such funds at the beginning of the respective fiscal years, are hereby appropriated to the State Health Department for the purpose of paying salaries, traveling expenses, and other costs of administering the Meat Inspection Law during each fiscal year of the biennium beginning September 1, 1955; provided, however, the salaries and traveling expenses to be paid from fees provided in this Act shall not exceed those of similar positions in the Departmental appropriation bill."

### CHAPTER THREE A—BEDDING

#### Art. 4476a. Bedding—Manufacture, repair or renovating

##### Labeling of Bedding Required

Sec. 2. (a) No person shall manufacture, repair, renovate or sell, or have in his possession with intent to sell, any article of bedding, unless there is securely attached, where clearly visible, a white tag, made of substantial cloth or a material of equal quality, as provided in this Act. All tags required by this Section shall be attached at the factory.

(b) Bedding manufactured in whole from all new material shall have attached a tag not less than six (6) square inches in size upon which shall be plainly stamped or printed, in black ink, in the English language, the statement "All New Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the kind and grade of each material used in filling, expressed in percentages by weight when mixed; and the manufacturer's permit number, assigned by the Department.

(c) Bedding manufactured in whole, or in part, from second-hand material shall have securely attached a tag not less than twelve (12) square inches in size upon which shall be plainly printed in red ink, in the English language, the statement "Second-hand Material" in lettering not less than one-fourth ( $\frac{1}{4}$ ) inch in height and the manufacturer's permit number assigned by the Department. The provisions of this paragraph (c) of Section 2 are not intended to apply to bedding reworked, repaired or renovated for the owner for his own use.

(d) Bedding renovated, reworked or repaired for the owner, for the owner's use, from the owner's material, which is in whole or in part second-hand, shall have attached a tag not less than six (6) square inches in size, upon which shall be plainly printed in black ink, in the English language, the statement "Not for Sale, Owner's Own Material which is secondhand Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the name and address of the owner; and the manufacturer's permit number assigned by the Department.

(e) All tags required by this Section, when attached to mattresses, shall be securely sewn to the mattresses on all four (4) sides of the tags.

(f) The terms used on the tag to describe materials used in filling shall be restricted to those defined in the regulations of the Department, and no trade or substitute terms shall be used.

(g) It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter or cause to be removed, defaced or altered, any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 7 of this Act over any lettering on the tag shall be construed to be defacement of the tag. As amended Acts 1955, 54th Leg., p. 578, ch. 192, § 1.

#### Germicidal treatment of bedding and materials

##### Sec. 4.

(c) No person shall sell, or offer for sale or include in a sale any material or bedding requiring germicidal treatment by this Act unless there is securely attached, by a method approved by the Department, by the person applying the germicidal treatment, a white tag not less than twelve (12) square inches in size, made of substantial cloth or a material of equal quality, upon which shall be plainly printed, in black ink, in the English language, a statement showing that the article or material has been germicidally treated by a method approved by the State Health Department, the method of germicidal treatment applied, the lot number and the tag number of the article germicidally treated, the name and address of the person for whom germicidally treated, and the permit number of the person applying germicidal treatment. As amended Acts 1955, 54th Leg., p. 578, ch. 192, § 1-a.

#### Registration for Selling

Sec. 7. (a) No person shall manufacture, renovate, sell or lease or have in his possession with intent to sell or lease in the State of Texas, any bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by this Department.

(b) The Department shall register all applicants for stamps and assign to every such person a registry number and/or separate and different serial numbers to be printed on each stamp as a means of

identifying the applicant and the stamps issued thereto, and said identification shall not be used by any other person.

(c) Adhesive stamps as provided for by this Act shall be furnished by the Department in quantities of not less than five hundred (500), for which the applicant shall pay at the rate of Five Dollars (\$5) for each five hundred (500) stamps. The Department is hereby authorized to prepare and cause to be printed, adhesive stamps which shall contain a replica of the Seal of the State of Texas, the registry number and/or serial numbers assigned by the Department, and such other matter as the Department shall direct. As amended Acts 1955, 54th Leg., p. 578, ch. 192, § 2.

Emergency. Effective May 10, 1955.

Section 3 of the amendatory Act of 1955 laws to the extent of such conflict. Section 4 was a severability clause.

## CHAPTER FOUR A—SANITATION AND HEALTH PROTECTION

### Art. 4477—2. Mosquito Control Districts

#### Merger of districts

Sec. 6A. The Commissioners Courts of any two or more counties operating under the provisions of this Act may enter into an agreement for the merging of their separate districts into a single mosquito control district composed of such two or more counties. Said Commissioners Courts shall enter into an agreement that in all respects complies with the provisions of this Act, except that the advisory commission and mosquito control engineer, as required above, may be appointed for the entire district, rather than for each county. Added Acts 1955, 54th Leg., p. 460, ch. 126, § 1.

Emergency. Effective April 29, 1955.

Section 2 of the Act of 1955 provided that the provisions of this Act should be cumulative of all other laws. Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER FIVE—COUNTY HOSPITAL

### Art. 4494i. Lease of County hospital by any county

#### Orders when no petition submitted

Sec. 4. If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed leasing of such hospital would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be leased. Such Court shall thereupon be fully authorized and empowered to lease such county hospital to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by an order duly entered, which order shall contain a complete copy of the lease contract and shall be recorded in the minutes of the Court.

Provided, however, if a petition signed by fifty (50) qualified, property, taxpaying voters of the county is filed with the Commissioners Court in writing to submit to a referendum vote the question as to whether or not



the county hospital shall be leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to lease such hospital for a period in excess of five (5) years and shall not finally lease the same for a period in excess of five (5) years unless the proposition to lease such hospital is sustained by a majority of votes cast at said election. As amended Acts 1955, 54th Leg., p. 1041, ch. 395, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 4494n. County hospital districts; Counties of 190,000 and Galveston county**

**Creation of district**

Section 1. Any county having a population of 190,000 or more, and Galveston County, that does not own or operate, or that does own and operate a hospital or hospital system, by itself or jointly with a city, for indigent and needy persons, may be constituted a Hospital District as hereinafter set out, and may take over the hospital or hospital system, either owned separately by a county or jointly with a city, or may provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to the indigent and needy persons residing in said Hospital District; provided, however, that such Hospital District shall not be created unless and until an election is duly held in said county for such purpose, which said election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty (30) days from the time said election is ordered by the Commissioners Court. At said election there shall be submitted to the qualified property taxpaying voters the proposition of whether or not a Hospital District shall be created in the county; and a majority of the qualified property taxpaying voters participating in said election voting in favor of the proposition shall be necessary. The ballots shall have printed thereon:

“FOR the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢), on the One Hundred Dollars (\$100.00) valuation”; and

“AGAINST the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation.”

If such county or city, either or both of them, has any outstanding bonds theretofore issued for hospital purposes (which by the provisions of Section 4 of this Act are required to be assumed by the Hospital District), then the ballots for such election shall, instead of the foregoing, have printed thereon:

“FOR the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation; and providing for the assumption by such District of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes”; and

“AGAINST the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation; and providing for the assumption by such District of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes.”

**Taxes of district; deposit of taxes and other income**

Sec. 2. The Commissioners Court of any county which has voted to create a Hospital District shall have the power and the authority, and it

shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the District at the same time taxes are levied for county purposes, using the county values and the county tax roll, a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of all taxable property within the Hospital District, for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the Hospital District for hospital purposes, as herein provided; (2) providing for the operation and maintenance of the hospital or hospital system; and (3) when requested by the Board of Hospital Managers and approved by the Commissioners Court, for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

The tax so levied shall be collected on all property subject to Hospital District taxation by the Assessor and Collector of Taxes for the county on the county tax values, and in the same manner and under the same conditions as county taxes. The Assessor and Collector of Taxes shall charge and deduct from payments to the Hospital District the fees for assessing and collecting the tax at the rate of not exceeding one and one-half (1½%) per cent of the amounts collected as may be determined by the Commissioners Court. Such fees shall be deposited in the county's general fund, and shall be reported as fees of office of the Tax Assessor and Collector. Interest and penalties on taxes paid to the Hospital District shall be the same as in the case of county taxes. Discounts shall be the same as for county taxes. The residue of tax collections, after deduction of discounts and fees for assessing and collecting, shall be deposited in the district depository; and such funds shall be withdrawn only as provided herein. All other income of the Hospital District shall be deposited in like manner with the district depository. Warrants against Hospital District funds shall not require the signature of the County Clerk.

The Commissioners Court shall have the authority to levy the tax aforesaid for the entire year in which the said Hospital District is established, for the purpose of securing funds to initiate the operation of the Hospital District, and to pay assumed bonds.

**Bonds of district; taxes to pay bonds and interest; sinking fund**

Sec. 3. The Commissioners Court shall have the power and authority to issue and sell as the obligations of such Hospital District, and in the name and upon the faith and credit of such Hospital District, bonds for the acquisition, purchase, construction, equipment and enlargement of the hospital or hospital system, and for any or all of such purposes; provided, that a sufficient tax shall be levied to create an interest and sinking fund to pay the interest and principal as same matures provided said tax together with any other taxes levied for said District shall not exceed Seventy-five Cents (75¢) in any one year. Such bonds shall be executed in the name of the Hospital District and on its behalf by the County Judge of the county within which the Hospital District is created, and countersigned by the County Clerk, and shall be subject to the same requirements in the matter of approval thereof by the Attorney General of the State of Texas and the registration thereof by the Comptroller of Public Accounts of the State of Texas as are by law provided for such approval and registration of bonds of such county; and the approval of such bonds by the Attorney General shall have the same force and effect as is by law given to his approval of bonds of such county. No bonds shall be issued by such Hospital District (except refunding bonds) until authorized by a majority vote of the legally qualified property taxpaying voters, residing in such

Hospital District, voting at an election called and held in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of the State of Texas (1925), as amended, relating to county bonds. Such election may be called by the Commissioners Court of its own motion, or shall be called by it after request therefor by the Board of Hospital Managers; and the same persons shall be responsible for the conduct of such election and the arrangement of all details thereof as the persons charged therewith in connection with other county-wide elections. The cost of any such election shall be a charge upon the Hospital District and its funds; and the Hospital District shall make provision for the payment thereof before the Commissioners Court shall be required to order such an election.

In the manner hereinabove provided, the bonds of such Hospital District may, without the necessity of any election therefor, be issued for the purpose of refunding and paying off any bonded indebtedness theretofore assumed by such Hospital District and any bonds theretofore issued by such Hospital District; such refunding bonds may be sold and the proceeds thereof applied to the payment of any such outstanding bonds or may be exchanged in whole or in part for not less than a like amount of said outstanding bonds and interest matured thereon, but unpaid; provided the average interest cost per annum on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, shall not exceed the average interest cost per annum so computed upon the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of such proceeds. In the foregoing computations, any premium or premiums required to be paid upon the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the Hospital District of the refunding bonds.

If the city and the county, or either of them, has voted bonds to provide hospital facilities, but such bonds have not been sold at the date of the creation of the Hospital District, the authority for such bonds shall be canceled, and they shall not be sold.

#### **County or city property or funds; transfer to district**

Sec. 4. Any lands, buildings or equipment that may be jointly or separately owned by such county and city, and by which medical services or hospital care, including geriatric care, are furnished to the indigent or needy persons of the city and county, shall become the property of the Hospital District; and title thereto shall vest in the Hospital District; and any funds of the city and county, or either, which are the proceeds of any bonds assumed by the Hospital District, as hereby provided, shall become the funds of the Hospital District; and title thereto shall vest in the Hospital District; and there shall vest in the Hospital District and become the funds of the Hospital District the unspent portions of any funds theretofore set up or appropriated by budget or otherwise by the city or the county, or either of them, for the support and maintenance of the hospital facilities for the year within which the Hospital District comes into existence, thereby providing such Hospital District with funds with which to maintain and operate such facilities for the remainder of such year. All obligations under contract legally incurred by the city or county, or either of them, for the building of, or the support and maintenance of, hospital facilities, prior to the creation of the said District but outstanding at the time of the creation of the District, shall be assumed and discharged by it without prejudice to the rights of third parties, pro-

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

vided that the management and control of the property and affairs of the present hospital system shall continue in the Board of Managers of such system until appointment and organization of the Board of Managers of the Hospital District, at which time the Board of Managers of the present hospital system shall turn over all records, property and affairs of said hospital system to the Board of Managers of the Hospital District and shall cease to exist as a hospital system Board of Managers.

Any outstanding bonded indebtedness incurred by the city or county, either or both of them, in the acquisition of such lands, buildings and equipment, or in the construction and equipping of such hospital facilities, together with any other outstanding bonds issued by either of them for hospital purposes, and the proceeds of which are in whole or in part still unspent, shall be assumed by the Hospital District and become the obligation of the Hospital District; and the city or county, either or both of them, that issued such bonds, shall be by the Hospital District relieved of any further liability for the payment thereof, or for providing interest and sinking fund requirements thereon; provided that nothing herein contained shall limit or affect any of the rights of any of the holders of such bonds against the city or the county, as the case may be, in the event of default in the payment of the principal or interest on any of such bonds in accordance with their respective terms.

The Commissioners Court and the city, where a hospital or hospital system is jointly operated, or the Commissioners Court, where the county owns the hospital or hospital system, as the case may be, as soon as the Hospital District is created and authorized at the election hereinabove provided, and there have been appointed and qualified the Board of Hospital Managers hereinafter provided for, shall execute and deliver to the Hospital District, to wit: to its said Board of Hospital Managers, an instrument in writing conveying to said Hospital District the hospital property, including lands, buildings and equipment; and shall transfer to said Hospital District the funds hereinabove provided to become vested in the Hospital District, upon being furnished the certificate of the Chairman of the Board to the fact that a depository for the District's funds has been selected and has qualified; which funds shall, in the hands of the Hospital District and of its Board of Hospital Managers, be used for all or any of the same purposes as, and for no other purposes than, the purposes for which the county or the city transferring such funds could lawfully have used the same had they remained the property and funds of such county or city.

#### **Board of hospital managers**

Sec. 5. The Commissioners Court shall appoint a Board of Hospital Managers, consisting of not less than five (5) nor more than seven (7) members, who shall serve for a term of two (2) years, with overlapping terms if desired, and with initial appointments to terms of office arranged accordingly, without pay, and whose duties shall be to manage, control and administer the hospital or hospital system of the Hospital District. The Board of Managers shall have the power and authority to sue and be sued and to promulgate rules and regulations for the operation of the hospital or hospital system.

The Board shall appoint a general manager, to be known as the Administrator of the Hospital District. The Administrator shall hold office for a term not exceeding two (2) years, and shall receive such compensation as may be fixed by the Board. The Administrator shall be subject to removal at any time by the Board. The Administrator shall, before entering into the discharge of his duties, execute a bond payable to the District,

in the amount of not less than Ten Thousand Dollars (\$10,000), conditioned that he shall well and faithfully perform the duties required of him, and containing such other conditions as the Board may require. The Administrator shall perform all duties which may be required of him by the Board, and shall supervise all of the work and activities of the District, and have general direction of the affairs of the District, within such limitations as may be prescribed by the Board. He shall be a person qualified by training and experience for the position of Administrator.

The Board of Managers shall have the authority to employ such doctors, technicians, nurses and other employees of every kind and character as may be deemed advisable for the efficient operation of the hospital or hospital system; provided that no contract or term of employment shall exceed the period of two (2) years.

The Board of Managers, with the approval of the Commissioners Court shall be authorized to contract with any county for care and treatment of such county's sick, diseased and injured persons, and with the State and agencies of the Federal Government for the care and treatment of such persons for whom the State and such agencies of the Federal Government are responsible. Further, under the same conditions, the Board of Managers may enter into such contracts with the State and Federal Government as may be necessary to establish or continue a retirement program for the benefit of its employees.

A majority of the Board of Hospital Managers shall constitute a quorum for the transaction of any business. From among its members, the Board shall choose a Chairman, who shall preside; or in his absence a Chairman pro tem shall preside; and the Administrator or any member of the Board may be appointed Secretary. The Board shall require the Secretary to keep suitable records of all proceedings of each meeting of the Board. Such record shall be read and signed after each meeting by the Chairman or the member presiding, and attested by the Secretary. The Board shall have a seal, on which shall be engraved the name of the Hospital District; and said seal shall be kept by the Secretary and used in authentication of all acts of the Board.

**Powers of Commissioners court; duties of district, county officers,  
employees or agents**

Sec. 6. The Commissioners Court of any such county shall have the power to prescribe the method and manner of making purchases and expenditures by and for such Hospital District, and also shall be authorized to prescribe all accounting and control procedures, or may delegate any or all such powers to the Board of Managers of such District by the adoption of an appropriate resolution or order to that effect. The Hospital District shall pay all salaries and expenses necessarily incurred by the county or any of its officers and agents in performing any duties which may be prescribed or required under this section. It shall be the duty of any officer, employee or agent of such county to perform and carry out any function or service prescribed by the Commissioners Court hereunder.

**Assistant to Administrator**

Sec. 7. In the event of incapacity, absence or inability of the Administrator to discharge any of the duties required of him, the Board may designate an assistant to the Administrator to discharge any duties or functions required of the Administrator. Such assistant or other persons shall give such bond and have such limitations upon his authority as may be fixed by the order of the Board.

**Reports of Administrator; budget**

Sec. 8. Once each year, as soon as practicable after the close of the fiscal year, the Administrator of the Hospital District shall report to the Board of Managers, the Commissioners Court, the State Board of Health and the State Comptroller a full sworn statement of all moneys and choses in action received by such Administrator and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the District for the term. Under the direction of the Board of Managers, he shall prepare an annual budget which shall be approved by the Board of Managers and shall then be presented to the Commissioners Court for final approval. In like manner all budget revisions shall be subject to approval by the Commissioners Court.

**Eminent domain**

Sec. 9. A Hospital District organized in pursuance of this Act shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed, or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of the said District, necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by General Law with respect to condemnation; provided that the said District shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph Numbered 2 in Article 3268, V.C.S., 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the said District, the District shall not be required to pay in advance or to give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas on any appeal or writ of error proceeding to any Court of Civil Appeals, or to the Supreme Court.

**Depository for district; selection**

Sec. 10. Within thirty (30) days after the appointment of the Board of Hospital Managers of any District created under this Act, the said Board shall select a depository for such District in the manner provided by law for the selection of county depositories; and such depository shall be the depository of such District for a period of two (2) years thereafter, until its successor is selected and qualified. In the alternative, the Board may elect to use the depository theretofore selected by the county.

**Inspection of districts**

Sec. 11. All Hospital Districts established or maintained under provisions of this Act shall be subject to inspection by any duly authorized representative of the State Board of Health or any State Board of Charities (or Public Welfare) that may hereafter be created, and of the Commissioners Court of the county, and resident officers shall admit such representatives into all Hospital District facilities and give them access on demand to all records, reports, books, papers, and accounts pertaining to the Hospital District.

**Legal representatives of district**

Sec. 12. It shall be the duty of the County Attorney, District Attorney or Criminal District Attorney, as the case may be, charged with the duty

of representing the county in civil matters, to represent the Hospital District in all legal matters; provided, however, that the Board of Hospital Managers shall be authorized at its discretion to employ additional legal counsel when the Board deems advisable.

The Hospital District shall contribute sufficient funds to the general fund of the county for the account of the budget of the County Attorney, District Attorney or Criminal District Attorney, as the case may be, to pay all additional salaries and expenses incurred by such officer in performing the duties required of him by such District.

**Medical and hospital care assumed by district; delinquent taxes owed to cities and counties**

Sec. 13. No county that has been constituted a Hospital District, and no city therein, shall thereafter levy any tax for hospital purposes; and such Hospital District shall be deemed to have assumed full responsibility for the furnishing of medical and hospital care for the needy and indigent persons residing in said Hospital District from the date that taxes are collected for the Hospital District.

That portion of delinquent taxes owed cities and counties on levies for present city and county hospital systems under Acts 48th Legislature, 1943, Chapter 383, page 691, shall continue to be paid to the Hospital District by the city and county as collected, and applied by the Hospital District to the purposes for which such taxes originally were levied.

**Patients; inquiry as to ability to pay; liability of relatives**

Sec. 14. Whenever a patient has been admitted to the facilities of the Hospital District from the county in which the District is situated, the Administrator shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives, to pay to the treasurer of the Hospital District for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The Administrator shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the Administrator finds that such patient or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the Hospital District. Should there be a dispute as to the ability to pay, or doubt in the mind of the Administrator, the County Court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which appeal shall lie to the District Court by either party to the dispute.

This Act shall apply to Hospital Districts created before the passage hereof, as well as to any such Districts hereafter created, and any such District created by election prior to the effective date of this Act is hereby validated, confirmed and ratified.

**Donations, gifts and endowments for district**

Sec. 15. Said Board of Managers of the Hospital District is authorized on behalf of said Hospital District to accept donations, gifts, and endowments for the Hospital District, to be held in trust and administered by the Board of Managers for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by donor,

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

not inconsistent with proper management and objects of Hospital District. Acts 1953, 53rd Leg., p. 691, ch. 266, as amended Acts 1955, 54th Leg., p. 715, ch. 257, § 1.

Emergency. Effective May 18, 1955.

Section 16 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER SEVEN—NURSES

Art.

4528c. Licensed vocational nurses [New].

Art. 4528c. Licensed vocational nurses

### Fees

Sec. 9. The following shall be the fees charged by the Board under this Act: application and examination fee, Ten Dollars (\$10); fee of Ten Dollars (\$10) for licensing existing vocational nurses in accordance with Section 6 hereof; annual renewal fee, Two Dollars (\$2); penalty for late annual renewal fee, One Dollar (\$1); fee for license by reciprocity, Ten Dollars (\$10); fee for accrediting training programs, Twenty-five Dollars (\$25). All expenses under this Act shall be paid from fees collected by the Board under this Act, and no expense incurred under this Act shall ever be charged against the funds of the State of Texas. As amended Acts 1954, 53rd Leg., 1st C.S., p. 67, ch. 28, § 1.

### Custody and use of revenues

Sec. 13. Upon and after the effective date of this Act, all moneys derived from fees, assessments, or charges under this Act shall be paid by the Board into the State Treasury for safekeeping, and shall by the State Treasurer be placed in a separate fund to be available for use of the Board in the administration of the act upon requisition of the Board. All such moneys so paid into the State Treasury are hereby allocated to the Board for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Board may occupy, and necessary traveling expenses for the Board or persons authorized to act for it when performing duties hereunder at the request of the Board. The Comptroller shall, upon requisition of the Board, from time to time, draw warrants upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund at the time of making any requisition; provided, however, that all moneys expended in the administration of this Act shall be specified and determined by itemized appropriation in the General Departmental Appropriation Act or other appropriation acts. At the end of a fiscal year, any unused portion of said fund in excess of the amount appropriated for the following fiscal year shall be set over and paid into the General Revenue Fund. As amended Acts 1954, 53rd Leg., 1st C.S., p. 67, ch. 28, § 2.

Emergency. Effective April 22, 1954.



## CHAPTER NINE—DENTISTRY

**Art. 4551a. Persons regarded as practicing dentistry**

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth any dental appliance, structure, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth any dental appliance, structure or denture. Added Acts 1954, 53rd Leg., 1st C.S., p. 97, ch. 46, § 1.

Effective 90 days after April 13, 1954,  
date of adjournment.

Section 2 of the amendatory act of 1954  
added subsection (5) to Vernon's Ann.P.C.

art. 754a. Section 3 provided that partial  
invalidity should not affect the remainder  
of the act.

## CHAPTER SIXTEEN—BASIC SCIENCES

**Article 4590c. Basic science law****Organization, officers and compensation of board**

Sec. 4. The Board shall organize as soon as practicable after its appointment. It shall have authority to elect officers, to adopt a seal, and to make such rules and regulations, not inconsistent with the law, as it deems expedient to carry this Act<sup>1</sup> into effect. The Board shall keep a record of its proceedings, which shall be prima facie evidence of all matters contained therein. Each member of the Board shall take the Constitutional oath of office.

Each member of the Board shall be paid Ten Dollars (\$10) per day for each day actively engaged in the discharge of his duties, and the time spent in going to and returning from meetings of the Board shall be included in computing such time. In addition to this per diem, each member of the Board shall receive expenses incurred while actually engaged in the performance of the duties of the Board. The Secretary-Treasurer shall be required to execute a bond in the sum of Ten Thousand Dollars (\$10,000) for the faithful performance of his duties, payable to the State of Texas. The premium of such bond shall be paid out of fees received. The office of the Board shall be in the State Capital, and quarters for that office shall be assigned by the State Board of Control in the Capitol Building, or some other building occupied by the State Government, where its permanent records shall be kept. As amended Acts 1955, 54th Leg., p. 759, ch. 277, § 1.

<sup>1</sup> This article and Vernon's Ann.P.C. arts. 160—a, 160—b, 742—a to 742—c, 744—a, 744—b.

Emergency. Effective May 20, 1955.

**Fees payable by applicants**

Sec. 5. The fee for examination by the Board shall be Fifteen Dollars (\$15). The fee for re-examination within a twelve-month period shall be Ten Dollars (\$10); but the fee for re-examination after the expiration of twelve months shall be the same as the original fee. The fee for the issue of a certificate by authority of reciprocity, on the basis of qualifications as determined by the proper agency of some other State or Territory or the District of Columbia, shall be Twenty-five Dollars (\$25). The fee for the issue of a certificate by waiver of examination, as provided for in Section 16—a of this Act, shall be Twenty-five Dollars (\$25). All fees shall be paid to the Board by the applicant when he files his application. The

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

Board shall pay all money received as fees into the State Treasury, where such money will be placed in a special fund to be known as "The Basic Science Examination Fund". All money so received and placed in such fund shall be used by the Board of Examiners in the Basic Sciences in paying its compensation and defraying its expenses, and in administering, enforcing and carrying out the provisions of the law. The Board may hire such employees as are necessary in carrying out the provisions of this law. The State Treasurer shall pay out of the fund the compensation of and expenses incurred by the Board on warrants based upon vouchers signed by the President and the Secretary-Treasurer of the Board. As amended Acts 1955, 54th Leg., p. 759, ch. 277, § 2.

Emergency. Effective May 20, 1955.

#### Reciprocity

**Sec. 8.** The Board shall waive the examination required by Section 7, when proof satisfactory to the Board is submitted, showing (1) that the applicant has passed in another State or Territory or the District of Columbia an examination in the basic sciences before a Board of Examiners in the Basic Sciences; (2) that the requirements of that State or Territory or the District of Columbia are not less than those required by this Act<sup>1</sup> as a condition precedent to the issue of a certificate; (3) that the Board of Examiners in the Basic Sciences in that State or Territory or the District of Columbia grants like exemption from examination in the basic sciences to persons holding certificates from the State Board of Examiners in the Basic Sciences in Texas; (4) that the applicant show satisfactory proof that he is a citizen of the United States; and (5) that the applicant is a person of good moral character and the holder of an uncancelled basic science certificate from another State or Territory or the District of Columbia. As amended Acts 1955, 54th Leg., p. 759, ch. 277, § 3.

<sup>1</sup> This article and Vernon's Ann.P.C. arts. 160—a, 160—b, 742—a to 742—c, 744—a, 744—b. Emergency. Effective May 20, 1955.

## TITLE 72—HOLIDAYS—LEGAL

Art.  
4591e. Veterans Day; designation  
changed from Armistice Day  
[New].

Art. 4591d. Closing of banks and trust companies for general banking purposes on Saturday or other designated weekday and limited banking services on such days; legal holidays for banking purposes

Sec. 1a. Any bank or trust company doing business in this State may, at its option, close for general banking purposes on Saturday or any other weekday provided such day is designated at least fifteen (15) days in advance by adoption of a resolution concurred in by a majority of the Board of Directors thereof (or, if an unincorporated bank or trust company, by its owner or a majority of its owners, if there be more than one owner), and by notice posted in a conspicuous place in such bank or trust company for at least such time, and by filing a copy of such resolution certified by the cashier of such bank or trust company in the office of the Commissioner of the Banking Department of Texas. The filing of such copy of resolution as aforesaid with the office of the Commissioner of the Banking Department of Texas shall be deemed to be proof in all courts in this State that such bank or trust company has duly complied with the provisions of this Section. Any such election to so close shall remain in effect until a subsequent resolution shall be adopted and notice thereof posted and a copy thereof filed in the manner above provided. If any bank or trust company elects to close for general banking purposes on Saturday or any other weekday as herein provided, it may, at its option, remain open on such day for the purpose of performing limited banking services. Notice of election to perform limited banking services shall be contained in the notices, above provided, with respect to closing for general banking purposes. Limited banking services shall mean: transit operations, cashing and certifying checks drawn on the bank performing such limited services, receiving payments on obligations due to such bank or to any other party for which such bank is acting as collection agent, making change and providing access to safety deposit boxes. Such day upon which such bank or trust company may elect to close for general banking purposes shall with respect to such institution be treated as Sunday or the Christian Sabbath for all purposes and not a business day; provided that if such bank shall elect to perform limited banking services on such day, the same shall not be deemed a legal holiday for the performance of limited banking services. Any bank or trust company which elects to close for general banking purposes on Saturday or any other weekday but which elects to perform limited banking services shall not be subjected to any liability or loss of rights for performing limited banking services or refusing to perform any other banking services on such day. Added Acts 1955, 54th Leg., p. 19, ch. 16, § 1.

Sec. 1b. The provisions of Section 1a of this Act shall be completely permissive with each individual bank or trust company in this State, and no bank, trust company, clearing house association, or group of banks or trust companies, shall discriminate against or refuse its services to any bank or trust company or enter into any agreement to discriminate against or refuse its services, either directly or indirectly, to any bank or trust

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

company which may or may not elect to exercise any of the options contained in Section 1a of this Act. The provisions of the Antitrust Laws of this State shall be applicable to the provisions of this Act, and the Attorney General of Texas shall institute and prosecute any legal proceedings authorized by law to enforce the provisions of this Act, including forfeiture of right to do business in Texas for violation of such provisions. Added Acts 1955, 54th Leg., p. 19, ch. 16, § 1.

Sec. 1c. Notwithstanding any existing provisions of law relative to negotiable or nonnegotiable instruments, but subject to the provisions of Section 1a of this Act, only the following enumerated dates are declared to be legal holidays for banking purposes on which each bank and trust company in Texas shall remain closed. The dates referred to are Sundays, January 1 (New Year's Day), April 21 (San Jacinto Day), July 4 (Independence Day), the first Monday in September (Labor Day), the last Thursday in November (Thanksgiving Day) and December 25 (Christmas Day). All such days (and the weekday on which a bank or trust company may elect to close for general banking purposes as provided in Section 1a of this Act) shall be treated as Sunday or the Christian Sabbath for all purposes and not a business day and any act authorized, required or permitted to be performed at or by any bank or trust company on such day may be performed on the next succeeding business day and no liability or loss of rights of any kind shall result therefrom. Any day in which an election is being held shall not be considered or construed as a bank legal holiday. Added Acts 1955, 54th Leg., p. 19, ch. 16, § 1.

Emergency. Effective March 3, 1955.

should not affect the remainder of the act.

Section 2 of the amendatory Act of 1955 provided that partial unconstitutionality

Section 3 repealed conflicting laws.

#### Art. 4591e. Veterans Day; designation changed from Armistice Day

The holiday of November 11th, heretofore known as Armistice Day, is hereby designated and is to be hereafter known as Veterans Day, dedicated to the cause of world peace and to honoring the veterans of all wars in which Texans and other Americans have fought. Acts 1955, 54th Leg., p. 37, ch. 27, § 1.

Effective 90 days after June 7, 1955 date of adjournment.

Title of Act:

An Act designating the 11th day of November as Veterans Day; and declaring an emergency. Acts 1955, 54th Leg., p. 37, ch. 27.

## TITLE 73—HOTELS AND BOARDING HOUSES

## Art. 4594. 5663, 3318, 3182 Lien

Proprietors of hotels, boarding houses, rooming houses, inns, tourist courts, and motels shall have a lien on the baggage and other property of guests in such hotels, boarding houses, rooming houses, inns, tourist courts, and motels for all sums due for board, lodging, extras furnished or money advanced at the request of such guest, and shall have the right to retain possession of such baggage or other property until the amount of such charges is paid. Such baggage and other property shall be exempt from attachment or execution while in the possession of such proprietor. As amended Acts 1955, 54th Leg., p. 879, ch. 333, § 1.

Emergency. Effective May 24, 1955.

## CHAPTER FOUR—DIVORCE

## Art. 4632. 4632-3 Procedure

No suit for divorce shall be heard, or divorce granted, before the expiration of sixty (60) days after the same is filed. In divorce suits the defendant shall not be compelled to answer upon oath nor shall the petition be taken as confessed for want of answer, but the decree of the court shall be rendered upon full and satisfactory evidence, upon the judgment of the court affirming the material facts alleged in the petition. Either party may demand a jury trial. As amended Acts 1955, 54th Leg., p. 463, ch. 128, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory act of 1955 provided that the change made by the foregoing amendment shall not apply to

suits for divorce which are pending at the time this Act takes effect. And all such suits may be heard and judgment rendered after the expiration of thirty (30) days after suit was filed.

## Art. 4639b. Suit against parent failing to support child

Section 1. While the marriage relation exists, a suit for the support of a child or children may be brought in the district court against any parent who fails to provide for the support and maintenance of his or her child or children under eighteen years of age. Such suit may be brought by the parent with whom the child or children reside or by any person having the legal custody of the child or children. Where the parents are living separate and apart, but the marriage relation continues to exist, one parent likewise is authorized to bring suit against the other to fix the legal custody of their child or children under the age of eighteen years.

Sec. 2. Venue in such a suit for support or custody shall be in the county of the residence of the defendant.

Sec. 3. Upon the filing of such a suit citation shall issue as in other cases. Upon a hearing the court shall enter such order for support and maintenance and custody, or custody only, of such child or children as may seem necessary and proper. Upon change of conditions such order may be changed after application and hearing. A violation of or refusal to obey any order of the court may be punished as for contempt. Money paid under the provisions of this Act shall be paid into the district clerk's office, and disbursed under the order of the court.

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

**Sec. 4.** In the event, however, a suit for divorce be filed by one of the parties to an action brought under this Act, either as an independent suit or as a cross-action, and an order or orders be entered in the divorce suit providing for child support and child custody, then the orders entered in the divorce suit shall operate to control the matter of support and custody of children to the exclusion of the provisions of this Act.

**Sec. 5.** The provisions of this Act shall be cumulative of any provisions of law for support and custody of children now in effect. Acts 1955, 54th Leg., p. 934, ch. 365.

Effective 90 days after June 7, 1955,  
date of adjournment.

Tex.St.Supp. '56—28

## INSURANCE CODE

Insurance Securities Act, see art. 580—1  
et seq.

### CHAPTER ONE—THE BOARD, ITS POWERS AND DUTIES

#### Art. 1.02. Board of Insurance Commissioners

(a) The Board of Insurance Commissioners of this State is created hereby. It shall consist of three members, all of whom shall be citizens of Texas. They shall be appointed by the Governor, by and with the advice and consent of the Senate of Texas. The term of office of each member shall be as provided in Article 1.03 of this Code, as amended.

(b) All the powers, duties and prerogatives heretofore vested in and devolving upon the Life Insurance Commissioner; the Fire Insurance Commissioner, who shall continue to be and function as State Fire Marshal according to Statute; the Casualty Insurance Commissioner; and the Board of Insurance Commissioners as now constituted by Statutes just prior to the effective date of this Act, shall hereafter be vested in and be had, enjoyed and exercised by the Board of Insurance Commissioners as created by this Act.

(c) Effective January 1, 1956, and each two years thereafter, the Board of Insurance Commissioners shall elect from among their membership a Chairman who shall be known and designated as the Chairman of the Board of Insurance Commissioners. As amended Acts 1955, 54th Leg., p. 1035, ch. 391, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 4 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws. Section 5 provided that partial invalidity should not affect the remaining portions of the Act.

Acts 1955, 54th Leg., ch. 307, p. 826,  
amended Articles 1.08, 1.14, 1.15, 1.16, 1.17,

1.18 and 1.19 of the Insurance Code. Section 9 of such amendatory act read as follows: "Provided, however, that all expenditures by the Board of Insurance Commissioners of Texas shall after September 1, 1955, be only as provided in the General Appropriation Act of the Legislature."

#### Art. 1.03. Terms of Office

The Commissioners in office at the effective date of this Act shall be the present members of the Board of Insurance Commissioners and shall continue in office until the expiration of the term for which they were appointed. Thereafter, the regular term of office of each of such Commissioners shall run for six years from the date of expiration of such Commissioner's term so that each membership on the Board of Insurance Commissioners shall run for six years and so that one membership of said Board shall expire every two years. Vacancies occurring in any such office during any term shall, with the advice and consent of the Senate, be filled by appointment by the Governor, which appointment shall extend only to the end of the unexpired term. As amended Acts 1955, 54th Leg., p. 1035, ch. 391, § 2.

#### Art. 1.04. Duties of the Board of Insurance Commissioners

The Board of Insurance Commissioners shall have supervision and control of all matters relating to insurance and the organization, examination and supervision of insurance companies and all other things relating to insurance and insurance companies as provided for in the Insur-

ance Code as it now exists or is hereafter amended. The Board of Insurance Commissioners shall operate and function as a whole and a majority vote of the members of the Board shall be necessary to transact any official business. As amended Acts 1955, 54th Leg., p. 1035, ch. 391, § 3.

#### Art. 1.08. Clerks

Each Commissioner may appoint such clerks as the work of his office may require. Each Commissioner may appoint a Chief Clerk who shall possess all of the power and perform all of the duties attached by law to the office of the appointing Commissioner during the necessary absence of such appointing Commissioner, or his inability to act from any cause. The appointing Commissioner shall be responsible for the acts of his Chief Clerk, who shall, before entering upon the duties of his position, take the oath required of the appointing Commissioner; each such Chief Clerk may also be required by the Commissioner appointing him to enter into bond with security, payable to said appointing Commissioner, for the faithful performance of the duties of his position.

All clerks, including the Chief Clerk, shall be removable at the will of the appointing Commissioner. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 1; Acts 1955, 54th Leg., p. 826, ch. 307, § 1.

Both amendments effective 90 days after June 7, 1955, date of adjournment.

The two amendments of 1955 contained identical provisions.

Section 54 of the amendatory act of 1955, 54th Leg., p. 413, ch. 117, repealed conflicting laws. Section 55 was a severability clause.

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 8 of such amendatory act read as follows: "Provided, however, that Fraternal Benefit Societies that sell insurance policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas, or which are

now exempted under the provisions of Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act."

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 9 of such amendatory act read as follows: "Provided, however, that all expenditures by the Board of Insurance Commissioners of Texas shall after September 1, 1955, be only as provided in the General Appropriation Act of the Legislature."

Section 10 of the amendatory act of 1955 was a severability clause. Section 11 repealed conflicting laws.

#### Art. 1.10. Duties of the Board

5. **When a Company's Surplus is Impaired.** Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this State, and adding thereto all other debts and claims against the company, the Board shall, in case it finds the minimum surplus required of the company doing the kind or kinds of insurance business set out in its Certificate of Authority impaired to the extent of more than fifty (50%) per cent of said required minimum surplus of a capital stock insurance company, or in case it finds the minimum surplus of a reciprocal, mutual other than a farm mutual, or finds the minimum required aggregate of guaranty fund and surplus of a Lloyd's company, other than life, doing the kind or kinds of insurance business set out in its Certificate of Authority impaired to the extent of more than sixteen and two-thirds (16- $\frac{2}{3}$ %) per cent of said required minimum surplus, give notice to the company to make good the impairment of its surplus to the extent that said impairment shall exist to a greater extent than such applicable per cent, within sixty (60) days, and if this is not done, the Board shall require the company to cease to do business within this State, and shall thereupon, in case the company is organized under authority of the State, immediately institute legal proceedings to determine what further shall be done in the case. No



impairment of the capital stock of a company shall be permitted. No impairment of the surplus of a company shall be permitted in excess of that above set out. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 2.

Effective 90 days after June 7, 1955,  
date of adjournment.

**Art. 1.14. Shall Issue Certificate of Authority**

Sec. 1. No individual, group of individuals, association or corporation, unless now or hereafter otherwise permitted by statute, shall be permitted to engage in the business of insuring others against those losses which may be insured against under the laws of this State. Should the Board of Insurance Commissioners be satisfied that any insurance carrier applying for a Certificate of Authority has in all respects fully complied with the law; and that if a stock company, its capital stock and surplus has been fully paid up, that it has the required amount of capital and surplus or surplus to policyholders; it shall be its duty to issue to such carrier a Certificate of Authority under its seal authorizing such carrier to transact insurance business, naming therein the particular kinds of insurance, for the period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next following the date of said certificate. Provided, however, that each Certificate of Authority in force at the effective date of this Code shall remain in force until it expires or is revoked or suspended according to law.

Sec. 2. The word "Carrier" as herein used is defined as that type of insurer which, in consideration of premium, issues policies to others insuring against those losses which may be insured against under the provisions of the law, including stock companies, reciprocals or inter-insurance exchanges, Lloyds' associations, fraternal benefit societies and mutual companies of all kinds, including state-wide assessment associations, local mutual aids, burial associations, and county and farm mutual fire associations. Provided that the Board of Insurance Commissioners shall give preference to applications of domestic companies in checking and approving annual statements and issuing Certificates of Authority.

Sec. 3. The Board may inquire into the competence, fitness and reputation of the officers and directors of each carrier. If, after inquiry, and based on substantial evidence, it shall appear to the Board that such officers and directors, or any of them, are not worthy of the public confidence, it shall give such carrier notice in writing of its intention to refuse the application for Certificate of Authority, or to revoke the certificate once granted, stating specifically why the Board intends such action, and the place and time for hearing by the Board, not sooner than ten (10) days nor later than twenty (20) days thereafter.

After notice and hearing, the Board shall forthwith record in its official minutes its findings and order, which shall be subject to full review in a suit filed in a District Court in Travis County. The filing of such suit shall operate as a stay of the Board's order until the court directs otherwise. The court shall consider all of the facts, and shall hear, try and determine said suit de novo as other civil cases. The court may modify, affirm or set aside the action of the Board in whole or in part, and shall enter such judgment as the evidence introduced in court may warrant, including an order directing the Board to take such action as may be justified. Provided, however, that fraternal benefit societies that sell insurance policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempt under the provisions of Article 10.12 or

Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 3; Acts 1955, 54th Leg., p. 826, ch. 307, § 2.

Both amendments effective 90 days after June 7, 1955, date of adjournment.

The two amendments of 1955 contained identical provisions.

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 8 of such amendatory act read as follows: "Provided, however, that Fra-

ternal Benefit Societies that sell insurance policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempted under the provisions of Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act."

### Art. 1.15. To Examine Carriers

Sec. 1. The Board of Insurance Commissioners shall, once in each six (6) months for the first three (3) years after organization or incorporation, once in each year for the fourth through sixth years after organization or incorporation and thereafter once in each two (2) years, or oftener, if the Board deems necessary, in person or by one or more examiners commissioned by such Board in writing, visit each carrier organized under the laws of this State and examine its financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting the conduct of its business; and such Board shall similarly, in person or by one or more commissioned examiners, visit and examine, either alone or jointly with representative of the insurance supervising departments of other states, each insurance carrier not organized under the laws of this State but authorized to transact business in this State. Such Board or its commissioned examiners shall have free access to all the books and papers of the carrier or agents thereof relating to the business and affairs of such carrier, and shall have power to summon and examine under oath the officers, agents, and employees of such carrier and any other person within the State relative to the affairs of such carrier. Such Board may revoke or modify any certificate of authority issued by such Board or by any predecessor in office when any condition or requirement prescribed by law for granting it no longer exists. Such Board shall give such company at least ten (10) days written notice of its intention to revoke or modify such certificate of authority stating specifically the reason for the action it proposes to take.

Sec. 2. The Board of Insurance Commissioners in administering any provision of the Insurance Code, Acts, 1951, Fifty-second Legislature, Chapter 491, shall be authorized and empowered in determining "value" or "market value" of any investment in or upon real estate or the improvements thereon by any carrier authorized to do business in the State of Texas to consider any and all matters and things relating thereto, including but not restricted to, appraisals by real estate boards or other qualified persons, affidavits by other persons familiar with such values, tax valuations, cost of acquisition, with proper deductions for depreciation and obsolescence,<sup>1</sup> cost of replacement, sales of other comparable property, enhancement in value from whatever cause, income received or to be received, improvements made or any other factor or any other evidence which to said Board may be deemed proper and material.

Sec. 3. Any insurer whose investment in or upon real estate or the improvements thereon may have been determined or found by said Board shall be entitled to make a written request to the Board for a written finding by the Board; and upon such request being made to the Board, the Board shall, within ten (10) days after receipt of such request, enter its written order or finding setting out separately its finding upon each factor or matter upon which its said determination or finding of "value" or "mar-

**Ins. Code**

ket value" was made and shall in such written order or finding give the names and addresses of all persons who furnished such evidence as to each such matter, factor or thing and upon whom the Board relied in making such determination or finding and shall deliver a copy of such written finding or order to the carrier so requesting the same.

Sec. 4. Any rule, regulation, order, decision or finding of the Board under this Act shall be subject to full review in any suit filed by any interested party in any District Court of the State of Texas in Travis County, Texas, and not elsewhere. The filing of such suit shall operate as a stay of any such rule, regulation, order, decision or finding of the Board until the Court directs otherwise. The Court may review all the facts, shall hear, try and determine said suit de novo as other civil cases in said Court; and in disposing of the issues before it, may modify, affirm or reverse the action of the Board in whole or in part. As amended Acts 1955, 54th Leg., p. 826, ch. 307, § 3.

<sup>1</sup> So in enrolled bill. Probably should be "obsolescence".

Effective 90 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 8 of such amendatory act read as follows: "Provided, however, that Fraternal Benefit Societies that sell insurance

policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempted under the provisions of Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act."

**Art 1.16. Expenses of Examinations; Disposition of Sums Collected**

The expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the Board of Insurance Commissioners or under its authority shall be paid by the corporations examined in such amount as the Board of Insurance Commissioners shall certify to be just and reasonable.

Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the Board of Insurance Commissioners upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected only at the time such examinations are made.

All sums collected by the Board of Insurance Commissioners, or under its authority, on account of the cost of examinations assessed as hereinabove provided for shall be paid into the State Treasury to the credit of the Insurance Examination Fund; and the salaries and expenses of the actuary of the Board of Insurance Commissioners and of the examiners and assistants, and all other expenses of such examinations, shall be paid upon the certificate of the Board of Insurance Commissioners by warrant of the Comptroller drawn upon such fund in the State Treasury.

If at any time it shall appear that additional pro rata assessments are necessary to cover all of the expenses and disbursements required by law and necessary to comply with this Article and Articles 1.17 and 1.18 of this Code, the same shall be made, and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments in the proportion assessed so that there shall be so assessed and collected the funds necessary to meet such expenses and disbursements and no more.

In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Board of Insurance Commissioners, and shall consist of the examiners' remuneration and expenses, and the other expenses of the Department of Insurance properly allocable to the examination. Payment shall be made directly to the Board of Insurance Commissioners, and all money collected by assessment on foreign companies for the cost of examination shall be deposited in the State Treasury by the Board of Insurance Commissioners to the credit of the Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher of the Board of Insurance Commissioners, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Board of Insurance Commissioners; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Board of Insurance Commissioners shall fix the remuneration and expense allowance of the examiners at such reasonable figure as it may determine. As amended Acts 1955, 54th Leg., p. 826, ch. 307, § 4.

Effective 90 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 8 of such amendatory act read as follows: "Provided, however, that Fraternal Benefit Societies that sell insurance

policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempted under the provisions of Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act."

#### Art. 1.17. Appointment of Examiners and Assistants and Actuary by Board of Insurance Commissioners; Salaries

The Board of Insurance Commissioners shall appoint such number of examiners, one of whom shall be the chief examiner, and such number of assistants as it may deem necessary for the purpose of making on behalf of the State of Texas and of the Board of Insurance Commissioners all such examinations of insurance companies, at the expense of such companies or corporations, as are required to be made or provided for by law; and it shall also appoint an actuary to the Board of Insurance Commissioners to advise the Board in connection with the performance of its duties and for aid and advice and counsel in connection with all such examinations required by law. Such examiners and assistants shall, as directed by the Board of Insurance Commissioners, perform all the duties relative to all examinations provided by law to be made by the Board of Insurance Commissioners of the State of Texas, and it is the purpose of this Article and Articles 1.16 and 1.18 of this Code to provide for the examination hereunder by the Board of Insurance Commissioners of all corporations, firms or persons engaged in the business of writing insurance of any kind in this State whether now subject to the supervision of the Insurance Department or not.

All such examiners and assistants and such actuary shall hold office subject to the will of the Board of Insurance Commissioners and the number of such examiners and assistants may be increased or decreased from time to time to suit the needs of the examining work. The actuary and all such examiners and assistants shall be paid out of the Insurance Examination Fund, such salaries as shall be fixed from time to time by the Legislature, and their necessary traveling expenses shall be paid out of said Fund upon sworn, itemized accounts thereof, to be rendered monthly and approved by the Board of Insurance Commissioners before payment.

Where the Board of Insurance Commissioners shall deem it advisable it may commission the actuary of the Board, the chief examiner, or any other examiner or employee of the Department, or any other person, to conduct or assist in the examination of any company not organized under the laws of Texas and allow them compensation as herein provided, except that they may not be otherwise compensated during the time they are assigned to such foreign company examinations. Other than as thus provided, neither the actuary of the Board of Insurance Commissioners nor any examiner or assistant shall continue to serve as such if, while holding such position, he shall directly or indirectly accept from any insurance company any employment or pay or compensation or gratuity on account of any service rendered or to be rendered on any account whatsoever. As amended Acts 1955, 54th Leg., p. 826, ch. 307, § 5.

Effective 90 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 8 of such amendatory act read as follows: "Provided, however, that Fraternal Benefit Societies that sell insurance poli-

cies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempted under the provisions of Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act."

### **Art. 1.18. Oath and Bond of Examiners and Assistants; Action on Bond for False Reports**

Each examiner and assistant examiner, before entering upon the duties of his appointment shall take and file in the office of the Secretary of State an oath to support the Constitution of this State, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly, for the discharge of his duty, other than the remuneration fixed and accorded to him by law; and that he will not reveal the condition of, nor any information secured in the course of any examination of any corporation, firm or person examined by him, to anyone except the Members of the Board of Insurance Commissioners, or their authorized representative, or when required as witness in Court.

Every such examiner shall enter into a bond payable to the State in the sum of Ten Thousand Dollars (\$10,000) and every assistant examiner shall enter into a bond in the sum of Five Thousand Dollars (\$5,000), to be approved by the Board of Insurance Commissioners and deposited in the office of the State Comptroller, conditioned that he will faithfully perform his duties as such examiner.

In case any such examiner or assistant examiner shall knowingly make any false report or give any information in violation of law relative to any such examination of any corporation, firm or person so examined, any such corporation, firm or person shall have a right of action on such bond

for his injuries in a suit brought in the name of the State at the relation of the injured party. As amended Acts 1955, 54th Leg., p. 826, ch. 307, § 6.

Effective 90 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 8 of such amendatory act read as follows: "Provided, however, that Fraternal Benefit Societies that sell insurance poli-

cies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempted under the provisions of Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act."

#### Art. 1.19. In Case of Examination

The Board of Insurance Commissioners for the purpose of examination authorized by law, has power either in person or by one or more examiners by it commissioned in writing:

1. To require free access to all books and papers within this State of any insurance companies, or the agents thereof, doing business within this State.

2. To summon and examine any person within this State, under oath, which it or any examiner may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this State, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company in this State refusing to permit such examination. The reasonable expenses of all such examination shall be paid by the company examined.

The Board may revoke or modify any certificate of authority issued by it when any conditions prescribed by law for granting it no longer exist.

The Board shall also have power to institute suits and prosecutions, either by the Attorney General or such other attorneys as the Attorney General may designate, for any violation of the law of this State relating to insurance. No action shall be brought or maintained by any person other than the Board for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this State. As amended Acts 1955, 54th Leg., p. 826, ch. 307, § 7.

Effective 30 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., ch. 307, p. 826, amended Articles 1.08, 1.14, 1.15, 1.16, 1.17, 1.18 and 1.19 of the Insurance Code. Section 8 of such amendatory act read as follows: "Provided, however, that Fraternal Benefit Societies that sell insurance

policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempted under the provisions of Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act."

## CHAPTER TWO—INCORPORATION OF INSURANCE COMPANIES

Art.

2.03—1. Live stock insurance companies; exemption from act [New].

2.20. Renewal Certificates of Authority [New].

2.21 Certificate of Authority [New].

#### Art. 2.01. Formation of Company

The provisions of this Chapter shall apply to the formation of each company or organization which proposes to engage in any kind of insur-

ance business, other than life, health or accident insurance companies organized or operating under the provisions of Chapters 3, 10, 11, 12, 13 or 14 of this Code; and except as in this Code otherwise provided.

Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign Articles of Incorporation as provided in this Code. Applicants shall file with the Board an application for charter on such form and include therein such information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05, and the proposed Articles of Incorporation or of Association, and shall deposit with the Board the fees prescribed by law.

Upon receipt of such application, the Board may set a date for the hearing of the same notifying all interested parties by notice published in one or more daily newspapers of this State of the place and date thereof, which date shall be not less than ten (10) nor more than thirty (30) days after the date of such notice.

A copy of such notice shall be given to the Attorney General of Texas. A representative of the Attorney General shall attend such hearing. The original examination report provided by Article 2.04 shall be a part of the record of the hearing.

In considering any such application, the Board shall, within thirty (30) days after public hearing, determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;

2. The proposed officers and directors, attorney in fact or managing head have sufficient insurance experience, ability, standing and good record to render success of the proposed insurance company probable;

3. The applicants are acting in good faith.

Should the Board by an affirmative finding determine any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise such Board shall approve the application and submit the same to the Attorney General. If the Articles and the record and the procedure and action thereon shall be found by the Attorney General to be in accordance with the law of this State, and if he shall find that the applicants have complied with all applicable requirements of this Code, he shall attach thereto his certificate to that effect, whereupon such Articles shall be deposited with the Board in the office of its Chairman. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 4.

Effective 90 days after June 7, 1955, date of adjournment.

## **Art. 2.02. Articles of Incorporation**

Such Articles of Incorporation shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;

2. The locality of the principal business office of such company;

3. The kind of insurance business in which the company proposes to engage; for the purposes of determining the amount of capital and surplus required under this Code of a capital stock company, or the amount of surplus required of a mutual company, reciprocal exchange, or the amount of guaranty fund and surplus required of a Lloyds, full coverage automobile insurance shall be construed as one line of casualty insurance;

4. The amount of its capital stock and its surplus, which shall in no case be less than \$100,000.00 capital and \$50,000.00 surplus in the event

the company is incorporated to engage in the business of fire insurance and its allied lines, or marine insurance, or both, and which in no case shall be less than \$150,000.00 capital and \$75,000.00 surplus if the company is incorporated to engage in the casualty insurance business, including fidelity, guaranty, surety and trust business, and which in no case shall be less than \$200,000.00 capital and \$100,000.00 surplus in the event the company is incorporated to engage in the business of fire insurance and its allied lines, or marine insurance, or both fire and marine insurance, and the business of casualty insurance.

At the time of incorporation all of said capital and surplus shall be in cash. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 5.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 2.03. Amendments to Charters

Any domestic insurance corporation subject to the provisions of this Chapter may make amendments to its charter as follows:

Applicants shall file with the Board the proposed amendment together with an application on such form and including such information as may be prescribed by the Board, and shall deposit with the Board the fees prescribed by law. Upon such filing the Board may give notice by publication in one or more daily newspapers of this State of a public hearing upon such application, copy of such notice to be delivered to the Attorney General, and the representative of the Attorney General to appear at such hearing; provided that no hearing shall be required in event amendment to charter involves only a stock dividend by means of lawful transfer of surplus to capital or a change of name or a change of locality of the principal business office of said company or a combination of such amendments.

In considering any such application, the Board may hold public hearings and shall within 30 days determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;
2. The then officers and directors and managing head have sufficient insurance experience, ability, standing and good record to render success of the company probable;
3. The applicants are acting in good faith;
4. If an amendment to charter involves a diminution of the company's charter powers with respect to the kinds of insurance business in which it may engage, in the manner prescribed by this Code, that all liabilities incident to the exercise of the powers to be eliminated have been terminated or wholly reinsured;
5. The property involved in any increase of capital or surplus or both is properly valued and is as authorized by Article 2.08 or Article 2.10 of this Code, as same may be applicable.

Should the Board determine any of the above issues adversely to the applicants, it shall reject the application. Otherwise the Board shall approve the application and shall forward the application, the amendment, and complete files relating to the charter and the charter amendment, as well as its findings and the record thereof to the Attorney General for examination. If said amendment shall be found by the Attorney General to be in accordance with the law of this State, he shall attach thereto his certificate to that effect, whereupon such amendment shall be deposited with



**Ins. Code**

the Board in the office of its Chairman, and shall become effective. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 6.

Effective 90 days after June 7, 1955, date of adjournment.

Acts 1955, 54th Leg., ch. 117, § 6 amended article 2.03 so as to incorporate the provisions relating to amendments to charters. The effect of this amendment is to repeal

by omission the original provisions of article 2.03 for organizing live stock insurance companies.

Exemption of live stock insurance companies, see article 2.03—1.

**Art. 2.03—1. Live stock insurance companies; exemption from act**

Live stock insurance companies organized prior to April 1, 1955 under the provisions of Article 2.03 of the Insurance Code and continuing to do a live stock insurance business only shall be exempt from the provisions of this Act. Acts 1955, 54th Leg., p. 413, ch. 117, § 12a.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 2.04. Original Examination and Application for Charter**

When the Articles of Incorporation and Application for Charter of persons desiring to form a company under this Chapter have been deposited with the Board, and the law in all other respects has been complied with by the company, prior to the hearing provided by Article 2.01, the Board shall make or cause an examination to be made by some competent and disinterested person or persons appointed by them for that purpose; and if it shall be found that the capital stock and surplus of the company, to the amount required by law, has been paid in, and is possessed by it, in money, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, the examiners or examiner shall so report to the Board. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 7.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 2.05. Oath as to Charter and Capital**

The incorporators or officers of any such company shall be required to certify under oath to the Board the truth and correctness of the facts set out in the Articles of Incorporation and in addition shall certify under oath to the Board that the capital and surplus is the bona fide property of such company.

If the Board is not satisfied in either event above, it may at the expense of the incorporators require other satisfactory evidence before it shall be required to receive the Articles of Incorporation, or application for charter, or give notice of hearing or hold same, or issue original Certificate of Authority, but may not delay the giving of notice of such hearing for more than ten days. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 8.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 2.07. Shares of Stock**

**Sec. 6. Powers Granted Additional to Existing Powers.**—The privileges and powers conferred by this article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to such companies; provided, however, life, health or accident insurance companies operating under Chapter 3 of this Code shall not utilize the provisions of

this article but shall comply with the provisions of Chapter 3 of this Code as amended. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 23 of the amendatory Act of 1955 repealed all conflicting laws and parts of

laws to the extent of such conflict. Section 24 provided that partial invalidity should not affect the remaining portions of the Act.

### Art. 2.08. Items of Capital Stock and Minimum Surplus

The capital stock and the minimum surplus of any such insurance company, except any writing life, health and accident insurance shall following incorporation and granting of Certificate of Authority, consist only of the following:

1. Lawful money of the United States; or
2. Bonds of this State; or
3. Bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; or
4. Notes secured by first mortgages upon unencumbered real estate in this State, the title to which is valid, and the payment of which notes is insured by the United States of America or any of its agencies;
5. Bonds or other interest-bearing evidence of indebtedness of any county, city or other municipality of this State.

The aggregate of all such investments in the securities referred to in the above numbered paragraphs 4 and 5 shall not exceed one-half ( $\frac{1}{2}$ ) of the capital stock and minimum surplus of the investing company. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 9.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 2.10. Investment of Funds in Excess of Capital and Minimum Surplus

No company except any writing life, health and accident insurance, organized under the laws of this State, shall invest its funds over and above its capital and its minimum surplus, as provided in Article 2.02, except as otherwise provided in this Code, in any other manner than as follows:

1. As provided for the investment of its capital and its minimum surplus in Article 2.08;
2. In bonds or other evidences of debt which at the time of purchase are interest bearing and are issued by authority of law and are not in default as to principal or interest, of any of the States of the United States or in the stock of any National Bank, in stock of any State Bank of Texas whose deposits are insured by the Federal Deposit Insurance Corporation; provided, however, that if said funds are invested in the stock of a State Bank of Texas that not more than thirty-five (35%) per cent of the total outstanding stock of any one (1) State Bank of Texas may be so purchased by any one (1) insurance company; and provided further, that neither the insurance company whose funds are invested in said bank stock nor any other insurance company may invest its funds in the remaining stock of any such State Bank;
3. In bonds or first liens or first mortgages upon unencumbered real estate in this State or in any other State, country or province in which such company may be duly licensed to conduct an insurance business, the title to which is valid and the market value of which is not less than forty (40%) per cent more than the amount loaned thereon. If any part of such real estate is in buildings such buildings shall be insured against loss

**Ins. Code**

by fire and extended coverage for not less than sixty (60%) per cent of the value thereof, with loss clause payable to such company. The provisions of this paragraph with respect to the value of real estate compared to the amount loaned thereon shall not apply to loans secured by real estate which are insured by the Federal Housing Administrator or successors. The valuation of such real estate where the loan is not insured by the Federal Housing Administrator shall be by appraisal by two or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, the cost and expense of such appraisal to be paid by the insurance company to the Board.

4. In bonds or other interest bearing evidences of debt of any county, municipality, road district, turnpike district or authority, water district, any subdivision of a county, incorporated city, town, school district, sanitary or navigation district, any municipally owned revenue water system or sewer system where special revenues to meet the principal and interest payments of such municipally owned revenue water system and sewer system bonds or other evidences of debt shall have been appropriated, pledged or otherwise provided for by such municipality. Provided, before bonds or other evidences of debt of navigation districts shall be eligible investments such navigation district shall be located in whole or in part in a county containing a population of not less than 100,000 according to the last preceding Federal Census; and provided further, that the interest due on such navigation bonds or other evidences of debt of navigation districts must never have been defaulted;

5. In the stocks, bonds, debentures, bills of exchange or other commercial notes or bills and securities of any solvent dividend paying corporation at time of purchase, incorporated under the laws of this State, or of any other State of the United States, or of the United States, which has not defaulted in the payment of any of its obligations for a period of five years, immediately preceding the date of the investment; provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation organized under the laws of this State, unless such corporation has at the time of investment a net worth of not less than \$250,000.00 nor in the stock of any oil, manufacturing or mercantile corporation, not organized under the laws of this State, unless such corporation has a combined capital, surplus and undivided profits of not less than \$2,500,000.00; provided further:

(a) Any such insurance company may invest its funds over and above its capital stock, its minimum surplus, and all reserves required by law, in the stocks, bonds or debentures of any solvent corporation organized under the laws of this State, or of any other State of the United States, or of the United States.

(b) No such insurance company shall invest any of its funds in its own stock or in any stock on account of which the holders or owners thereof may, in any event, be or become liable to any assessment, except for taxes.

(c) No such insurance company shall invest any of its funds in stocks, bonds or other securities issued by a corporation if a majority of the stock having voting powers of such issuing corporation is owned, directly or indirectly, by or for the benefit of one or more officers or directors of such insurance company; provided, however, that this section shall not apply to any insurance company which has been in continuous operation for five years;

6. In loans upon the pledge of any mortgage, stock, bonds or other evidence of indebtedness acceptable as investments under the terms of this article, if the current value of such mortgage, stock, bonds or other evi-

dence of indebtedness is at least twenty-five (25%) per cent more than the amount loaned thereon;

7. In interest-bearing notes or bonds of The University of Texas issued under and by virtue of Chapter 40, Acts of the 43rd Legislature, Second Called Session;<sup>1</sup>

8. In real estate to the extent only as elsewhere authorized by this Code;

9. In insured accounts and evidences of indebtedness as defined and limited by Section 1, Chapter 618, page 1356, Acts of 47th Legislature;<sup>2</sup> in shares or share accounts as authorized in Section 1, page 76, Acts 1939, 46th Legislature;<sup>3</sup> in insured or guaranteed obligations as authorized in Chapter 230, page 315, Acts 1945, 49th Legislature;<sup>4</sup> in bonds issued under the provisions authorized by Section 9, Chapter 231, page 774, Acts 1933, 43rd Legislature;<sup>5</sup> in bonds under authority of Section 1, Chapter 1, page 427, Acts 1939, 46th Legislature;<sup>6</sup> in bonds and other indebtedness as authorized in Section 1, Chapter 3, page 494, Acts 1939, 46th Legislature;<sup>7</sup> in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature;<sup>8</sup> or in bonds as authorized by Section 5, Chapter 122, page 219, Acts 1949, 51st Legislature;<sup>9</sup> or in bonds as authorized by Section 10, Chapter 159, page 326, Acts 1949, 51st Legislature;<sup>10</sup> or in bonds as authorized by Section 19, Chapter 340, page 655, Acts 1949, 51st Legislature;<sup>11</sup> or in bonds as authorized by Section 10, Chapter 398, page 737, Acts 1949, 51st Legislature;<sup>12</sup> or in bonds as authorized by Section 18, Chapter 465, page 855, Acts 1949, 51st Legislature;<sup>13</sup> or in shares or share accounts as authorized in Chapter 534, page 966, Acts 1949, 51st Legislature;<sup>14</sup> or in bonds as authorized by Section 24, Chapter 110, page 193, Acts 1949, 51st Legislature;<sup>15</sup> together with such other investments as are now or may hereafter be specifically authorized by law. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 10.

<sup>1</sup> Vernon's Ann.Civ.St. art. 2603d.

<sup>2</sup> Vernon's Ann.Civ.St. art. 842a.

<sup>3</sup> Vernon's Ann.Civ.St. art. 881a—24.

<sup>4</sup> Vernon's Ann.Civ.St. art. 824a—1.

<sup>5</sup> Vernon's Ann.Civ.St. art. 1187a, § 9.

<sup>6</sup> Vernon's Ann.Civ.St. art. 1269k—1.

<sup>7</sup> Vernon's Ann.Civ.St. art. 5890c.

<sup>8</sup> Vernon's Ann.Civ.St. art. 7880—19a.

<sup>9</sup> Vernon's Ann.Civ.St. art. 6795b—1, § 7b.

<sup>10</sup> Vernon's Ann.Civ.St. art. 8280—134, § 10.

<sup>11</sup> Vernon's Ann.Civ.St. art. 8280—137, § 19.

<sup>12</sup> Vernon's Ann.Civ.St. art. 8280—138, § 10.

<sup>13</sup> Vernon's Ann.Civ.St. art. 8280—139, § 18.

<sup>14</sup> Vernon's Ann.Civ.St. art. 881a—24.

<sup>15</sup> Vernon's Ann.Civ.St. art. 8280—133, § 24.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 2.18. Governed By Other Laws

The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this Code. None of the provisions of this Chapter 2 shall apply to insurance companies organized or operating under the provisions of Chapter 3 or Chapter 11 of this Code, and Chapters 10, 12, 13, or 14 of this Code. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 2.20. Renewal Certificates of Authority**

Any domestic insurance company and any foreign or alien insurance company heretofore organized and doing business in Texas as an authorized fire or casualty insurer, or both, at the effective date of this Act, and which does not have the minimum capital or the minimum surplus, or both, required by Article 2.02 of this Code subject to the provisions of Section 5 of Article 1.10 of this Code may continue to transact the kind or kinds of insurance business for which it held Certificate of Authority on such date until said certificate expires by its terms or is revoked or suspended according to law, provided that on December 31, 1959, it shall have increased its capital or its surplus, or both, as required by law by fifty (50%) per cent of the difference between the capital or surplus or both existing on December 31, 1954, and the capital or surplus or both required by Article 2.02 of this Code subject to the provisions of Section 5 of Article 1.10 of this Code before it shall be entitled to obtain Renewal Certificate or Certificates of Authority as provided by law, after December 31, 1959; and provided further, that its investments made in compliance with law prior to the effective date hereof may be retained until December 31, 1959, after which date the provisions hereof as to investments must be fully met before it shall be entitled to obtain Renewal Certificate or Certificates of Authority as provided by law; and provided further, all such companies shall fully meet the requirements of Article 2.02 of this Code on and after December 31, 1964, subject to the provisions of Section 5 of Article 1.10 of this Code. No part of this Article shall apply to any farm mutual fire insurance company operating in Texas under the provisions of Chapter 16 of this Code at the effective date of this Act, or to any company now operating under Chapter 12 of Title 78, Revised Civil Statutes of Texas, which has heretofore been repealed. Added Acts 1955, 54th Leg., p. 413, ch. 117, § 11.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 2.21. Certificate of Authority**

When the said Articles of Incorporation have been deposited with the Board, or when the right to do business has been approved as provided by law, and the law in all other respects has been complied with by the company, the Board shall issue to such company a Certificate of Authority to commence business as proposed in their Articles of Incorporation or application or declaration. Added Acts 1955, 54th Leg., p. 413, ch. 117, § 12.

Effective 90 days after June 7, 1955, date of adjournment.

CHAPTER THREE—LIFE, HEALTH AND ACCIDENT  
INSURANCE

<p>Art. SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES</p> <p>3.02a. Shares of Stock [New].</p> <p>SUBCHAPTER D. POLICIES AND BENEFICIARIES</p> <p>SUBCHAPTER F. MISCELLANEOUS PROVISIONS</p> <p>3.69. Governed by Other Laws [New].</p> <p>SUBCH. G. ACCIDENT AND SICKNESS INSURANCE [NEW].</p> <p>3.70—1. Definitions; Scope of Act.</p>	<p>Art. 3.70—2. Form of policy.</p> <p>3.70—3. Accident and Sickness Policy Provisions.</p> <p>3.70—4. Conforming to Statute.</p> <p>3.70—5. Application.</p> <p>3.70—6. Notice; Waiver.</p> <p>3.70—7. Age Limit.</p> <p>3.70—8. Non-application to Certain Policies.</p> <p>3.70—9. Violation.</p> <p>3.70—10. Notice and Hearing; Judicial Review.</p>
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## SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

## Art. 3.02. Who May Incorporate

Section 1. Any three or more citizens of this State may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. In order to form such a company, the incorporators shall sign and acknowledge its articles of incorporation and file the same in the office of the Board of Insurance Commissioners. Such articles shall specify:

1. The name and place of residence of each of the incorporators;
2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;
3. The location of its home office;
4. The kind or kinds of insurance business it proposes to transact;
5. The amount of its capital stock, not less than One Hundred Thousand (\$100,000.00) Dollars; all of which capital stock must be fully subscribed and fully paid up and in the hands of the corporators before said articles of incorporation are filed. Such insurance company shall not be incorporated unless, at the time of incorporation, such company is possessed of at least One Hundred Thousand (\$100,000.00) Dollars surplus in addition to its capital; provided, the amount of such surplus need not be stated in its articles of incorporation. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate; provided, however, that fifty (50%) per cent of the minimum capital may be invested in first mortgage real estate loans. After the granting of charter the surplus may be invested as otherwise provided in this Code. Notwithstanding any other provisions of this Code, such minimum capital shall at all times be maintained in cash or in the classes of investments described in this article;
6. The period of time it is to exist, which shall not exceed five hundred years;

**Ins. Code**

7. The number of shares of such capital stock;

8. Such other provisions not inconsistent with the law as the corporations may deem proper to insert therein.

Sec. 2. From and after the effective date of this Act the capital and surplus requirements of Paragraph 5 of Section 1 of Article 3.02 of this Code shall be the minimum capital and surplus requirements for any company which is subject to the provisions of Chapter 3 of this Code as amended; provided, however, that no such company which was licensed and doing such business in this State prior to May 15, 1955 shall be required to increase the amount or convert the class or form if its existing capital or surplus to comply with the capital and surplus requirements of said Paragraph 5 of Section 1 hereof, but such company shall comply with the requirements of Subsection (a) hereof;

(a) Until the capital and surplus of such company is at least One Hundred Thousand (\$100,000.00) Dollars, no such company shall insure any life for more than Twenty Thousand (\$20,000.00) Dollars in the event of death from natural causes nor more than Forty Thousand (\$40,000.00) Dollars in the event of death from accidental causes. Provided, however, that when the net capital and surplus of any such company is not more than Thirty-five Thousand (\$35,000.00) Dollars, the excess over One Thousand (\$1,000.00) Dollars natural death benefit and Two Thousand (\$2,000.00) Dollars accidental death benefit under any policy issued by it shall be reinsured in some legal reserve company licensed in Texas; that when the net capital and surplus is Thirty-five Thousand and One (\$35,001.00) Dollars to Fifty Thousand (\$50,000.00) Dollars, the natural death benefit over Two Thousand (\$2,000.00) Dollars and accidental death benefit over Four Thousand (\$4,000.00) Dollars shall be so reinsured; that when the net capital and surplus is Fifty Thousand and One (\$50,001.00) Dollars to Seventy-five Thousand (\$75,000.00) Dollars, the natural death benefit over Three Thousand (\$3,000.00) Dollars and accidental death benefit over Six Thousand (\$6,000.00) Dollars shall be so reinsured; and when the net capital and surplus is Seventy-five Thousand and One (\$75,001.00) Dollars to less than One Hundred Thousand (\$100,000.00) Dollars, the natural death benefit over Four Thousand (\$4,000.00) Dollars and accidental death benefit over Eight Thousand (\$8,000.00) Dollars shall be so reinsured.

Sec. 3. Every life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company incorporated or transacting such business in this State shall be subject to this Chapter 3 unless otherwise expressly provided by this Code. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 3.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 3.02a. Shares of Stock**

(a) The stock of any life, health or accident insurance company organized or operating under the provisions of this chapter may be divided or converted into shares of either par value or no-par value, or both, all of which shall be fully paid and non-assessable. If divided or converted into shares of par value, each share shall be for not less than One (\$1.00) Dollar nor more than One Hundred (\$100.00) Dollars. If divided or converted into shares of no-par value, every such share shall be equal in all respects to every other such share. At the time of filing of original charter or any amendment of an existing charter authorizing the issuance of stock with no-par value, the company shall file a statement under oath with the Board of Insurance Commissioners setting forth the number of shares without par value subscribed and the actual consideration received by the

company for such shares. Provided, however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty (50%) per cent of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further, that in no event shall the amount so paid be less than Two Hundred Fifty Thousand (\$250,000.00) Dollars.

(b) Such companies may issue and dispose of their authorized shares having no nominal or par value for money or those notes, bonds, mortgages and stocks of which the law requires that capital stock of insurance companies shall consist. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this article shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments.

(c) In the event all of the shares of stock without nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares of stock without nominal or par value are sold and issued, the company shall file with the Board, within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the number of such shares so issued and the actual consideration received by the company for such shares.

(d) Nothing herein contained shall be construed to impair the charter rights of companies heretofore authorized to issue stock of no-par value. Acts 1951, 52nd Leg., p. 868, ch. 491, art. 3.02a added Acts 1955, 54th Leg., p. 916, ch. 363, § 4.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 3.03. Repealed. Acts 1955, 54th Leg., p. 916, ch. 363, § 5, eff. 90 days after June 7, 1955, date of adjournment**

Section 5 of the repealing act contained a proviso: That Article 3.03 of the Insurance Code be and it is hereby repealed; provided that every company heretofore organized and now operating under Article 3.03 shall, after the effective date of this amendment to the Insurance Code, be permitted to continue to operate and write new business subject to the provisions of

Chapter 3 of the Insurance Code as amended, including the provisions of Section 2 of Article 3.02 of the Insurance Code as amended; provided, however, no such company shall be required to increase the amount of or convert the class or form of its capital or surplus to comply with the requirements of Paragraph 5 of Article 3.02 of this Code as amended.

**Art. 3.04. Application, Charter and Organization**

As a condition precedent to the granting of a charter of any such company, the incorporators shall file with the Board of Insurance Commissioners the following:

1. An application for charter on such form and including therein such information as may be prescribed by the Board;
2. The articles of incorporation as provided in this Code;
3. An affidavit made by two or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount of not less than One Hundred Thousand (\$100,000.00) Dollars capital and that such company is possessed of at least One Hundred Thousand (\$100,000.00) Dollars surplus, as required by law, in addition to its capital; which affidavit shall state that the facts set forth



in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The Board of Insurance Commissioners may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;

4. A charter fee of Twenty-five (\$25.00) Dollars.

When such application for charter, articles of incorporation, affidavit, and charter fee are filed with the Board of Insurance Commissioners, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing and shall furnish a copy of such notice to the Attorney General of Texas and to all interested parties including any parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings, and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this State, including the right to be represented by counsel.

In considering any such application, the Board shall, within thirty (30) days after public hearing, determine whether or not:

(a) The minimum capital and surplus, as required by law, is the bona fide property of the company;

(b) The proposed officers, directors and managing executive have sufficient insurance experience, ability and standing to render success of the proposed company probable;

(c) The applicants are acting in good faith.

If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise the Board shall approve the application and submit such application together with the articles of incorporation and the affidavit to the Attorney General for examination. If the application, articles of incorporation, the affidavit and the procedure and action thereon shall be found by the Attorney General to be in accordance with the law of this State, he shall attach thereto his certificate to that effect, whereupon all such documents shall be deposited with the Board. Upon receipt by the Board of such documents so certified by the Attorney General, the Board shall record the same in a book kept for that purpose; and upon receipt of a fee of One (\$1.00) Dollar, it shall furnish a certified copy of the same to the incorporators, upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders, who shall adopt by-laws for the government of the company, and elect a board of directors, not less than five (5), composed of stockholders; which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the

laws of this State. The board of directors so elected shall serve until the second Tuesday in March thereafter, on which date, annually thereafter, there shall be held a meeting of the stockholders at the home office, and a board of directors elected for the ensuing year. If the stockholders fail to elect directors at any such annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. The directors shall choose from their own number a president and such other officers as may be provided for by the by-laws, and define the duties and fix the compensation thereof. The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of such business. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 6.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 3.06. Original Examination and Certificate

When the first meeting of the stockholders shall be held and the officers of the company elected, the president or secretary shall notify the Board of Insurance Commissioners; and it shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If it finds that all of the capital of the company, as required by law, has been fully paid up and that the capital and surplus is in the custody of the officers, in cash or securities of the class authorized by Article 3.02 of the Insurance Code as amended, it shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this State as such officers may apply for and as may be authorized by its charter; which certificate shall be issued for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law. Before such certificate is issued, not less than two (2) officers of such company shall execute and file with the Board of Insurance Commissioners a sworn schedule of all the assets of the company exhibited to the Board upon such examination showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company, and are worth the amount stated in such schedule. No original or first certificate of authority shall be granted, except in conformity herewith, regardless of the date of filing of the articles of incorporation with the Board of Insurance Commissioners. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 7.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 3.11. Dividends; How Paid

No life insurance company shall declare or pay any dividends to its policy holders, except from the expense loading and profits made by such company; provided, however, any such company not showing a profit may pay dividends on its participating policies from the expense loading on such policies; and provided further, that any payment of dividends from

Ins. Code

the expense loading shall not be discriminatory as between policyholders. This shall not prohibit the issuance of policies guaranteeing, by coupons or otherwise, definite payments or reductions in premiums, but any such guarantee contained in policies or coupons issued after the effective date of this Act shall be treated as a definite contract benefit and so valued according to the reserve requirements of this chapter using reserve valuation net premium for such benefits which is a uniform percentage of the gross premium, provided that any policy containing such a contract benefit may be valued on a basis which provides for not more than one (1) year preliminary term insurance. No such company shall declare or pay any dividends to its stockholders, except from the profits made by said company, not including surplus arising from the sale of stock. Nothing in this section with respect to reserves shall apply to any policy issued prior to the effective date of this Act. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 8.

Effective 90 days after June 7, 1955, date of adjournment.

### SUBCHAPTER B. FOREIGN COMPANIES

#### Art. 3.22. Capital Stock and Surplus Requirements

No such foreign stock insurance company shall be licensed by the Board of Insurance Commissioners or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum capital and surplus required by this chapter of a similar domestic company in similar circumstances, including the same character of investments for its minimum capital and surplus. No such foreign mutual insurance company shall be licensed by the Board of Insurance Commissioners or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum free surplus required by Chapter 11 of this Code of a similar domestic company in similar circumstances including the same character of investments for its minimum free surplus. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 9.

Effective 90 days after June 7, 1955, date of adjournment.

### SUBCHAPTER C. RESERVES AND INVESTMENTS

#### Art. 3.30. The Board May Accept Reserve Computations of Other States

The Board of Insurance Commissioners may accept the computation of reserve liability made by the Insurance Commissioner or Supervisor of the State under whose authority a foreign company transacting business in this State was organized when such computations have been properly made on sound and recognized principles reasonably comparable to the principles required by this chapter. The company shall furnish to the Board of Insurance Commissioners a certificate of the Insurance Commissioner or Supervisor of such other State setting forth the reserve calculated on the above requirements on all the policies in force in the company on the previous 31st day of December, and stating that after all other debts of the company and claims against it at that time, and the amount of capital and surplus required by this chapter were provided for, the company had, in securities of the character required by the laws of this State, an amount equal to the reserves on all its policies in force, and that said com-

pany is entitled to do business in its own State. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 10.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 3.32. Requirement of Securities in Amount of Reserve

Having determined the required reserves on all the policies in force, the Board shall see that the company has in securities of the class and character required by the laws of this State the amount of said reserves on all its policies, after all the debts and claims against it and the minimum capital required by this chapter have been provided for. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 11.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 3.39. Authorized Investments for "Domestic" Companies

9. Notwithstanding other provisions of this Article 3.39 of this Code, the capital and surplus of a company hereafter organized under Article 3.02 of this Code and the free surplus of a company hereafter organized under Article 11.01 of this Code shall, at the time of incorporation, consist only of lawful money of the United States, or bonds of the United States, or of this State, or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate; provided, however, that fifty (50%) per cent of the minimum capital may be invested in first mortgage real estate loans; and the minimum capital of a company hereafter organized under said Article 3.02 and the minimum free surplus of a company hereafter organized under said Article 11.01 shall at all times be maintained in cash or in the same classes of investments. After the granting of charter the surplus in excess of such One Hundred Thousand (\$100,000.00) Dollars may be invested as otherwise provided in this Code for Stock Companies. Added Acts 1955, 54th Leg., p. 916, ch. 363, § 12.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 3.40. May Hold Real Estate

Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1(a). One building site and office building for its accommodation in the transaction of its business and for lease and rental; and such office building may be on ground on which the company owns a lease having not less than fifty (50) years to run from the date of its acquisition by the company, provided that the company shall own, or be entitled to the use of, all the improvements thereon, and that the value of such improvements shall at least equal the value of the ground, and shall be not less than twenty (20) times the annual average ground rentals payable under such lease; and provided such office building shall have an annual average net rental of at least twice such annual ground rental; and provided further, that such company shall be liable for and shall pay all State and local taxes levied and assessed against such ground and the improvements thereon, which for the purposes of taxation shall be deemed real estate owned by the company. Provided that an acquisition of such an office building on leased ground shall be approved by the Board of Insurance Commissioners before such investment.

1(b). No such company shall (after the effective date of this Act) make any investment in the properties described in Paragraph 1(a) above

## Ins. Code

if, after making such investment, the total investment of the company in such properties is in excess of thirty-three and one-third (33 $\frac{1}{3}$ %) percent of its admitted assets as of December 31st next preceding the date of such investment; provided, however, that such investment may be increased to as much as fifty (50%) percent of the company's admitted assets upon advance approval by the Board of Insurance Commissioners; provided further, that such investment may be further increased if the amount of such additional increase is paid for only from surplus funds and is not included as an admitted asset of the company. It is especially provided, however, that these limitations shall not affect any bona fide investment in such properties actually made by contract or otherwise for reasonable and adequate consideration prior to the effective date of this Act.

1(c). The value of each such investment in the properties described in Paragraph 1(a) shall be subject to the approval by the Board of Insurance Commissioners; and the Board may, in its discretion, at the time such investment is made or any time when an examination of the company is being made, cause any such investment to be appraised by an appraiser appointed or approved by the Board, and the reasonable expense of such appraisal shall be paid by such insurance company and shall be deemed to be a part of the expense of examination of such company. No such insurance company may hereafter make any increase in the valuation of any of the properties described in Paragraph 1(a) unless and until such increased valuation shall be likewise approved by the Board, subject to the limitations and conditions set out in Paragraph 1(b);

2. Such as have been acquired in good faith by way of security for loans previously contracted or for moneys due;

3. Such as have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings;

4. Such as have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

All such real property specified in Subdivisions 2, 3 and 4 of this article which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold and disposed of within five (5) years after the company shall have acquired title to the same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Board that its interest will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Board shall direct in such certificate. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 13.

Effective 90 days after June 7, 1955, date of adjournment.

**SUBCHAPTER E. GROUP INDUSTRIAL AND CREDIT INSURANCE****Art. 3.50. Group Life Insurance****(1). Sec. 1. Definitions.**

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Twenty Thousand Dollars (\$20,000), unless one hundred and fifty per cent (150%) of the annual compensation of such employee from his employer or employers exceeds Twenty Thou-

sand Dollars (\$20,000), in which event all such term insurance shall not exceed Forty Thousand Dollars (\$40,000), or one hundred and fifty per cent (150%) of such annual compensation, whichever is the lesser, except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater. As amended Acts 1955, 54th Leg., p. 504, ch. 146, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

(3) A policy issued to an incorporated city, town, or village, an independent school district, State colleges or universities, any association of State employees, any association of State, County and City, town or village employees, and any association of any combination of State, County or City, town or village employees, and any Department of the State Government which employer or association shall be deemed the policyholder to insure the employees of any such incorporated city, town or village, of any such independent school district, of any such State college and university, of any such Department of the State Government, members of any association of State, County or City, town or village employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment.

(b) The premium for the policy shall be paid by the policyholder wholly from funds contributed by the insured employees, provided, however, that any moneys or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contributions therefor; and provided further, that the employer may deduct from the employees' salaries the required contributions for the premiums when authorized in writing by the respective employees so to do; and provided further the premium for the policy may be paid by the policyholder wholly or partly from funds contributed by any incorporated city, town or village policyholder when authorized by the charter of such city, town or village. Such policy may be placed in force only if at least seventy-five per cent (75%) of the eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder.

(c) The policy must cover at least fifteen (15) employees at date of issue. As amended Acts 1953, 53rd Leg., p. 853, ch. 345, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 52, ch. 18, § 1; Acts 1955, 54th Leg., p. 809, ch. 299, § 1.

Emergency. Effective May 21, 1955.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who became borrowers from one financial institution, or who became purchasers of securities, merchandise or other property from one vendor under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property, purchased to the extent of their respective indebtedness to said financial institution

**Ins. Code**

or vendor, or the face amount of any loan or loan commitment, totally or partially executed, made to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, but not to exceed Ten Thousand (\$10,000.00) Dollars on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any shall be payable to the estate of the debtor or under the provision of a facility of payment clause. As amended Acts 1955, 54th Leg., p. 686, ch. 247, § 1.

Emergency. May 16, 1955.

Section 2 of the amendatory act of 1954 provided that partial unconstitutionality should not affect the remaining portions of the act. Section 3 repealed conflicting laws or parts of laws to the extent of the conflict.

**SUBCHAPTER F. MISCELLANEOUS PROVISIONS****Art. 3.60. Impairment of Capital Stock**

Any such insurance company transacting business within this State, whose capital stock shall become impaired to the extent of thirty-three and one-third (33 $\frac{1}{3}$ %) per cent thereof, computing its liabilities in the manner provided by the laws of this State, shall make good such impairment within sixty (60) days by reduction of its capital stock (provided such capital stock shall in no case be less than the minimum amount required of such company by law), and failing to make good such impairment within said time shall forfeit its right to write new business in this State until said impairment shall have been made good. The Board of Insurance Commissioners may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty (50%) per cent thereof, computing its reserve liability in the manner provided by the laws of this State for the computation of such reserve liability. No company shall write new business unless it is possessed of the minimum capital required by this Chapter 3, except to the extent it may be otherwise expressly authorized by this Code to do so. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 14.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 3.69. Governed by Other Laws**

The laws governing corporations in general shall apply to and govern insurance companies organized or operating under this Chapter 3 in so far as same are not inconsistent with the provisions of this chapter. Acts 1951, 52nd Leg., p. 868, ch. 49, art. 3.69 added Acts 1955, 54th Leg. p. 916, ch. 363, § 15.

Effective 90 days after June 7, 1955, date of adjournment.

SUBCHAPTER G. ACCIDENT AND SICKNESS  
INSURANCE [NEW]

*Subchapter G, Accident and Sickness Insurance, including Articles 3.70—1 to 3.70—10, was not enacted as part of the Insurance Code.*

*Section 13 of Acts 1955, 54th Leg., p. 1044, ch. 397, provided that "A policy, rider or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in this state immediately before the effective date of this Act may be used or delivered or issued for delivery to any such person during five years after the effective date of this Act without being subject to the provisions of Sections 2, 3, or 4 of this Act."*

## Art. 3.70—1. Definitions; Scope of Act

(A) Definitions. As used in this Act,<sup>1</sup> "Board" shall mean the Board of Insurance Commissioners of the State of Texas. The term "policy of accident and sickness insurance" as used herein, includes any policy or contract providing insurance against loss resulting from sickness or from bodily injury or death by accident or both.

(B) Scope of Act. This Act shall apply to and govern accident and sickness insurance policies issued in the State of Texas by life, health and accident companies, mutual life insurance companies, mutual assessment life insurance companies, mutual insurance companies, local mutual aid associations, mutual or natural premium life or casualty insurance companies, general casualty companies, Lloyds, reciprocal or inter-insurance exchanges or any other insurer which by law is required to be licensed by the Board of Insurance Commissioners; provided, however, this Act shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status, nor to fraternal benefit societies; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies. Acts 1955, 54th Leg., p. 1044, ch. 397, § 1.

<sup>1</sup> Article 3.70—1 et seq.

Effective 90 days after June 7, 1955, date of adjournment.

Section 11 of the Act of 1955 repealed all

conflicting laws and parts of laws to the extent of such conflict. Section 12 was a severability clause.

## Art. 3.70—2. Form of policy

(A) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(1) the entire money and other consideration therefor are expressed therein or in the application, if it is made a part of the policy; and

(2) the time at which the insurance takes effect and terminates is expressed therein; and

(3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policy holder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed twenty-five years, and any other person dependent upon the policy holder; and



(4) the style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers (except copies of applications and identification cards) is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

(5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in Section 3 of this Act<sup>1</sup> are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions"; provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or by-laws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Board. Acts 1955, 54th Leg., p. 1044, ch. 397, § 2.

<sup>1</sup> Article 3.70—3.

### **Art. 3.70—3. Accident and Sickness Policy Provisions**

(A) Required Provisions. Except as provided in paragraph (C) of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Board which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows:

Time Limit on Certain Defenses: (a) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three year period, nor to limit the application of Section 3(B); (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

(b) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

Grace Period: A grace period of ..... (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a rein-

Ins. Code

statement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

**Notice of Claim:** Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every . . . . . (insert a number not less than one nor more than six) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of . . . . . (insert a number not less than one nor more than six) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of . . . . . (insert a number not less than one nor more than six) months preceding the date on which such notice is actually given.)

(6) A provision as follows:

**Claim Forms:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

**Proofs of Loss:** Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible; and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

**Time of Payment of Claims:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic pay-

ment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid . . . . . (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. . . . . (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(B) Other Provisions.

Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain

## Ins. Code

provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Board which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or sub-captions as the Board may approve.

(1) A provision as follows:

**Change of Occupation:** If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

**Misstatement of Age:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

**Other Insurance in This Insurer:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . . . (insert type of coverage or coverages) in excess of \$. . . . . (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate;

or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

**Insurance With Other Insurers:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would

otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro-rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision, there shall be added to the caption of the foregoing provision the phrase: "Expense Incurred Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Board. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(5) A provision as follows:

Insurance With Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro-rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase: "Other Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Board. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether

provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(6) A provision as follows:

**Relation of Earnings to Insurance:** If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars (\$200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Board or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(7) A provision as follows:

**Unpaid Premium:** Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(8) A provision as follows:

**Cancellation:** The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned

premium shall be computed pro-rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(9) A provision as follows:

**Conformity With State Statutes:** Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(10) A provision as follows:

**Illegal Occupation:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision as follows:

**Intoxicants and Narcotics:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(C) Inapplicable or Inconsistent Provisions.

If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Board, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(D) Order of Certain Policy Provisions.

The provisions which are the subject of subsections (A) and (B) of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

(E) Third Party Ownership.

The word "insured" as used in this Act,<sup>1</sup> shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(F) Requirements of other Jurisdictions.

(1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this Act and which is prescribed or required by the law of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(G) Filing Procedure.

The Board may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this Act as are necessary, proper or advisable to the administration of this Act.



**Ins. Code**

This provision shall not abridge any other authority granted the Board by law. Acts 1955, 54th Leg., p. 1044, ch. 397, § 3.

<sup>1</sup> Article 3.70—1 et seq.

**Art. 3.70—4. Conforming to Statute****(A) Other Policy Provisions.**

No policy provision which is not subject to Section 3 of this Act<sup>1</sup> shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this Act.

**(B) Policy Conflicting with this Act.<sup>2</sup>**

A policy delivered or issued for delivery to any person in this state in violation of this Act shall be held valid but shall be construed as provided in this Act. When any provision in a policy subject to this Act is in conflict with any provision of this Act, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this Act. Acts 1955, 54th Leg., p. 1044, ch. 397, § 4.

<sup>1</sup> Article 3.70—3.

<sup>2</sup> Article 3.70—1 et seq.

**Art. 3.70—5. Application**

**(A)** The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

**(B)** No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

**(C)** The falsity of any statement in the application for any policy covered by this Act may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer. Acts 1955, 54th Leg., p. 1044, ch. 397, § 5.

**Art. 3.70—6. Notice; Waiver**

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this Act,<sup>1</sup> or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy. Acts 1955, 54th Leg., p. 1044, ch. 397, § 6.

<sup>1</sup> Article 3.70—1 et seq.

**Art. 3.70—7. Age Limit**

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. Acts 1955, 54th Leg., p. 1044, ch. 397, § 7.

**Art. 3.70—8. Non-application to Certain Policies**

Nothing in this Act<sup>1</sup> shall apply to or affect (1) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract; or (5) any policy written under the provisions of Senate Bill No. 208, Acts 51st Legislature, 1949.<sup>2</sup> Acts 1955, 54th Leg., p. 1044, ch. 397, § 8.

<sup>1</sup> Article 3.70—8.

<sup>2</sup> Vernon's Ann.Civ.St. art. 4764c.

**Art. 3.70—9. Violation**

Any person, partnership or corporation wilfully violating any provision of this Act<sup>1</sup> or order of the Board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed Five Hundred Dollars (\$500.00) for each such violation, which may be recovered by a civil action. The Board may also suspend or revoke the license of an insurer or agent for any such wilful violation. Acts 1955, 54th Leg., p. 1044, ch. 397, § 9.

<sup>1</sup> Article 3.70—1 et seq.

**Art. 3.70—10. Notice and Hearing; Judicial Review**

No general rule, regulation or order shall be adopted by the Board relating to any matter covered by this Act, except after hearing upon at least ten days prior notice by mail to all insurers to whom this Act applies. If any insurer be dissatisfied with any decision, regulation, order, rule, act, or administrative ruling adopted by the Board under the provisions of this Act,<sup>1</sup> such dissatisfied insurer may file a petition setting forth the particular objection to such decision, regulation, order, rule, act or administrative ruling, or to either or all of them, in a District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but

such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. The filing of such suit shall operate as a stay of any such rule, regulation, decision or finding of the Board until the court directs otherwise. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause, and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder. Acts 1955, 54th Leg., p. 1044, ch. 397, § 10.

<sup>1</sup> Article 3.70—1 et seq.

## CHAPTER FIVE—RATING AND POLICY FORMS

### SUBCHAPTER F. JOINT UNDER- WRITING AND REINSURANCE; ADVISORY ORGANIZATIONS

Art.

5.76. Reinsurance [New].

### SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

#### Art. 5.13. Scope of Sub-chapter

This Sub-chapter applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyds or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire Sub-chapter shall ever be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 16 and 17 of this Code.

This Sub-chapter applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this State except as herein stated.

This Sub-chapter does not apply to the writing of motor vehicle, life, health, accident, professional liability, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or opening in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or container, workmen's compensation, inland marine, ocean marine, marine, or title insurance; nor does this Sub-chapter apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operation thereby.

This Sub-chapter shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

The regulatory power herein conferred is vested in the Board of Insurance Commissioners of the State of Texas. Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however to the final authority of the entire Board. As amended Acts 1955, 54th Leg., p. 359, ch. 76, § 1.

Emergency. Effective April 22, 1955. provided that partial invalidity should not affect the remaining portions of the Act.  
Section 2 of the amendatory Act of 1955

### SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

#### Art. 5.50. Exceptions

This subchapter shall not apply to farm mutual insurance companies operating under Chapter 16 of this Code or to any company now operating under Chapter 12 of Title 78 which has heretofore been repealed, and none of the Articles of this subchapter, except Articles 5.35, 5.36, 5.37, 5.38, 5.39, 5.40 and 5.49 shall apply to other purely mutual or to other purely profit sharing fire insurance companies incorporated or unincorporated under the laws of this State, and carried on by the members thereof solely for the protection of their property and not for profit, or to a purely cooperative inter-insurance and reciprocal exchange carried on by the members thereof solely for the protection of their property and not for profit. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 13.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 5.54. Associations Excepted

Nothing in Articles 5.49, 5.52 and 5.53 of this subchapter shall ever be construed to apply to any farm mutual insurance company operating under Chapter 16 of this Code or to any company now operating under Chapter 12, of Title 78, which has heretofore been repealed. Nothing in Articles 5.52 and 5.53 of this subchapter shall ever be construed to apply to any county mutual insurance company operating under Chapter 17 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 14.

Effective 90 days after June 7, 1955, date of adjournment.

### SUBCHAPTER F. JOINT UNDERWRITING AND RE-INSURANCE; ADVISORY ORGANIZATIONS

#### Art. 5.76. Reinsurance

Every company authorized to do business in Texas, regulated by this Act, and while in compliance with all laws applicable to it, will be eligible to reinsure any risk or part of a risk which it may assume as a direct writer under authority of law. No such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the Board of Insurance Commissioners, and be by it approved, as protecting fully the interests of all the policyholders. This Article shall be cumulative of the provisions of this Code pertaining to reinsurance. Added Acts 1955, 54th Leg., p. 413, ch. 117, § 15.

Effective 90 days after June 7, 1955, date of adjournment.

Another Article 5.76 was added by Acts 1953, 53rd Leg., p. 716, ch. 279, § 1. See Article 5.76, post.

**CHAPTER SIX—FIRE AND MARINE COMPANIES**

**Art. 6.04. Reduction of Capital Stock to Make Good Impairment of Surplus**

Whenever the minimum surplus of any fire, fire and marine, or marine insurance company of this State becomes impaired to a greater extent than that provided by Section 5 of Article 1.10, the Board may, in its discretion, permit the said company by amendment to charter as provided by Article 2.03, to reduce its capital stock and par value of its shares in proportion to the extent of permitted impairment; provided that the par value of said shares shall not be reduced below the sum provided by Section 1 of Article 2.07. In fixing such reduced capital, no sum exceeding \$125,000.00 shall be deducted from the assets and property on hand, which shall be retained as surplus assets. No part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company or its surplus in any case be reduced to an amount less than the minimum capital and the minimum surplus provided by Article 2.02 of this Code, subject to the provisions of Section 5 of Article 1.10 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 16.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 6.05. Capital and Surplus to be Made Good**

Any fire, marine or inland insurance company having received notice from the Board to make good any impairment of its required capital or to make good its surplus within 60 days as provided by Section 5 of Article 1.10 shall forthwith call upon its stockholders for such amounts as shall make its capital and its surplus equal to the amount required by Article 2.02, subject to the provisions of said Section 5 of Article 1.10 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 17.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 6.06. Stockholder Failing to Pay**

If any stockholder of such company shall neglect or fail to pay the amount so called for, after notice personally given, or by advertisement for such time and in such manner as said Board shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue a new certificate for such number of shares as such defaulting stockholder may be entitled to in the proportion that the ascertained value of the funds of said company, calculated without inclusion of any money or property paid by stockholders in response to such call, may be found to bear to the total of the original capital and the minimum surplus of said company as required by Article 2.02; as qualified by the provisions of Section 5 of Article 1.10 of this Code, the value of such shares for which new certificates are issued shall be ascertained under the direction of said Board and the company shall pay for the fractional parts of shares.

Any interested person may pay part or all of the amount of the deficit resulting from such default and the company shall issue to each such person a stock certificate for the number of shares to which he is entitled, such certificate to be for the number of shares in proportion to the whole number of forfeited shares which the payment made by the recipient of the

new stock certificate bears to the deficit which resulted from such forfeited shares. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 18.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 6.07. New Stock and Minimum Surplus Made Up

It shall be lawful for such company upon compliance with Article 2.03 of this Code to create new stock and dispose of the same according to law and to issue new certificates therefor. Said new stock shall be sold for an amount sufficient to make up any impairments of its required minimum capital and to make up the surplus of the company as provided in Article 2.02 of this Code as qualified by Section 5 of Article 1.10, without impairment of the capital of the company. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 19.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 6.08. Holding Real Estate

No such company shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

1. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business;
2. Such as shall have been mortgaged to it in good faith by way of security of loans previously contracted or for money due;
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due;
4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts.

All real estate acquired under authority of the above paragraphs of this Article numbered 2, 3 and 4, or either of them, shall be subject to the provisions of Article 8.19 of this Code.

Not more than thirty-three and one-third (33- $\frac{1}{3}$ %) per cent of its admitted assets shall be invested by such insurance company in real estate, and none of its capital and minimum surplus may be so invested, except to the extent that the foregoing limitation shall not apply to real estate held under authority of the above paragraphs of this Article numbered 2, 3 and 4, or either of them. Any insurance company subject to the provisions of this Act, heretofore organized and doing business in Texas, and heretofore holding real estate under the terms of Article 6.08 or 8.18 of this Code prior to this amendment, shall have until December 31, 1959, to comply with this Article as hereby amended.

The value of real estate mentioned in paragraph numbered 1 above shall be appraised by two or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, when such real estate is hereafter acquired or when amendment to charter is applied for, the reasonable cost and expense of such appraisal to be paid by the insurance company to the Board. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 20.

Effective 90 days after June 7, 1955, date of adjournment.

**CHAPTER EIGHT—GENERAL CASUALTY COMPANY**

**Art. 8.05. Capital and Deposits**

Only companies organized and doing business under the provisions of this Chapter shall be subject to its provisions. Such companies shall have not less than the minimum capital and the minimum surplus applicable to casualty, fidelity, guaranty, surety and trust companies as set out in Article 2.02 of this Code. Such a company shall be authorized to transact all and every kind of insurance specified in the first Article of this Chapter. At the time of incorporation all of said capital and surplus shall be in cash. The capital and minimum surplus required of said company as provided in Article 2.02 of this Code shall, following incorporation and the issuance by the Board to said company of a certificate authorizing it to do business, be invested as provided in Article 2.08 of this Code. All other funds of said corporation in excess of its capital and minimum surplus shall be invested by such company as provided in Article 2.10 and in Article 6.08 of this Code. Upon the granting of the charter to said corporation in the mode and manner provided in Article 2.01 and Article 2.02 of this Code, and upon the deposit of the sum of \$50,000.00 of securities of the kind described in Article 2.10 of this Code or in cash with the State Treasurer, the Board shall issue to said company a certificate authorizing it to do business.

No part of the capital or surplus paid in shall be loaned to any officer of said company.

In the event any such company shall be required by the law of any other State, country or province as a requirement prior to doing an insurance business therein to deposit with the duly appointed officer of such other State, country or province, or with the State Treasurer of this State, any securities or cash in excess of the said deposit of \$50,000.00 hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by law, or cash sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of policyholders of the company. Any deposit so made to meet the requirements of any other State, country or province shall not be withdrawn by the company except upon filing with the Board evidence satisfactory to it that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other State, country or province by which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 21.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 8.10. Examination**

All of the provisions of Article 1.15 and Article 1.16 relative to the examination of companies shall apply to companies formed under this Chapter. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 22.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 8.18. Real Estate**

Such company shall be subject to the provisions of Article 6.08 of this Code; and no such company shall be permitted to purchase, hold

or convey real estate, except for the purposes and in the manner set forth in said Article. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 23.

Effective 90 days after June 7, 1955, date of adjournment.

## CHAPTER NINE—TITLE INSURANCE COMPANIES

### Art. 9.01. May Incorporate

Private corporations may be created for the following named purposes:

(1) To compile and own, or to acquire and own, records or abstracts of title to lands and interests in lands; and to insure titles to lands or interests therein, both in Texas and other states of the United States, and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of incumbrances upon or defects in the title to such lands or interests therein; and in transactions in which title insurance is to be or is being issued, to supervise or approve the signing of legal instruments (but not the preparation of such instruments) affecting land titles, disbursement of funds, prorations, delivery of legal instruments, closing of deals, issuance of commitments for title insurance specifying the requirements for title insurance and the defects in title necessary to be cured or corrected; provided, however, that nothing herein contained shall authorize such corporation to practice law, as that term is defined by the courts of this state, and in the event of any conflict herein, this clause shall be controlling.

Such corporations may also exercise the following powers by including same in the charter when filed originally, or by amendment:

(2) Make and sell abstracts of title in any counties of Texas or other states;

(3) To accumulate and lend money, to purchase, sell or deal in notes, bonds, and securities, but without banking privileges;

(4) To act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 8 of the amendatory Act of 1955 repealed all conflicting laws and parts of

laws. Section 9 provided that partial invalidity should not affect the remaining portions of the Act.

### Art. 9.02. Capital Stock

All corporations created and/or operating under the provisions of this chapter must have a paid up capital of not less than One Hundred Thousand (\$100,000.00) Dollars. Any corporation organized under this chapter having the right to do a title insurance business may invest as much as fifty (50%) per cent of its capital stock in an abstract plant or plants, provided the valuation to be placed upon such plant or plants shall be approved by the Board of Insurance Commissioners; provided, however, that if such corporation is not doing a trust business as provided in subdivision 4, Article 9.01 of this chapter, and maintains with the Board the deposit of One Hundred Thousand (\$100,000.00) Dollars, in securities as provided in Article 9.07 of this chapter, such of its capital in excess of fifty (50%) per cent, as deemed necessary to its business by its board of



## Ins. Code

directors may be invested in abstract plants; and provided further, that no such corporation created and/or operating under the provisions of this chapter may either directly or through ownership of a portion of the capital stock of another corporation, or otherwise, hereafter own or acquire more than one abstract plant in any one county. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 2.

**Art. 9.03. Policy Forms and Premiums**

Corporations organized under this chapter, as well as foreign corporations and those created under subdivision 57, Article 1302, of the Revised Civil Statutes of 1925, or under Chapter 8 of this Code, or any other law in so far as the business of either may be a title insurance business, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this chapter or any other law of the State of Texas, shall be permitted to issue any title policy of any character, or underwriting contract, on Texas property other than under this chapter and under such rules and regulations. No policy of title insurance or guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with all provisions of and authorized or qualified under this chapter. Before any rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the companies authorized or qualified under this chapter. Every company doing business under this chapter shall file with the Board the form of guarantee certificate, mortgage policy, or any other policy of title insurance before the same shall be issued, and the form must be approved by the Board, and be uniform as to all companies. Under no circumstances may any company use any form until the same shall have been approved by the Board.

The Board shall have the right and it shall be its duty to fix and promulgate the rates to be charged by corporations created or operating under this chapter for premiums on policies or certificates, and underwriting contracts. The rates fixed by the Board shall be reasonable to the public and non-confiscatory as to the company. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall have the right to require the companies operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for its consideration.

Rates when once fixed shall not be changed until after a public hearing shall be had by the Board, after proper notice sent direct to all companies qualified or authorized to do business under this Act, and after public notice in such manner as to give fair publicity thereto for two (2) weeks in advance. The Board must call such hearing to consider rate changes at the request of a company writing title insurance, or if the Board thinks that a change in rates may be proper. Any company or other person interested, feeling injured by any action of the Board with regard to rates, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming the action of the Board. Under no circumstances shall any rate or premium be charged for policies,

or underwriting contracts different from those fixed and promulgated by the Board. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 3.

#### Art. 9.06. Revocation of License

Any foreign or domestic corporations issuing any form of policy or underwriting contracts, or charging any premium rates on either owners', mortgagee's or other policies, or on underwriting contracts on Texas properties other than forms and rates prescribed by the Board, under the provisions of this chapter, shall forfeit its right to do business in Texas; but this shall not be construed as intended to require the charge made by one title insurance company, qualified to do business under this chapter and doing a general title insurance business for the public in this state, for reinsuring or underwriting all or any part of the business of another such company, to be the same as the charge to the public. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 4.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 9.07. Deposits

All corporations, domestic and foreign, writing title or mortgage policies, or underwriting contracts, must at all times have and keep on deposit with the State Treasury or such other depository in the State of Texas as may be named by such corporation and approved by the Board of Insurance Commissioners, either cash or first mortgage notes or such securities as are now admissible for investment by life insurance companies under the laws of this state, to an amount equal to one-fourth of the authorized capital of such corporation; provided, however, that such deposit shall in no event exceed the sum of One Hundred Thousand (\$100,000.00) Dollars. Such corporation, at its option, may withdraw from time to time such securities or any part thereof, first having deposited in such depository in lieu thereof other securities of sufficient value to maintain the required deposit. Funds deposited under this provision shall never be used for the payment of any obligation other than those connected with title insurance, and in the event of the insolvency or dissolution of a corporation, the fund hereby provided shall be used to protect title insurance policy holders even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts; provided, however, that same shall be applied to the payment of other obligations and liabilities of said corporation and/or distribution to stockholders after complete payment of the obligations and liabilities of the corporation connected with title insurance business and the establishment of adequate reserves or reinsurance for the protection of any subsequently accruing or maturing title insurance obligations and liabilities, the amount of such reserves and the handling and distribution of same to be subject to the control and discretion of the Board of Insurance Commissioners, same to be reviewable in judicial proceedings to be governed by like rules as are applicable to review of rates under Article 9.03 of this chapter. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 5.

#### Art. 9.11. Reserve

Every company, foreign and domestic, doing a title insurance business under the provisions of this chapter shall establish, segregate, and maintain an unearned premium or reinsurance reserve during the period and for the uses and purposes hereinafter provided which shall at all times and for all purposes be deemed and shall constitute unearned portions of

**Ins. Code**

the original premiums and shall be charged as a reserve liability of such company in determining its financial condition; such reserve shall be cumulative and shall be established and shall consist of the following:

(a) the reserve required to be established by such companies up to the effective date of this Act, pursuant to Article 9.11 of the Insurance Code, Acts of the 52nd Legislature, Regular Session, 1951, Chapter 491; and

(b) commencing on the effective date of this Act, a reserve of five (5%) per cent of gross premiums collected by every such company for title insurance policies and mortgagee's policies issued. The term 'gross premium' as used herein means the total amount of the premium paid by the assured, or by someone else for the benefit of the assured, for the policy of insurance.

After June first, nineteen hundred sixty-five, for companies heretofore organized, and after the expiration of one hundred eighty months from the date of beginning business for any company hereafter organized, that unused portion of the unearned premium reserve established more than one hundred eighty months prior shall be released and shall no longer constitute part of the unearned premium reserve and may be used for any corporate purpose.

Such unearned premium reserve shall be set aside by every such company at the close of each and every month, out of gross premiums received on account of policies written during the preceding calendar month, commencing at the close of the month following that in which this Act becomes effective, and continuing each and every calendar month thereafter; providing, however, that every such company which shall have set up and maintained such reserve may from time to time withdraw therefrom such amounts as may be necessary to pay current title policy losses sustained by the company, and amounts so withdrawn shall be deemed to have been appropriated from earlier reserves first, in chronological order of their establishment; and provided further, that the total amount of such reserve shall never be required to exceed a total reserve of One Hundred Thousand (\$100,000.00) Dollars; provided, however, any company, domestic or foreign, which now maintains an unearned premium or reinsurance reserve as herein defined, which totals or exceeds One Hundred Thousand (\$100,000.00) Dollars, including reserves heretofore required and accumulated as provided in subdivision (a) hereof, shall not be required to accumulate or set aside additional reserves as provided in this article so long as such reserve is maintained at not less than One Hundred Thousand (\$100,000.00) Dollars. Such reserve must be set apart and maintained by such company in a segregated reserve fund at all times distinct and separate from all other assets of the company, and shall be held in cash or invested in first mortgage notes or such securities as are admissible for investment by life insurance companies under the laws of this state. Said reserve fund shall constitute a separate and distinct trust fund for the security of holders of title insurance policies, and during the period that said fund is required herein to be maintained, no part of such fund shall be used for the payment of any obligation other than losses connected with title insurance. In the event of the insolvency of a company, such reserve fund shall be used to protect title insurance policyholders even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 6.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 9.25. To Cancel License; Appeals by Companies**

The terms and provisions of this chapter are conditions upon which corporations doing the business provided for in this chapter may continue to exist, and failure to comply with any of them or a violation of any of the terms of this chapter shall be proper cause for revocation of the permit and forfeiture of charter of a domestic corporation or the permit of a foreign corporation.

Any company qualified or seeking to qualify under this chapter, feeling aggrieved by any action of the Board, especially, but not limited to, any action against such company, shall have the right to file a suit in the District Court of Travis County, within thirty days after the Board has made its order or ruling; provided, however, that if the order or ruling is directed against such company, whether or not directed against other companies, such company shall have thirty days after receipt of official notice of such ruling from the Board to review such action of the Board. Such cases shall be tried de novo in such District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of pleading, including rights of amendments thereof, evidence, and procedure as are applicable to other civil cases in the original jurisdiction of a District Court. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 7.

Effective 90 days after June 7, 1955, date of adjournment.

**CHAPTER TEN—FRATERNAL BENEFIT SOCIETIES****Art. 10.08. Reserve**

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the Standard Mortality and Interest Tables adopted by the society for computing contributions, same to be first approved by the Board of Insurance Commissioners. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 24.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 10.40. Conversion of Fraternal Benefit Society into Mutual or Stock Company**

Sec. 3. Pursuant to said notice and convening of the supreme governing body, there shall be adopted a resolution by delegates representing lodges which comprise not less than sixty (60%) per cent of the total membership of the association authorizing the conversion of the said fraternal benefit society into a mutual or stock life insurance company, and shall set forth or ratify a certificate of incorporation, amending the society's charter, and shall set forth:

(a) The name of the society, and the name of the new corporation by which it shall thereafter be known, which shall preferably be a continuation of the same name. Provided that if the new corporation shall change from the former name of the society, it shall not adopt the same name as that of any other such society doing business in this State, nor a name similar to that of any other society doing business in this State;

(b) The object of the corporation;

(c) The location of its principal office, which must be within the State of Texas; and the names of the principal officers of such corporation, who shall serve until their successors are elected and qualified;

## Ins. Code

(d) The period, if any, for the duration of the corporation;

(e) If the conversion is into a mutual benefit company there shall be set forth the amount of the free surplus which in amount and form shall comply with Article 11.01 of this Code as amended; and such conversion shall comply with the requirements of Article 11.02 of this Code as amended, and upon such conversion such company shall be subject to all of the provisions of Chapter 11 of this Code. If the conversion is into an incorporated stock company, there shall be set forth the amount of the surplus and the amount of the capital stock authorized, the number of shares into which it is divided, and the amount of capital stock to be immediately paid in, and in amount and form such capital and surplus shall be in conformity with Articles 3.02 and 3.02a of this Code, as amended; and such conversion shall comply with the requirements of Article 3.04 of this Code as amended, and upon such conversion such company shall be subject to all of the provisions of Chapter 3 of this Code. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 16.

Effective 90 days after June 7, 1955, date of adjournment.

## CHAPTER ELEVEN—MUTUAL LIFE INSURANCE COMPANIES

## Art. 11.01. Incorporation

Section 1. Nine or more persons, residents of this State, may form a mutual life insurance company for the purposes of insuring the lives of individuals on the mutual level premium, legal reserve plan, and any such company heretofore or hereafter created may issue, combined or separately, life, health and accident insurance policies, subject to the provisions of this chapter, by executing and acknowledging articles of incorporation for that purpose. Such articles of incorporation shall set forth:

1. The name and residence of each incorporator;
2. The name of the proposed company, which shall contain the words "Mutual Life Insurance Company" as a part thereof; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;
3. The location of the principal office from which the business of the company is to be transacted;
4. The number of directors and the name and residence of each one who is to serve until the first regular election of directors;
5. The amount of its free surplus which shall, at the time of incorporation, be not less than Two Hundred Thousand (\$200,000.00) Dollars. Such free surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate as a part of its free surplus; provided, however, that twenty-five (25%) per cent of the minimum free surplus may be invested in first mortgage real estate loans. Notwithstanding any other provision of this Code, a minimum of One Hundred Thousand (\$100,000.00) Dollars of such free surplus shall at all times be maintained in cash or in the classes of investments described in this article. After the granting of charter the free surplus in excess of such One Hundred Thousand (\$100,000.00) Dollars may be invested as otherwise provided in this Code for stock companies.

Sec. 2(a). From and after the effective date of this Act the surplus requirement of Paragraph 5 of Section 1 of Article 11.01 of this Code shall

be the minimum surplus requirement for any company which is subject to the provisions of Chapter 11 of this Code as amended; provided, however, that no such company which was licensed and doing business in this State prior to May 1, 1955 shall be required to increase the amount or convert the class or form of its existing surplus to comply with the surplus requirement of said Paragraph 5 of Section 1 of Article 11.01 of this Code as amended, nor shall any such company be denied the right of writing new business if such company does not maintain the surplus stated in Article 11.17 of this Code, so long as all other laws are complied with.

(b) Each such mutual life insurance company shall have the right to apportion to its free surplus all or any portion of the contingency reserves provided for in Article 11.11 of the Insurance Code while and whenever the free surplus of such company shall be less than One Hundred Thousand (\$100,000.00) Dollars."

(c) Any mutual life insurance company heretofore organized or operating under the provisions of Chapter 11 of this Code may convert into a stock legal reserve life insurance company subject to the following conditions:

1. There shall be contributed in cash of the United States the sum of not less than Fifty Thousand (\$50,000.00) Dollars in capital and not less than Twenty-five Thousand (\$25,000.00) Dollars in surplus, which contributed capital and surplus shall be in addition to all assets of such company at the date of conversion;

2. Such conversion shall only be made on a vote of the policy holders of such company at a meeting called for such purpose. Pursuant to such policy holder authorization, the Board of Directors and officers of such mutual legal reserve life insurance company shall amend its existing charter or articles of incorporation so as to comply with the requirements of Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof;

3. After compliance with the provisions hereof and approval of the proposed conversion by the Attorney General of the State of Texas and the Board of Insurance Commissioners, such company shall be and become a legal reserve stock life insurance company, except that such company so converted shall not: (1) insure any life for more than Five Thousand (\$5,000.00) Dollars in event of death; nor (2) declare or pay any cash dividend unless and until the capital and surplus of such stock legal reserve life insurance company shall be increased to not less than the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code as amended;

4. Any such company so converted shall within ten years from the date of its conversion increase its capital and surplus to not less than the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners;

5. From and after the date of such conversion such legal reserve life insurance company shall be governed by the provisions of Chapter 3 of this Code, as amended, except as otherwise herein provided. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 17.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 11.02. Application Charter and Certificate of Authority**

Section 1. As a condition precedent to the granting of a charter of any such insurance company, the incorporators shall file with the Board of Insurance Commissioners the following:

1. An application for charter on such form and include therein such information as may be prescribed by the Board;

2. The articles of incorporation as provided in this Code;

3. An affidavit made by two (2) or more of its incorporators that such company is possessed of at least Two Hundred Thousand (\$200,000.00) Dollars free surplus, as required by law, which affidavit shall state that the facts set forth in the application and articles of incorporation are true and correct and that the free surplus is the bona fide property of such company. The Board of Insurance Commissioners may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter, or follow the procedure hereinafter set forth;

4. A charter fee of Twenty-five (\$25.00) Dollars.

When such application for charter, articles of incorporation, affidavit and charter fee are filed with the Board of Insurance Commissioners, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing, and shall furnish a copy of such notice to the Attorney General of Texas and to all interested parties, including any other parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this State, including the right to be represented by counsel.

In considering any such application, the Board shall within thirty (30) days after public hearing, determine whether:

(a) The minimum free surplus, as required by law, is the bona fide property of the company;

(b) The proposed officers, directors and managing executive have sufficient insurance experience, ability and standing to render success of the proposed company probable;

(c) The applicants are acting in good faith;

If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing, giving the reason therefor. Otherwise, the Board shall approve the application and submit such application together with the articles of incorporation and the affidavit to the Attorney General for examination. If the application, articles of incorporation, affidavit and the procedure and action thereon shall be found by the Attorney General to be in accordance with the laws of this State, he shall attach thereto his certificate to that effect, whereupon all such documents shall be deposited with the Board.

Sec. 2. The Board shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If it finds that the company has complied with all applicable laws and is possessed of a free surplus of not less than Two Hundred Thousand (\$200,000.00) Dollars and that such surplus is in the custody of the officers either in cash or classes of investments as provided in Paragraph 5 of Article 11.01 of this Code, as amended, it shall issue to such company a certificate of authority to transact a life, health or accident insurance business within this State as such officers may apply for and as may be authorized by its charter issued pursuant to Article 11.01 of this chapter; which certificate shall be issued for a period of not more than fifteen (15) months and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law. The foregoing requirement as to free surplus shall apply to mutual assessment companies or associations which may convert to mutual legal reserve companies under the provisions of Article 11.10 of the Insurance Code as amended. No original or first certificate of authority shall be granted, except in conformity herewith. As amended Acts 1953, 53rd Leg., p. 1010, ch. 415, § 1; Acts 1955, 54th Leg., p. 916, ch. 363, § 18.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 11.10. Mutual Assessment Companies May Convert

Mutual assessment companies and associations organized and operating under the laws of this State on May 17, 1943 which desire to convert to a mutual legal reserve company, and qualify under Chapter 11 of the Insurance Code, shall be required at the time of conversion to be possessed of free surplus of not less than Two Hundred Thousand (\$200,000.00) Dollars. In order to convert, such company shall comply with the provisions of Articles 11.01 and 11.02 of the Insurance Code as amended, and upon such conversion shall be subject to all of the provisions of Chapter 11 of this Code.

Nothing in this article or in the provisions of this chapter or Chapter 3 of this Code shall ever be construed to mean that any of the associations or similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to convert to mutual legal reserve companies as herein authorized unless they voluntarily decide to do so; and if such associations have not heretofore voluntarily decided to come under this chapter, and if such associations do not hereafter so voluntarily decide to come under this chapter, then this chapter shall not in any way apply to any such associations. As amended Acts 1953, 53rd Leg., p. 1010, ch. 415, § 2; Acts 1955, 54th Leg., p. 916, ch. 363, § 19.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 11.11. Contingency Reserve

Any mutual, level premium, legal reserve life insurance company organized and doing business under the provisions of this Chapter may accumulate and maintain a contingency reserve, over and above all of its reserves and liabilities required or specifically permitted by the provisions of this Chapter, in an amount not exceeding Ten Thousand Dollars (\$10,000), or an amount equal to the sum of ten per cent (10%) of all of its policy reserves and policy liabilities, plus one per cent (1%) of the amount of its life insurance then in force, if such sum be greater than



**Ins. Code**

Ten Thousand Dollars (\$10,000), but in no event to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000), or ten per cent (10%) of all of its policy reserves and policy liabilities, whichever shall be greater. The term "policy reserves and policy liabilities" as used in this Section of this Act shall include only its reserves on outstanding life insurance policies and annuity contracts, contracts issued as supplemental thereto or in connection therewith or provisions included therein insuring against disability or against death by accident or accidental means, and including liabilities required under optional modes of settlement, and for dividends left on deposit at interest, after deducting the net value of its risks reinsured by other solvent assuming insurers, but this shall not affect any existing contingency reserve held by any such company on the effective date of this Act, save that whenever and as long as such existing contingency reserve shall exceed the limit above-mentioned, it shall not be entitled to maintain any additional contingency reserve.

The Board of Insurance Commissioners may, for good cause shown by an official order, permit any such company to accumulate and maintain a contingency reserve in excess of the maximum amount hereinbefore prescribed, for a period, not exceeding one (1) year under any one order, which shall be specified in such order. The Board of Insurance Commissioners shall state in such order its reasons therefor.

"All such contingency reserves as provided for by this Act shall be invested according to law under the supervision of the Board of Insurance Commissioners and shall be used exclusively for the payment of death claims and dividends to policyholders. All interests and earnings from such investments in excess of the maximum contingency reserves as provided for in this Act shall be paid in dividends to policyholders according to present laws.

The contingency reserve described in this Article shall be deemed to be unassigned surplus, and in addition to any free surplus elsewhere required or allowed, may be so designated in all financial statements and reports and treated as such. As amended Acts 1955, 54th Leg., p. 814, ch. 301, § 1.

Emergency. Effective May 21, 1955.

**Art. 11.12. Surplus and Dividends**

Each such company shall make an annual accounting and apportionment of divisible surplus to each policyholder, beginning not later than the end of the second policy year on all policies issued; and each such policyholder shall be entitled to and credited with or paid such portion of the entire divisible surplus as may be equitably apportioned to his policy. Upon the 31st day of December of each year, or as soon thereafter as may be practicable, each such company shall truly ascertain the surplus earned by it during such year; and after setting aside from such surplus such portion thereof as the Board of Insurance Commissioners may approve for retirement of any unpaid advances theretofore made pursuant to Article 11.16 of this chapter, and after deducting the contingency reserve and the amount of earned surplus, if any, apportioned to free surplus as provided for in this chapter, it shall apportion to each of its policies upon which all premiums due and payable for at least two (2) years have been paid, an equitable proportion of the remainder of such surplus, and shall immediately submit a detailed report of such apportionment under oath of its president or secretary to the Board of Insurance Commissioners. If such Board shall find such apportionment to be equitable and just to the policyholders and in accordance with the provisions of this chapter, it shall approve the same, and it shall become effective. If it shall not approve

such apportionment, it shall make such changes therein as it shall deem equitable and just and necessary to make the same comply with the provisions of this chapter, and shall certify such changes to such company, whereupon such apportionment as changed by such Board shall become effective. Each dividend declared as aforesaid shall be paid in cash, or in the equivalent of its cash value in any option stated in the policy and selected by the policyholder, notice of which selection by the policyholder shall be given to the company in writing.

It is further provided that each such company heretofore organized or converted and operating under the provisions of Chapter 11 of this Code which does not at the effective date of this amendment to this Code maintain the minimum free surplus specified in Article 11.01 as amended shall have the right, subject to the limitations herein set forth, to pay dividends but shall not be obligated by the provisions of this article to pay dividends to the policyholders until the minimum free surplus specified in Article 11.01 as amended has been acquired or accumulated by such company. The divisible surplus available for payment of dividends shall not include:

(a) Any portion of the free surplus, required by Article 11.01 as amended, of companies organized after the effective date of this amendment;

(b) Any portion of the free surplus of any company theretofore apportioned from earned surplus, transferred from contingency reserves or otherwise accumulated or acquired by such company as a part of its free surplus;

(c) That portion of the earned surplus for the preceding calendar year in excess of seventy-five (75%) per cent thereof whenever the free surplus of any company shall be less than Twenty-five Thousand (\$25,000.00) Dollars; it being the intent and purpose of this clause that each company whose free surplus is less than Twenty-five Thousand (\$25,000.00) Dollars shall be obligated to apportion a minimum of twenty-five (25%) per cent of the net earned surplus for the preceding calendar year to the free surplus of such company until such company shall have acquired or accumulated a free surplus of at least Twenty-five Thousand (\$25,000.00) Dollars.

No such company shall ever be required by the provisions of this article to pay dividends to policyholders at any time when the free surplus theretofore accumulated or acquired by said company shall be impaired. As amended Acts 1953, 53rd Leg., p. 1010, ch. 415, § 3; Acts 1955, 54th Leg., p. 916, ch. 363, § 20.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 11.17. Liabilities

Any such insurance company transacting business within this State shall at all times have and maintain a minimum free surplus of not less than One Hundred Thousand (\$100,000.00) Dollars and if such minimum free surplus shall become impaired to the extent of thirty-three and one-third (33⅓%) per cent thereof, computing its liabilities in the manner provided by the laws of this State, it shall make good such impairment within sixty (60) days; and failing to make good such impairment within said time shall forfeit its right to write any business in this State until said impairment shall have been made good. The Board of Insurance Commissioners may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its above mentioned minimum free surplus shall become impaired to the extent of fifty (50%) per cent thereof, computing its reserve liability in

**Ins. Code**

the manner provided by the laws of this State for the computation of such reserve liability. No company shall write new business unless it is possessed of the minimum free surplus required by this article, except to the extent it may be otherwise expressly authorized by this Code to do so. As amended Acts 1953, 53rd Leg., p. 1010, ch. 415, § 4; Acts 1955, 54th Leg., p. 916, ch. 363, § 21.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 11.19. Other Laws to Govern**

The provisions of Chapter 3 of this Code, when not in conflict with the Articles of this Chapter, shall apply to and govern mutual life insurance companies organized under the provisions of this Chapter; provided, however, that when any mutual life insurance company organized under the provisions of this Chapter has a surplus equal to or greater than the minimum of capital and surplus required of capital stock companies under the provisions of Article 3.02 of Chapter 3, Insurance Code of the State of Texas, Revised Civil Statutes of Texas of 1925, the following provisions of Chapter 11 only shall apply to such mutual companies: 11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 11.09, 11.10, 11.11, 11.12, 11.14, 11.16, 11.17, 11.18, and 11.19. On all other matters the provisions of said Chapter 3 shall apply to and govern such mutual life insurance companies. As amended Acts 1955, 54th Leg., p. 546, ch. 171, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**CHAPTER FOURTEEN—GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES**

Art. 14.63. Conversion of Local Mutual Aid Association or Statewide Mutual	Assessment Company into Stock Legal Reserve Life Insurance Company [New].
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**Art. 14.61. Conversion or Reinsurance of Domestic Local Mutual Aid Associations, etc., into Legal Reserve Companies**

**Sec. 1.**

(c) When such association shall have complied with the provisions of this Article and the other laws of this State regulating the incorporation of such mutual legal reserve insurance companies, and shall have received from the Board of Insurance Commissioners its charter and certificate of authority to transact business as a mutual insurance company, its reorganization and conversion shall be complete. Such reorganized and converted or reinsured corporation shall be deemed in law to have the rights, privileges, powers and authority of any other corporation organized in accordance with the provisions of said Chapters. The new corporation shall be deemed in law to be a continuation of the business of the former association and shall succeed to and become invested with all and singular the rights and privileges not inconsistent with the provisions of said Chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property, rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association, and the title to any real estate by deed or otherwise vested in the former association shall forthwith vest in such organized converted corporation and

the title thereto shall not in any way be impaired by reason of such change or reincorporation. The standing of all claims under the former association shall be preserved unimpaired under the new corporation, and all debts, liabilities and duties of the former association shall thenceforth attach to the reorganized corporation and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, except that the liabilities created under the terms of policies or certificates outstanding at the date of conversion or reorganization may be altered in accordance with the provisions of said plans approved by the Board of Insurance Commissioners; provided, however, that no alteration shall be made in the renewability or noncancellability of any insurance agreement, contract, policy or certificate theretofore made or issued. As amended Acts 1955, 54th Leg., p. 1187, ch. 466, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 14.63. Conversion of Local Mutual Aid Association or Statewide Mutual Assessment Company into Stock Legal Reserve Life Insurance Company**

Section 1. Any local mutual aid association or statewide mutual assessment company or association doing business in this State on January 1, 1955, may convert into a stock legal reserve life insurance company, provided such company or association so converted has at least One Hundred Thousand (\$100,000.00) Dollars in its claim or mortuary fund at the time of such conversion and complies with the following provisions:

a. There shall be contributed in cash of the United States the additional sum of not less than Fifty Thousand (\$50,000.00) Dollars in capital and not less than Twenty-five Thousand (\$25,000.00) Dollars in surplus.

b. All policies of insurance in force shall be exchanged for a legal reserve policy in accordance with the provisions of Section 2 of Article 14.61 of this Code.

c. Such conversion shall only be made upon a vote of the membership duly called for such purposes. Pursuant to such authorization, the board of directors and officers of such company or association shall amend its existing charter or articles of association, as the case may be, so as to comply with the requirements contained in Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof.

d. After the exchange of such mutual assessment policies for legal reserve policies in accordance with the provisions of Section 2 of Article 14.61, the proper legal reserve required by Chapter 3 of this Code, as amended, shall be established and maintained for such policies so as to leave the capital of the company at all times unimpaired and not less than Fifty Thousand (\$50,000.00) Dollars.

e. After compliance with the provisions hereof, and approval of the same by the Attorney General of the State of Texas and the Board of Insurance Commissioners, such company or association shall be and become a legal reserve stock life insurance company, except that such company so converted shall not: (1) operate in any territory not previously authorized under the old charter or articles of association, as the case may be; nor (2) insure any life for more than Five Thousand (\$5,000.00) Dollars in event of death; nor (3) declare or pay any cash dividends; unless and until the capital and surplus of such converted company or association shall be increased to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code.

Ins. Code

Sec. 2. Any such company or association so converted shall within ten (10) years from the date of its conversion increase its capital and surplus to the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of the Insurance Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners.

Sec. 3. From and after the date of such conversion such legal reserve stock life insurance company shall be governed by the provisions of Chapter 3 of the Insurance Code, as amended, except as otherwise herein provided. Acts 1951, 52nd Leg., p. 868, ch. 491, art. 14.63 added Acts 1955, 54th Leg., p. 916, ch. 363, § 22.

Effective 90 days after June 7, 1955, date of adjournment.

## CHAPTER FIFTEEN—MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

### Art. 15.04. Certificate of Incorporation

Applicants for such Articles of Incorporation shall comply with and be subject to the provisions of Article 2.01 of this Code except:

1. The minimum number of persons adopting and signing such Articles of Incorporation shall be governed by Article 15.01 of this Chapter; and

2. Free surplus shall constitute capital structure within the meaning of Article 2.01. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 25.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 15.06. Kinds of Insurance

Any company organized under the provisions of this Chapter is empowered and authorized to write any kinds of insurance, which may lawfully be written in Texas, except life insurance. Any such company writing fidelity and surety bonds shall keep on deposit with the State Treasurer cash or securities as provided in Article 2.10 approved by the Board equal in amount to that required of domestic stock companies. Any such company shall be possessed of a surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. Mutual insurance companies operating under the provisions of this Chapter shall be required to charge the rates prescribed by the Board of Insurance Commissioners and be subject to the same rates and reserve supervision that domestic insurance companies are subject to by law. As amended Acts 1955, 54th Leg., p. 413, ch. 177, § 26.

Effective 90 days after June 7, 1955, date of adjournment.

### Art. 15.08. Conditions to Obtain License

No company organized under this Chapter shall issue policies or transact any business of insurance unless and until its charter is granted as provided in this Code and unless and until the Board has, by issuance of Certificate of Authority, authorized it to do so. The provisions of Article 2.20 of this Code shall apply to all renewal Certificates of Authority. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 27.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 15.11. Provisions of Policy**

The maximum premium shall be expressed in the policy of a mutual company organized under this Chapter, and it may be solely a cash premium or a cash premium and an additional contingent premium, which contingent premium shall be equal in amount to one (1) additional cash premium, but no such company shall issue an insurance policy for a cash premium and without an additional contingent premium until and unless it possesses a surplus above all liabilities of a sum at least equal to the minimum capital and surplus required of a stock insurance company transacting the same kinds of business.

When any company shall issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums set forth in policies then outstanding. The issuance of policies for cash premiums only in pursuance of this Article may not be exercised by any such company until written notice of its intention so to do accompanied by a certified copy of the resolution of the Board of Directors providing for the issuance of such policies shall have been filed with and approved by the Board. Policyholders of a mutual insurer shall at no time be liable for assessment on policies issued at a time when such approval by the Board is in effect. Neither the officers nor directors of any such mutual insurer, the Board of Insurance Commissioners, nor any receiver or liquidator shall have authority to levy assessments upon the holders of such policies.

A foreign mutual insurance company authorized to do business in Texas may issue an insurance policy for a cash premium and without an additional contingent premium and may waive contingent premiums on outstanding policies under the same conditions and subject to the same restrictions and provisions as a mutual insurance company organized under this Code and doing the same kinds of business.

If up to the time of the effectiveness of this Act a mutual insurance company was authorized to write non-assessable policies in Texas under the provisions of this Code, such mutual company shall not be denied such authority by reason of provisions which are contained herein that were not contained in this Insurance Code immediately prior to the effective date of this Act, so long as such company is complying with Article 2.20 of this Code as added by this Act. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 28.

Effective 90 days after June 7, 1955, date of adjournment.

**CHAPTER SIXTEEN—FARM MUTUAL INSURANCE COMPANIES****Art. 16.01. Farm Mutual Insurance Companies; Definitions**

Sec. 2. Any company operating under the provisions of this Chapter which out of the total amount of insurance in force maintains more than sixty (60%) per cent in force on rural property and those companies operating on the "assessment-as-needed plan" shall hereafter be known as "Farm Mutual Insurance Companies" and shall be subject to the provisions of this Chapter. "Rural Property" as that term is used in this law, shall mean any property located outside of the city limits of any incorporated city or town. "Assessment-as-needed plan" shall refer to companies that other than for reserve purposes assess members only when a loss or losses occur and who use not more than twenty-five (25%) per

Ins. Code

cent of their gross income for expenses. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 29.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 16.06. Conditions of Incorporation**

Before a charter shall be granted a farm mutual insurance company, the incorporators must have on hand:

(a) Not less than twenty-five (25) applications in writing for insurance on not less than one hundred (100) separate risks; provided that no one risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one or more items of real and/or personal property which is not exposed to any other property on which insurance is applied for in the new company;

As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 30.

(b) Not less than \$2.00 for each \$100.00 of insurance applied for at the time of incorporation in cash. All companies organized after the effective date of this Act under this Chapter shall always have free surplus of \$2.00 for each \$100.00 of insurance in force, or a free surplus of \$200,000.00, whichever amount is less, invested as provided in Article 2.08 of this Code. Funds in excess of such minimum surplus may be invested as provided in Article 2.10 of this Code. If such free surplus is at any time impaired, the Board shall proceed as is provided in Section 5 of Article 1.10 of this Code. The provisions of this section shall not apply to any farm mutual insurance company operating in Texas prior to the effective date of this Act. As amended Acts 1953, 53rd Leg., p. 1020, ch. 421, § 1; Acts 1955, 54th Leg., p. 413, ch. 117, § 30.

Effective 90 days after June 7, 1955, date of adjournment.

Section 4 of the Act of 1953 provided that partial invalidity would not affect the validity of other parts of the Act.

**CHAPTER SEVENTEEN—COUNTY MUTUAL INSURANCE COMPANIES****Art 17.02. Formation of Company**

No county mutual insurance company may be formed under the provisions of this Chapter after the effective date of the Act of which this section is a part, except such as are formed pursuant to permits issued under Article 17.03 of this Code prior to the effective date of this amendment. County mutual insurance companies formed prior to the effective date of this Act and actively engaged in the insurance business at the time of such effective date or formed pursuant to permit issued prior to the effective date of this amendment under Article 17.03 shall be permitted to engage in business in accordance with the provisions of Chapter 17, as amended, and other applicable laws; provided, however, that neither the provisions of this Act nor the provisions of Senate Bill No. 107, Acts of 53rd Regular Session, Texas Legislature, 1953, effective May 22, 1953,<sup>1</sup> shall apply to any county mutual insurance company organized and operating as a county mutual fire insurance company on May 22, 1953, whose business is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly or quarterly basis on a continuous premium payment plan. Provided further, that this exemption shall apply only so long as said companies are engaged exclusively in the writing of such industrial

fire insurance policies. Section 22 of Article 17.25 is hereby repealed. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 31.

<sup>1</sup> Article 17.05 et seq.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 17.03. Application for Permission to Solicit Insurance

Permits issued prior to the effective date of this amendment pursuant to the provisions of Article 17.03 shall expire by their present terms and shall not be renewed. Moneys collected from applicants other than charter members shall be held in trust for them until incorporation and returned in the event the organization is not perfected. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 32.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 17.06. By-Laws; Additional Provisions

The by-laws shall state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

They shall also fix the liability of the policyholders for all losses accrued while the policies are in force, in addition to the regular premium or assessments for the same; and the time and manner of the payment of such liability; provided that the amount of such liability shall be \$2.00 for each \$100.00 of insurance in such policy.

The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed; provided such provision may be equally made applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homestead and exempt personal property. County mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

Provided, however, that a county mutual insurance company which meets the requirements of Article 17.11, subsection (c) shall not be subject to the provisions of the next two (2) preceding paragraphs, but shall be subject to the provisions of Article 15.11 of this Code. As amended Acts 1953, 53rd Leg., p. 540, ch. 196, § 2; Acts 1955, 54th Leg., p. 413, ch. 117, § 33.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 17.09. Policyholders' Liabilities

Policyholders shall be liable for losses of the company only as prescribed in the by-laws of the company and Article 17.06 of this Code, and that only in proportion that the premium or assessments for the insurance of any policy bears to the total amount of premiums or assessments for all the insurance in the class to which the policy belongs. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 34.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 17.11. Financial Requirements and Impairment of Surplus

County mutual insurance companies shall maintain at all times unearned premium reserves as provided in Article 6.01 of this Code. The



## Ins. Code

unearned premium reserves and any other type of reserves authorized by the Board of Directors, shall be invested in such securities as the reserve funds of other insurance companies doing the same kind of business are by law required to be invested.

There shall be maintained at all times free surplus invested only in items enumerated in Article 2.08 of this Code of:

(a) Not less than \$25,000.00 if the company is organized to write insurance locally in the county of its domicile only; or

(b) Not less than \$50,000.00 if the company is organized to write insurance in the county of its domicile and any adjoining counties only; or

(c) Not less than an amount equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code if such company is organized to write insurance in a county other than the county of its domicile and any adjoining counties within this State.

Each county mutual insurance company shall be subject to the provisions of Section 5 of Article 1.10 and Article 2.20 of this Code. As amended Acts 1953, 53rd Leg., p. 540, ch. 196, § 3; Acts 1955, 54th Leg., p. 413, ch. 117, § 35.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 17.16. Location of Business**

A county mutual insurance company possessed of \$25,000.00 or more in surplus as provided in Article 17.11 may write insurance locally in the county of its domicile; and such company possessed of \$50,000.00 or more in surplus as provided in Article 17.11 may write insurance in the county of its domicile and any adjoining counties; and such company possessed of surplus equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code may write insurance anywhere within this State. As amended Acts 1953, 53rd Leg., p. 540, ch. 196, § 4; Acts 1955, 54th Leg., p. 413, ch. 117, § 36.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 17.22. Exemption from Insurance Laws**

County mutual insurance companies shall be exempt from the operation of all insurance laws of this State, except as in this Chapter specifically provided. In addition to such Articles as may be made to apply by other Articles of this Chapter, county mutual insurance companies shall not be exempt from and shall be subject to all the provisions of Article 2.04 and of Article 2.05 and of Article 2.08 and of Article 2.10 and of Article 5.12 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 of this Code, and the provisions of Article 7064 of the Revised Civil Statutes of Texas. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 37.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 17.25. County Mutual Insurance Companies**

**Sec. 1. Regulation.**—County mutual insurance companies operating under the provisions of this Chapter shall be authorized to write insurance against loss or damage from any hazard provided therein or that any other fire or windstorm insurance company operating in Texas may write on property described in Article 17.01 of this Chapter. County mutual insur-

ance companies qualifying to write casualty lines for state wide operation may write all lines of automobile insurance, provided that no such company shall assume a risk on any one hazard greater than five (5%) per cent of its assets, unless such excess shall be promptly reinsured. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 37A.

Effective 90 days after June 7, 1955, date of adjournment.

**Sec. 5. Policy Forms Prescribed.**—Each county mutual insurance company shall be subject to the provisions of Article 5.06 and of Article 5.35 and of Article 5.36 of this Code. The Board of Insurance Commissioners pursuant to Article 5.35 may in its discretion make, promulgate and establish uniform policies for county mutual insurance companies different from the uniform policies made, promulgated and established for use by companies other than county mutual insurance companies, and shall prescribe the conditions under which such policies may be adopted and used by county mutual insurance companies, and the conditions under which such companies shall adopt and use the same forms and no others as are prescribed for other companies. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 38.

Effective 90 days after June 7, 1955, date of adjournment.

**Sec. 7. Repealed.** Acts 1955, 54th Leg., p. 413, ch. 117, § 39. Eff. 90 days after June 7, 1955, date of adjournment.

Prior to repeal, section was amended by Acts 1953, 53rd Leg., p. 540, ch. 196, § 7.

**Sec. 9. Agents' License.**—Such company shall also file with the Board, and secure license for, each of its agents, or solicitors, upon payment of license fee of Five Dollars (\$5) plus Two Dollars (\$2) for each appointment for each agent or solicitor, under the provisions of Article 21.07 of this Code. As amended Acts 1953, 53rd Leg., p. 540, ch. 196, § 8; Acts 1955, 54th Leg., p. 517, ch. 153, § 2.

Emergency. Effective May 6, 1955.

**Sec. 20. Contingent Liability.**—The contingent liability of policyholders required under Article 17.06 of this Chapter shall be fixed in the by-laws of each company and shall be \$2.00 for each \$100.00 of property insured in any policy issued by companies subject to the provisions of this Article. Where any risk is insured against more than one hazard, for the purposes of this Chapter and of this Article, the amount of risk or insurance in any policy shall be the maximum loss that may be sustained at any one time by the company under the policy, regardless of the number of hazards insured against. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 40.

Effective 90 days after June 7, 1955, date of adjournment.

**Sec. 22. Repealed.** Acts 1955, 54th Leg., p. 413, ch. 117, § 31. Eff. 90 days after June 7, 1955, date of adjournment.

Prior to repeal, section was added by Acts 1953, 53rd Leg., p. 540, ch. 196, § 9.

## CHAPTER EIGHTEEN—LLOYD'S PLAN

### Art. 18.04. License

Such underwriters and their attorney shall be subject to the provisions of Article 2.01 and Article 2.04 of this Code, except that:

"1. The Articles of Agreement shall be in lieu of Articles of Incorporation; and

**Ins. Code**

2. The aggregate of guaranty fund and free surplus shall constitute capital structure within the meaning of Article 2.01.

The attorney for such underwriters shall pay a fee of \$10.00 to the Board of Insurance Commissioners upon the filing of the application for license.

Upon determination by the Board of Insurance Commissioners that such underwriters and their attorneys have fully complied with the law the Board shall issue a Certificate of Authority as provided by Article 1.14 of this code.

In the event, however, of first applications for licenses on behalf of newly formed Lloyds, or in the event of proposed amendment to the text of the Articles of Agreement of currently licensed Lloyds, the Board shall not issue certificates of authority until receipt of certification by the Attorney General that such underwriters and their attorneys have fully complied with the law. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 41.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 18.05. Assets**

No attorney shall be licensed for the Underwriters at a Lloyds' until and unless the provisions of Article 2.01 are fully complied with and until and unless the net assets contributed to the attorney, a committee of underwriters, trustee or other officers as provided for in the Articles of Agreement shall constitute a guaranty fund and surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. The required net assets shall be invested following the licensing as provided in Article 2.08 as to minimum guaranty fund and surplus required, and as provided in Article 2.10 as to other funds. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 42.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 18.07. Impairment of Guaranty Fund and Surplus**

Lloyds' companies shall be subject to the provisions of Section 5 of Article 1.10 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 43.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 18.09. Investments**

The assets of Underwriters at a Lloyds' to the extent of the minimum required under the provisions of Article 2.02 and of Article 18.05 of this Chapter shall be cash or shall be invested in such securities as are eligible for investment of the capital stock and minimum surplus of stock insurance companies transacting the same sort of business, and the other assets of underwriters shall be invested, if at all, in such property or securities as the funds of the stock insurance companies doing the same sort of business may be invested in, except that only the surplus, in excess of the required minimum guaranty fund and surplus of a Lloyds' may be invested in the securities eligible for investment of surplus in excess of capital and minimum surplus of such similar stock insurance companies. Lloyds' organized prior to August 10, 1943, and doing business under Certificate of Authority from the Board of Insurance Commissioners shall not be required to conform to this Article except as to securities thereafter ac-

quired, whether in substitution for securities then held or from additional, successor or substituted underwriters. Underwriters at a Lloyds' shall be permitted to purchase, hold or convey real estate in accordance with the provisions and subject to the limitations of Article 6.08 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 44.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 18.11. Examination of Affairs

All of the provisions of Article 1.15 and of Article 1.16 relative to examination of companies shall apply to companies organized under this Chapter. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 45.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 18.23. Exemption from Insurance Laws with Limitations

Underwriters at a Lloyds' shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless it is specifically so provided in such other law that same shall be applicable. In addition to such Articles as may be made to apply by other Articles of this Chapter, underwriters at a Lloyds' shall not be exempt from and shall be subject to all of the provisions of Article 2.20 and of Article 5.35 and of Article 5.36 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 46.

Effective 90 days after June 7, 1955, date of adjournment.

### CHAPTER NINETEEN—RECIPROCAL EXCHANGES

#### Art. 19.03. Declaration of Subscribers

Such subscribers, so contracting among themselves, shall, through their attorney in fact file with the Board of Insurance Commissioners a declaration verified by the oath of such attorney in fact setting forth:

1. The name or title of the office at which subscribers propose to exchange such indemnity contracts. Said name or title shall contain the word "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurers," and shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of said Board of Insurance Commissioners is calculated to confuse or deceive. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or inter-insurance exchanges;

2. The kind or kinds of insurance to be effected or exchanged, provided that same shall not include life insurance;

3. A copy of the form of power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged, which form shall be subject to approval by the Board of Insurance Commissioners of Texas; provided, however, that except as to matters concerning which specific provision is made in this Chapter, nothing herein contained shall be so construed as to permit the said Board to require the filing or use of uniform forms of such instruments. Such subscribers at such exchange may provide by agreement that the premium or premium deposit specified in the policy contract on all forms of insurance except life shall constitute their entire liability through the

## Ins. Code

exchange if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. If a Certificate of Authority is issued as provided by Article 19.10 and Article 2.20, the power of attorney or other authority executed by the subscribers at any such exchange shall provide that such subscribers at such exchange shall be liable, in addition to the premium or premium deposit specified in the policy contract, to a contingent liability equal in amount to one (1) additional annual premium or premium deposit. Such last mentioned provision may be eliminated if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. When any such subscribers and their attorney in fact shall be authorized to issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums.

If up to the time of the effectiveness of this Act such subscribers and their attorney in fact were authorized to write non-assessable policies in Texas under the provisions of this Code, such subscribers and their attorney in fact shall not be denied such authority by reason of provisions which are contained herein that were not contained in this Insurance Code immediately prior to the effective date of this Act, so long as such company is complying with Article 2.20 of this Code as added by this Act;

4. The location of the office or offices from which such contracts or agreements are to be issued;

5. Such other information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05.

Such subscribers and their attorney in fact shall be subject to the provisions of Article 2.01 and of Article 2.04 of this Code, except that:

(a) The declaration of subscribers shall be in lieu of Articles of Incorporation; and

(b) Free surplus shall constitute capital structure within the meaning of Article 2.01. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 47.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 19.06. Financial Requirements**

There shall be maintained at all times a surplus over and above all liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business.

There shall be maintained at all times such reserves as are required, or which, by the laws of this State or by the lawful rules and regulations of the Board of Insurance Commissioners, hereafter may be required, to be maintained by stock insurance companies transacting the same kind or kinds of insurance business.

The required assets of such exchanges shall be maintained as to minimum surplus requirements as provided in Article 2.08 of this Code, and as to other funds, as provided in Article 2.10 of this Code.

If fidelity and surety bond insurance is exchanged in this State by any reciprocal exchange, there shall be kept on deposit with the State Treasurer of Texas, money, bonds, or other securities in an amount not less than \$50,000.00. Such securities as described in Article 2.10 of this Code shall be approved by the Board of Insurance Commissioners, and this amount shall be kept intact at all times. Any foreign exchange writing fidelity and surety bonds in this State shall file with the Board of Insurance Commissioners evidence, satisfactory to the Board of Insurance Commissioners, that it has on deposit with the State Treasurer or other proper officials of its home state, or in escrow under his supervision and con-

trol in some reliable bank or trust company, \$100,000.00 or more, in money, bonds or other securities as described in Article 2.10 of this Code for the protection of its policyholders; provided further, that if said bonds and securities herein referred to are not acceptable to and approved by the Board of Insurance Commissioners of Texas, said Board shall have the right and authority to deny the attorney in fact a Certificate of Authority. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 48.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 19.10. Certificate of Authority

Such attorney by whom or through whom are issued any policies of or contracts for indemnity of the character referred to herein shall procure from the Board of Insurance Commissioners a Certificate of Authority as provided in Article 1.14, and the provisions of Article 2.20 shall be applicable as well as to renewal Certificates of Authority. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 49.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 19.11. Fees and Taxes

The schedule of fees set out in Article 4.07 of this Code, so far as pertinent, shall apply to reciprocal exchanges and their attorneys in fact. Said exchanges shall be subject to the provisions of Article 7064 and of Article 7064a of the Revised Civil Statutes of Texas and of Article 4.02 and of Article 4.04 and of Article 5.12 and of Article 5.24 and of Article 5.49 and of Article 5.68 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 50.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 19.12. Exemption from Insurance Laws with Limitations

Reciprocal or inter-insurance exchanges shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless reciprocal or inter-insurance exchanges are specifically mentioned in such other laws. In addition to such Articles as may be made to apply by other Articles of this Code, reciprocal or inter-insurance exchanges shall not be exempt from and shall be subject to all of the provisions of Section 5 of Article 1.10 and of Article 1.15 and of Article 1.16 and of Article 5.35 and of Article 5.36 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 of this Code. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 51.

Effective 90 days after June 7, 1955, date of adjournment.

**CHAPTER TWENTY-ONE—GENERAL PROVISIONS**

**SUBCH. A. AGENTS AND AGENTS'  
LICENSES**

**SUBCH. E. MISCELLANEOUS  
PROVISIONS**

- Art.  
21.07—1. Legal Reserve Life Insurance  
Agents; Examination; Li-  
censes [New].  
21.07—2. Life Insurance Counselor [New].

- 21.44. Foreign Insurance Companies other  
than Life [New].

**SUBCHAPTER A. AGENTS AND AGENTS' LICENSES**

**Art. 21.07. Licensing of Agents**

**Sec. 6. Fees and Use of Funds.**—It shall be the duty of the Life Insurance Commissioner to collect from every agent of any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association or organization, local mutual aid association or statewide mutual association soliciting or writing insurance in the State of Texas under the provisions of this Article, an annual fee of Five Dollars (\$5) plus Two Dollars (\$2) for each and every appointment by any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association or organization, local mutual aid association or statewide mutual association, which fees shall constitute a fund to be used by the Life Insurance Commissioner to enforce the provisions of this Article and all laws of this State governing and regulating agents of such insurance companies; and the Life Insurance Commissioner is hereby given full power and authorized under authority to use any portion of the fund herein created for the purpose of enforcing the provisions of this Article and any and all such laws; and said Commissioner is authorized to employ such person or persons as he may deem necessary to investigate and make reports upon any and all alleged violations of said laws and misconduct on the part of such agents and to pay the salaries and expenses of such person or persons so designated by him and all office employees and expenses necessary in the enforcement of this Article out of the funds created hereunder and such person or persons so appointed by the Commissioner are hereby authorized and empowered to administer the oath and to examine under oath any person deemed necessary in gathering information and evidence and to have the same reduced to writing if deemed necessary and all such expenses shall be paid out of said fund. If any residue for any years shall remain in said fund over and above the amount necessary to carry on the work and investigation and pay the expenses herein provided for, the same shall be carried over to the following year or years and used in the continuation of the enforcement of this Article and the insurance laws of this State and all such funds are hereby appropriated for such purpose. The funds collected under this provision shall be paid into the State Treasury at least once each week and kept in a special fund and shall be paid out for salaries, traveling expenses, office expenses and other incidental expenses incurred by the Commissioner hereunder upon proper account duly approved by the Life Insurance Commissioner.

Provided, however, that at the termination of each biennium after the payment of all expenses of enforcement hereinbefore provided, any surplus of the enforcement fund created by the collection of the fees provided herein shall be transferred by the State Treasurer to the Examina-

tion Fund of the Board of Insurance Commissioners of Texas for such use as the Board of Insurance Commissioners may deem necessary in furthering the duties of the Examining Division of such Board. As amended Acts 1955, 54th Leg., p. 517, ch. 153, § 1.

Emergency. Effective May 6, 1955.

### Art. 21.07—1. Legal Reserve Life Insurance Agents; Examination; Licenses

**Section 1. Legal Reserve Life Insurance Agent Defined.**—(a) This Act shall be known as The Texas Agents Qualification and License Law for Agents of Legal Reserve Life Insurance Companies authorized to do business in Texas. It repeals the provisions of Article 21.07 of the Texas Insurance Code, 1951, to the extent only as applicable to such agents. This Act has no application to agents for local mutual aid associations, or for statewide mutual associations or for any type or kind of insurance organization other than legal reserve life insurance companies, and existing statutes, including Article 21.07 of the Texas Insurance Code, 1951, applicable to such agents, other than agents of legal reserve life insurance companies, shall remain in full force and effect.

(b) The term "life insurance agent" for the purpose of this Act means any person who is an authorized agent of a legal reserve life insurance company, and any person who is a sub-agent of such agent, who acts as such in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company; except that the term "life insurance agent" shall not include:

(1) any regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the business obtained, and who does not solicit or accept from the public applications for insurance or annuity contracts;

(2) employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued by a legal reserve life insurance company, provided that such employers, officers, employees or trustees are not in any manner compensated, directly or indirectly, by the legal reserve life insurance company issuing such insurance or annuity contracts;

(3) banks or their officers and employees to the extent that such banks, officers and employees collect and remit premiums by charging same against accounts of depositors on the orders of such depositors;

(4) a ticket-selling agent of a public carrier with respect to accident life insurance tickets covering risks of travel;

(5) an agent selling credit life, health and accident insurance issued exclusively in connection with commercial loan, or acting as agent or solicitor for health and accident insurance under license issued pursuant to the provisions of Article 21.14 of the Texas Insurance Code.

(c) The term "sub-agent" means any person, except a regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, engaging in activities defined in Paragraph 1 (b), above, who acts for or on behalf of a licensed life insurance agent in the solicitation of, negotiation for, or procurement or mak-



**Ins. Code**

ing of, or collection of premiums on, an insurance or annuity contract, whether or not he is designated by such agent as a sub-agent or a solicitor or by any other title. Each such sub-agent shall be deemed to be a life insurance agent, as defined above, and wherever, in succeeding Sections of this Act, the term "life insurance agent" is used, it shall include sub-agents, whether or not they are specifically mentioned. Each such sub-agent shall be subject to the provisions of this Act to the same extent as a life insurance agent.

(d) The terms "insurance or annuity contract," "insurance contract," and "annuity contract," shall mean a contract or policy of life, health or accident (including hospitalization) insurance, or an annuity contract, issued by any legal reserve company or insurer engaged in the business of writing life, health or accident (including hospitalization) insurance, or annuity contracts.

(e) The term "excess risk" shall mean all or any portion of a life, health or accident insurance risk or contract of annuity for which application is made through an agent, and which exceeds the amount of insurance or annuity which will be provided by the insurer for which such agent is licensed.

(f) The term "rejected risk" shall mean a life, health or accident insurance risk or annuity contract for which application has been made through an agent and which insurance or annuity contract is declined by the insurer for which such agent is licensed.

(g) The terms "Industrial" and "weekly premium life insurance on a debit basis" refer to the type of life insurance defined in Article 3.52 of the Texas Insurance Code.

**Sec. 2. Acting for Unauthorized Companies Prohibited.**—(a) No person shall, within this State, solicit, procure, receive, or forward applications for life insurance or annuities, or issue or deliver policies for, or in any manner secure, help, or aid in the placing of any contract of life insurance or annuity for any person other than himself, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State.

(b) Any agent shall be personally liable for any loss sustained by any insured or beneficiary on any contract of life insurance or annuity made by or through such agent, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State and, in addition, for any premium taxes which may become due under any law of this State by reason of such contract.

**Sec. 3. Acting as Agent Without License Prohibited; No Commissions to be Paid to Unlicensed Persons.**—(a) No person shall act as a life insurance agent within this State until he shall have procured a license as required by the laws of this State.

(b) No insurer or licensed life insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person for services as a life insurance agent within this State, unless such person shall hold a currently valid license to act as a life insurance agent as required by the laws of this State; nor shall any person, other than a duly licensed life insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person has ceased to hold a license to act as a life insurance agent.

**Sec. 4. Application for License.**—(a) Each applicant for a license to act as a life insurance agent within this State shall file with the Life Insurance Commissioner his written application on forms furnished by the Commissioner. The application shall be signed and duly sworn to by the applicant. The prescribed form shall require the applicant to state his full name; residence; age; occupation and place of business for five years preceding date of the application; whether applicant has ever held a license to solicit life, or any other insurance in any State; whether he has been refused, or has had suspended or revoked a license to solicit life, or any other insurance in any State; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this State he has had or expects to have; whether any insurer or general agent claims applicant is indebted under any agency contract, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto; whether applicant has had an agency contract cancelled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed; whether, if applicant is a married woman, her husband has ever applied for or held a license to solicit life, or any other insurance in any State and whether such license has been refused, suspended, or revoked; and such other information pertinent to the licensing of such agent as the Life Insurance Commissioner in his discretion may prescribe. It is not intended that the Life Insurance Commissioner shall be authorized to deny a license to an applicant on the sole ground that he will act only part time as a life insurance agent.

(b) The application shall be accompanied by a certificate on forms furnished by the Life Insurance Commissioner and signed by an officer or properly authorized representative of the legal reserve life insurance company he proposes to represent, stating that the insurer has investigated the character and background of the applicant and is satisfied that he is trustworthy and qualified to hold himself out in good faith to the general public as a life insurance agent and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

(c) The application, when filed, shall be accompanied by a filing fee in the amount of \$5.00 and, in the case of applicants required to take an examination administered by the Life Insurance Commissioner as hereafter prescribed, by an examination fee in the amount of \$10.00. In the event an applicant fails to qualify for, or is refused a license, the filing fee shall be returned; the examination fee shall not be returned for any reason. An examination fee shall be paid for each and every examination.

(d) No corporation, association, partnership, or any legal entity of any nature, other than an individual person, may be licensed as a life insurance agent.

**Sec. 5. Examination of Applicant for License.**—(a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered, and as shall be prescribed by, the Life Insurance Commissioner, to determine his competence with respect to insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this State, and shall pass the same to the satisfaction of the Life Insurance Commissioner; except that no such written examination shall be required of:

**Ins. Code**

(1) An applicant for the renewal of a license issued by the Board of Insurance Commissioners pursuant to Article 21.07, Texas Insurance Code, 1951, which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as a life insurance agent expired less than one year prior to the date of application may, in the discretion of the Life Insurance Commissioner, be issued a license without written examination.

(b) The Life Insurance Commissioner shall establish rules and regulations with respect to the scope, type and conduct of such written examinations and the times and places within this State where they shall be held; provided, that applicants shall be permitted to take such examinations at least once in each week at the office of the Life Insurance Commissioner, and at least once in each month in the county court house of the residence of the applicant. The rules and regulations of the Commissioner shall designate text books, manuals and other materials to be studied by applicants in preparation for examinations pursuant to this Section. Such text books, manuals or other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the Commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the Commissioner pursuant to this Section.

(c) The Life Insurance Commissioner is authorized in his discretion to appoint an Advisory Board to make recommendations to him with respect to the scope, type, and conduct of written examinations and the times and places within the State where they shall be held. This Advisory Board, if appointed, shall consist of individuals experienced in the legal reserve life insurance business and in industrial life insurance, and may include legal reserve life insurance company officers and employees, general agents and managers, and licensed life insurance agents. The members of the Board shall serve without pay but, upon the authorization of the Life Insurance Commissioner, shall be reimbursed for their reasonable expenses in attending meetings of the Advisory Board.

(d) An applicant for a license to act as a combination life insurance agent for a combination company, or as an industrial life agent for an industrial company, may, in lieu of taking and passing to the satisfaction of the Life Insurance Commissioner a personal written examination as provided in Sub-section (a) of this Section 5, submit to a personal written examination given by the combination or industrial insurer for which he is to be licensed, subject to the following definitions and conditions:

(1) A combination life insurance agent is hereby defined as an agent writing both weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial life agent is an agent writing only weekly life insurance on a debit basis. A combination company is hereby defined as an insurer actually writing weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial company is an insurer writing only weekly premium life insurance on a debit basis.

(2) Any combination or industrial insurer desiring to qualify to administer the examination to its agents shall file with the Life Insurance Commissioner a complete outline and explanation of the course of study and instruction to be given such applicants and the nature and manner of conducting the examinations of applicants and, after official approval thereof by the Commissioner, may administer such examinations.

(3) The combination or industrial insurer shall certify as to each applicant that he has completed the approved course of study and instruction and has successfully passed the examination in writing without aid.

(4) It shall be the duty of the Life Insurance Commissioner to investigate the manner and method of instruction and examination of each combination and industrial insurer as often as deemed necessary by the Commissioner and the Commissioner may, in his discretion, withdraw from any insurer the privilege of examining agents in lieu of the examination administered by the Commissioner pursuant to Sub-section (a) of this Section 5.

(5) The license to act as a life insurance agent issued to an applicant pursuant to the provisions of this Sub-section (d) shall be stamped COMBINATION OR INDUSTRIAL LICENSE on its face and shall automatically expire and be of no further force and effect when the holder ceases to act as a combination or industrial agent for a combination or industrial company.

**Sec. 6. Issuance or Denial of License.**—(a) If the Life Insurance Commissioner is satisfied that the applicant is trustworthy and competent and after the applicant, if required to do so, has passed the written examination to the satisfaction of the Commissioner, a license shall be issued forthwith. If the applicant has not passed the written examination, or if license is denied for any of the reasons set forth in Section 12 of this Act, the Life Insurance Commissioner shall notify the applicant and the insurer in writing that the license will not be issued to the applicant.

**Sec. 7. Non-residents May Be Licensed.**—(a) A person not resident in this State may be licensed as a life insurance agent upon compliance with the provisions of this Act, provided that the State in which such person resides will accord the same privilege to a citizen of this State.

(b) The Life Insurance Commissioner is further authorized to enter into reciprocal agreements with the appropriate official or any other State waiving the written examination of any applicant resident in such other State, provided:

(1) That a written examination is required of applicants for a life insurance agent's license in such other State;

(2) That the appropriate official of such other State certifies that the applicant holds a currently valid license as a life insurance agent in such other State and either passed such written examination or was the holder of a life insurance agent's license prior to the time such written examination was required;

(3) That the applicant has no place of business within this State in the transaction of business as a life insurance agent;

(4) That in such other State, a resident of this State is privileged to procure a life insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other State.

**Sec. 8. Agent May Be Licensed to Represent Additional Insurers.**—(a) Any life insurance agent licensed in this State may apply to the Commissioner, at any time while his license is in force, for an additional appointment or appointments authorizing him to act as a life insurance agent for an additional legal reserve life insurance company or companies. Such application shall set forth the insurer or insurers which the applicant is then licensed to represent, and shall be accompanied by a certificate from each insurer to be named in each additional appointment applied for, that said insurer desires to appoint the applicant as its

**Ins. Code**

agent. This application shall also contain such other information as the Life Insurance Commissioner may require. The applicant shall be required to pay a fee of \$2.00 for each additional appointment applied for which shall accompany the application. Any insurer may file a request with the Life Insurance Commissioner for notification in event any agent licensed to represent such insurer has been issued an additional appointment to represent another insurer; and in such event the Commissioner shall notify the insurer filing such request.

(b) Any life insurance agent licensed in this State may place excess or rejected risks with any legal reserve life insurance company lawfully doing business in this State other than an insurer such agent is licensed to represent; provided, however, that such life insurance agent shall procure an additional license to represent such other insurer before receiving commissions or other compensation for his services.

**Sec. 9. Expiration and Renewal of License.**—(a) Each license issued to a life insurance agent shall expire one year following the date of issue, unless prior thereto it is suspended or revoked by the Life Insurance Commissioner or the authority of the agent to act for the insurer is terminated. Each license in effect at the time of the effective date of this Act, said licenses having been issued to life insurance agents covered by this Act pursuant to Article 21.07, Texas Insurance Code, 1951, shall expire on March 31st following the date of issue, unless prior thereto the license is suspended or revoked by the Life Insurance Commissioner or the authority of the agent to act for the insurer is terminated, and the renewal of such licenses shall be subject to the provisions of this Act.

(b) Licenses which have not expired or which have not been suspended or revoked, may be renewed from year to year upon request in writing of the agent, joined by the insurer.

(c) Each request for renewal of license shall show whether the agent devotes all or part of his efforts to acting as a life insurance agent, and if part only, how much time he devotes to such work.

(d) Upon the filing of a request for renewal of license and such additional appointments which may be held by the agent, and payment of a renewal fee of \$5.00 for such license and \$2.00 for each appointment sought to be renewed, prior to date of expiration, the current license and appointments shall continue in force until the renewal license and appointments are issued by the Commissioner or until the Commissioner has refused, for cause, to issue such renewal license and appointments, as provided in Section 12 of this Act, and has given notice of such refusal in writing to the insurer and the agent.

**Sec. 10. Temporary License.**—The Life Insurance Commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license, effective for ninety days, without requiring the applicant to pass a written examination, as follows:

(a) To an applicant who has fulfilled the provisions of Section 4 of this Act where such applicant will actually collect the premiums on industrial life insurance contracts during the period of such temporary license; provided, however, that if such temporary license is not received from the Commissioner within seven days from the date the application was sent to the Commissioner, the company may assume that the temporary license will be issued in due course and the applicant may proceed to act as an agent. For the purpose of this sub-section (a) an industrial life insurance contract shall mean a contract for which the premiums are payable at monthly or more frequent intervals directly by

the owner thereof, or by a person representing the owner, to a representative of the company;

(b) To any person who has been appointed or who is being considered for appointment as an agent by an insurer immediately upon receipt by the Commissioner of an application executed by such person in the form required by Section 4 of this Act, together with a certificate signed by an officer or properly authorized representative of such insurer stating:

(1) that such insurer has investigated the character and background of such person and is satisfied that he is trustworthy;

(2) that such person has been appointed or is being considered for appointment by such insurer as its agent; and

(3) that such insurer desires that such person be issued a temporary license; provided that if such temporary license shall not have been received from the Commissioner within seven days from the date on which the application and certificate were delivered to or mailed to the Commissioner, the insurer may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent; provided, however, that no temporary license shall be renewable nor issued more than once in a consecutive six months period to the same applicant; and provided further, that no temporary license shall be granted to any person who does not intend to actively sell life insurance to the public generally and it is intended to prohibit the use of a temporary license to obtain commissions from sales to persons of family employment or business relationships to the temporary licensee, to accomplish which purposes an insurer is hereby prohibited from knowingly paying directly or indirectly to the holder of a temporary license under this sub-section (b) any commissions on the sale of a contract of insurance on the life of the temporary licensee, or on the life of any person related to him by blood or marriage, or on the life of any person who is or has been during the past six months his employer either as an individual or as a member of a partnership, association, firm or corporation, or on the life of any person who is or who has been during the past six months his employee, and the holder of a temporary license is hereby prohibited from receiving or accepting commissions on the sale of a contract of insurance to any person included in the foregoing classes of relationship.

**Sec. 11. Company to Notify Commissioner of Termination of Contract; Communications Privileged.**—(a) Every legal reserve life insurance company shall, upon termination of the appointment of any life insurance agent, immediately file with the Life Insurance Commissioner a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Commissioner shall thereupon terminate the license of such agent to represent such insurer in this State.

(b) Any information, document, record or statement required to be made or disclosed to the Commissioner pursuant to this Section shall be deemed a privileged communication and shall not be admissible in evidence in any court action or proceeding except pursuant to subpoena of a court of record.

**Sec. 12. Denial, Refusal, Suspension, or Revocation of Licenses.**—(a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Life Insurance Commissioner if, after notice and hearing as hereafter provided, he finds that the applicant for, or holder of such license:

(1) Has wilfully violated any provision of the insurance laws of this State; or

(2) Has intentionally made a material misstatement in the application for such license; or

(3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) Has misappropriated or converted to his own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or

(5) Has otherwise demonstrated lack of trustworthiness or competence to act as a life insurance agent; or

(6) Has been guilty of fraudulent or dishonest practices; or

(7) Has materially misrepresented the terms and conditions of life insurance policies or contracts; or

(8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any life insurance or annuity contract legally issued by any insurer, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

(9) Has obtained, or attempted to obtain such license, not for the purpose of holding himself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or members of his family or business associates; or

(10) Is not of good character or reputation.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Life Insurance Commissioner shall give notice of his intention so to do, by registered mail, to the applicant for, or holder of such license and the insurer whom he represents or who desires that he be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurer may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as a life insurance agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Commissioner unless the applicant shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

**Sec. 13. Judicial Review of Acts of Commissioner.**—If the said Life Insurance Commissioner shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the Life Insurance

Commissioner as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence, and not elsewhere, within twenty (20) days from the date of the order of said Life Insurance Commissioner.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

**Sec. 14. Penalty.**—Any person who individually, or as an officer or employee of a legal reserve life insurance company, or other corporation, violates any of the provisions of this Act shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender holds a license as a life insurance agent, such license shall automatically expire upon such conviction.

**Sec. 15. Commissioner May Establish Rules and Regulations.**—The Life Insurance Commissioner is authorized to establish, and from time to time to amend, reasonable rules and regulations for the administration of this Act. Acts 1955, 54th Leg., p. 621, ch. 213.

Effective 90 days after June 7, 1955, date of adjournment.

Section 16 of the Act of 1955 repealed all conflicting laws and parts of laws. Sec-

tion 17 provided that partial invalidity should not affect the remaining portions of the Act.

## Art. 21.07—2. Life Insurance Counselor

**Section 1. Definition of Term.**—The term "Life Insurance Counselor" as used in this Act shall mean any person who, for money, fee, commission or any other thing of value offers to examine, or examines any policy of life insurance or any annuity or pure endowment contract for the purpose of giving, or gives, or offers to give, any advice, counsel, recommendation or information in respect to the terms, conditions, benefits, coverage or premium of any such policy or contract, or in respect to the expediency or advisability of altering, changing, exchanging, converting, replacing, surrendering, continuing or rejecting any such policy or contract, or of accepting or procuring any such policy or contract from any insurer, or who in or on advertisements, cards, signs, circulars or letterheads, or elsewhere, or in any other way or manner by which public announcements are made, uses the title "insurance adviser," "insurance specialist," "insurance counselor," "insurance analyst," "policyholders' adviser," "policyholders' counselor," or any other similar title, or any title indicating that he gives, or is engaged in the business of giving advice, counsel, recommendation or information to an insured, or a beneficiary, or any person having any interest in a life insurance, annuity or pure endowment contract.

**Sec. 2. License Required; Issuance by Board.**—No person shall act as a Life Insurance Counselor, as defined in Section 1 hereof, unless



**Ins. Code**

authorized so to act by a license issued by the Board of Insurance Commissioners of the State of Texas pursuant to the provisions of this Act.

**Sec. 3. Exemptions.**—The provisions of this Act shall not apply to the following persons:

(a) Licensed agents for a life insurance company while acting for an insurer as its agent.

(b) Licensed attorneys at law of this State when acting within the course or scope of their profession.

(c) Licensed public accountants of this State while acting within the course or scope of their profession.

(d) A regular salaried officer or employee of an authorized insurer issuing policies of life insurance while acting for such insurer in discharging the duties of his position or employment.

(e) An officer or employee of any bank or trust company who receives no compensation from sources other than the bank or trust company for such activities connected with his employment.

(f) Employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued by a legal reserve life insurance company.

**Sec. 4. Contract, Writing Required; Duplicates; Other Requisites.**—No contract or agreement between a Life Insurance Counselor, as defined in this Act, and any other person, firm or corporation, relating to the activities, services, advice, recommendations or information referred to in Section 1 of this Act, shall be enforceable by or on behalf of such Life Insurance Counselor unless it is in writing and executed in duplicate by the person, firm or corporation to be charged, nor unless one of said duplicates is delivered to and retained by such person, firm or corporation when executed, nor unless such contract or agreement plainly specifies the amount of the fee paid or to be paid by such person, firm or corporation, and the services to be rendered by such Life Insurance Counselor; provided, however, that the foregoing provisions shall not be applicable to any of the persons set out in Section 3 above.

**Sec. 5. Mode of Licensing and Regulation.**—The licensing and regulation of a Life Insurance Counselor, as that term is defined herein, shall be in the same manner and subject to the same requirements as applicable to the licensing of agents of legal reserve life insurance companies as provided in Article 21.07 of the Texas Insurance Code, 1951, or as provided by any existing or subsequent applicable law governing the licensing of such agents, and all the provisions thereof are hereby made applicable to applicants and licensees under this Act; provided, however, that an appointment to act for an insurer shall not be a condition to the licensing of a Life Insurance Counselor.

**Sec. 6. Intent of Legislature; Statutes and Amendments Applicable.**—It is the legislative intent, and it is hereby provided, that the licensing and regulation of any person acting as a Life Insurance Counselor shall be subject to the same statutes and requirements applicable to the licensing and regulation of agents of legal reserve life insurance companies. In event of subsequent legislative enactment applicable to agents of legal reserve life insurance companies in lieu of, or as an amendment to, present Article 21.07 of the Texas Insurance Code, it is hereby provided that such statute shall be applicable to any person acting as a Life Insurance Counselor, as defined in this Act.

**Sec. 7. Violations; Misdemeanor; Penalties.**—Any person who shall act as a Life Insurance Counselor, as defined herein, without having first obtained a license as herein provided, or who violates any of the provisions of this Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than Five Hundred Dollars (\$500), or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender holds a license hereunder, such license shall automatically expire upon such conviction and the offender shall be barred from license for a period of at least two (2) years.

**Sec. 8. Partial Invalidity.**—Should any Section or part thereof of this Act be held to be invalid for any reason, such holding shall not be construed as affecting the validity of any of the remaining Sections or parts thereof, it being the legislative intent that the remainder of this Section shall stand, notwithstanding the invalidity of any Section or part thereof. Acts 1955, 54th Leg., p. 39, ch. 29.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act to define and regulate the activities of a "Life Insurance Counselor"; to provide for the licensing thereof; to provide exceptions; to provide that contracts

between a Life Insurance Counselor and any person, firm or corporation shall be in writing for enforceability; to provide a penalty for violation of the Act; to provide for partial invalidity; and declaring an emergency. Acts 1955, 54th Leg., p. 39, ch. 29.

**Art. 21.11. Commissions to Non-Residents; Cancellation of Non-Resident Agent's License; Excess Agent, Non-Resident Agent not to act as**

Any person, agent, firm, or corporation licensed by the Board to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the State of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons in this State, to any person, persons, agent, firm or corporation that is a non-resident of this State, or to any person or persons, agent, firm or corporation not duly licensed by the Board as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent; excepting however, that on any policy of insurance originated by a Licensed Non-Resident Insurance Agent, as hereinafter defined, and covering property or persons in this State, a Texas local Recording Agent may divide the commission with the originating Licensed Non-Resident Insurance Agent, but in any such case the insurance company or carrier shall pay to the Texas Local Recording Agent through which such policy is issued, signed or countersigned, his minimum share, which shall be a sum not less than the amount of commission or brokerage required to be paid by the laws or regulations of the State of such originating Non-Resident Agent when a similar policy of insurance is originated by a Texas Local Recording Agent covering persons or property in such other State.

Nothing herein shall prevent a Texas Local Recording Agent from dividing with, or paying commissions to, another Texas local Recording Agent. Nothing herein shall relieve any insurance company or carrier covered thereby from writing Texas risks through Texas agents as provided in Article 21.09, Insurance Code.

A Licensed Non-Resident Insurance Agent is any person, firm or corporation residing or domiciled in another State and having a Non-Resident Insurance Agent's license as is hereinafter authorized.

Upon application, in such form as the Board of Insurance Commissioners may require, a non-resident of this State who is duly licensed to transact insurance other than life under the laws of the State wherein such applicant resides, if such State does not prohibit residents of this State from acting as insurance agent therein, the Board of Insurance Commissioners may issue to such applicant a Non-Resident Agent's license.

The issuance of a Non-Resident Agent's license shall be for the purpose of permitting a Local Recording Agent of Texas to divide commission with an agent of another State on insurance covering property or persons in this State placed with or through a Local Recording Agent, and to permit an agent of another State, who qualifies and is licensed as a Non-Resident Agent, to inspect and service such risks in Texas, which license shall be subject to the same fees, qualifications, requirements and restrictions as apply to Local Recording Agents of this State, except that an office shall not be maintained in this State by a Non-Resident Agent and all such insurance transacted shall be through licensed Local Recording Agents as provided in Article 21.09 of the Texas Insurance Code; and provided further that a Non-Resident Agent shall transact all matters with the Board of Insurance Commissioners relating to rates and rate engineering and terminology of standard policy forms through Local Recording Agents, and nothing contained herein shall be construed as granting authority to a Non-Resident Agent to transact such matters directly with the Board of Insurance Commissioners; and, except that the Board of Insurance Commissioners, at its discretion, on payment by applicant of the examination fee, may enter into a reciprocal arrangement with the officer having jurisdiction of insurance business in any other State to accept in lieu of the written examination of such an applicant residing therein, a certificate of such officer to the effect that the applicant is licensed as an insurance agent in such State and has complied with its qualification standards in respect to the following:

- (a) Experience or training;
- (b) Reasonable familiarity with the broad principles of insurance, licensing and regulatory laws, and with provisions, terms, and conditions of the insurance which applicant proposes to transact; and
- (c) A fair and general understanding of the obligations and duties of an insurance agent.

Nothing contained herein shall be construed to permit any person or firm who is licensed solely as a broker in the State of his residence to be granted a Non-Resident license as referred to herein; provided further that nothing contained herein shall be construed to permit a holder of a Non-Resident Agent's license to act as an Excess Agent under the provisions of present Article 21.38 of the Insurance Code or to perform any of the acts permitted thereunder or to permit any person or firm who holds a Non-Resident Agent's license as authorized herein to engage in any form of direct solicitation of insurance within this State. A Non-Resident Agent's license shall be cancelled and not be subject to reissuance when it is found by the Board of Insurance Commissioners that such license was obtained or is being used for the purpose of transacting insurance through a Local Recording Agent in such a manner as to permit a Non-Resident Agent, by subterfuge, to transact insurance as a Local Recording Agent, and in which event the license of the Local Recording Agent likewise shall be cancelled and not be subject to reissuance and all insurance transacted under such arrangement shall be cancelled, provided

further that the provisions of Sections 16 and 17, Article 21.14 of the Insurance Code shall apply to such cancellation. As amended Acts 1955, 54th Leg., p. 604, ch. 210, § 1.

Emergency. Effective May 13, 1955.

#### SUBCHAPTER D. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS

#### Art. 21.28. Liquidation, Rehabilitation, Reorganization or Conservation of Insurers

##### Section 1. Definitions. For the purposes of this Article:

(a) "Insurer" means and includes capital stock companies, reciprocal or interinsurance exchanges, Lloyd's associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code of 1951, and all other organizations, corporations, or persons transacting an insurance business, unless such insurers are by statute specifically, by naming this Article, exempted from the operation of this Article.

(b) "Delinquency proceeding" means any proceeding commenced in any court of this State against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(c) "Assets" means all property, real or personal, whether specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons, or a limited class or classes of persons. The word "assets," as used in this Article, includes all deposits and funds of a special or trust nature.

(d) "Liquidator" means the person designated by the Board of Insurance Commissioners as receiver, liquidator, rehabilitator, or conservator of all insurers as defined herein.

(e) "Board" means the Board of Insurance Commissioners of the State of Texas.

(f) "Court," unless the same clearly appears to the contrary from the text of this article, means the court in which the delinquency proceeding is pending.

##### Sec. 2. General Procedures.

(a) Receiver Taking Charge. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the liquidator designated by the Board of Insurance Commissioners as hereinafter provided for shall be such receiver. The liquidator so appointed receiver shall forthwith take possession of the assets of such insurer and deal with the same in his own name as receiver or in the name of the insurer as the court may direct.

(b) Title in Receiver. The property and assets of such insurer shall be in the custody of the court as of the date of the commencement of such delinquency proceedings. The said receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action of such insurer, wherever located, as of the date of entry of the order directing possession to be taken. Such title of the receiver shall relate back to the date of the commencement of the delinquency proceedings unless the court shall otherwise provide. The

**Ins. Code.**

filing or recording of such an order in any record office of the State shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded by such insurer.

(c) **Rights Fixed.** The rights and liabilities of any such insurer and of its creditors, policyholders, members, officers, directors, stockholders, agents, and all other persons interested in its estate, shall, unless otherwise directed by the court, be fixed as of the date of the commencement of the delinquency proceedings, subject, however, to the provisions of Section 3 with respect to the rights of claimants holding contingent claims, and as otherwise expressly provided in this Article.

(d) **Bonds.** The receiver shall be responsible, on his official bond hereinafter provided for, for all assets coming into his possession. The court may require an additional bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy liquidator, or other assistant or employee appointed by or under the authority of this Article.

(e) **Conducting of Business.** Upon taking possession of the assets of a delinquent insurer the receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as may be necessary to conserve the assets and protect the rights of policyholders and claimants for the purpose of liquidating, rehabilitating, reinsuring, reorganizing or conserving the affairs of the insurer.

(f) **Inventory.** An inventory in duplicate of the insurer's assets shall be prepared forthwith by the receiver, one of which shall be filed in the office of the Board and one in the office of the clerk of the court having jurisdiction, which inventories shall be open to inspection.

(g) **Disposal of Property; Settling Claims.** The receiver may, subject to the approval of the court, (1) sell or otherwise dispose of the real and personal property, or any part thereof, of an insurer against whom a proceeding has been brought under this Article, and (2) sell or compound all doubtful or uncollectible debts, or claims owed by or owing to such insurer, including claims based upon an assessment levied against a member of a mutual insurer, reciprocal exchange, or an underwriter at Lloyds. Whenever the amount of any such debt or claim owed by or owing to such insurer or the value of any item of property of the insurer does not exceed Five Hundred Dollars (\$500), exclusive of interest, the receiver may compromise or compound such debt or claim or sell such property upon such terms as he may deem for the best interests of said insurer without obtaining the approval of the court. The receiver may, subject to the approval of the court, sell or agree to sell, or offer to sell, any assets of such an insurer to such of its creditors who may desire to participate in the purchase thereof, to be paid for, in all or in part, out of dividends payable to such creditors, and, upon the application of the receiver, the court may designate representatives to act for such creditors in the purchase, holding and/or management of such assets, and the receiver may, subject to the approval of the court, advance the expenses of such representatives against the security of the claims of such creditors.

(h) **Depositories.** All money collected by the receiver shall be forthwith deposited in any bank or banks in this State which are members of the Federal Deposit Insurance Corporation. The funds collected or realized from the assets of each insurer shall be kept separate and apart from all other funds. Whenever any account in any such bank exceeds the maximum amount insured by said Federal Deposit Insurance Corporation, the receiver is hereby authorized and directed to make such contracts and

require such security as it may deem proper for the safeguarding of such deposit upon approval of the Board.

### Sec. 3. Claims.

(a) Time for Filing. Where a liquidation, rehabilitation, or conservation order has been entered in a proceeding against an insurer under this Article, all persons who may have claims against such insurer shall present proof of the same to the receiver at a place specified by him within a period of time to be specified by the court, in no event, however, less than ninety (90) days nor more than one (1) year after the date of the entry of the order specifying such time. The receiver shall notify all persons who may have claims against such insurer as disclosed by its books and records, to present proof of the same to him within the time as fixed. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(b) Late Filing. Proofs of claims may be filed subsequent to the date specified but in no event later than one (1) year after the entry of the court's order specifying the time for filing claims. Claims filed subsequent to the date specified in the court's order, but prior to the expiration of one (1) year after the entry of such order, may participate only in future dividends. Claims which are not filed within the expiration of such one-year period shall not participate in any distribution of the assets by the receiver.

(c) Proof necessary. A proof of claim shall consist of a written statement under oath signed by the claimant, setting forth the claim, the consideration therefor, and whether any, and if so, what securities are held therefor, and any right of priority of payment or other specific rights asserted by the claimant, and whether any, and if so, what payments have been made thereon, and such other matters as may be required by the court, and that the sum claimed is justly owing from the insurer to the claimant. Whenever a claim is founded upon an instrument in writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. After the filing of such instrument, the receiver may in his discretion permit the claimant to substitute a true copy of such instrument, until the final disposition of the claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim.

(d) Contingent Claims. No contingent claim shall share in a distribution of the assets of an insurer in liquidation except that such claim shall be considered if properly presented, and may be allowed to share where (1) such claim becomes absolute against the insurer on or before the last day fixed for filing of proof of claims against the assets of such insurer, or (2) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent. For the purposes of this Article, "contingent claim" means a claim for which the right of action is dependent upon the occurrence or nonoccurrence of some future event which may or may not happen.

(e) Third Party Claims. Where a liquidation, rehabilitation or conservation order has been entered in a proceeding against an insurer under this Article, any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim with the receiver, regardless of the fact that such claim may be contingent, and such claim may be approved (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such persons shall furnish suit-

## Ins. Code

able proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. No judgment against an insured taken after the date of the commencement of the delinquency proceedings shall be considered in the proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings shall be considered as conclusive evidence in the proceeding, either of the liability of such insured to such person upon such cause of action, or of the amount of damages to which such person is therein entitled.

(f) Offsets. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any claim or proceeding under this Article, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (g).

(g) No Offsets. No offsets shall be allowed in favor of any person, however, where (1) the obligation of the insurer to such person would not at the date of the commencement of the delinquency proceedings or as otherwise provided in Section 2(c), entitle him to share as a claimant in the assets of such insurer, or (2) the obligation of the insurer to such person was purchased by or transferred to such person subsequent to the commencement of the delinquency proceedings or with a view of its being used as an offset, or (3) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or reciprocal exchange, or underwriters at Lloyds, or to pay a balance upon a subscription to the capital stock of a stock insurance corporation, or (4) the obligation of such person is as a trustee or fiduciary.

(h) Action on Claims. The receiver shall have the discretion to approve or reject any claim filed against the insurer. Objections to any claim not rejected may be made by any party interested, by filing the objections with the receiver, who shall forthwith present them to the court for determination after notice and hearing. Upon the rejection of each claim either in whole or in part, the receiver shall notify the claimant of such rejection by written notice. Action upon a claim so rejected must be brought in the court in which the delinquency proceeding is pending within three (3) months after service of notice; otherwise, the action of the receiver shall be final and not subject to review. Such action shall be de novo as if originally filed in said court and subject to the rules of procedure and appeal applicable to civil cases.

**Sec. 4. Actions.**

(a) Injunctions. Upon an application by the receiver, the receivership court may, with or without notice, issue an injunction restraining the insurer named in the order, its officers, directors, stockholders, members, trustees, agents, servants, employees, policyholders, attorneys, managers, attorneys-in-fact, associate, deputy, substitute attorneys-in-fact, and all other persons from the transaction of its business or the waste or disposition of its property, or requiring the delivery of its property and/or assets to the receiver subject to the further order of the court.

(b) Other Orders. Such court may at any time during a proceeding under this Article issue such other injunctions or orders as may be deemed necessary to prevent interference with the receiver or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments,

garnishments, or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(c) No Preferences. Any claim, judgment, lien or preference against the insurer or its receiver obtained, after the date of receivership, in derogation of the terms of any such injunction or order of the receivership court may be denied by the receiver until proof of the justness of such claim, judgment, lien, preference or demand is made before and approved by the receivership court.

(d) Pending Lawsuits. No judgment or order rendered by any court of this State in any action pending by or against the delinquent insurer after the commencement of delinquency proceedings shall be binding upon the receiver unless the receiver shall have been made a party to such suit.

(e) One Year Extension. The receiver shall not be required to plead to any suit in which he may be a proper party plaintiff or defendant, in any of the courts in this State until one (1) year after the date of his appointment as receiver, and the provisions of Articles 2310 and 2311 of the Revised Civil Statutes of Texas of 1925, as amended, shall not apply to insolvent insurance companies being administered under this Article.

(f) New Lawsuits. The court of competent jurisdiction of the county in which the delinquency proceedings are pending under this Article shall have venue to hear and determine all action or proceedings instituted after the commencement of delinquency proceedings by or against the insurer or receiver.

#### Sec. 5. Voidable Transfers.

(a) Transfers or liens voidable. Any transfer or lien upon the property or assets of an insurer which is made or created within four (4) months prior to the commencement of delinquency proceedings under this Article, with the intent of giving to any creditor or enabling him to obtain a greater percentage of his debt than of any other creditor of the same class, and which is accepted by such creditor, having reasonable cause to believe that such preference will occur, shall be voidable.

(b) Personal Liability. Every director, officer, agent, employee, stockholder, member, attorney-in-fact, associate, substitute or deputy attorney-in-fact, underwriter, subscriber, and any other person acting on behalf of such insurer, who shall be concerned in any such prohibited act or deed, and every person receiving thereby property of such insurer, or the benefit thereof, shall be personally liable therefor, and shall be bound to account to the receiver for the benefit of the creditors of the insurer.

(c) Avoiding and Recovery. The receiver in any proceeding under this Article, may avoid any transfer of, or lien upon the property or assets of an insurer which any creditor, stockholder or member of such insurer might have avoided, and may recover the property so transferred or its value from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the commencement of proceedings under this Article. Such property or its value may be recovered from anyone who has received it, except a bona fide holder for value as above specified.

#### Sec. 6. Priority of Claims for Wages.

All wages actually owed to employees of an insurer against whom a proceeding under this Article is commenced, for services rendered within three (3) months prior to the commencement of such proceeding not exceeding Three Hundred Dollars (\$300) to each employee shall be paid prior to the payment of every other debt or claim, and in the discretion of the court may be paid as soon as practicable after the proceeding has



been commenced, except that at all times there shall be reserved such funds as will be sufficient for the expenses of administration by the receiver.

**Sec. 7. Assessments.**

(a) Application. Within four (4) years from the date of an order of rehabilitation, or liquidation, of a domestic insurer, the receiver may make an application to the court to levy an assessment against the members of a mutual insurer, or the underwriters or members of a reciprocal exchange, or the underwriters at Lloyds. Such application shall set forth the reasonable value of the assets of such insurer, its probable liabilities, and the probable necessary assessment, if any, to pay all possible claims and expenses in full, including expenses of administration and collection.

(b) Levy. Upon such notice as may be designated by the court, the court shall proceed to consider such report and may levy one or more assessments. Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. No such assessment shall be levied against any member or subscriber with respect to any policy which contains a nonassessable or noncontingent liability provision or provisions and which has been issued under authority granted by the Board.

(c) Collection. After the entry of such an order of assessment and the expiration of the time for appeal, the receiver shall proceed to collect such assessments, and for the purpose of such collection may bring suit for the same in any court of competent jurisdiction in the county in which such delinquency proceeding is pending.

(d) Provisions Cumulative. The provisions of this Section are cumulative of any other remedies for the levy and collection of assessments.

**Sec. 8. Distribution of Assets.**

(a) Payments to Creditors. Under the direction of the court the receiver shall make payments and dividends to the creditors.

(b) Interest. Interest shall not accrue on any claim subsequent to the date of the commencement of delinquency proceedings.

(c) Foreign Claimants. If any claimant of another state or foreign country shall be entitled to or shall receive a dividend upon his claim out of a statutory deposit or the proceeds of any bond or other asset located in such other state or foreign country, then such claimants shall not be entitled to any further dividend from the receiver until and unless all other claimants of the same class, irrespective of residence or place of the acts or contracts upon which their claims are based, shall have received an equal dividend upon their claims; and after such equalization, such claimants shall be entitled to share in the distribution of further dividends by the receiver, along with and like all other creditors of the same class, wheresoever residing.

(d) Setoff by Receiver. Upon the declaration of a dividend, the receiver shall apply the amount of such dividend against any indebtedness owed to the insurer by the person entitled to such dividend.

(e) Unclaimed Dividends. Unclaimed dividends on approved claims remaining in the receiver's hands after payment of the final dividend shall be delivered to the Board. Such funds shall be deposited by the Board in trust in a special account to be maintained with the State Treasurer.

(f) Escheat. On receipt of satisfactory written and verified proof of ownership within two (2) years from the date such funds are so deposited with the State Treasurer, the Board shall certify such facts to the Comptroller of Public Accounts, who shall issue proper warrant therefor in favor of the parties respectively entitled thereto drawn on the State Treas-

urer. Any such money remaining unclaimed with the Board for two (2) years shall automatically become the property of the Board.

#### Sec. 9. Closing.

(a) Excess Assets—Stock Companies. When the receiver shall have made provision for unclaimed dividends and all of the liabilities of a stock insurance company, he shall call a meeting of the stockholders of the insurer by giving notice thereof in one (1) or more newspapers in the county where the principal office of the insurer was located, and by written notice to the stockholders of record at their last known address. At such meeting, the stockholders shall appoint an agent or agents to take over the affairs to continue the liquidation for benefit of the stockholders. Voting privileges shall be governed by the insurer's bylaws. A majority of the stock shall be represented at the agent's appointment. Such agent or agents shall execute and file with the court such bond or bonds as shall be approved by it, conditioned on the faithful performance of all the duties of the trust. Under order of the court the receiver shall then transfer and deliver to such agent or agents for continued liquidation under the court's supervision all assets of insurer remaining in his hands, whereupon the receiver and the Board, and each member and employee thereof, shall be discharged from any further liability to such insurer and its creditors and stockholders; provided, however, that nothing herein contained shall be so construed as to permit the insurer to continue in business as such, but the charter of such insurer and all permits and licenses issued thereunder or in connection therewith shall be ipso facto revoked and annulled by such order of the court directing the receiver to transfer and deliver the remaining assets of such insurer to such agent or agents.

(b) Excess Assets—Other Companies. After the receiver shall have made provision for unclaimed dividends and all of the liabilities of any insurer other than a stock insurance company, he shall dispose of any remaining assets as directed by the receivership court.

(c) No Limitation. Each receivership or other delinquency proceeding prescribed by this Article shall be administered continuously hereunder for whatever length of time is necessary to effectuate its purposes. No arbitrary period prescribed elsewhere by the laws of Texas limiting the time for the administration of receiverships or of corporate affairs generally shall be applicable thereto.

(d) Reopening. If after the receivership shall have been closed by final order of the court, the liquidator shall discover assets not known to him during receivership, he shall report his findings to the court. It shall be within the discretion of the court as to whether the value of the after-discovered assets shall justify the reopening of the receivership for continued liquidation.

#### Sec. 10. Reinsurance.

(a) Reinsurer's Liability. If the receiver has claims under policies covered by reinsurance, there shall be no diminution of the liability of the reinsurer because of the delinquency proceeding against the delinquent company, regardless of any provisions in the reinsurance contract to the contrary.

(b) Notice to Reinsurer. The liquidator or receiver shall give written notice to the affected reinsurers of the pendency of a claim against the receiver under a policy covered by reinsurance within a reasonable time after such claim is filed in the delinquency proceeding, and during the pendency of such claim any affected reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where the claim is to be adjusted any defense or defenses which it may deem available to the delinquent company, the liquidator or the receiver. Subject to court ap-

proval, the expense thus incurred shall be chargeable against the delinquent company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the delinquent company solely as a result of the defense undertaken by the assuming insurer.

(c) Provided, however, that Article 6.16 of the Insurance Code of 1951, Acts Regular Session of the Fifty-second Legislature, 1951, Chapter 491, page 868, shall remain in full force and effect and shall govern as to those insurance companies affected thereby.

**Sec. 11. Evidence in Records.**

(a) Records Admitted. All books, records, documents and papers of any delinquent insurer received by the liquidator and held by him in the course of the delinquency proceedings, or certified copies thereof, under the hand and official seal of the Board and/or liquidator, shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Board and/or liquidator that the same was received from the custody of the delinquent insurer or found among its effects.

(b) Certificates. The liquidator shall have the authority to certify to the correctness of any paper, document or record of his office, including those described in (a) of this section, and to make certificates under seal of the Board and certified by the liquidator certifying to any fact contained in the papers, documents or records of the Liquidation Division; and the same shall be received in evidence in all cases in which the originals would be evidence.

(c) Prima-facie Evidence. Such original books, records, documents and papers, or certified copies thereof, or any part thereof, when received in evidence shall be prima-facie evidence of the facts disclosed thereby.

**Sec. 12. Liquidator, Assistants, Expense Accounts.**

(a) Liquidator, Bond. The liquidator herein named shall be appointed by a majority of the Board of Insurance Commissioners, and shall be subject to removal by a majority of said Board, and before entering upon the duties of said office, shall file with the Board of Insurance Commissioners a bond in the sum of Ten Thousand Dollars (\$10,000), payable to the Board of Insurance Commissioners for the benefit of injured parties, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.

(b) Appointments, Expenses. The Board shall have the power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary. The payment of such compensation and all expenses of liquidation shall be made by the liquidator out of funds or assets of the insurer on approval of the Board. An itemized report of such expenses, sworn to by the liquidator and approved by the Board, shall be presented to the court from time to time, which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

(c) Filing Reports. Said liquidator shall file reports with the Board of Insurance Commissioners upon its request showing the operation, receipts, expenditures, and general condition of any organization of which he may have charge at that time, and, upon request, shall file a copy of said

report with the court in which said receivership proceeding is pending. He shall also file a final report of each organization which he has liquidated or handled showing all receipts and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

### Sec. 13. Ancillary Delinquency Proceedings.

Whenever under the laws of this State, a receiver is to be appointed in delinquency proceedings for an insurer domiciliary in another state, a court of competent jurisdiction in this State shall, on the petition of the Board of Insurance Commissioners of this State, appoint the liquidator herein provided as ancillary receiver in this State of such insurer. The Board shall file such petition (a) if it finds that there are sufficient assets of such insurer located in this State to justify the appointment of an ancillary receiver, or (b) if ten (10) or more persons resident in this State, having claims against such insurer, file a petition or petitions in writing with the Board, requesting the appointment of such ancillary receiver. Such ancillary receiver shall have the right to sue for and reduce to possession the assets of such insurer in this State, and shall have the same powers and be subject to the same duties with respect to such assets, as are possessed by a receiver of a domiciliary insurer under the laws of this State. The remaining provisions of this Article shall be applicable to the conduct of such ancillary proceedings.

### Sec. 14. Contracts with Foreign Receiver.

In cases where a receiver of any delinquent insurer has been appointed both in Texas and in some other state, the Texas receiver, either domiciliary or ancillary, may, under supervision of the Texas receivership court, contract with the receiver in such other state for the administration of the affairs of their respective receiverships in any manner consistent with this Article which will enable the respective receivers to coordinate their activities in the interest of efficiency and economy.

### Sec. 15. Borrowing on the Pledge of Assets.

For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this Article the receiver may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the receiver, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The receiver shall be under no obligation personally or in his official capacity as receiver to repay any loan made pursuant to this section.

### Sec. 16. Conflicts of Law.

In the event of conflict between the provisions of this Article and the provisions of any existing law, the provisions of this Article shall prevail, and all laws, or parts of law, in conflict with the provisions of this Article, are hereby repealed to the extent of such conflict. As amended Acts 1955, 54th Leg., p. 737, ch. 267.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955, provided that this Act shall be liberally

construed to effectuate its purpose. Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

**Art. 21.39. Loss or Claim Reserves**

Every insurer shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such claims. The Board of Insurance Commissioners shall adopt each current formula for establishing reserves applicable to each line of insurance recommended by the National Association of Insurance Commissioners and all companies writing the line of insurance to which each such adopted formula is applicable shall establish reserves in compliance therewith. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 52.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 21.44. Foreign Insurance Companies other than Life**

No foreign insurance company other than one doing a life insurance business shall be permitted to do business within this State unless it shall have and maintain the minimum requirements of this Code as to capital or surplus or both, applicable to companies organized under this Code doing the same kind or kinds of insurance business. Added Acts 1955, 54th Leg., p. 413, ch. 117, § 53.

Effective 90 days after June 7, 1955, date of adjournment.

Another Article 21.44 under a new Sub-

chapter F, Judicial Review, was added by Acts 1955, 54th Leg., p. 933, ch. 364, § 1. See Article 21.44, post.

**Art. 21.45. Minimum Insurance to Be Maintained by Insurance Companies.**

Section 1. Every domestic insurance company, corporation, mutual life insurance company, state-wide mutual assessment company, mutual insurance company other than life operating under and governed by the provisions of Chapter 15 of the Insurance Code, Lloyds, reciprocal or inter-insurance exchange, title insurance company, or other insurer which is by law required to be licensed by the Board of Insurance Commissioners of the State of Texas, shall maintain in force at all times not less than one hundred (100) Policy Holders or Certificate Holders nor less than Two Hundred Thousand Dollars (\$200,000) of insurance which has been written by said insurer or which has been acquired through reinsurance contracts; provided, however, that the provisions of this Act shall not apply to any such insurer which has had paid to it by Policy Holders gross premium income in excess of Fifty Thousand Dollars (\$50,000) during its last preceding accounting year, or until two (2) years after its original certificate of authority has been issued; and further provided that the provisions of this Act shall not take effect as to any insurer which has heretofore been issued an original certificate of authority until one (1) year after the effective date of this Act.

Sec. 2. The Board of Insurance Commissioners shall report to the Attorney General the failure of any insurer to comply with the provisions of this Article, whereupon the Attorney General shall bring suit in any district court of Travis County, Texas, for the purpose of canceling, forfeiting and revoking the charter, articles of association, or articles of

agreement, and for the purpose of cancelling, forfeiting and revoking the certificate of authority of any such insurer.

Sec. 3. The local mutual aid associations and local mutual burial associations authorized to transact business under Chapters 12 and 14 of the Insurance Code, state-wide mutual assessment companies or associations authorized to transact business under Chapters 13 and 14 of the Insurance Code, farm mutual insurance companies authorized to transact business under Chapter 16 of the Insurance Code, county mutual fire insurance companies authorized to transact business under Chapter 17 of the Insurance Code, fraternal benefit societies authorized to transact business under Chapter 10 of the Insurance Code, and those associations which are authorized to transact business under the provisions of Article 14.17 of the Insurance Code, shall be exempt from the provisions of this Article. Added Acts 1955, 54th Leg., p. 1192, ch. 468, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

*This article, as added by Acts 1955, 54th Leg., p. 1192, ch. 468, was designated as article 21.44. Section 2 of such 1955 Act provides that, "In the event another law passed at this session of the Legislature is also designated at Article 21.44 of the Insurance Code, the Article added by this Act shall be numbered Article 21.45 or the next succeeding number which is not assigned to some other statute enacted at this session." Another article enacted at this session, relating to judicial review of the Board's action, having been designated as art. 21.44, this article is designated art. 21.45, in accordance with the direction of section 2.*

Section 3 was a severability clause.

**Title of Act:**

An Act requiring insurance companies to maintain in force a stated minimum amount of insurance written by them or acquired through reinsurance contracts;

making certain exceptions; providing for forfeiture of charter, certificate of authority, etc., of any insurer failing to comply with this requirement; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 1192, ch. 468, § 1.

## SUB-CHAPTER F. JUDICIAL REVIEW

### Art. 21.44. Judicial Review of Board Action

Except where otherwise provided for under the provision of the Insurance Code, if any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act, or administrative ruling adopted by the Board of Insurance Commissioners, such dissatisfied company or party at interest after failing to get relief from the Board of Insurance Commissioners, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act, or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence

**Ins. Code**

in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder. Acts 1951, 52nd Leg., p. 868, ch. 491, art. 21.44 added Acts 1955, 54th Leg., p. 933, ch. 364, § 1.

Emergency. Effective May 28, 1955.

Acts 1955, 54th Leg., p. 413, ch. 117, § 53.

Another Article 21.44 was added to Subchapter E, Miscellaneous Provisions, by

See Article 21.44, ante.

**TITLE 81—JAILS****Art.**

5118a. Commutation for good conduct; forfeiture of commutation; record [New].

**Art. 5118a. Commutation for good conduct; forfeiture of commutation; record**

In order to encourage county jail discipline a distinction may be made in the term of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts; the reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict county jail rules, and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience may be granted the inmates of each county jail by the sheriff in charge. A deduction in time not to exceed one third ( $\frac{1}{3}$ ) of the original sentence may be made from the term or terms of sentences when no charge of misconduct has been sustained against the prisoner. A prisoner under two (2) or more cumulative sentences shall be allowed commutation as if they were all one sentence. For such sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape) any part or all of the commutation which shall have accrued in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the sheriff. No other time allowance or credits in addition to the commutation of time for good conduct herein provided for may be deducted from the term or terms of sentences. The sheriff shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all forfeitures of commutation time and the reasons therefor. Acts 1955, 54th Leg., p. 1182, ch. 461, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 82—JUVENILES

## Art.

5139H—1. Juvenile boards in counties of 38th and 63rd Judicial Districts [New].

5139H—2. Juvenile boards in counties of Second 38th Judicial District [New].

5139J. Juvenile Boards in Harrison and Rusk counties [New].

5139K. Juvenile board in Waller County [New].

5139L. Juvenile board in Fannin County [New].

5139M. Juvenile board in Bowie County [New].

## Art.

5139N. Cass county juvenile board [New].

5139O. Titus county juvenile board [New].

5142a—1. Child support fund; special fee in divorce cases; administration [New].

5142c. Juvenile Officers in Counties of one hundred and ninety thousand (190,000) to two hundred and twenty-four thousand (224,000) [New].

5142c—2. Juvenile Probation Officers in counties of over 500,000 [New].

**Art. 5139G. Juvenile board in counties comprising special 9th district court**

Section 1. In each county comprising the Second 9th Judicial District, the judge of the district court or the district courts together with the county judge of the county shall constitute the juvenile board of such county. The members of such board shall be allowed additional compensation of not less than One Hundred Dollars (\$100) per annum and not more than Six Hundred Dollars (\$600) per annum to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county. As amended Acts 1955, 54th Leg., p. 1162, ch. 445, § 1.

Emergency. Effective June 14, 1955.

**Art. 5139H—1. Juvenile boards in counties of 38th and 63rd Judicial Districts**

Section 1. In each county comprising the 38th Judicial District and in each county comprising the 63rd Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county may each be allowed additional compensation of not less than Six Hundred Dollars (\$600) per annum and not more than Twelve Hundred Dollars (\$1200) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the General Fund of the County; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges. Acts 1955, 54th Leg., p. 963, ch. 374.

Emergency. Effective May 28, 1955.

Section 3 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 5139H—2. Juvenile boards in counties of Second 38th Judicial District**

Section 1. In each county comprising the Second 38th Judicial District, the Judge of the District Court together with the County Judge of the county shall constitute the juvenile board of such county. The mem-



bers of the juvenile board in each such county shall each be allowed additional compensation of not less than One Hundred Dollars (\$100.00) per annum, and not more than Three Hundred Dollars (\$300.00) per annum, which shall be paid in twelve equal installments out of the general fund of the county, such additional compensation to be fixed by the Commissioners Court of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, as amended.

Sec. 2. This Act shall become effective on the effective date of House Bill No. 593, Acts of the Regular Session of the 54th Legislature, creating the Second 38th Judicial District. Acts 1955, 54th Leg., p. 1177, ch. 456.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act establishing a juvenile board in each county comprising the Second 38th Judicial District; prescribing the member-

ship and powers of each board and providing for compensation of its members; providing an effective date; and declaring an emergency. Acts 1955, 54th Leg., p. 1177, ch. 456.

**Art. 5139J. Juvenile Boards in Harrison and Rusk counties**

Section 1. There is hereby established a county juvenile board in each of the Counties of Harrison and Rusk, which shall be composed of the county judge and the judge of each judicial district which includes the county. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compensation not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per year, to be fixed by the commissioners court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the commissioners court of the county in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The commissioners court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. Acts 1955, 54th Leg., p. 385, ch. 106.

Emergency. Effective April 26, 1955.

Section 4 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 5 provided that partial invalidity should not affect the remaining portions of the Act.

**Title of Act:**

An Act establishing a juvenile board in each of the Counties of Harrison and Rusk; prescribing the membership and

powers of each board and providing for compensation of its members; authorizing each board to appoint a juvenile officer; prescribing the powers and duties of the juvenile officer and providing for his compensation and expenses; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 385, ch. 106.

**Art. 5139K. Juvenile board in Waller County**

Section 1. The County Judge of Waller County and the Judge of the Judicial District which includes Waller County shall constitute the Juvenile Board of that county. The Judge of the court which is designated as the Juvenile Court of Waller County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon them, the County and District Judges who are members of such Board may be allowed additional compensation not to exceed Six Hundred Dollars (\$600) per year, to be fixed by the Commissioners Court and paid monthly in twelve equal installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of Judges of the District courts and County Judges. Acts 1955, 54th Leg., p. 735, ch. 264.

Emergency. Effective May 18, 1955.  
Title of Act:

An Act creating a Juvenile Board for Waller County and designating the Chairman thereof; providing additional com-

penensation for County and District Judges serving thereon; stating the effect of this Act on existing laws; and declaring an emergency. Acts 1955, 54th Leg., p. 735, ch. 264.

**Art. 5139L. Juvenile board in Fannin county**

Section 1. There is hereby established a Juvenile Board for Fannin County, which shall be known as the Fannin County Juvenile Board. It shall be composed of the county judge of Fannin County and the judge of each judicial district which includes Fannin County. The judge of the court which is designated as the juvenile court for Fannin County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1200) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Fannin County. The commissioners court of Fannin County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1200) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Fannin County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges. Acts 1955, 54th Leg., p. 859, ch. 322.

Effective 90 days after June 7, 1955 date of adjournment.

Section 3 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 4 was a severability clause.

Title of Act:

An Act establishing the Fannin County Juvenile Board; prescribing its membership and powers and providing for compensation of its members; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 859, ch. 322.

**Art. 5139M. Juvenile Board in Bowie county**

Section 1. There is hereby established a County Juvenile Board in the County of Bowie which shall be composed of the County Judge and the Judge of each Judicial District which includes the County. The offi-

cial title of the Board shall be the "Bowie County Juvenile Board." The Judge of the Court which is designated as the Juvenile Court of the County shall be Chairman of the Board and its Chief Administrative Officer.

Sec. 2. As compensation for the added duties imposed upon members of the Juvenile Board each member thereof may be allowed additional compensation not less than Twelve Hundred Dollars (\$1200) per year, to be fixed by the Commissioners Court of the County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges.

Sec. 3. The Juvenile Board established by this Act shall have all the powers conferred on Juvenile Boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The Board may appoint a Juvenile Officer, whose salary shall be fixed by the Commissioners Court of the County in an amount not to exceed Three Thousand Dollars (\$3000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The Juvenile Officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the Juvenile Officer shall be certified by the Chairman of the Board as being necessary in the performance of the duties of the Juvenile Officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the Juvenile Officer. Acts 1955, 54th Leg., p. 897, ch. 348.

Effective 90 days after June 7, 1955, date of adjournment.

Section 4 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 5 provided that partial invalidity should not affect the remaining portions of the Act.

**Title of Act:**

An Act establishing the Bowie County Juvenile Board; prescribing its member-

ship and powers and providing for compensation of its members; authorizing appointment of a Juvenile Officer; prescribing his powers and duties and providing for his compensation and expenses; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 897, ch. 348.

### **Art. 5139N. Cass county juvenile board**

Section 1. There is hereby established the Cass County Juvenile Board, which shall be composed of the County Judge of Cass County and the Judge of each Judicial District which includes Cass County. The Judge of the Court which is designated as the Juvenile Court for Cass County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Eighteen Hundred Dollars (\$1800) per year, to be fixed by the Commissioners Court of Cass County and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Cass County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. If the Juvenile Board determines that it is necessary to have a juvenile officer for Cass County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Cass County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall

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

have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the Juvenile Board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Cass County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. Acts 1955, 54th Leg., p. 1203, ch. 478.

Emergency. Effective June 15, 1955.

Section 4 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 5 was a severability clause.

**Title of Act:**

An Act establishing the Cass County Juvenile Board; prescribing its membership and powers and providing for com-

penation of its members; authorizing appointment of a juvenile officer; prescribing his powers and duties and providing for his compensation and expenses; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 1203, ch. 478.

**Art. 51390. Titus county juvenile board**

Section 1. There is hereby established the Titus County Juvenile Board, which shall be composed of the County Judge of Titus County and the Judge of each Judicial District which includes Titus County. The Judge of the Court which is designated as the Juvenile Court for Titus County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Eighteen Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of Titus County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges.

Sec. 3. The Titus County Juvenile Board shall have all the powers conferred on Juvenile Boards created under Article 5139 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. If the Juvenile Board determines that it is necessary to have a juvenile officer for Titus County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Titus County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. All claims for expenses of the juvenile officer shall be certified by the chairman of the Juvenile Board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Titus County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. Acts 1955, 54th Leg., p. 1206, ch. 480.

Effective 90 days after June 7, 1955, date of adjournment.

Section 4 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 5 was a severability clause.

**Title of Act:**

An Act establishing the Titus County Juvenile Board; prescribing its member-

ship and powers and providing for compensation of its members; authorizing appointment of a juvenile officer; prescribing his powers and duties and providing for his compensation and expenses; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 1206, ch. 480.

**Art. 5142a—1. Child support fund; special fee in divorce cases; administration**

For the purpose of maintaining the Child Support Office there shall be taxed, collected, and paid as other costs the sum of Three (\$3.00) Dollars in each divorce case hereafter filed in any District Court in each county having a population of more than 350,000 inhabitants according to the last preceding Federal Census. Such cost shall be collected by the clerk of the court and when collected shall be paid by him to the County Treasurer to be kept by him in a separate fund, such fund to be known as the "Child Support Fund". This fund shall be administered by the Juvenile Board of the county, subject to the approval of the Commissioners Court of the county, for the purpose of assisting in paying the cost of maintaining the Child Support Office in the Probation Department of the county, including the payment of salaries and other expenses of the Collector of Child Support and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the office. This fund shall be supplemented out of the General Fund, Officers Salary Fund, or other available funds of the county where necessary. Acts 1955, 54th Leg., p. 507, ch. 148, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act providing for the assessment and collection of a fee in divorce cases filed in counties having a population of more than 350,000 inhabitants according to the last preceding Federal Census; provid-

ing that such moneys collected shall be placed in a separate fund to be used for the purpose of helping defray the cost of maintaining the Child Support Office in the Probation Department of the county; and declaring an emergency. Acts 1955, 54th Leg., p. 507, ch. 148.

**Art. 5142b. Juvenile officers in counties of 225,000 to 390,000****Application of law**

Section 1. The provisions of this Act shall apply to all counties of the State of Texas having a population of not less than two hundred twenty-five thousand (225,000) inhabitants, nor more than three hundred ninety thousand (390,000) inhabitants, according to the last preceding or any future Federal Census, general or special. As amended Acts 1949, 51st Leg., p. 110, ch. 66, § 1; Acts 1949, 51st Leg., p. 654, ch. 339, § 1; Acts 1955, 54th Leg., p. 1228, ch. 490, § 1.

**Compensation of Juvenile Board Members**

Sec. 15. The Judges of the several District and Criminal District Courts who are members of the juvenile board in such counties, on account of the additional duties imposed on them, are hereby allowed an additional compensation of Three Hundred Twenty-five Dollars (\$325.00) per month; and the County Judge in such counties, on account of the additional duties imposed on him, is hereby allowed an additional compensation of Seventy-five Dollars (\$75.00) per month. The compensation herein provided for is to be paid by the Commissioners Court in such counties and is to be in addition to all other compensation now allowed by law to such officers. The Commissioners Court, in its discretion, may also allow each member of the juvenile board an increase in such additional compensation in an amount not to exceed One Thousand Dollars (\$1,000.00) per year, but any increase must be allowed uniformly for all members of the Board. Provided, however, that in counties coming under the provisions of this Act, the members of the juvenile board shall not receive any compensation under or by virtue of Acts of 1917, 35th Legislature, Chapter 16, page 27,

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

(Article 5139), as amended. As amended Acts 1949, 51st Leg., p. 110, ch. 66, § 2; Acts 1955, 54th Leg., p. 1228, ch. 490, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 5142c. Juvenile Officers in Counties of one hundred and ninety thousand (190,000) to two hundred and twenty-four thousand (224,000)**

**Compensation of probation officers; expenses**

Sec. 5. The compensation of all Probation Officers shall be fixed by the Juvenile Board subject to the approval of the County Commissioners Court. The Commissioners Court shall, out of the General Fund of the county, provide funds for all necessary expenses needed to properly carry out the duties of the Juvenile Officer and his assistants, in such amounts as recommended by the Juvenile Board, subject to the approval of the Commissioners Court. As amended Acts 1955, 54th Leg., p. 1158, ch. 441, § 1.

Emergency. Effective June 14, 1955.

**Art. 5142c—2. Juvenile Probation Officers in counties of over 500,000**

**Chief juvenile probation officer; appointment; term; salary; removal**

Section 1. In counties having a population of more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, regular or special, the County Juvenile Board shall appoint a Chief Juvenile Probation Officer for a term of two (2) years at a salary to be fixed by the Juvenile Board and approved by the Commissioners Court, to be paid in monthly installments by the county. The salary so fixed shall not be less than Seven Thousand, Five Hundred Dollars (\$7,500.00) per annum. The County Juvenile Board may remove the Chief Juvenile Probation Officer for just cause.

**Assistant juvenile probation officers and other employees; appointment; salaries; automobiles**

Sec. 2. The Chief Juvenile Probation Officers in counties to which this Act applies are hereby authorized to appoint, and shall appoint, subject to the approval of the Juvenile Board, not less than thirty-two (32) Assistant Juvenile Probation Officers and other employees, in accordance with the following schedule, and shall fix their salary rates at not less than the following amounts: One (1) assistant, Five Thousand, Four Hundred Dollars (\$5,400.00) per annum; two (2) assistants, Four Thousand, Four Hundred Dollars (\$4,400.00) per annum each; three (3) assistants, Three Thousand, Nine Hundred Dollars (\$3,900.00) per annum each; five (5) assistants, Three Thousand, Seven Hundred Twenty Dollars (\$3,720.00) per annum each; eight (8) assistants, Three Thousand, Six Hundred Dollars (\$3,600.00) per annum each; and five (5) assistants, Three Thousand, Three Hundred Dollars (\$3,300.00) per annum each. He shall employ: two (2) clerk-stenographers, at Three Thousand, One Hundred Eighty Dollars (\$3,180.00) per annum each; one (1) secretary, Three Thousand, Three Hundred Dollars (\$3,300.00) per annum; one (1) clerk-stenographer, Three Thousand Dollars (\$3,000.00) per annum; three (3) clerk-typists, Two Thousand, Seven Hundred Dollars (\$2,700.00) per annum each; and one (1) clerk-typist, Two Thousand, Four Hundred Dollars (\$2,400.00) per annum; to be paid by the county in monthly or semi-monthly installments.

In addition to the salaries herein provided for the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers, the Commissioners Court is authorized to furnish automobiles for the use of the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers, to be used in the official work of the Juvenile Probation Office, and provide for the maintenance and operation of same; or if the Commissioners Court does not furnish automobiles to the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers to be used in the discharge of their duties, it shall allow such Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles, such amounts and the reasonableness thereof to be determined by the Juvenile Board.

**Additional probation officers, assistants and employees**

Sec. 3. Should the Juvenile Board, in any county to which this Act applies, be of the opinion that the number of Juvenile Probation Officers, clerks, stenographers, typists and other employees above provided for, is inadequate for the proper investigation, processing and handling of all cases referred to the office, or is inadequate for the efficient performance of the duties of the office, with the advice and approval of the Commissioners Court, it may appoint such additional Juvenile Probation Officers, assistants or employees as the Juvenile Board may determine; the salaries of such additional Juvenile Probation Officers, assistants and employees to be fixed by the Juvenile Board and approved by the Commissioners Court.

**Payments for support of wife or children; desertion cases**

Sec. 4. All payments made under the order of the District and Criminal District Courts in such county in wife and child desertion cases for the support of wives and children shall be paid in, either to said Juvenile Probation Officer working in said courts as an officer of the courts, or the District Clerk, as the Juvenile Board may direct, and said Juvenile Probation Officer, or District Clerk, as the case may be, shall disburse said funds for the benefit of the wife and/or children of the defendant, making such payment in such manner as shall appear to the courts to be for the best interest of said wife and/or children.

**Board of probation officer**

Sec. 5. In all cases wherein the Juvenile Board designates the Juvenile Probation Officer to receive said payments in wife and child desertion cases for the support of wives and children, said Juvenile Probation Officer shall make a surety bond in some solvent surety company authorized to make such bond in Texas, conditioned upon the faithful performance of the duties of his position, and further conditioned upon his properly accounting for any moneys entrusted to him, said bond to be in such amount as may be fixed by the Commissioners Court and subject to the approval of the Commissioners Court, the premium for such bond to be paid out of the general funds of the county.

**Records of receipts and disbursements**

Sec. 6. Said Juvenile Probation Officer in such county with a population in excess of five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, shall keep an accurate and complete record of all his receipts and disbursements of all moneys for the benefit of support of wives and children, which shall be a public record open to the inspection of the public; and it shall be the duty of the County Auditor to inspect and examine such records and audit such ac-

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

counts quarterly, making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

#### **Partial invalidity**

Sec. 7. If any clause, section or part of this Act is found to be unconstitutional or invalid, it is hereby declared to be the purpose and intention of the Legislature that such clause or section shall not in any manner invalidate or impair the remaining portions of this Act.

#### **Cumulative of other laws; conflicting laws repealed**

Sec. 8. It is further provided that this law is cumulative of all other laws and parts of laws and repeals only those laws and parts of laws in conflict with this Act; and the same are hereby repealed to the extent of such conflicts only.

#### **Effective date**

Sec. 9. This Act shall become operative on the first day of January, 1956. Acts 1955, 54th Leg., p. 699, ch. 250.

Emergency. Effective January 1, 1956.

### **Art. 5143c. State Youth Development Council**

#### **Council Established**

Sec. 4. (a) The State Youth Development Council shall consist of nine (9) members selected as follows: six (6) members, who are influential citizens in their respective communities and recognized for their interest in the welfare of youth, shall be appointed by the Governor with the consent of the Senate, provided that citizens of Texas now serving as members of Boards or Commissions of the State may be eligible for appointment to this Council, service on said Council to be considered as an extension of their other official duties; and three (3) State officers—the Executive Director of the State Department of Public Welfare, the Director of the Texas Department of Public Safety, and the Chairman of the Texas Employment Commission, shall serve ex officio, the service by such State officials on the Council to be considered as additional duties of their present offices, and not as a separate office or employment.

The present members of the Council who have previously been appointed by the Governor and confirmed by the Senate shall continue to hold office for the terms to which they have been appointed.

(b) The duties of the six (6) appointed members first mentioned, in addition to serving as regular members of the Council, will be to provide the essential liaison with the public to enlist its support and participation, to channel the public's suggestions to the Council, and to keep the Council's sights trained on the major needs and problems of Texas youth. The term of office of the six (6) appointed members shall be six (6) years except that initially two (2) members shall be appointed for a six (6) year term, two (2) members for a four (4) year term, and two (2) members for a two (2) year term. Said members shall be eligible for reappointment. A vacancy for an unexpired term shall be filled by the Governor with the consent of the Senate. The lay members shall each receive a per diem of Ten Dollars (\$10) for not exceeding sixty (60) days for any fiscal year.

(c) Two (2) persons shall be employed by the Executive Committee subject to the approval of the Council to serve at the pleasure of the



Council, and shall perform such duties as shall be designated by the Council. Said employees shall devote full time to the work of the Council.

(d) All members of the Council shall receive as expenses that sum provided by Statute for other State employees.

(e) The Council shall hold meetings at the call of its Chairman or Secretary or at the request of any three (3) members at such times and places as its Chairman may determine, but it shall hold not less than six (6) meetings annually.

(f) The State Youth Development Council shall have its office wherever the Council chooses, in such building as shall be designated and approved by the State Board of Control. As amended Acts 1955, 54th Leg., p. 1250, ch. 500, § 1.

#### Organization of the Council

Sec. 5. (a) A member of the Council shall be designated by the Governor as its Chairman and he shall preside over all meetings of said Council. The Executive Director of the State Department of Public Welfare shall be Executive Secretary of the Council and shall be the executive and administrative officer of the Council. The Executive Secretary and two (2) other members of the Council appointed by that body shall constitute the Executive Committee of the Council, one (1) of which shall be a member of the Council appointed by the Governor.

(b) The Council shall be responsible for the adoption of all policies and may make all rules appropriate to the proper accomplishment of its functions. It is further provided that the Council may delegate any function or responsibility to the Executive Committee, and the Executive Committee is hereby authorized to transact all business on behalf of the Council.

(c) The powers and duties of the Council in respect to placement for training and treatment, transfer, release under supervision, and discharge of delinquent children committed to the Council shall be exercised and performed by the Executive Committee and may be delegated to the Executive Secretary. The Executive Secretary may delegate the powers and duties vested in him by this subsection to any member or employee of the Council, or State employee designated by the Council.

(d) All powers, duties, and functions granted to or imposed on the Council by any provision of law may be exercised and performed by the Secretary or by any member or employee designated or assigned by the Council or by the Secretary.

(e) For the exercise of all functions five (5) members of the Council shall constitute a quorum.

(f) Such citizens as the council or the Governor may appoint shall constitute an Advisory Committee for the Council. It shall be the function of the Advisory Committee, upon request of the Council, to make recommendations and render advice to the Council concerning any matter coming within the scope of the Council's duties and functions. The service of any State official on the Advisory Committee shall be considered as additional duties of his office. As amended Acts 1955, 54th Leg., p. 1250, ch. 500, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

Section 3 of the amendatory Act of 1955 repealed all conflicting laws and parts

of laws to the extent of such conflict. Section 4 provided that partial invalidity should not affect the remaining portions of the Act.

## TITLE 83—LABOR

CH.

16. Miscellaneous Provisions [New]

Art.

522(d)

## CHAPTER TWO—LABOR ORGANIZATIONS

Art.

5154g. Strikes and picketing regulated and prohibited; elections; injunction [New].

**Art. 5154g. Strikes and picketing regulated and prohibited; elections; injunction****Public policy declared; right to work not to be denied or abridged for union membership or non-membership**

Section 1. It is hereby declared to be the public policy of the State of Texas that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization and that in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion.

**Striking or picketing to coerce employer to bargain with employee groups representing minority of employees**

Sec. 2. It shall be a violation of the rights set forth in Section 1 for any person or persons, or associations of persons, or any labor union or labor organization, or the members or agents thereof, acting singly or in concert with others, to establish, call maintain, participate in, aid or abet any strike or picketing, an object of which is to urge, compel, force or coerce any employer to recognize or bargain with, or any employee or group of employees to join or select as their representative, any labor union or labor organization which is not in fact the representative of a majority of the employees of an employer or, if the employer operates two or more separate and distinct places of business, is not in fact the representative of a majority of such employees at the place or places of business subjected to such strike or picketing.

**Election by employees to determine bargaining agency; authority of judge to order; procedure; employees eligible to vote**

Sec. 3. In any proceeding or suit that may be instituted under the provisions of Section 2 hereof, the trial judge, prior to final hearing thereon, is hereby authorized to order an election, by the employees of the employer subjected to strike or picketing, for the purpose of determining whether a labor union or labor organization is in fact the representative of a majority of the employees of said employer, and any such election shall be held, within twenty (20) days after the institution of such proceeding or suit, by a disinterested master appointed by the trial judge, under rules and procedures prescribed by the trial judge, which shall provide that the employer and the said labor union or labor organization may each have one representative present at the voting place or places as an observer, such representatives to be approved by the trial judge, and the voting of such election shall be by secret ballot. The ballots used in all elections under this Act shall be on plain white paper through which printing or writing cannot be read, shall be uniform in size, and shall not be numbered nor have attached in any manner any

form of stub nor shall the person using said ballot be required to sign the same. Employment lists will be checked and no employees shall be allowed to vote more than once. Each ballot shall be initialed by the judge before being presented to the voter. All employees of the employer at the time of the commencement of the strike or picketing complained of shall be eligible to vote in any such election except employees who have since quit or been discharged for cause, which shall not include the participation in the strike or picketing complained of, and have not been rehired or reinstated prior to the date of the election; provided, however, that permanent replacements of employees on strike shall be eligible to vote in any such election.

#### Liability for damages for violations; injunction

Sec. 4. Any person, organization or association who violates any of the provisions of this Act shall be liable to the person suffering therefrom for all resulting damages, and the person subjected to strike or picketing in violation of this Act is given right of action to redress such wrong or damage, including injunctive relief, and the District Courts of this State shall grant injunctive relief when a violation of this Act is made to appear.

#### Injunction suits

Sec. 5. The State of Texas, through its Attorney General or any District or County Attorney, may institute suit in the District Court to enjoin any person or persons, association of persons, labor union or labor organization from violating any provision of this Act.

#### Application for assignment of judge to hear proceedings

Sec. 6. Any party to any suit or cause of action arising under this Act may make, within two (2) days after notice of the institution of said cause, application to the Presiding Judge of the Administrative Judicial District within which the suit is filed who shall immediately assign a District Judge from within said Administrative Judicial District who shall then hear all proceedings in the cause. Acts 1955, 54th Leg., p. 1029, ch. 387.

Effective 90 days after June 7, 1955, date of adjournment.

Section 7 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

### CHAPTER THREE—PAYMENT OF WAGES

Art.

5159c. Action on assignment of wages; written notice of assignment [New].

#### Art. 5159c. Action on assignment of wages; written notice of assignment

Section 1. No action shall be brought against any employer upon any assignment by an employee of such employer to any person of any wages or salaries unearned at the time of such assignment unless such employer shall have written notice thereof immediately after the execution of such assignment.

Sec. 2. The provisions of this Act shall not apply to such assignments heretofore executed if action is brought within ninety (90) days following the effective date of this Act, nor shall this Act apply to pending litigation.

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

Sec. 3. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only. Provided, however, that nothing in this Act shall in any manner affect or repeal any part of Acts, 1939, Forty-sixth Legislature, page 282, Chapter 13, as amended (codified as Vernon's Article 2883a). Acts 1955, 54th Leg., p. 595, ch. 203.

Emergency. Effective May 12, 1955.  
Title of Act:  
An Act providing that no action shall be brought against any employer upon any assignment of wages by an employee unless such employer has written notice

thereof immediately after the execution of such assignment; providing a saving clause; providing a repealing clause; and declaring an emergency. Acts 1955, 54th Leg., p. 595, ch. 203.

## CHAPTER FOURTEEN—UNEMPLOYMENT COMPENSATION

### Article 5221b-1. Benefits

(b) Benefit amount for total unemployment: Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one twenty-sixth ( $\frac{1}{26}$ ) of his wages received from employment by employers during that quarter in his base period in which such wages were highest, provided that:

(1) If such rate is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1); and

(2) Such rate shall not be more than Twenty-eight Dollars (\$28) per benefit period nor less than Seven Dollars (\$7) per benefit period. As amended Acts 1955, 54th Leg., p. 1310, ch. 517, § 1.

Effective Oct. 1, 1955.

(d) Duration of Benefits: The Commission shall establish wage credits for each individual by crediting him with the wages for employment received by him during his base period from employers up to a maximum of Two Thousand, Four Hundred Dollars (\$2,400). The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of:

(1) Twenty-four (24) times his benefit amount, or

(2) One-fourth ( $\frac{1}{4}$ ) of such wage credits; provided that if such is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1). As amended Acts 1949, 51st Leg., p. 282, ch. 148, § 1; Acts 1955, 54th Leg., p. 399, ch. 116, § 1.

Operative Oct. 1, 1955.

Section 15 of the amendatory Act of 1955, 54th Leg., p. 399, ch. 116 provided that all laws or parts of laws in conflict herewith, in so far as they do conflict herewith, are hereby repealed, but such repeal shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder, including, without limiting or without being limited thereto, the right to collect contributions, interest or penalties that have accrued, and the right of prosecution for violation of any provision thereof; nor shall such repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued prior to October 1, 1955; provided

that if an individual had filed an initial claim prior to October 1, 1955, the benefit amount and the maximum potential duration of such benefits shall be in accordance with the law in effect at the time such claim was filed.

Section 16 provided that partial invalidity should not affect the remaining portions of the Act.

Section 4 of the amendatory Act of 1955, 54th Leg., p. 1310, ch. 517 read as follows: "All laws or parts of laws in conflict herewith, in so far as they do conflict herewith, are hereby repealed, but such repeal shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder, including, without limiting or with-

out being limited thereto, the right to collect contributions, interest or penalties that have accrued, and the right of prosecution for violation of any provision thereof; nor shall such repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued prior to October 1, 1955; provided that if an individual had filed an

initial claim prior to October 1, 1955, the benefit amount and the maximum potential duration of such benefits shall be in accordance with the law in effect at the time such claim was filed."

Section 5 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 5221b—1a. Repealed. Acts 1955, 54th Leg., p. 399, ch. 116, § 14.**  
Eff. April 28, 1955

**Art. 5221b—2. Benefit eligibility conditions**

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of subsection 6(a) of this Act;<sup>1</sup>

(c) He is able to work;

(d) He is available for work;

(e) He has within his base period received wages from employment by employers equal to not less than Two Hundred Dollars (\$200) and he has received a portion of such wages in at least two (2) of the calendar quarters within his base period; or he has within his base period received wages for employment by employers in an amount equal to the maximum amount of wages with respect to which contributions could have been required from an employer during a calendar year on wages paid him. As amended Acts 1949, 51st Leg., p. 282, ch. 148, § 2; Acts 1955, 54th Leg., p. 399, ch. 116, § 2.

Operative Oct. 1, 1955.

*Amendment by Acts 1955, p. 1310, ch. 517, § 2, see art. 5221b—2, post*

**Art. 5221b—2. Benefit eligibility conditions**

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of subsection 6(a) of this Act;<sup>1</sup>

(c) He is able to work;

(d) He is available for work;

(e) He has:

(1) Within his base period received wages for employment by employers in an amount equal to not less than Two Hundred Fifty Dollars (\$250) in one quarter and not less than One Hundred Twenty-five Dollars (\$125) in some other quarter of his base period; or

(2) Within at least one quarter of his base period received wages for employment by employers in an amount equal to or exceeding One Thousand Dollars (\$1,000); or

(3) Within his base period received wages for employment by employers in an amount equal to or exceeding Four Hundred Fifty Dollars

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

(\$450), provided that he has received wages equal to or in excess of Fifty Dollars (\$50) in each of three (3) or more of the quarters in his base period. As amended Acts 1949, 51st Leg., p. 282, ch. 148, § 2; Acts 1955, 54th Leg., p. 1310, ch. 517, § 2.

Operative Oct. 1, 1955.

*Amendment by Acts 1955, 54th Leg., p. 399, ch. 116, § 2, see art. 5221b—2, ante*

### Art. 5221b—3. Disqualification for benefits

An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. Such disqualification shall be for not less than one (1) nor more than twenty-four (24) benefit periods beginning with the first day of the benefit period with respect to which his first claim was filed after he left such last work, as determined by the Commission according to the circumstances in each case. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 3.

(b) If the Commission finds that he has been discharged for misconduct connected with his last work. Such disqualification shall be for not less than one (1) nor more than twenty-four (24) benefit periods beginning with the first day of the benefit period with respect to which his first claim was filed after he was discharged from such last work, as determined by the Commission according to the seriousness of the misconduct. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 3.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than twelve (12) benefit periods following the failure, as described above, to apply for or accept suitable work, the degree of disqualification to be determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act,<sup>1</sup> no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 3.

Operative Oct. 1, 1955.

*Subsection (c) amendment by Acts 1955, 54th Leg., p. 1310, ch. 517, § 3, see subsec. (c), post.*

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work

when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than twelve (12) benefit periods following the failure, as described above, to apply for or accept suitable work, the degree of disqualification to be determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. As amended Acts 1955, 54th Leg., p. 1310, ch. 517, § 3.

*Subsection (c) amendment by Acts 1955, p. 399, ch. 116, § 3, see subsec. (c), ante.*

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease

if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed. As amended Acts 1955, 54th Leg., p. 1310, ch. 517, § 3.

Effective Oct. 1, 1955.

Subsection (d) of this article was also amended by Acts 1955, 54th Leg., p. 1211, ch. 484, § 1, but the Attorney General in an opinion, S-169, August 23, 1955, ruled that the later amendment by Acts 1955, 54th Leg., p. 1310, ch. 517, § 3 prevailed over the earlier amendment in view of irreconcilable conflict in the provisions thereof.

Subsection (d) as amended by Acts 1955, 54th Leg., p. 1211, ch. 484, § 1, read as follows:

"(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or because of a labor dispute at another place, either within or without this state, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

"(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in (as defined in (d) (1) above) or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments or separate premises of the same employing unit, each such department or premises shall, for the purposes of this subsection (d), be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the

1 Article 5221b-1 et seq.

employee's failure to meet the requirements of this paragraph (2) of this subsection (d), his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which such labor dispute occurred, and has made an unconditional offer to return to work at the premises at which he is or was last employed.

"(3) In any case wherein the issue of granting of benefits rests upon a stoppage asserted to exist because of a labor dispute at premises of the employer other than those at which claimant is employed, an employer opposing the payment of benefits (or the effect of payment of benefits with respect to calculation of that employer's benefit wages) shall sustain the following burden and perform the following conditions in the appropriate tribunal at each stage of the proceedings:

"(i) He shall sustain the burden of showing all material matters relating to the common ownership or operation of the premises where the stoppage and labor dispute exist and the premises where the claimant was employed;

"(ii) He shall sustain the burden of proving that the supplies, materials or services necessary to the continued and usual operation of the premises at which the claimant is or was last employed have been cut off, that such was caused by the stoppage at the supplying plant, and that such was the cause of claimant's unemployment."

Section 2 of Acts 1955, 54th Leg., p. 1211, ch. 484, provided that "The provisions of this Act shall repeal all parts of the Texas Unemployment Compensation Act, as amended, in conflict herewith and all laws or parts of laws in conflict herewith, but shall in no way be construed as forfeiting or waiving rights of any individual to benefits which accrued or accrue prior to the effective date hereof."

#### Art. 5221b-4. Claims for benefits

(a) Filing: Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain in places accessible to individuals in his employ printed no-



tices giving general information about filing a claim for unemployment benefits. Such notices shall be supplied by the Commission to each employer without cost to him.

(b) (1) If an individual files a claim for benefits at a time when he has not previously established a current benefit year, and an examiner determines that such claim does not meet the requirements of an initial claim as defined in subsection 19(m) of this Act,<sup>1</sup> the examiner shall promptly mail a notice of such determination to the claimant, who may request a redetermination within twelve (12) days from date of mailing the determination, or who may appeal therefrom as provided below. If it is determined that the claimant has filed a valid initial claim as defined in subsection 19(m) of this Act, the examiner shall mail a copy of the initial claim to the individual or organization for whom the claimant last worked, unless a copy has previously been mailed to such individual or organization. This claim copy shall include a statement to the effect that benefits may be payable to the claimant filing such claim and that in the event such benefits are so paid, then the wages paid to the claimant during his base period may become benefit wages for the purpose of computing the contribution rate of such individual or organization, if such individual or organization is an employer subject to the terms of this Act.<sup>2</sup> Such claim copy when mailed as prescribed shall constitute due notice to the individual or organization to whom mailed that benefits may be paid to such claimant and that the contribution rate of such employer may be affected thereby. If the individual or organization to whom the copy of the claim was mailed desires to protest the payment of benefits to such claimant, such individual or organization shall so notify the Commission within seven (7) days from date such copy was mailed by the Commission which notice to the Commission shall include a statement of the facts which are the basis of the protest. If such protest is not mailed or delivered to the Commission within such seven-day period, such individual or organization shall not be entitled to receive a copy of the determination on such claim or to appeal therefrom and such individual or organization shall be deemed to have waived all rights in connection with the determination on such claim. When the time has expired within which the individual or organization may protest payment of benefits under such claim and after such investigation as may be deemed by the examiner to be necessary, the examiner shall make a determination of the weekly benefit amount, the maximum total amount of benefits potentially payable during the claimant's benefit year, whether the claimant is eligible to receive benefits under Section 4 of this Act,<sup>3</sup> and whether the claimant is disqualified from receiving benefits under Section 5 of this Act.<sup>4</sup> The examiner shall mail a notice of the determination to the individual or organization which made a timely protest and the examiner shall also mail a notice of the determination to the claimant.

(2) Unless the claimant or the individual or organization to which notice of a determination was mailed files an appeal from such determination within twelve (12) calendar days after the notice of determination was mailed to his last known address as reflected by Commission records, such determination shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period of time prior to the final determination of the Commission shall be paid only after such determination; provided, that if an appeal tribunal affirms a determination of an examiner, or the Commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken but if such deci-

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

sion is finally reversed, wages paid to the claimant by employers during his base period shall not constitute benefit wages.

(c) Appeals: Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the determination of the examiner. The parties to the appeal shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten (10) days after the date of mailing of such decision, further appeal is initiated pursuant to subsection (e) of this Section.

(d) Appeal Tribunals: To hear and decide disputed claims, the Commission, if it is necessary to insure prompt disposal of cases on appeal, shall establish one or more impartial appeal tribunals consisting in each case of a salaried examiner.

(e) Commission Review: The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof. The Commission shall promptly mail to the parties before it a copy of its findings and decision.

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, or other individuals or organizations, and the conduct of hearings and appeals shall be in accordance with rules or regulations prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees: Witnesses subpoenaed pursuant to this Section shall be allowed fees at a rate fixed by the Commission, and such fees shall be deemed a part of the expense of administering this Act.

(h) Appeal to Courts: Any decision of the Commission shall become final ten (10) days after the date of mailing thereof, unless, within such ten (10) days, the appeal is reopened by Commission order or a party to the appeal files a written motion for rehearing, and judicial review of any final decision of the Commission shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the Commission and has been designated and appointed for that purpose by the Attorney General of Texas.

(i) Court Review: Within ten (10) days after the decision of the Commission has become final, and not before, any party aggrieved thereby may secure judicial review thereof by commencing an action in any court of competent jurisdiction in the county of claimant's residence against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant, provided that if a claimant is a non-resident of the State of Texas such action may be filed in a court of competent jurisdiction in Travis County, Texas, or in the county in Texas in which the last employer has his principal place of business, or in the county of claimant's last residence in Texas. Such trial shall be de novo. In such action, a petition which need not be

verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. Such action shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation Law of this State. An appeal may be taken from the decision of the trial court, in the same manner, as is provided in other civil cases. It shall not be necessary, in any judicial proceedings under this Section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a surpersedeas. As amended Acts 1949, 51st Leg., p. 283, ch. 148, § 4; Acts 1955, 54th Leg., p. 399, ch. 116, § 4.

<sup>1</sup> Article 5221b—17.

<sup>2</sup> Article 5221b—1 et seq.

<sup>3</sup> Article 5221b—2.

<sup>4</sup> Article 5221b—3.

Operative Oct. 1, 1955.

#### **Art. 5221b—5. Contributions**

(a) Payment: Contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he is subject to this Act, with respect to wages for employment paid during such calendar year, or portion thereof. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 5.

(b) Rate of contributions: Each employer shall pay contributions equal to two and seven-tenths per centum (2 $\frac{7}{10}$ %) of wages paid by him with respect to employment, except as provided in subsection (c) of this Section. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 5.

Operative Jan. 1, 1956.

#### **(c) Experience Rating:**

(1) No employer's contribution rate shall be less than two and seven-tenths per centum (2 $\frac{7}{10}$ %) unless and until his account has been chargeable with benefit wages throughout each calendar month of the four (4) consecutive calendar quarters immediately preceding the date as of which such employer's rate is determined.

For each calendar year commencing after December 31, 1955, the contribution rate of each employer who has had at least four (4) such calendar quarters of compensation experience shall be determined by the fund's maximum liability for benefits to his employees who have received benefits, modified by the state experience factor as to average duration of benefits, as provided below. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 5.

Operative Jan. 1, 1956.

(2) (A) When in any benefit year an individual is first paid benefits, his wages received during his base period shall be termed "benefit wages," and shall be treated for the purposes of this subsection 7(c) as though they had been paid in the calendar year in which such benefits are paid within such benefit year. This process may be designated as charging benefit wages to an employer's account, and benefit wages thus charged may be designated as charge-backs. Benefit wages shall include only the

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wages from employers available for wage credits in a base period and shall not exceed Two Thousand, Four Hundred Dollars (\$2,400) for any one employee or former employee. If an employer fails to report wages which were paid to a claimant during a base period when requested by the Commission, the Commission may establish wage credits for such claimant for such base period on the basis of information which has been furnished by the claimant or on the basis of the best information which has been obtained by the Commission, and wage credits so established shall be used as benefit wages for such employer for the purposes of this Section 7.<sup>1</sup> The benefit wages of each employer for a given calendar year shall be the total of the benefit wages received from such employer by all of his employees or former employees with respect to such year; provided, that the benefit wages of an employer shall not include wages received during any given base period from such employer by an employee or former employee, whose last separation from such employer's employment, prior to the benefit year in conjunction with which such base period was established, was (i) a separation required by a Federal or a Texas statute or a Texas municipal ordinance; or (ii) a separation for which a disqualification under subsection 5(a) or 5(b) of this Act would have been imposed if such employer's employment of the employee or former employee had been the employee's last work; or (iii) a separation with respect to which a disqualification was imposed under subsection 5(a) or 5(b) of this Act; and provided further that in the event the individual has had more than one (1) separation from the same employer, the Commission shall, in determining whether or not wages shall be benefit wages under (i), (ii), or (iii) above, consider only the last separation from such employer's employment prior to the individual's benefit year in which such wages become, or might become, benefit wages.

(2) (B) An examiner designated by the Commission shall mail to each employer who reported the wages which he has paid a claimant during the claimant's base period a notice of the benefit wages resulting from any particular initial claim, and if such employer desires to protest the correctness of such benefit wages or their effect upon his contribution rate, he shall, within seven (7) days after such notice was mailed to him, mail his protest including a statement of the facts upon which his protest is based to the Commission at Austin, Texas. The examiner shall promptly decide the issues involved in such protest and shall mail a notice of his decision thereon to the protesting employer. Such decision shall become final twelve (12) days from the date of mailing thereof, unless such employer mails to the Commission at Austin, Texas, a written appeal therefrom within such twelve (12) days. Administrative review hereunder shall be in accordance with Commission regulations, and appeals to the courts shall be permitted only after such employer has exhausted his administrative remedies before the Commission, and within the time prescribed by subsection 6(h) and subsection 6(i) of this Act with respect to Commission decisions on benefits. Venue and jurisdiction of appeals to the courts with respect to benefit wages shall be the same as venue and jurisdiction of suits to collect contributions and penalties under this Act. As amended Acts 1949, 51st Leg., p. 283, ch. 148, § 5; Acts 1955, 54th Leg., p. 399, ch. 116, § 5.

<sup>1</sup> This article.

Operative Oct. 1, 1955.

(4) The benefit wage ratio of each employer shall be a percentage equal to the total of his benefit wages for the thirty-six (36) consecutive completed calendar months immediately preceding the date as of which the employer's tax rate is determined divided by his total taxable payroll

for the same months on which contributions have been paid to the Commission on or before the last day of the month in which the computation date occurs; provided that, in the event the employer has less than three (3) years but at least one (1) year of compensation experience, such computation shall be made on the basis of all of the employer's compensation experience during the consecutive completed calendar quarters (throughout which his account has been chargeable with benefit wages) immediately preceding the date as of which the employer's tax rate is determined. As amended Acts 1949, 51st Leg., p. 283, ch. 148, § 5A; Acts 1955, 54th Leg., p. 399, ch. 116, § 5.

Operative Jan. 1, 1956.

(5) For any calendar year the total benefits paid from the fund, less all amounts credited to the fund except employers' contributions collected under this Section, and except interest earned on the fund, shall be termed the "amount required from employers." The amount required from employers, divided by the State-wide total of the benefit wages of all employers for that calendar year, after adjustment to the nearest multiple of one per centum (1%) shall be termed the "State experience factor." The state experience factor for any year shall be determined prior to the due date of the first contribution payment on wages for employment in that year and such determination shall be made upon the basis of figures for the preceding calendar year; such state experience factor shall not be affected by any subsequent adjustment of any benefit wages of any employer. As amended Acts 1949, 51st Leg., p. 283, ch. 148, § 5B; Acts 1955, 54th Leg., p. 399, ch. 116, § 5.

Operative Jan. 1, 1956.

(d) Any provision of this Section to the contrary notwithstanding, the experience rate for each employer who, between January 1 and July 1 of any year, for the first time has completed four (4) full consecutive calendar quarters throughout each month of which he was chargeable with benefit wages shall be computed and determined as of such July 1. The computation date for all other experience rates shall be as of January 1 of the year for which such rates are to be effective. All experience rates shall be effective as of such computation date for the remainder of the calendar year in which such computation date occurs. As amended Acts 1949, 51st Leg., p. 283, ch. 148, § 5E; Acts 1955, 54th Leg., p. 399, ch. 116, § 5.

Operative Jan. 1, 1956.

#### **Art. 5221b—6. Duration of coverage**

(c) (1) Except as provided in paragraph (2) immediately below, no employing unit shall cease to be an employer subject to this Act except as of the first day of January of any calendar year, and only then if it files with the Commission, within the period from January 1 through March 31 of such year, a written application for termination of coverage, and the Commission finds that there were no twenty (20) different days within the preceding calendar year, each day being in a different calendar week, during each of which days such employing unit employed four (4) or more individuals in employment subject to this Act. For the purposes of this subsection the two or more employing units mentioned in paragraph (2) or (3) of subsection 19(f)<sup>2</sup> shall be treated as a single employing unit.

(2) Regardless of whether or not an application for termination of coverage has been filed, an employing unit shall cease to be an employer subject to this Act as of the first day of January of any year after December 31, 1955, if the employing unit has not had any individuals in employ-

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

ment on any one or more days within the three immediately preceding consecutive calendar years and the Commission so finds. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 6.

Operative Oct. 1, 1955.

<sup>2</sup> Article 5221b—17.

#### Art. 5221b—8. Texas Employment Commission

(c) Employment Service and Advisory Council: The Commission is authorized to operate a public employment service but it is not necessary that same be operated as a separate division of the Commission. The Commission is also authorized to appoint a State Advisory Council composed of persons representing employers, employees and the public. Advisory Council members shall be allowed and paid, as a part of the cost of administering this Act<sup>1</sup> and in accordance with regulations of the Commission, necessary travel and subsistence expenses, in addition to a per diem allowance, in connection with meetings of the Council; but they shall for no purpose be regarded as State employees. The Commission shall fix the composition and establish the duties of the State Advisory Council and may take such action as it deems necessary or suitable to this end. The Commission may likewise appoint and pay local advisory councils and consultants under the same conditions prescribed herein for the State Advisory Council. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 8.

(d) The salaries of the members of the Texas Employment Commission shall be as specified in the regular departmental appropriation bill. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 8.

<sup>1</sup> Articles 5221b—1 et seq.

Operative Oct. 1, 1955.

#### Art. 5221b—9. Administration

(a) Duties and Powers of Commission: It shall be the duty of the Commission to administer this Act;<sup>1</sup> and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. As soon after the close of each State fiscal year as is practicable, the Commission shall submit to the Governor a report covering the administration and operation of this Act during the preceding State fiscal year, and the Commission shall make such recommendations for amendments to this Act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 8.

<sup>1</sup> Articles 5221b—1 to 5221b—22b.

Operative Oct. 1, 1955.

Tex.St.Supp. '56—35

(e) Records and Reports: Each employing unit shall keep true and accurate employment records, containing such information as the Commission may prescribe and which is deemed necessary to the proper administration of this Act.<sup>1</sup> Such records shall be open to inspection and subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this Act. Information thus obtained or otherwise secured shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) except as the Commission may deem necessary for the proper administration of this Act. Any employee or member of the Commission who violates any provision of this subsection shall be fined not less than Twenty Dollars (\$20), nor more than Two Hundred Dollars (\$200), or imprisoned for not longer than ninety (90) days, or both. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 8.

<sup>1</sup> Articles 5221b—1 to 5221b—22b.

(h) Protection Against Self Incrimination: No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission or in obedience to the subpoena of the Commission or any member thereof or any duly authorized representative of the Commission, in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. No statement whether oral or in writing made to the Commission or its employees in connection with the discharge of their duties under this Act<sup>1</sup> shall ever be made the basis for an action for defamation of character. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 8.

<sup>1</sup> Articles 5221b—1 to 5221b—22b.

Operative Oct. 1, 1955.

#### **Art. 5221b—9b. Destruction of records**

The Commission may destroy any of its records, under such safeguards as will protect the confidential nature of such records, when it determines that such records no longer serve any legal, administrative, or other useful purpose. The Commission may likewise destroy its records at any time after it has made authentic photographs, calligraphs, microfilms, or other similar reproductions of such records. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 9.

Operative Oct. 1, 1955.

#### **Art. 5221b—12. Collection of contributions**

(a) Interest and penalties on past due contributions: If any employer subject to the provisions of this Act<sup>1</sup> shall fail to pay contributions due under this Act on the date on which they are due and payable as prescribed by the Commission, such employer shall forfeit to the State of Texas a penalty of one per cent (1%) of such contributions, and after the expiration of one (1) month such employer shall forfeit an additional pen-

alty of one per cent (1%) of such contributions for each month or fraction thereof, until such contributions and penalties shall have been paid in full; provided, however, that the penalties applicable to the contributions due for any period (as prescribed by the regulations of the Commission) shall not exceed twenty-five per cent (25%) of the amount of contributions due at due date. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 10.

(b) Collections: If, after due notice, any employer defaults in any payment of contributions, penalties or interest thereon, the amount due shall be collected by civil action in the name of the State and the Attorney General, and the employer adjudged in default shall pay the costs of such action; provided, however, that no Court action shall be begun to collect contributions or penalties from an employer after the expiration of three (3) years from the due date of such contributions, except that, in any case of a willful attempt in any manner to evade any of the provisions of the Unemployment Compensation Law or Commission rules and regulations promulgated thereunder, such action may be begun at any time. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 10.

<sup>1</sup> Articles 5221b-1 to 5221b-22b.

(d) If any employer fails or refuses to pay any contributions, penalties or interest within the time and manner provided by this Act,<sup>1</sup> or by the rules or regulations adopted by the Commission hereunder, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceeding, any report filed in the offices of the Texas Employment Commission by such employer or his agents or representatives, or a certified copy thereof certified to by the Chairman or any member of said Commission or any employee designated for the purpose by said Commission, showing the amount of wages paid by such employer or his agents or representatives, with respect to which contributions, penalties or interest have not been paid, or any audit made by the Texas Employment Commission or its representatives from the books of such employer when signed and sworn to by such representative as being made from the records of said employer, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 10.

<sup>1</sup> Articles 5221b-1 to 5221b-22b.

(j) (1) Where any employing unit has made a payment to the Commission of contributions and/or penalties alleged to be due, and it is later determined that such contributions and/or penalties were not due, in whole or in part, the employing unit making such payment may make application to the Commission for an adjustment thereof in connection with contribution payments then due, or for a refund thereof because such adjustment cannot be made. If the Commission shall determine that such contributions or penalties, or any portion thereof were erroneously collected, the Commission shall allow such employing unit to make an adjustment thereof without interest in connection with contribution payments then due by such employing unit. If such adjustment cannot be made, the Commission shall refund said amount without interest from the fund. It is provided, however, that no application for adjustment or refund shall ever be considered by the Commission unless the same shall have been filed within three (3) years from the date on which such contributions and/or penalties would have become due, had such contributions and/or penalties been legally collectible by the Commission from such employing unit, and provided further that with respect to applications for refund or adjustment filed on or after January 1, 1956, if the approval of such application



and the making of a refund or adjustment in connection therewith would require the deletion, removal, or disregarding of any benefit wages which became benefit wages, or which were charged as benefit wages, more than three (3) years before the filing of such application for refund or adjustment of contributions and/or penalties, no such application for adjustment or refund shall ever be considered by the Commission. The deletion, removal, or disregarding of benefit wages referred to herein shall not include the transfer of compensation experience as described in subsection 7(c) (7) of this Act.<sup>1</sup> For like cause, and within the same period, adjustments or refunds without interest may be so made on the Commission's own initiative.

(2) When an employing unit has made a payment to the Commission of contributions and/or penalties alleged to be due and has, within three (3) years from the date on which such contributions and/or penalties would have become due had such contributions and/or penalties been legally collectible by the Commission from such employing unit, made application to the Commission for a refund or adjustment thereof, and such application for refund or adjustment has been denied by the Commission, such employing unit may, within one (1) year from the date on which notice of such denial was mailed to it, commence an action in any court of competent jurisdiction in Travis County, Texas, against the Commission for a refund of the contributions and/or penalties which the Commission refused to refund; provided, however, that such action may not be based upon an application for a refund or adjustment of contributions and/or penalties, or upon the denial of such an application, which application involved the consideration of wages which became benefit wages, or which were charged as benefit wages, more than three (3) years before the filing of such application for refund or adjustment of contributions. The action herein provided shall be exclusive and no action shall be brought under any other provision of law for such refund. Such action shall be de novo; and such recovery, if any, shall be without interest. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 10.

<sup>1</sup> Article 5221b—5.

Operative Jan. 1, 1956.

### **Art. 5221b—13. Protection of rights and benefits**

(a) Waiver of Rights Void: No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act shall be valid, except that an employer's waiver under the terms of subsection 7(c) (7)<sup>1</sup> shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Act<sup>2</sup> from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violated any provision of this subsection shall, for each offense, be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or be imprisoned for not more than six (6) months, or both. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 11.

<sup>1</sup> Article 5221b—5.

<sup>2</sup> Articles 5221b—1 to 5221b—22b.

Operative Oct. 1, 1955.

### **Art. 5221b—14. Penalties**

(a) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact, to obtain or

increase any benefit or other payment under this Act<sup>1</sup> or under the unemployment compensation law of any other State, either for himself or for any other person, shall be punished by a fine of not less than Twenty Dollars (\$20), nor more than Fifty Dollars (\$50) or by imprisonment for not longer than thirty (30) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. In any proceeding under this Section, the original records of the Commission or of the agency which administers the unemployment compensation law of any other State, as well as certified photostatic copies thereof, may be received in evidence, and the Commission is authorized to furnish copies of its records to such other State agencies. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 12.

(e) Any person who by willful nondisclosure or misrepresentation by him, or by another for him, of a material fact, has received any sum as benefits under this Act<sup>1</sup> while any conditions for receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, forfeits such benefits and the rights to benefits which remain in the benefit year in which such nondisclosure or misrepresentation occurred. The Commission may to the same extent cancel such benefit rights of any person who has attempted by such willful nondisclosure or misrepresentation to obtain or increase benefits. Such forfeiture or cancellation may be effective only after opportunity for fair hearing before the Commission or its duly designated representative has been afforded such person. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 12.

<sup>1</sup> Articles 5221b—1 to 5221b—22b.  
Operative Oct. 1, 1955.

#### Art. 5221b—17. Definitions

As used in this Act, unless the context clearly requires otherwise:

(a) (1) "Act" means the Texas Unemployment Compensation Act which is Senate Bill No. 5, Chapter 482, General and Special Laws of the Forty-fourth Legislature, Third Called Session, as amended.<sup>1</sup>

(2) "Base period" means such period of four (4) consecutive completed calendar quarters within the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year as the Commission may by regulation prescribe.

(3) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commission may by regulation prescribe. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 13.

(b) (1) "Benefits" means the money payments payable to an individual, as provided in this Act,<sup>1</sup> with respect to his unemployment.

(2) "Benefit amount" means the amount of benefits an individual would be entitled to receive for one benefit period of total unemployment.

(3) "Benefit period" means such period of seven (7) consecutive calendar days as the Commission may by regulation prescribe.

(4) "Benefit year," with reference to any individual, means the fifty-two (52) consecutive week period beginning with the first day of the first benefit period with respect to which he files a claim for benefits and the Commission finds that he has received qualifying wages as prescribed in subsection 4(e)<sup>2</sup> of this Act, and has been totally or partially unemployed during such benefit period, and thereafter, following the termination of his

last preceding benefit year, the fifty-two (52) consecutive week period beginning with the first day of the next benefit period with respect to which he files a claim and the Commission finds that he has received qualifying wages as prescribed in subsection 4(e) of this Act and has been totally or partially unemployed during such benefit period. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 13.

(c) "Commission" means the Texas Employment Commission. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 13.

(f) "Employer" means:

(1) Any employing unit which for some portion of each of twenty (20) different days within the current or preceding calendar year, each day being in a different calendar week, whether or not such weeks are or were consecutive, has or had in employment four (4) or more individuals, but not necessarily simultaneously, (irrespective of whether the same individuals are or were employed in each such day); provided however, that during the calendar year 1956 'employer' means any employing unit which for some portion of each of twenty (20) different days within the last two (2) calendar quarters of the calendar year 1955, or within the entire calendar year 1956, each day being in a different calendar week, whether or not such weeks are or were consecutive, has or had in employment four (4) or more individuals, but not necessarily simultaneously, (irrespective of whether the same individuals are or were employed in each such day);

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this Act) and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, having become an employer, has not, under Section 8,<sup>3</sup> ceased to be an employer subject to this Act;

(5) Any employing unit which has elected to become fully subject to this Act under Section 8.

(6) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act<sup>4</sup> for the current calendar year. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 13.

(m) "Initial claim" means a claim which fixes a benefit year. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 13.

(n) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid him by his employing unit. The reasonable cash value of all remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commission; provided, however, that after October 1, 1941, the term "wages" shall not include:

(1) That part of the remuneration which, after remuneration with respect to employment equal to Three Thousand Dollars (\$3,000) has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year;

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

(2) The amount of any payment excluded from the definition of wages in subsection 3306(b) (2), (3), (4), or (5), of the Internal Revenue Code of 1954;<sup>11</sup>

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under Section 3101 of the Internal Revenue Code of 1954<sup>12</sup> or (B) of any payment required from an employee under a State unemployment compensation law;

(4) Dismissal payments which the employer is not legally required to make; or

(5) Within any calendar year that part of an individual's remuneration from a single employer which, after Three Thousand Dollars (\$3,000) has been paid him upon which contributions have been paid under the unemployment law of any state, is paid with respect to employment. As amended Acts 1955, 54th Leg., p. 399, ch. 116, § 13.

Operative Jan. 1, 1956.

<sup>1</sup> Article 5221b—1 et seq.

<sup>2</sup> Article 5221b—2.

<sup>3</sup> Article 5221b—6.

<sup>4</sup> 26 U.S.C.A. (I.R.C.1939) §§ 1600-1611.

<sup>11</sup> 26 U.S.C.A. (I.R.C.1954) § 3306.

<sup>12</sup> 26 U.S.C.A. (I.R.C.1954) § 3101.

## CHAPTER FIFTEEN—INSPECTION OF STEAM BOILERS

### Article 5221c. Inspection and inspectors

#### Exemptions from act

Sec. 3. The following boilers are exempt from the provisions of this Act:

(1) Boilers under Federal control and stationary boilers at round houses, pumping stations and depots of railway companies under the supervision or inspection of the Superintendent of Motive Power of such railway companies;

(2) Steam boilers on which pressure does not exceed fifteen (15) pounds per square inch, except where such boilers are located in public or private schools, colleges, universities, or county courthouses.

(3) Automobile boilers and boilers on road motor vehicles;

(4) Boilers used exclusively for agriculture purposes;

(5) Boilers for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families;

(6) Boilers used for cotton gins. As amended Acts 1955, 54th Leg., p. 445, ch. 121, § 1.

Emergency. Effective April 29, 1955.

## CHAPTER 16. MISCELLANEOUS PROVISIONS

Art.

5221d. Retirement, death or other benefit or savings plan; payments or refunds by employer or trustee; relief from liability [New].

Art. 5221d. Retirement, death or other benefit or savings plan; payments or refunds by employer or trustee; relief from liability

Section 1. Whenever payment or refund is made to an employee, former employee, or his beneficiary or his heirs, legatees or the representative of his estate pursuant to a written retirement, death, or other employee

benefit plan or savings plan, such payment or refund shall fully discharge the employer, former employer, and any trustee making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment or refund is made by the employer or former employer, has received at its principal place of business within this State, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof or where a trustee is making the payment or refund, such notice has been received by the trustee at its home office.

Sec. 2. Should said payment or refund, made as provided in Section 1 above, be comprised in whole or in part of stock in any corporation, such corporation may accept said stock for transfer as directed by the employer, former employer, or the trustee making such payment or refund, and shall be entitled to treat the transferee as the owner of said stock for all purposes unless and until the corporation has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such stock or to some interest therein.

Sec. 3. Nothing contained in this Act shall affect any claim or right to any such payment or refund or part thereof as between all persons other than the employer or former employer and the trustee making such payment or refund, or the corporation accepting such stock for transfer. Acts 1955, 54th Leg., p. 470, ch. 132.

Effective 90 days after June 7, 1955, date of adjournment.

## **TITLE 85—LANDS—ACQUISITION FOR PUBLIC USE**

### **2. FEDERAL USE**

#### **Art. 5248g. Grant of portions of bed and banks of Rio Grande River to United States**

Section 1. The Governor of the State of Texas is hereby authorized to grant to the United States of America in accordance with the conditions hereinafter set out, such of those portions of the bed and banks of the Rio Grande in Brewster, Cameron, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb and Zapata Counties as may be necessary or expedient in the construction and use of the storage and flood control dams and their resultant reservoirs, diversion works and appurtenances thereto, provided for in the Treaty between the United States of America and United Mexican States, concluded February 3, 1944. As amended Acts 1955, 54th Leg., p. 861, ch. 324, § 1.

Effective 90 days after June 7, 1955 date of adjournment.

## TITLE 86—LANDS—PUBLIC

## CHAPTER TWO—SURVEYORS AND SURVEYS

## 1A. Registered Public Surveyors [New]

Art.

5282a. Registered Public Surveyors Act  
of 1955.

## 1A. REGISTERED PUBLIC SURVEYORS

## Art. 5282a. Registered Public Surveyors Act of 1955

**Name**

Section 1. This Act may be cited as the Registered Public Surveyors Act of 1955.

**Definitions**

Sec. 2. (a) Registered Public Surveyor. A registered Public Surveyor is a person engaged in the practice of Public Surveying as defined in this Act, and who is registered as provided for herein.

(b) Public Surveying and Public Surveyor. Public Surveying is the science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public generally for compensation, and comprises the determination by means of survey, of the location or relocation of land boundaries and land boundary corners; the calculation of area and the preparation of field note description of surveyed land; the preparation of maps showing the boundaries and areas of the subdivision of tracts of land into smaller tracts; the preparation of official plats or maps of said land and subdivisions in compliance with the laws of the State of Texas and the political subdivisions thereof; and such other duties as sound surveying practice would direct.

A public Surveyor is any person engaged in public surveying as defined in this Act, and who is employed as a surveyor or who holds himself out to the public as such.

(c) Person. The term "person" means a natural person except where otherwise specifically indicated.

(d) Board. The term "Board" shall mean the State Board of Registration for Public Surveyors as created and provided for in this Act.

(e) Secretary. The term "Secretary" shall mean the Executive Secretary of the Board as herein provided for.

**Exemptions**

Sec. 3. The provisions of this Act shall not apply to any of the following:

(a) County Surveyor acting in his official capacity as authorized by law.

(b) Licensed State Land Surveyor when acting in his official capacity as authorized by law.

(c) Registered Professional Engineer when practicing his profession as authorized by law.

(d) Officer of a state, county, city or other political subdivision whose official duties include land surveying when acting in his official capacity.

(e) Deputy, assistant or employee of any person exempted from the provisions of this Act by subsections (a), (b) and (c) of this Section when acting under the direction and supervision of such exempted person.

(f) Assistant or employee of any Public Surveyor registered under the provisions of this Act while acting under the direction and supervision of such Registered Public Surveyor.

#### **State Board of Registration for Public Surveyors**

Sec. 4. There is hereby created a State Board of Registration for Public Surveyors, which Board shall consist of six (6) members, each of whom shall be a citizen of the United States and a resident of this State. Members of the Board and their successors shall be appointed by the Governor, with the advice and consent of the Senate, and shall be surveyors in public practice, of good moral character, and actively engaged for at least ten (10) years in the said profession, in Texas, immediately prior to said appointment, two (2) years of which may be credited for graduation from an approved engineering or surveying school. The teaching of surveying in a recognized school of engineering or surveying may be regarded as the practice of surveying. Members of the first Board shall be appointed within ninety (90) days after this Act becomes effective to serve the following terms: two (2) members for two (2) years, two (2) members for four (4) years, and two (2) members for six (6) years, from the date of their appointment or until their successors are duly appointed and qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the State and he shall serve for a term of six (6) years or until his successor shall be appointed and qualified. Before entering upon the duties of his office, each member of the Board shall take and subscribe to the Constitutional Oath of Office and the same shall be filed with the Secretary of State. Each member of the Board first appointed hereunder shall receive a certificate of registration under this Act. Upon the death, resignation or removal of any member of the Board, the Governor shall appoint a successor for the remainder of the term of such member who shall qualify in the same manner as other members of the Board. Any member may be removed by the Governor for official misconduct, gross inefficiency or moral unfitness.

#### **Power and Duties of the Board**

Sec. 5. The Board shall have the duty and responsibility of administering this Act, and may adopt all rules and regulations it deems necessary therefor. At its first meeting it shall elect one (1) of its members as Chairman of the Board, and he shall serve as such chairman for such length of time, not exceeding his term as member of the Board, as the Board may prescribe. The Board may, for good cause and after hearing, remove a Chairman, but such removal as Chairman shall not affect the right of such member to serve on the Board for the remainder of his appointed term. Upon the death, resignation or removal of a Chairman, the Board shall elect a successor from among its members. Four (4) members of the Board shall constitute a quorum for the transaction of any of its business, and a majority of those present at any meeting may decide any question before the Board, provided, however, that the Chairman of the Board may not be removed as Chairman except by a vote of two thirds ( $\frac{2}{3}$ ) of the members of the Board at a meeting called for that purpose. The Board may adopt such reasonable rules and regulations for the orderly conduct of its affairs as it may deem necessary, and may from time to time amend such rules and regulations.

The first Board appointed under the provisions of this Act shall hold its first meeting within thirty (30) days after the members have been qualified. It shall hold at least two (2) regular meetings each year at such time and place as the Chairman may designate. It may hold special meetings at such times and places as a majority thereof may deem necessary after giving reasonable notice thereof to all the members. The Board is authorized to employ an Executive Secretary who shall devote full time to his work and shall have such duties and responsibilities as the Board may prescribe. The Board is authorized to employ such other persons as it may deem necessary to administer the provisions of this Act. The salaries of the Secretary and all other employees of the Board shall be fixed by the Board, and shall be paid out of the Registered Public Surveyors' Fund as provided for in this Act. All salaries paid by the Board shall be reasonably comparable in amount to salaries paid by other departments of the State government to employees engaged in similar capacities. All persons employed by the Board shall hold their positions at the pleasure of the Board. Each member of the Board shall receive the sum of Ten Dollars (\$10) per day for each day he is actually engaged in the discharge of his duties as such member, and the said sum so received by him shall compensate for all legitimate expenses incurred in the discharge of such duties, but his necessary time of travel in connection with his duties shall be considered as time actually engaged in such duties. All payments to Board members or employees, and all expenses of the administration of this Act, shall be paid out of the Registered Public Surveyors' Fund provided for herein, and no part of the expense of administering this Act shall ever be a charge against the General Funds of the State of Texas. The Board shall arrange for such suitable office and space and equipment as it may deem necessary and the rental for such office space and the cost of such equipment shall be considered administration expense. The Board shall, as of December 31, of each year after the passage of this Act, make a written report to the Governor accounting for all receipts and disbursements under this Act. A roster showing the names and places of business of all Registered Public Surveyors shall be prepared by the Secretary of the Board during the month of July of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public upon request.

#### Qualifications for Registration

Sec. 6. From and after January first following the effective date of this Act, no person except those exempted from the operation of this Act as provided for in Section 3 hereof, shall engage or continue in the practice of Public Surveying as defined herein unless such person shall be registered as provided herein. The following classes of persons shall be qualified for registration:

(a) All persons residing in Texas and engaged in the practice of Public Surveying on the effective date of this Act, and who have been so engaged for five (5) years immediately preceding the effective date hereof, upon satisfactory showing to the Board of the moral and educational fitness of such person to continue in such practice. Applications to register under this subsection (a) of Section 6 must be filed within one (1) year after this Act becomes effective.

(b) All persons who can show to the satisfaction of the Board that they have had at least eight (8) years experience in land surveying in Texas of which at least two (2) years were in responsible charge of surveying work. Within the meaning of this subsection, two (2) years of basic engineering course in an accredited school or college shall be con-



sidered the equivalent of two (2) years of land surveying. Applicants to register under subsection (b) of Section 6 must be filed within five (5) years after this Act becomes effective.

(c) All persons who apply to take, and successfully pass, an examination given by the Board to determine the fitness and qualification of the person examined. Such examination shall be written and oral, and shall be designed to reflect knowledge and ability on the part of the applicant, showing to the Board that he is qualified to be placed in charge of surveying work. Any applicant for such examination must be able to show to the satisfaction of the Board that he has had the equivalent of six (6) years experience in land surveying. The successful completion of a course of study in an accredited school leading to a Bachelor of Science Degree in Civil Engineering shall be considered as four (4) years satisfactory experience.

Any person desiring to register as a Public Surveyor shall file with the Board an application therefor in writing, accompanying the application with a registration fee, the amount to be determined by the Board but in no event to exceed Twenty Dollars (\$20). If the Board finds that the applicant is qualified to register without examination as herein provided for, it shall issue to him a Certificate of Registration and assign to him a registration number which shall not thereafter be assigned to, nor used by any other surveyor. Such number shall be placed on the Certificate of Registration and recorded in the permanent records of the Board, and shall constitute the registration number of such surveyor and shall be used by him on all his official documents. The Certificate of Registration shall also show the full name of registrant and shall be signed by the Chairman and Secretary of the Board. If the Board finds that an applicant is not qualified to be registered at the time of making his application, but is qualified to take an examination, it shall set a time and name a place for the applicant to take such examination. Upon passing the examination to the satisfaction of the Board, the applicant shall be entitled to a Certificate of Registration as hereinabove provided.

Applications for registration shall be on forms prescribed and furnished by the Board, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be surveyors having personal knowledge of his surveying experience. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability which shall insure safety to the public welfare and property rights. A candidate failing an examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fee.

All Certificates of Registration shall expire on the last day of the month of December, following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year; such notice shall be mailed at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of Ten Dollars (\$10). The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten per cent (10%) for each month

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

or fraction of the month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee; and provided further that if such failure to renew shall continue for more than one (1) year after the date of expiration of the registration certificate, the applicant must reapply for registration and must qualify under the foregoing provisions of this section before being registered. All renewal certificates shall carry the same registration number as the original certificate. All original and renewal Certificates of Registration shall be evidence that the person whose name and registration number appears thereon is qualified to practice as a Registered Public Surveyor so long as such Certificate is valid and in force. Each registrant hereunder shall, upon receiving his Certificate of Registration, obtain a seal of the design authorized by the Board, bearing the registrant's name and number and the legend "Registered Public Surveyor"; plats, field notes and reports prepared by a registrant or under his direction shall be stamped with the said seal when filed with public authorities or delivered to a private client. It shall be unlawful for anyone to stamp or seal any document with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

#### Revocations and Reissuance of Certificates

Sec. 7. The Board shall have the power to revoke the Certificate of Registration of any registrant who is charged with and found guilty of:

(a) The practice of any fraud or deceit in obtaining a Certificate of Registration.

(b) Any gross negligence, incompetency, or misconduct in the practice of surveying as a registered public surveyor.

In determining the truth of any such charges, the Board shall proceed upon sworn information furnished it by any reliable resident of this State; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three (3) copies of the same shall be filed with the Secretary of the Board. Upon receipt of such information the Board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearings at a specified time and place, and the Secretary of the Board shall cause a copy of the Board's order and of the information contained in the written charges to be served upon the accused at least thirty (30) days before the date appointed in the order for the hearing. The accused may appear in person or by counsel, or both at the time and place named in the order and make his defense to the same. If the accused fails or refuses to appear, the Board may proceed to hear and determine the charges in his absence. If the accused pleads guilty, or upon a hearing of the charges, the Board by a majority of its members shall find them to be true, it may enter an order revoking the Certificate of Registration of such registered public surveyor. The Board shall have the power, through its Chairman or Secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the District Court by subpoena issued over the signature of the Secretary and seal of the Board. If the accused desires the evidence to be preserved and shall so inform the Board before the hearing is begun and shall deposit with the Board such a sum of money as the Board may deem reasonably necessary for the employment of a competent reporter, then the Board shall employ such reporter and, when so employed, he shall be the official reporter of the Board for the purpose of reporting the evidence

and proceedings of such Board. In proceedings under this section, a majority of the Board shall constitute a quorum.

When the Board has completed such hearing, it shall make a record of its findings and shall order and cause a certified copy thereof to be forwarded to the accused.

Any person who may feel himself aggrieved by reason of the revocation of his Certificate of Registration by the Board, as hereinabove authorized, shall have the right to file suit within thirty (30) days after receiving notice of the Board's order revoking his Certificate of Registration, in the District Court of the county of his residence, or of the county in which the alleged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the Certificate of Registration; said suit to be filed against the Board as defendant, and service of process may be had upon its Chairman or Secretary. The only issues to be tried in such cause shall be whether such person has been guilty as originally found by the Board, which issues shall be tried de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

The Board, for equitable reasons it may deem sufficient, may reissue a Certificate of Registration to any person whose certificate has been revoked, provided four (4) or more members of the Board vote in favor of such reissuance. A new Certificate of Registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of Three Dollars (\$3) shall be made for such issuances.

#### Violations and Penalties

Sec. 8. After the effective date of this Act, as defined in Section 6 hereof, any person who shall practice, or offer to practice, the profession of Public Surveying in this State without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the Certificate of Registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining or assisting to obtain for another a Certificate of Registration, or any person who shall violate any of the provisions of this Act, shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or be confined in jail for a period not exceeding three (3) months, or both. Each day of such violation shall be a separate offense.

The Board is charged with the duty of aiding in the enforcement of the provisions of this Act, and any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this Act; and the Board, through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violations of said statutes, subject to the control of the prosecuting officers.

The Attorney General or his assistants shall act as legal adviser of the Board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

#### Registered Public Surveyors' Fund; deposits in fund; expenditures from fund

Sec. 9. All sums of money paid to the Board under the provisions of the Act shall be deposited in the Treasury of the State of Texas and placed in a special fund to be known as the "Registered Public Surveyors' Fund,"

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

and such fund is hereby appropriated and made available to the Board created herein for expenditure in accordance with the provisions of this Act, up to August 31, 1957. After August 31, 1957, all expenditures for the administration and enforcement of this Act shall be in the amounts and for the purposes fixed by the General Appropriation Bill, and at the beginning of each biennium thereafter all moneys then in such fund which are not then appropriated shall be set over and paid into the General Revenue Fund.

#### Invalid Portions

Sec. 10. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed the valid portions of the Act irrespective of the fact that any one or more portions thereof be declared unconstitutional.

#### Repeal of Conflicting Legislation with Proviso

Sec. 11. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. Provided, however, that this Act shall not be construed as repealing or amending any laws affecting or regulating licensed state land surveyors or registered professional engineers, and such licensed state land surveyors or registered professional engineers in performing their duties or profession as such shall not be subject to the provisions of this Act; provided further that registration under this Act shall not of itself qualify the registrant to conduct surveys of Public Lands under the provisions of Article 5299, Revised Civil Statutes, nor to make any surveys, the field notes of which are to be filed in the General Land Office of Texas; nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed or registered by the State or under its authority. Acts 1955, 54th Leg., p. 864, ch. 328.

Effective 90 days after June 7, 1955 date of adjournment.

### CHAPTER FOUR—OIL AND GAS

#### 4. GENERAL PROVISIONS

Art.  
5382d. Lease of lands of State Departments, Board and Agencies [New].

Art.  
5382d—1. Tender of payment of special fee; percentage of bid on mineral lease and land sales [New].

#### 2. GULF LANDS

##### Art. 5366. Pollution of streams

All development and operations upon the areas included herein shall be done so far as practicable in such manner as to prevent the pollution of water, destruction of fish, oysters and other marine life, and obstruction of navigation. The Commissioner of the General Land Office shall promulgate and enforce such rules and regulations as may be necessary for that purpose. All such rules and regulations and any alterations of such rules shall be submitted to the Attorney General of this State for his written approval prior to the time such rules and regulations or alterations of the same shall become effective. As amended Acts 1955, 54th Leg., p. 671, ch. 240, § 1.

Emergency. Effective May 16, 1955.

## 4. GENERAL PROVISIONS

## Art. 5382d. Lease of lands of State Departments, Board and Agencies

**Grant of easements for irrigation canals, flumes, ditches; telephone, telegraph, electric power and pipe lines**

Sec. 13a. The appropriate board for lease is authorized to grant easements on the land covered by this Act for irrigation canals, laterals, flumes and ditches, telephone, telegraph and electric power lines, and pipe lines for the gathering or transportation of oil, gas, water and other fluids or substances, together with such devices, equipment and appurtenances as may be necessary. Such easements may be granted on such terms and conditions as the board for lease may deem to the best interest of the State of Texas. Provided, that the provisions of this Section 13a shall not apply to lands owned by the State of Texas as a part of the penitentiary system nor shall this Act be construed as repealing House Bill No. 330, Acts of the 48th Legislature of the State of Texas, Regular Session, 1943, Chapter 177, page 281, being Article 6203d, Vernon's Texas Civil Statutes, or any amendments thereto. Added Acts 1955, 54th Leg., p. 670, ch. 239, § 1.

Emergency. Effective May 16, 1955.

## Art. 5382d—1. Tender of payment of special fee; percentage of bid on mineral lease and land sales

Section 1. After September 1, 1955, on all mineral lease and land sales held by the School Land Board as created by Section 5, Chapter 3, Acts of the 46th Legislature, 1939, and on all mineral lease sales held by the Boards for Lease created by Chapter 325, Acts of the 52nd Legislature, 1951,<sup>1</sup> each bidder shall be required to remit by separate check an amount equal to one per cent (1%) of each bid payable to the Commissioner of the General Land Office as a special sale fee, and the special payments on only the high bids accepted by the Boards shall be deposited by the Commissioner in the State Treasury as a special fund.

It is further provided, however, that failure to remit the special fee shall not, of itself, render a bid void; but the Commissioner shall demand payment thereof before issuing a lease to the successful bidder; provided further, that if the successful bidder should fail or refuse to make such payment within thirty (30) days from and after demand by the Commissioner, he shall not be entitled to a lease upon the tract covered by his bid and the cash bonus shall be automatically forfeited to the State and the Commissioner shall deposit same in the State Treasury to the credit of the Permanent Free School Fund or the appropriate Special Mineral Fund as the case may be. All such checks submitted by unsuccessful bidders shall be returned to such bidders with their bid checks.

Sec. 2. Monies deposited in the special fund provided in Section 1 of this Act, or so much thereof as may be necessary, are hereby appropriated to the General Land Office for the payment of travel expenses, fees for professional services, office supplies and expenses, and equipment, subject to the applicable provisions of House Bill No. 140, 54th Legislature, 1955;<sup>2</sup> for the payment of salaries and wages of such additional personnel as may be required; and for the payment of salary increases, provided that such salary increases paid from the funds appropriated in this Act shall be limited to positions for which salary rates of less than Ten Thousand Dollars (\$10,000) per annum are specified in said House Bill No. 140, and that

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

the amount of such salary increases shall never exceed Six Hundred Dollars (\$600) per annum.

It is further provided that additional positions established, and any salary increases granted, pursuant to the provisions of this Act shall be reported in writing to the Legislative Budget Board prior to the effective date of such additional positions and salary increases. Acts 1955, 54th Leg., p. 1119, ch. 415.

<sup>1</sup> Article 5382d.

<sup>2</sup> Acts 1955, ch. 519.

Effective 90 days after June 7, 1955, date of adjournment.

## CHAPTER SIX—PATENTS

Art.

5414a—1. Validating deeds of acquittance on lands lying across or partly across water courses or navigable streams [New].

**Art. 5414a—1. Validating deeds of acquittance on lands lying across or partly across water courses or navigable streams**

Section 1. All deeds of acquittance to lands lying across or partly across water courses or navigable streams and all deeds of acquittance covering or including the beds or abandoned beds of water courses or navigable streams or parts thereof, which deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, are hereby confirmed and validated.

Sec. 2. The State of Texas hereby relinquishes, quit claims and grants to grantees and their assignees all of the lands, and minerals therein contained, lying across, or partly across water courses or navigable streams, which lands are included in surveys heretofore made, and to which lands deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited; and the State of Texas hereby relinquishes, quit claims and grants to grantees and their assignees all of the beds, and minerals therein contained, of water courses or navigable streams and also all of the abandoned beds, and minerals therein contained, of water courses or navigable streams, which beds or abandoned beds or parts thereof are included in surveys heretofore made, and to which beds or abandoned beds, or parts thereof, deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof, and have not been cancelled or forfeited; provided that nothing in this Act contained shall impair the rights of the general public and the State in the waters of streams or the rights of riparian and appropriation owners in the waters of such streams; and provided further, that with respect to lands sold by the State of Texas expressly reserving title to minerals in the State, such reservation shall not be affected by this Act; nor shall the State of Texas relinquish or quit claim any number of acres of land in excess of the number of acres of land conveyed to said grantees in the deeds of acquittance granted by the State, but the grantees and their assignees shall have the same rights, title and interest in the minerals in the beds or abandoned beds, or parts thereof, of such water courses or navigable streams, that they have in the uplands covered by the same deed of acquittance; provided that this Act shall not in anyway affect the State's title, right or interest in and to the sand and gravel lying within the bed of any navigable stream within this State, as defined by Article 5302, Revised Statutes of 1925.

Sec. 3. All of the provisions of this Act shall apply equally to all Spanish and Mexican land grants and titles issued by the Spanish or Mexican governments prior to the Texas Revolution of 1836, which have subsequently been recognized by the Republic of Texas, or by the State of Texas, as valid.

Sec. 4. No provision of this Act shall affect the rights of any parties involved in pending litigation at the effective date of this Act. The provisions of this Act are and shall be held and construed to be cumulative of all laws of this State on the subject treated of and embraced in this Act. All laws or parts of laws in conflict herewith are hereby repealed. If any section, subdivision, paragraph, sentence or clause of this Act shall be held to be unconstitutional, the remaining portions of this Act shall nevertheless be held valid and binding. Acts 1955, 54th Leg., p. 660, ch. 232.

Emergency. Effective May 16, 1955.

**CHAPTER SEVEN—GENERAL PROVISIONS**

<p>Art. 5421b—1. Leasing for minerals of lands under and adjacent to Caddo Lake and tributaries [New].</p> <p>5421c—7. Prospecting state lands for minerals, including fissionable materials [New].</p>	<p>Art. 5421m. Veterans' Land Board [New].</p> <p>5421o. Oil, gas and mineral leases by cities, towns and political subdivisions; failure to publish notice of intent; effect [New].</p>
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**Art. 5421b—1. Leasing for minerals of lands under and adjacent to Caddo Lake and tributaries**

Section 1. All or any part of the Public Lands belonging to the State situated in and under the bed of Caddo Lake and the tributaries thereto and all or any part of such lands adjacent thereto shall be subject to lease for mineral development by the Commissioner of the General Land Office to any person, firm or corporation in accordance with the provisions of existing or future laws pertaining to the leasing and development of all islands, salt-water lakes, bays, inlets, marshes and reefs, owned by the State within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsold public free school land, both surveyed and unsurveyed, in so far as same are not in conflict herewith.

Sec. 2. The development and operation upon the lands included herein shall be conducted so far as practicable in such manner as to prevent such pollution of the water as will destroy fish or wildlife. The Commissioner of the General Land Office, with the advice and assistance of the Game and Fish Commission, shall prescribe and enforce such rules and regulations as may be necessary for that purpose. Acts 1955, 54th Leg., p. 844, ch. 311.

Emergency. Effective May 24, 1955.  
Section 3 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 4 provided that partial invalidity should not affect the remaining portions of the Act.

Acts 1955, 54th Leg., p. 1243, ch. 497, Vernon's Civil St. Ann., art. 5421c—6, does not affect existing prospecting rights under § 12 of this article.

**Art. 5421c—7. Prospecting state lands for minerals, including fissionable materials**

**Lands and minerals to which applicable; application for permit; rental payments**

Section 1. Any tract of land belonging to the State, including all islands, salt and fresh water lakes, bays, inlets, marshes and reefs, owned

by the State within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsold public free school land, both surveyed and unsurveyed, and all rivers and channels, shall be subject to prospect for uranium, thorium or other fissionable materials, or for gold, silver, platinum, cinnabar and other metallic ores and precious stones by any person, firm or corporation desiring to prospect same, by the filing of an application with the Commissioner of the General Land Office designating the area to be prospected. Such application must be accompanied by a rental payment of Ten Cents (10¢) per acre.

**Permits to prospect; issuance; annual rental**

Sec. 2. Permits shall be issued by the Commissioner of the General Land Office giving to the first applicant a period of one (1) year from the date of filing his application within which to prospect the area designated. Within the period of said year the permittee or his assignee may file an application to lease the area covered by the Permit for the purpose of mining or producing the uranium, thorium or other fissionable materials, or gold, silver, platinum, cinnabar and other metallic ores and precious stones, which application shall be accompanied by the first rental payment of Two Dollars (\$2) per acre. The annual rental payments thereafter during the primary term shall be One Dollar (\$1) per acre, which shall be payable unless production in paying quantities is being obtained and royalty being paid the State thereon.

**Leases; issuance; royalty**

Sec. 3. The leases shall be issued by the Commissioner of the General Land Office in accordance with the provisions of this Act and shall be for a primary term of five (5) years and as long thereafter as uranium, thorium or other fissionable materials, metallic ores or precious stones are produced in paying quantities. The royalty shall be one-sixteenth (1/16) of the value of the metallic ores and precious stones and one-sixth (1/6) of the value of uranium, thorium or other fissionable materials. The Commissioner may include in such leases such other provisions as he may deem necessary for the protection of the interests of the State.

**Rental and royalty payments; disposition**

Sec. 4. All rental and royalty payments shall be paid to the Commissioner of the General Land Office at Austin, Texas. All such payments shall be credited to the account of the Permanent School Fund.

**Assignability of permits and leases; filing fee**

Sec. 5. Permits shall not be assignable. All leases may be assigned in quantities of not less than forty (40) acres unless there be less than forty (40) acres remaining out of the tract originally leased in which case such lesser area may be assigned. Such assignments shall be recorded in the county in which the land is located and a certified copy thereof, certified by the county clerk from his records, forwarded to the General Land Office within ninety (90) days from the date of recordation, accompanied by a One Dollar (\$1) filing fee for each tract affected.

**Saving clause**

Sec. 6. Nothing herein shall apply to, alter, or affect any rights presently existing on the effective date of this Act under a valid permit issued by the Commissioner of the General Land Office under the provisions of Chapter 271, Acts, Forty-second Legislature, 1931, as amended by Section 1, Chapter 365, Acts, Forty-seventh Legislature, 1941, as



amended by Section 1, Chapter 301, Acts, Forty-eighth Legislature, 1943, codified as Section 12, Article 5421c, Vernon's Civil Statutes; provided, however, that should the owner of a valid outstanding permit on the effective date of this Act desire that his lease provide for a term to continue as long as production is secured in paying quantities, he shall pay the rental and royalty specified in this Act. Acts 1955, 54th Leg., p. 1243, ch. 497.

Emergency. Effective June 23, 1955.

### **Art. 5421m. Veterans' Land Board**

#### **Appraisalment of property; report by appraiser; sworn report of seller**

Sec. 10(A). Before purchasing land under any of the provisions of this Act, the Board shall cause to be made an appraisalment of the property in order to determine its value. Any appraiser representing the Board shall be reasonably qualified to give competent appraisals of land. Such appraiser shall make a written report to the Board in affidavit form, duly sworn to before a Notary Public or other official authorized to administer oaths, showing the appraised value of the land, the names and addresses of any person contacted relative to the valuation of the land, that he has examined the records of the County Clerk's office relative to the amount paid by the vendor for such land, that he has checked past sales of adjacent lands to aid in determining valuation, and if the purchase is being made under Section 16 hereof, that he has met the veteran on the land and has explained the transaction as authorized by this Act to him in detail; and that neither the appraiser, nor any member of his family, has received any personal benefits from the transaction and does not expect to receive any future personal benefits from the transaction.

Before any land is purchased by the Board, whether it be under Section 10 or Section 16 hereof, the Board shall require that the seller execute a sworn report to the Board to include the following: (1) the date the seller purchased the land, (2) the amount the seller paid therefor if purchased subsequent to June 7, 1949, (3) from whom the seller purchased the land, (4) the improvements made on the land since the seller purchased it and the cost thereof; and if the purchase is being made under Section 16 hereof, the following must be included in addition thereto: (5) whether the seller by any manner or method is making the down payment to the Board on behalf of the veteran, (6) whether there is a lease arrangement between the seller and the veteran, and if so, the duration, term, and amount to be paid, (7) whether there is an agreement or contract of any nature to transfer, sell, or convey at any time in the future between the seller and the veteran. Added Acts 1955, 54th Leg., p. 1597, ch. 520, § 1.

#### **Price of land; payment; title**

Sec. 11. All land purchased by the Board shall be acquired at the lowest price obtainable, in the opinion of said Board, taking into consideration the quality, location, natural advantages and improvements of such land, and shall be paid for in cash and shall be clear of all liens and shall constitute a part of the Veterans Land Fund. It shall be the duty of the Board, before making payment for any land, to have the title of the property sought to be bought, examined, and may require for this purpose an abstract of title or a policy of title insurance, and may refer the same to the Attorney General for his examination and opinion. The Board may purchase lands which are subject to outstanding mineral leases or with all or a part of the mineral interests being outstanding, provided the title be otherwise good and marketable. As amended Acts 1951, 52nd Leg., p. 550, ch. 324, § 4; Acts 1955, 54th Leg., p. 1597, ch. 520, § 2.

**Local committees to pass on veterans' qualifications; inquiries and investigations**

Sec. 15. There shall be appointed by the Commissioners Court of each county in this State a committee to be composed of three (3) residents of that county, all of whom shall be real property owners in said county. Any person deeming himself a veteran as defined herewith, and desiring to benefit hereunder, shall submit to such committee such forms as may be prescribed by the Board, and before he submits his application of purchase and sales contract to the Board, which the committee will consider and then submit a report to the Board concerning the financial responsibility of the veteran, if such is known, a statement as to whether or not in their opinion the transaction is bona fide, and a statement from them as to what they consider is the reasonable value of the land in question. Provided, however, that when the veteran is a resident of one (1) county and is seeking to purchase land situated in another county, he shall submit such forms to the local committees of both such counties. The Board shall also be supplied with a statement as to the credit rating of the veteran applicant. The Board may make such other inquiries and investigation as it deems proper, in order to determine the veteran's eligibility and qualifications, and if the Board determines from the information submitted, or from its own inquiries and investigation, that the financial responsibility of the veteran is such as to leave a reasonable doubt as to his ability to carry the contract through to completion and make all payments thereon, the Board shall reject his application; provided further that the provisions of this section shall not, unless the Board desires, be applicable to sales under Section 12 and Section 19(A) of this Act. As amended Acts 1955, 54th Leg., p. 1597, ch. 520, § 3.

**Purchase of land selected by veteran**

Sec. 16. Anything contained in this Act to the contrary notwithstanding, it is expressly provided that where the veteran desires a particular tract of land located in this State, containing not less than fifteen (15) acres, which he can purchase for not exceeding Fifteen Thousand Dollars (\$15,000), he may, upon proper showing of eligibility to benefits hereunder, be authorized by the Board to select the land which he desires and submit his selection to such Board on such form as it may prescribe. The Board may purchase such land from the owner thereof upon the terms agreed, if the Board is satisfied of the value and desirability of the property submitted, and pay not to exceed Seven Thousand, Five Hundred Dollars (\$7,500) of the purchase price, provided the veteran pays cash for all the purchase price over Seven Thousand, Five Hundred Dollars (\$7,500). The Board shall cause to be made such appraisal of the property as it deems necessary in order to determine value, and before consummating a purchase shall satisfy itself as to title as provided in Section 10 of this Act. No transaction under this Act shall be considered together with any other transaction so as to constitute a block deal between the State and two or more veteran purchasers, and each tract of land shall be considered as a wholly separate entity without dependence upon any other tract of land, substance, matter, person or thing in determining its value, purchase or sale, under any of the provisions of this Act; provided, however, that nothing in this Act shall be construed so as to prevent the purchase and/or sale of contiguous tracts of land to separate purchasers so long as the value of the land is determined in the above manner. The property so acquired shall become a part of the Veterans Land Fund, but the veteran who has selected the land so acquired shall have a preference right to purchase the same from the Board. The rules and regulations governing

the sale of land under this section shall be governed by the provisions hereinafter made with reference to sale of land generally by the Board, except where same conflicts with this section. In order to be entitled to such preference right, the veteran shall, before the Board purchases said land, have agreed in writing to purchase said selected land from the Board at the purchase cost to the Board and shall have deposited with the State Treasurer in a suspense account to be held until the title of said land is approved and accepted by the Board, at which time said deposit shall be applied to the down payment on the contract of sale and purchase of land by said veteran. If the title to said land is not approved and accepted by the Board, said deposit by the veteran shall be returned to him. In so far as practical, all applications shall be processed in the order in which they are received by the Board. As amended Acts 1951, 52nd Leg., p. 550, ch. 324, § 6; Acts 1955, 54th Leg., p. 1597, ch. 520, § 4.

**Insurance on improvements carried by veteran purchaser**

Sec. 16(A). Each veteran purchaser shall carry such insurance on the improvements on the property under contract of purchase under this Act as the Board may deem necessary and failure to do so will subject his contract to forfeiture under the provisions of Section 19 hereof. The Board is authorized to promulgate such rules and regulations it deems necessary in the enforcement of this provision and if the Board so desires, it may require each veteran applicant subject to this provision to make additional semiannual payments to be held in trust for the payment of premiums that may become due and unpaid on any contracted insurance covering such improvements. If the Board requires such payments to be made, they shall be deposited in a trust fund with the State Treasurer and shall be used for the purpose of making such premium payments. Any unused balance of each veteran's deposit shall be held by the Board until such time as the maintenance of such account becomes unnecessary at which time such funds shall be refunded to the veteran. Added Acts 1955, 54th Leg., p. 1597, ch. 520, § 5.

**Contract of sale; payments; transfer; deed**

Sec. 17. The sale of all lands hereunder by the Board may be properly initiated by contract of sale and purchase, and said contract shall be recorded in the deed records in the county where the land is located. The purchaser shall make an initial payment of at least five per cent (5%) of the selling price of the property. The balance of said selling price shall be amortized over a period to be fixed by the Board, but not exceeding forty (40) years, together with interest thereon at the rate of three per cent (3%) per annum; provided, however, that the purchaser shall have the right on any installment date to pay any or all installments still remaining unpaid; provided further, that in any individual case the Board may for good cause postpone from time to time, upon such terms as the Board may deem proper, the payment of the whole or any part of any installment of the selling price or interest thereon. The Board is empowered in each individual case to specify the terms of the contract entered into with the purchaser, not contrary to the provisions of this Act, but no property sold under the provisions of this Act shall be transferred, sold or conveyed, in whole or in part, until the purchaser has enjoyed possession for a period of three (3) years from the date of purchase of said property and complied with all the terms and conditions of this Act and the rules and regulations of the Board; provided, however, that should the veteran purchaser die or become incapacitated by reason of illness, the property may be conveyed before the expiration of said three (3) years by said purchaser or his heirs, administrators or executors; provided,

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

further, that a purchaser may transfer, sell, or convey land purchased under the provisions of this Act, after he has enjoyed possession for a period of three (3) years from the date of his purchase, to another qualified Texas Veteran who has not previously participated in this Program, provided all matured interest, principal, and taxes have been paid and that the terms and conditions of this Act and the rules and regulations of the Board have been met; and provided further, that a purchaser may transfer, sell, or convey land purchased under the provisions of this Act, after he has enjoyed possession for a period of three (3) years from the date of his purchase, to an individual, firm, or corporation, provided all matured interest, principal, and taxes have been paid, and provided that the assignee may assume an indebtedness to the Board of an amount not exceeding two-thirds ( $\frac{2}{3}$ ) of the Board's commitment on which the purchaser's contract was based, and the terms and conditions of this Act and the rules and regulations of the Board have been met, and that the assignee assume an interest rate on his indebtedness to the Board to be fixed by the Board at not less than four per cent (4%) per annum; provided, however, that property sold under the provisions of this Act may be transferred, sold, or conveyed at any time after the entire indebtedness due the Board has been paid. Any land purchased under the provisions of this Act may not be leased by the purchaser for any term exceeding ten (10) years, except for oil, gas or other minerals, and so long thereafter as any minerals may be produced therefrom in commercial quantities, and no such lease shall contain any provision for option or renewal of such lease, or re-lease of such property for any term. The taking of any option, renewal, or re-lease agreement in a separate instrument to take effect in the future is prohibited, and any such lease or instrument containing such an option, renewal, or re-lease agreement executed after the effective date of this Act in violation hereof is expressly declared to be void. When the entire indebtedness due the State under the contract of sale is paid, the Chairman of the Veterans Land Board shall execute a deed under its seal to the original purchaser of the land, which deed shall inure to the benefit of the legal owner of said land. As amended Acts 1951, 52nd Leg., p. 550, ch. 324, § 7; Acts 1955, 54th Leg., p. 1597, ch. 520, § 6.

#### **Oil, gas and mineral leases**

Sec. 18. If at any time, while the veteran is indebted to the Board for the land purchased, he should execute, or there is in existence a lease or contract of sale of oil, gas, or any other mineral, chemical, or hard metal, or a lease or contract of sale of any timber, sand, gravel, or other materials, covering such land, or any part thereof, the removal of which would deplete the corpus of the tract; at least one-half ( $\frac{1}{2}$ ) of all bonus money, delay rentals, and royalties received as consideration for, or payment under such oil, gas and mineral lease, and at least one-half ( $\frac{1}{2}$ ) of all moneys received under any such lease or contract of sale of any other minerals, chemicals, hard metals, timber, sand, gravel, and other materials, or so much thereof as may be required, shall be paid to the Board by the owner of such lease or contract of sale and applied by it toward the satisfaction of said indebtedness; provided, further, that no oil, gas or mineral lease shall be for a primary term exceeding ten (10) years and the lease may provide that it shall remain in force as long thereafter as production is obtained in paying quantities. As amended Acts 1951, 52nd Leg., p. 550, ch. 324, § 8; Acts 1955, 54th Leg., p. 1597, ch. 520, § 7.

#### **Forfeiture of contracts**

Sec. 19. In the event that any portion of the interest or principal on any sale should not be paid when due, the contract of sale and purchase

shall be subject to forfeiture by the Board, upon thirty (30) days written notice to the original purchaser and his vendees, such notice shall be sufficient when given by registered mail to the last known address of the original purchaser and his vendees, and such forfeiture shall be effective when the Board shall have met and passed a resolution directing the Chairman of the Board to endorse upon the wrapper containing the papers of said sale, or upon the purchase contract filed in the Land Office, the word 'forfeited,' or words of similar import, with the date of such action, and to sign officially; thereupon the lands and all payments theretofore made shall become forfeited. Upon forfeiture full title to the land, including both the surface and mineral estates, shall revert in the Board; provided, however, that the Board may at its option recognize and continue in force and effect any outstanding surface, oil, gas or mineral lease and collect all rentals, royalties, or other amounts payable thereunder. A notice of the action of the Board in forfeiting the original contract shall be mailed to the County Clerk of the county wherein the land is located, and the said Clerk shall enter on the margin of the page or pages containing the record of the original contract a notation of such forfeiture. Land included in such forfeited contract shall be subject to resale under the terms as set forth in Section 19A hereof. In any case where the sale has been forfeited and the title to the lands reverted in the Veterans Land Fund, the original purchaser or his vendee shall have the right to reinstate his purchase contract at any time prior to the date on which the Board shall have met and ordered the said lands to be advertised for resale, or for lease for mineral development, but not thereafter. Any person exercising a right of reinstatement shall pay all interest, penalties and cost incident to the reinstatement, as shall be prescribed by the said Board. All interest and principal which shall become delinquent shall bear interest at the rate of five per cent (5%) per annum from the date the same becomes delinquent, until paid.

The Board acting by and through the Attorney General is hereby directed to institute such legal proceedings as may be necessary to enforce such forfeiture or to recover the full amount of the delinquent installments, interest, and other penalties as may be due the Board at the time such forfeiture occurred, or to protect any other right to such land. The liability of the original veteran purchaser and any subsequent assignee or assignees of such veteran shall be joint and several, but the original veteran purchaser shall be primarily liable for payment of any and all moneys under the original contract of sale and purchase.

In any action brought in the courts against the State, after obtaining permission of the Legislature, involving the title to any tract of land to which the State has a warranty deed, the State shall have the right to plead all statutes of limitations in the general laws of this State. This shall not be considered as a limitation to any other defense the State might have. As amended Acts 1955, 54th Leg., p. 1597, ch. 520, § 8.

#### **Resale of forfeited land**

Sec. 19(A). The resale of land which has been forfeited under the provisions of this Act may be made to the highest bidder; provided, however, that sales shall be made to qualified veterans only and under the same terms and conditions as provided elsewhere in this Act for original sales. Such sales shall be held at such times and in such manner as the Board may prescribe and the Board shall have the right to reject any and all bids. Added Acts 1955, 54th Leg., p. 1597, ch. 520, § 9.

**Rules and regulations; forms; forfeitures; fees for processing and servicing applications**

Sec. 21. The Board is hereby authorized and empowered to make and promulgate such rules and regulations under this Act, and not inconsistent herewith, as it shall deem to be necessary or advisable. Such rules and regulations shall be considered a part of this Act and any violation thereof shall subject the offender to prosecution under the provisions of Section 32 hereof. The Board shall likewise have the power to prescribe the form and contents of all notices, bids, applications, awards, contracts, deeds, or instruments whatsoever in any manner used by it in so carrying out such project and plan when the same shall not be in conflict with law. The Board is hereby made the sole judge of forfeiture of any purchase contract under this Act, and anyone availing of the provisions of this Act shall by so doing agree to abide by the same; and should the Board declare a forfeiture under said purchase contract, then the purchaser shall vacate the premises within thirty (30) days after receipt of notice of such declaration.

The Board is hereby authorized and required to collect a fee of Fifty Dollars (\$50) from each applicant under Section 16 of this Act, which fee shall be held in a trust fund to be used for the purpose of payment for examination of title, recording fees and other allied expenses, and any unused balance remaining after payment for such items shall be deposited in the State Treasury and credited to the Veterans Land Board Special Fund.

The Board is further authorized and required to charge and collect for the use of the State the following fees for the processing and servicing of purchase applications and Contracts of Sale and Purchase and matters incidental thereto:

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|--|---------|
| 1. Appraisal and service fee for each application under Section 17 of this Act | \$50.00 |
| 2. Contract of Sale and Purchase transfer fee for each transfer                | 25.00   |
| 3. Mineral lease service fee for each lease executed by purchasers             | 7.50    |
| 4. Reappraisal fee where purchaser applies for deed on building site           | 25.00   |
| 5. Fee for each loan of abstract   | 5.00    |
| 6. Fee for servicing and filing each easement                                  | 5.00    |
| 7. Service fee for each sale under Section 19(A) of this Act                   | 25.00   |

All moneys received by payment of the above fees shall be deposited in the State Treasury and credited to the Veterans Land Board Special Fund, and said Fund is hereby appropriated to the Veterans Land Board to be used as it deems necessary to pay any salaries, increasing of salaries, or travel expenses, of the employees of the Veterans Land Board, or employees of the General Land Office doing work with the Veterans Land Program, provided, however, that such salaries, or expenses, shall be in line with the salaries or expenses paid to similar employees of other state departments performing similar duties. As amended Acts 1955, 54th Leg., p. 1597, ch. 520, § 10.

**Investigations by Board; subpoenas duces tecum; forfeiture and cancellation of permit or charter; fraud**

Sec. 21(A). The Board is hereby authorized to make any investigation it deems necessary relating to any transactions involving land purchases or sales under this Act with specific authority to administer oaths,

to examine any books, records, or other documents dealing with or relating to such transactions, of any person, firm, corporation, or association involved in the transaction, and to make such copies thereof as in its judgment may show or tend to show fraud upon the Board or veteran, or any violation or attempted violation of this Act; the Board is further authorized to issue subpoena duces tecum requiring such persons, firms, corporations or associations to produce any books, records, or any other documents to the Board for examination. If any corporation shall fail or refuse to comply with the orders of the Board under this Section, such corporation shall thereby forfeit its right to do business in this State, and its permit or charter shall be canceled or forfeited by the Attorney General. Such failure or refusal by any person, firm, corporation, or association, shall be presumed to be prima-facie evidence of fraud upon the Board and veteran in violation of this Act by such person, firm, corporation or association, and such person, firm, corporation or association shall lose and forfeit all its rights and benefits under this Act. Added Acts 1955, 54th Leg., p. 1597, ch. 520, § 11.

#### **Supplies for board**

Sec. 24. The Board is hereby specifically authorized to purchase through the State Board of Control any and all supplies including, but not by way of limitation, stationery, stamps, printing, record books, and such other things as may be needed, at State expense, in order to carry on its functions as a State agency in the performance of the duties herein imposed upon it. The Board shall cause to be published pamphlets containing the provisions of this Act and any rules and regulations the Board desires, to be made available to any interested veteran, veteran's organization, or other interested persons in this State. As amended Acts 1955, 54th Leg., p. 1597, ch. 520, § 12.

#### **Meetings of board; secretaries; seal; employees**

Sec. 25. The Board shall meet, when necessary, on the first and third Tuesdays of each month in the General Land Office, where its sessions shall be held and continue until its docket is cleared, subject to recesses at the discretion of the Board. The Chairman of the Board may call a special meeting of same at any time he thinks necessary, by giving the other members notice thereof. Minutes of each meeting of the Board shall be kept, and only those matters that actually transpire at the meeting shall be entered thereon. The Board shall select an Executive Secretary and an Assistant Executive Secretary, each of whom shall be nominated by the Commissioner of the General Land Office and approved by a majority of the Board, who shall perform all duties required of them by said Board. The Board shall procure and adopt a seal bearing the words 'Veterans Land Board' encircled by the oak and olive branches, common to other official seals. The Commissioner of the General Land Office is authorized to employ all other employees which may be necessary for the discharge of the duties of the Board, such as stenographers, typists, bookkeepers, surveyors, appraisers, and any and all other employees, in such number and for such time as may be necessary to the performance of their duties. The employees of the Board shall be deemed to be employees of the General Land Office, and all civil and criminal laws regulating the conduct and relations of the employees of the General Land Office shall apply in all things to the employees of the Board. All papers, records, and archives of the Board shall be deposited and kept in the General Land Office.

The provisions of the Veterans Land Act shall apply to the successors, if any, of the Veterans Land Board. As amended Acts 1955, 54th Leg., p. 1597, ch. 520, § 12(A).

**False or forged documents; defrauding veteran; punishment**

Sec. 32. (a). Any person, seller, veteran or appraiser, who shall knowingly make, utter, publish, pass or use any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing, in connection with or pertaining to any transaction under this Act, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than two (2), nor more than ten (10) years, or by fine of not less than One Thousand Dollars (\$1,000), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and imprisonment.

(b). Any person who shall knowingly file any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or any other instrument in writing, pertaining to the purchase, sale, or resale of lands under this Act, shall be guilty of a felony, and upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than two (2), nor more than ten (10) years, or by fine of not less than One Thousand Dollars (\$1,000), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and imprisonment.

(c). Whoever shall defraud any veteran of his rights and benefits under the provisions of this Act, by any act of fraud, duress, deceit, coercion, or misrepresentation, or whoever shall use the purposes or provisions of this Act to defraud the State or any veteran by an act of fraud, duress, coercion, misrepresentation, or deceit, shall be guilty of a felony, and upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than two (2), nor more than ten (10) years, or by fine of not less than One Thousand Dollars (\$1,000), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and imprisonment. Added Acts 1955, 54th Leg., p. 1597, ch. 520, § 13.

Effective 90 days after June 7, 1955, date of adjournment.

Section 14 of the amendatory Act of 1955 provided that the provisions of this

Act shall be cumulative of all other laws not in conflict herewith, but where a conflict exists, this Act shall be controlling. Section 15 was a severability clause.

**Art. 5421o. Oil, gas and mineral leases by cities, towns and political subdivisions; failure to publish notice of intent; effect**

Any oil, gas and mineral lease, or oil and gas lease, heretofore granted for a valid consideration by any city, including home rule cities, town, village, county or any of the following political subdivisions of this state: water control and improvement districts, water control and preservation districts, water control districts, water improvement districts, water power control districts, water supply district, or irrigation districts, shall not be cancelled or held void or voidable because the lessor in any such lease or leases has failed to give notice by newspaper published in the county in which the leased lands are located of the intention to grant any such oil, gas and mineral lease, or oil and gas lease, on lands belonging to such lessor, stating the time and place where bids for such leases were to have been received; provided, however, that such lease or leases may be declared void or voidable for any other cause; and provided further, that nothing herein contained shall be construed as affecting pending litigation in which the validity of any such lease or leases is being questioned for any reason, including the failure to give such newspaper notice. Acts 1955, 54th Leg., p. 773, ch. 280, § 1.

Emergency. Effective May 20, 1955.



## TITLE 89—LIBRARY AND HISTORICAL COMMISSION

Art.

5438d. Admission fees; state property  
under control of Daughters ofConfederacy and Daughters of  
Republic [New].**Art. 5438d. Admission fees; state property under control of Daughters of Confederacy and Daughters of Republic**

The Daughters of the Confederacy, Texas Division, and the Daughters of the Republic of Texas, are hereby authorized to charge admission fees to the general public to visit State property under their custody and control except the Alamo, and such organizations are authorized to maintain and operate in any manner they deem appropriate concessions in State property under their custody and control. All money received from the admission charged and all profit obtained from the operation of concessions shall be held in trust by such organizations to be expended for the purpose of maintenance and repair of State property and furnishings under the custody and control of such organizations. The admission fee to be charged the public shall be in the amount determined by such organizations as in their discretion they deem best for the interest of the State and the public. The operation of concessions shall be under the control of such organizations and they are authorized to operate such concessions themselves or to enter into necessary contracts with any other person, firm or corporation for the operation of concessions in any manner they deem necessary for the best interest of the State and public. Acts 1955, 54th Leg., p. 1115, ch. 412, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 3 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict. As to all other laws, this Act shall be cumulative.

## TITLE 90—LIENS

## CHAPTER SEVEN—OTHER LIENS

Art

5506c. Lien upon merchandise in favor of  
factor advancing money [New].

## Art. 5506c. Lien upon merchandise in favor of factor advancing money

**Factors' Liens Provided For: Contents of Notice of Lien**

Sec. 2. If so provided by any written agreement with the borrower, a factor shall have a lien upon such merchandise in the custody or possession of the borrower as is from time to time after the execution of said written agreement designated in separate written statements dated and signed by the borrower and delivered to the factor, and such lien shall secure the factor for all his loans and advances to or for the account of the borrower, together with interest thereon, and also for the commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower and for the amounts due or owing upon any notes or other obligations given to or received by him for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses. Such lien shall be valid from the time of filing the notice hereinafter and in Sections 2 to 7, inclusive, referred to, whether such merchandise shall be in existence at the time of the execution of the written agreement providing for the creation of the lien, or at the time of filing such notice, or shall come into existence subsequently thereto, or shall subsequently thereto be acquired by the borrower; provided, that a notice of the lien is filed as provided in Section 3 stating:

(a) The name of the factor; the name under which the factor does business, if an assumed name; the principal place of business of the factor within the state, or if he has no place of business within the state his principal place of business outside of the state; and, if the factor is a partnership or association, the names of the partners; and if a corporation, the state under whose laws it was organized.

(b) The name of the borrower; the name under which the borrower does business, if an assumed name; the principal place of business of the borrower within the state; or, if he has no place of business within the state, the principal place or places at which the merchandise shall be located or stored.

(c) The general character of merchandise subject to the lien, or which may become subject thereto, and the period of time during which such loans or advances may be made under the terms of the written agreement providing for such loans or advances and for such lien. Amendments of the notice may be filed from time to time in the same manner to record any changes in the information contained in the original, subsequent, or amended notices. As amended Acts 1955, 54th Leg., p. 548, ch. 173, § 1.

Emergency. Effective May 7, 1955.

**Common Law Lien**

Sec. 7. When any factor, or any third party for the account of any such factor, shall have possession of merchandise, such factor shall have

a continuing general lien, as set forth in Section 2 of this Act, without filing the notice provided for in this Act. As amended Acts 1955, 54th Leg., p. 548, ch. 173, § 2.

Emergency. Effective May 7, 1955.

## **TITLE 92—LUNACY—JUDICIAL PROCEEDINGS IN CASES OF**

Art.

5561b—1. Return of released inmate to committing county [New].

5561c. Alcoholism [New].

### **Art. 5561b—1. Return of released inmate to committing county**

Upon determination of a State Mental Hospital that a person being treated in such hospital is no longer of unsound mind, or in need of restraint, or is free from psychosis, it shall be the duty of the superintendent to notify the county judge of the county from which such person was committed. It shall be the duty of the county from which such person was committed, upon receipt of such notification by the county judge, to provide for the transportation and return of such person to the county from which such person was committed. Provided, however, that none of the provisions of this Act shall apply to persons committed under the provisions of Acts, 1937, Forty-fifth Legislature, page 1172, Chapter 466, being codified as Article 932a, Vernon's Code of Criminal Procedure of the State of Texas. Acts 1955, 54th Leg., p. 566, ch. 183, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Title of Act:

An Act providing for the return of persons released from State Mental Hos-

pitals to the committing county; and declaring an emergency. Acts 1955, 54th Leg., p. 566, ch. 183.

## TITLE 102—OIL AND GAS

## GENERAL PROVISIONS

Art.  
6029a. Rules and regulations; drilling ex-  
ploratory wells and wells; aban-  
doning wells; pollution preven-  
tion [New].

## GENERAL PROVISIONS

## Art. 6008—1. Interstate Compact to Conserve Oil and Gas; Extension of Compact

Extension to Sept. 1, 1955:	Kan.—Laws 1951, ch. 329, repealed.
U.S.—Resolution of Congress, Aug. 28, 1951, c. 350, 65 Stat. 199.	Laws 1955, ch. 263.
Ariz.—Laws 1955, ch. 44.	Nebr.—Laws 1953, ch. 201.
Ill.—Laws 1951, p. 1172, S.H.A. ch. 104, § 24.	S.Dak.—Laws 1955, ch. 266.
	Wyo.—Laws 1955, ch. 116.

## Art. 6008b. Agreements for pooled units and cooperative facilities in secondary recovery operations

Sec. 3. Repealed. Acts 1955, 54th Leg., p. 88, ch. 55, § 434. Eff. Jan. 1, 1956.

Saving clause and application of Probate Code, see Probate Code § 2.

Art. 6020a. Telephone, telegraph, electric transmission and power lines; oil, gas and sulphur pipelines; irrigation canals and water pipelines; easements and rights of way over public lands and waters

## Grants of right of way

Section 1. The Commissioner of the General Land Office may execute grants of all easements for right-of-ways for telephone, telegraph, electric transmission and power lines, for oil pipelines, gas pipelines, sulphur pipelines, and other electric and pipelines of whatsoever nature, and for irrigation canals, laterals, and water pipelines granted by this State, across all unsold Public Free School Land, and across all islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, and across that portion of the Gulf of Mexico within the jurisdiction of Texas. The Board of Regents of the University of Texas may continue to execute, under authority heretofore granted, all right-of-way easements for telephone, telegraph, electric transmission and power lines, for oil pipelines, gas pipelines, sulphur pipelines, and other electric and pipelines of whatever nature, and for irrigation canals, laterals, and water pipelines across lands belonging to the State, and dedicated to the support and maintenance of the University of Texas. The Board of Regents of the University may continue to execute, under authority heretofore granted, easements or leases for the erection and maintenance of electric substations, pumping stations, loading racks, and tank farms on University Lands, and the Commissioner of the General Land Office may execute easements or leases for electric substations, for pumping stations, loading racks, and tank farms to be located on State Lands other than those owned by the University.

**Approval of Forms; Recording and Fees**

Sec. 2. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General and shall be recorded in the office of the county clerk of the county in which the land lies. The recording fee shall be paid by the persons, firm, or corporation obtaining the easement or right-of-way who shall furnish a certificate of such recording to the Commissioner of the General Land Office.

**Term of easement**

Sec. 3. No right-of-way easement, electric substation, or tank farm, loading rack, or pumping station easement or lease of the character enumerated in Section 1 hereof may be granted for a longer term than ten (10) years, but any such easement may be renewed by the official or officials charged with the execution thereof, in his or their discretion.

**Privilege fee for right of way**

Sec. 4. From and after the passage of this Act every person or corporation occupying or using any unsold Public Free School Land, any islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, any portion of the Gulf of Mexico within the jurisdiction of Texas, and any unsold public land dedicated to the University of Texas, or any part thereof, as a telephone, telegraph, electric transmission and/or power line right-of-way, as an oil and/or gas pipeline right-of-way, or sulphur pipeline right-of-way, or irrigation canal, lateral, and water pipeline right-of-way, shall, as a condition to such further use or occupancy, pay annually in advance for such privileges, to the Commissioner of the General Land Office at the General Land Office in Austin, Texas a sum equal to two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per lineal rod per annum for each and every rod of telephone, telegraph, electric transmission and power line, oil pipeline and/or gas pipeline used, possessed, or maintained by any such person or corporation on any unsold Public Free School Land, on any islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, on any portion of the Gulf of Mexico within the jurisdiction of Texas, and on any public land dedicated to the University of Texas. This annual privilege fee shall be paid by all such persons and corporations on all oil pipelines, gas pipelines, telephone, telegraph, electric transmission and/or power lines now existing and situated on public lands of the classes above mentioned which have not heretofore paid such fee. All amounts due shall be paid annually unless the easement granted provides otherwise.

**Terms of easements fixed by Land Commissioner and Board of Regents of University**

Sec. 5. Hereafter all telephone, telegraph, electric transmission, power lines, and/or all pipeline right-of-way easements and easements or right-of-ways for irrigation canals, laterals, and water pipelines shall be executed on terms to be fixed by the Land Commissioner and by the Board of Regents of the University of Texas, respectively, but no oil and/or gas pipeline right-of-way easement, or sulphur pipeline right-of-way easement, telephone, telegraph, electric transmission and/or power line right-of-way easement shall be granted which does not provide for an annual privilege fee of not less than two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per lineal rod per annum of oil and/or gas pipeline for which a right-

of-way is sought. A higher fee may be fixed by contract between the officials named and any grantee of such easement.

#### Rentals for pumping stations, etc.

Sec. 6. The rental to be charged for an easement or lease for electric substation sites, pumping stations, loading racks, and tank farms shall be such as shall be agreed upon between the lessee and the Board of regents with respect to University lands, and the Commissioner of the General Land Office with respect to other State Lands.

#### Disposition of funds

Sec. 7. All income received by the Land Commissioner under this Act from Public School Land shall be credited to the Available School Fund; all income received by the Land Commissioner under this Act from University Lands shall be credited to the Available University Fund, and all income received by the Land Commissioner under this Act from the other lands herein set out shall be credited to the General Revenue Fund.

#### Interest on past due payments

Sec. 8. All past due payments under this Act shall bear interest at the rate of ten per centum (10%) per annum. In event the date of payment is not fixed by contract, or in event no written contract has been executed, all unpaid annual fees due shall bear interest at the rate of ten per centum (10%) calculated from the first day of January following the year for which such annual privilege fee was due.

#### Penalty for violations

Sec. 9. No person or corporation shall hereafter construct any telephone, telegraph, transmission and/or electric lines, pipeline, electric substation, tank farm, loading rack, and/or pumping station, irrigation canal, lateral, and water pipe line of the kind and character enumerated in Section 1 hereof across or on any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, nor shall any person or corporation owning or possessing any telephone, telegraph, transmission and/or electric lines, pipeline, electric substation, tank farm, loading rack, and/or pumping station, irrigation canal, lateral, and water pipeline of the kind and character enumerated in Section 1 hereof now lying and situated on or across any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, who has not obtained a proper easement as herein provided for, continue in possession of any such lands without obtaining from the Commissioner of the General Land Office, or the Board of Regents of the University of Texas, respectively, a grant of a right-of-way easement or other easement across or on such lands where such telephone, telegraph, transmission and/or electric lines, pipeline, electric substation, tank farm, loading rack, or pumping station, irrigation canal, lateral, and water pipeline is to be constructed. Any person or corporation violating this section of this Act shall be liable for a penalty of One Hundred Dollars (\$100) per day for each day of such violation, said penalty to be recovered by the Attorney General.

#### Venue of suits

Sec. 10. The venue of all suits by the State arising out of this Act, or for violation of any provision of this Act, is hereby fixed in Travis County. As amended Acts 1955, 54th Leg., p. 479, ch. 134, § 1.

Emergency. Effective April 30, 1955.

Section 2 of the amendment of 1955 was severability clause. Section 3 was emergency clause.

**Art. 6029a. Rules and regulations; drilling exploratory wells and wells; abandoning wells; pollution prevention**

The Railroad Commission shall also make and enforce rules, regulations and orders in connection with the drilling of exploratory wells and wells for oil or gas or any purpose in connection therewith; the production of oil or gas; and the operation, abandonment and proper plugging of such wells to prevent the pollution of the streams and public bodies of surface water of the State, and any sub-surface water strata that are capable of producing water suitable for domestic or livestock use, or for irrigation of crops or for industrial use, which would or might result from the escape or release of crude petroleum oil, salt water or other mineralized waters from any such well, or from operations in connection therewith.

In all cases where an application to drill a new well, or to redrill or deepen an old well, is made to the Railroad Commission of Texas, and in all cases where an application is filed with the Railroad Commission of Texas to authorize the connection of any producing well or wells to a pipe line or other outlet by any operator who has acquired said producing well or wells, and in all cases where a well potential form is filed by any operator who has reworked and brought into production any previously non-producing well and thereby makes application for an allowable for production of oil and/or gas therefrom, the Railroad Commission, prior to approving any such application, may require the applicant or applicants to execute and file with the Railroad Commission a bond in the penal sum of Five Thousand Dollars (\$5,000) for any such well to be so drilled or operated, or in lieu of a separate bond for each such well, a blanket bond in the penal sum of Ten Thousand Dollars (\$10,000) to cover all wells drilled, to be drilled, and/or operated in the State of Texas, conditioned that the operator will plug and abandon said well in accordance with the laws of the State of Texas and the rules, regulations, and orders of the Railroad Commission. Each of such bonds shall be executed by a corporate surety authorized to do business in Texas, and shall be renewed and be continued in effect until the aforesaid conditions have been complied with or release of same is authorized by the Railroad Commission. The discretion of the Railroad Commission in requiring a bond hereunder shall be final and not subject to appeal. In the event that any well covered by any such bond is transferred, sold, or assigned by its operator, a new bond covering said well or wells may be required by the Railroad Commission of the party acquiring same, and the bond of the prior operator shall remain in effect until the new bond is so provided or the filing of same is waived.

The Railroad Commission is hereby authorized and directed to employ such additional personnel as may be necessary to the administration and enforcement of this Act and related laws and orders, rules and regulations adopted by the Commission. Added Acts 1955, 54th Leg., p. 1097, ch. 406, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

## NATURAL GAS

**Art. 6050. Classification**

Sec. 4. Provided, however, that the act or acts of transporting, delivering, selling or otherwise making available natural gas for fuel, either directly or indirectly, to the owners of irrigation wells or the sale, transportation or delivery of natural gas for any other direct use in agricul-

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

tural activities shall not be construed within the terms of this law as constituting any person, association, corporation, trustee, receiver or partnership as a "gas utility," "public utility," or "utility" as hereinabove defined so as to make such person, association, corporation, trustee, receiver or partnership subject to the jurisdiction, control and regulation of the Commission as a gas utility. Added Acts 1954, 53rd Leg., 1st C.S., p. 70, ch. 31, § 1.

Sec. 4a. The natural gas made available under the provisions of this Act shall be used exclusively for pumping water for farm and other agricultural purposes in order for the person, firm, association, or corporation furnishing such natural gas to be exempt from the provisions of said Article 6050 of the Revised Civil Statutes of Texas of 1925. The provisions of this Act shall be considered only as cumulative of other laws and shall not have the effect of repealing or amending any substantive or statutory law except as herein specifically provided. Added Acts 1954, 53rd Leg., 1st C.S., p. 70, ch. 31, § 1.

*Emergency. Effective April 22, 1954.*



TITLE 103—PARKS

1. STATE PARKS BOARD

Art. 6070f. Validation of State Park Improvement bonds, agreements, actions and proceedings; incontestability [New].

6079c—1. Bonds for construction of roads; counties on Gulf having islands suitable for recreational purposes [New].

1. STATE PARKS BOARD

Art. 6070f. Validation of State Park Improvement bonds, agreements, actions and proceedings; incontestability

The State Park Improvement Bonds authorized by resolution of the State Parks Board, adopted on January 12, 1955, which resolution was entitled, "A resolution authorizing the issuance of \$25,000,000 State Park Improvement Bonds of the State Parks Board of the State of Texas for the purpose of making improvements to state parks; confirming the sale of part of such bonds; providing for the payment of principal thereof and interest thereon; providing for the security of such bonds, and entering into certain covenants and agreements in the above connection," and all provisions, covenants and agreements in said resolution contained, and all actions and proceedings of said Board relating thereto, are hereby validated, ratified, approved and confirmed, and said State Park Improvement Bonds when issued and delivered pursuant to said proceedings, shall be valid and legally binding and enforceable obligations against the revenues so encumbered and shall be valid and legally binding and enforceable obligations of the State Parks Board in accordance with their terms and after said delivery said bonds shall be incontestable; and any changes or amendments hereafter made to said resolution or proceedings relating to or affecting the dating or maturity dates of said bonds, the interest coupon rates, not to exceed five per cent (5%) per annum, or the order, time or manner of the application of the revenues securing such bonds, shall not impair or limit the validation thereof as is in this Act provided; and it is hereby found and determined that the issuance of said State Park Improvement Bonds in accordance with the aforementioned resolution will not create or constitute a debt or obligation of the State of Texas within the meaning of any applicable constitutional limitation or restriction. Acts 1955, 54th Leg., p. 801, ch. 292, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Title of Act:

An Act to validate, upon certain terms and conditions, State Park Improvement Bonds heretofore authorized by the Texas

State Parks Board and all covenants and agreements and all actions and proceedings in connection therewith; providing the bonds to be incontestable; and declaring an emergency. Acts 1955, 54th Leg., p. 801, ch. 292.

5. COUNTY PARKS

Art. 6079b. County parks in counties of under 80,000 population

In counties owning and maintaining county parks, and having a population of less than 80,000 inhabitants according to the last preceding Federal Census, the Commissioners Court is authorized to maintain and operate said parks; provided that the Commissioners Court shall not ex-

pend more than Five Thousand Dollars (\$5,000) in any one year for the maintenance and operation of said parks. Said Five Thousand Dollars (\$5,000) shall be paid out of the General Fund of the County. As amended Acts 1955, 54th Leg., p. 369, ch. 88, § 1.

Emergency. Effective April 25, 1955.

**Art. 6079c—1. Bonds for construction of roads; counties on Gulf having islands suitable for recreational purposes**

Section 1. Any county situated on the coast of the Gulf of Mexico and having within its boundaries any islands susceptible of development for recreational purposes for the use and benefit of the inhabitants of such county shall be authorized to construct, improve and operate roads on such islands and to issue bonds for such purpose payable from tolls charged for their use, or from taxation, or from both such sources. Such bonds may be issued and secured in the manner and in accordance with the provisions of Chapter 304, Acts 1947, 50th Legislature, as amended by Chapter 122, Acts 1949, 51st Legislature,<sup>1</sup> except that no bonds, whether payable from taxes or revenues, shall be issued, nor shall any county funds be expended in any manner in connection with or on any such revenue project, unless and until they shall have been authorized at an election at which the question of their issuance and/or expenditure shall have been submitted to a vote of the people.

Sec. 2. In those instances where any such county has issued bonds under said Chapter 304, Acts 1947, as amended, for any of the purposes authorized thereby and has secured the payment of such bonds by a pledge of the revenues to be derived from the operation of any such facility and further secured said bonds by the levy of ad valorem taxes authorized under Article 3, Section 52 of the Constitution, and which county may issue bonds for the purposes authorized in Section 1 hereof, where such bonds shall be payable wholly or partially from revenues, the provisions of Section 7 of said Chapter 304, as amended, empowering the State Highway Commission to declare such facilities to be a part of the State Highway System and thereafter to maintain and operate said facilities free of tolls shall be inapplicable to the facility first constructed, until the bonds issued under this Act shall have been paid, or a sufficient amount for the payment of all such bonds and interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders for such purpose. Acts 1955, 54th Leg., p. 666, ch. 237.

Emergency. Effective May 16, 1955.

<sup>1</sup> Article 6795b—1.

**TITLE 105—PARTNERSHIPS AND JOINT STOCK COMPANIES****CHAPTER ONE—PARTNERSHIPS LIMITED**

Art.

6132a. Uniform Limited Partnership Act  
[New].**Arts. 6110–6132. Repealed. Acts 1955, 54th Leg., p. 471, ch. 133, § 31.**Continued applicability of repealed law  
to limited partnerships formed under prior  
law, see article 6132a, § 30.**Art. 6132a. Uniform Limited Partnership Act****Short title**Section 1. This Act shall be known and may be cited as The Texas  
Uniform Limited Partnership Act.**Limited partnership defined**Sec. 2. Limited partners not bound. A limited partnership is a part-  
nership formed by two (2) or more persons under the provisions of Section  
3 of this Act, and having as members one (1) or more general partners and  
one (1) or more limited partners. The limited partners as such shall not  
be bound by the obligations of the partnership.**Formation of limited partnership**Sec. 3. (a) Two (2) or more persons desiring to form a limited part-  
nership shall:

- (1) Sign and swear to a certificate, which shall state:
  - (A) The name of the partnership.
  - (B) The character of the business.
  - (C) The location of the principal place of business.
  - (D) The name and place of residence of each member; general and  
limited partners being respectively designated.
  - (E) The term for which the partnership is to exist.
  - (F) The amount of cash and a description of the agreed value of the  
other property contributed by each limited partner.
  - (G) The additional contributions, if any, agreed to be made by each  
limited partner and the times at which or events on the happening of  
which they shall be made.
  - (H) The time, if agreed upon, when the contribution of each limited  
partner is to be returned.
  - (I) The share of the profits or the other compensation by way of in-  
come which each limited partner shall receive by reason of his contribu-  
tion.
  - (J) The right, if given, of a limited partner to substitute an assignee  
as contributor in his place, and the terms and conditions of the substitu-  
tion.
  - (K) The right, if given, of the partners to admit additional limited  
partners.
  - (L) The right, if given, of one or more of the limited partners, as to  
contributions or as to compensation by way of income, and the nature of  
such priority.
  - (M) The right, if given, of the remaining general partner or partners  
to continue the business on the death, retirement or insanity of a general  
partner.

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

(N) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) File for record the certificate in the office of the Secretary of State accompanied by the payment of a filing fee in the amount of Twenty-five Dollars (\$25) made payable to the Secretary of State.

(b) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (a).

#### **Business which may be carried on**

Sec. 4. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking and insurance.

#### **Contributions of limited partner**

Sec. 5. The contributions of a limited partner may be cash or other property, but not services.

#### **Partnership name**

Sec. 6. (a) The surname of a limited partner shall not appear in the partnership name, unless:

(1) It is also the surname of a general partner.

(b) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (a) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

#### **False statements in certificate**

Sec. 7. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in Section 26(c).

#### **Liability of limited partner**

Sec. 8. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

#### **Admission of additional limited partners**

Sec. 9. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of Section 26.

#### **General partners—Rights, powers, restrictions and liabilities**

Sec. 10. (a) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

(1) Do any act in contravention of the certificate.

(2) Do any act which would make it impossible to carry on the ordinary business of the partnership.

(3) Confess a judgment against the partnership.

(4) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(5) Admit a person as a general partner.

(6) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(7) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

#### **Rights of limited partner**

Sec. 11. (a) A limited partner shall have the same rights as a general partner to:

(1) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(3) Have dissolution and winding up by decree of court.

(b) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in Sections 16 and 17.

#### **Person erroneously believing himself a limited partner**

Sec. 12. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the right of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

#### **Same person as general partner and limited partner**

Sec. 13. (a) A person may be a general partner and a limited partner in the same partnership at the same time.

(b) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

#### **Limited partner as creditor of partnership**

Sec. 14. (a) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro-rata share of the assets. No limited partner shall in respect to any such claim:

(1) Receive or hold as collateral security any partnership property, or

(2) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(b) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (a) is a fraud on the creditors of the partnership.

**Priority as between several limited partners**

Sec. 15. Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

**Share of profits or compensation**

Sec. 16. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

**Return of contribution**

Sec. 17. (a) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(1) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

(2) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (b), and

(3) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(b) Subject to the provisions of paragraph (a), a limited partner may rightfully demand the return of his contribution:

(1) On the dissolution of a partnership, or

(2) When the date specified in the certificate for its return has arrived, or

(3) After he has given six (6) months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(c) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(d) A limited partner may have the partnership dissolved and its affairs wound up when:

(1) He rightfully but unsuccessfully demands the return of his contribution, or

(2) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (a) (1) and the limited partner would otherwise be entitled to the return of his contribution.

**Liabilities of limited partner to partnership**

Sec. 18. (a) A limited partner is liable to the partnership:

(1) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(b) A limited partner holds as trustee for the partnership:

(1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(2) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(c) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(d) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

#### Interest as personal property

Sec. 19. A limited partner's interest in the partnership is personal property.

#### Assignments and substitutions

Sec. 20. (a) A limited partner's interest is assignable.

(b) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(c) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(d) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(e) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with Section 26.

(f) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(g) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under Sections 7 and 18.

#### Retirement, death or insanity of general partner

Sec. 21. The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners.

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members.

**Death of limited partner**

Sec. 22. (a) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(b) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

**Creditors of limited partners, remedies of**

Sec. 23. (a) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(b) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(c) The remedies conferred by paragraph (a) shall not be deemed exclusive of others which may exist.

(d) Nothing in this Act shall be held to deprive a limited partner of his statutory exemption.

**Order of payment of liabilities on dissolution**

Sec. 24. (a) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(1) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(2) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

(3) Those to limited partners in respect to the capital of their contributions.

(4) Those to general partners other than for capital and profits.

(5) Those to general partners in respect to profits.

(6) Those to general partners in respect to capital.

(b) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claim for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

**Cancellation or amendment of certificate**

Sec. 25. (a) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(b) A certificate shall be amended when:

(1) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.

(2) A person is substituted as a limited partner.

(3) An additional limited partner is admitted.

(4) A person is admitted as a general partner.

(5) A general partner retires, dies or becomes insane, and the business is continued under Section 21.

(6) There is a change in the character of the business of the partnership.

(7) There is a false or erroneous statement in the certificate.



(8) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.

(9) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(10) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

#### **Instruments and proceeding to cancel or amend certificates**

Sec. 26. (a) The writing to amend a certificate shall:

(1) Conform to the requirements of Section 3(a) (1) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(2) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed by all members.

(c) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (a) and (b) as a person who must execute the writing refuses to do so, may petition the district court of the judicial district wherein he resides, to direct a cancellation or amendment thereof.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so it shall order the Secretary of State to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(e) A certificate is amended or cancelled when there is filed for record in the office of the Secretary of State where the certificate is recorded:

(1) A writing in accordance with the provisions of paragraph (a) or (b) or

(2) A certified copy of the order of court in accordance with the provisions of paragraph (d).

(f) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this Act.

#### **Parties to proceedings against partnership**

Sec. 27. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

#### **Interpretation and construction**

Sec. 28. (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(b) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(c) This Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action on proceedings begun or right accrued before this Act takes effect.

**Cases not provided for**

Sec. 29. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

**Partnerships formed under prior laws**

Sec. 30. (a) A limited partnership formed under any statute of this State prior to the adoption of this Act, may become a limited partnership under this Act by complying with the provisions of Section 3; provided the certificate sets forth:

(1) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(2) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(b) A limited partnership formed under any statute of this State prior to the adoption of this Act, until or unless it becomes a limited partnership under this Act, shall continue to be governed by the provisions of Articles 6110-6132, both inclusive, Revised Civil Statutes of Texas, except that such partnership shall not be renewed unless so provided in the original agreement.

**Acts repealed**

Sec. 31. Except as affecting existing limited partnerships to the extent set forth in Section 30, Articles 6110-6132, both inclusive, Revised Civil Statutes of Texas are hereby repealed. Acts 1955, 54th Leg., p. 471, ch. 133.

Emergency. Effective April 30, 1955.

Section 32 of the Act of 1955 was a severability provision. Section 33 was emergency clause.

**Title of Act:**

An Act to make uniform the law of limited partnerships; relating to the creation of limited partnerships; defining the rights, duties and obligations of limited partners to each other and to others during the existence of limited partnership

and upon its dissolution; providing for interpretation and construction of the Act; providing for cases not provided for herein; providing for limited partnerships formed prior to this Act; repealing Articles 6110-6132 both inclusive, Revised Civil Statutes of Texas with exceptions; providing a severability clause; and declaring an emergency. Acts 1955, 54th Leg., p. 471, ch. 133.

**TITLE 106—PATRIOTISM AND THE FLAG****Art.**

6142b. Public display of Texas flag; position [New].

**Art. 6142b. Public display of Texas flag; position**

On every occasion of public display of the Texas flag, within the State of Texas, it shall occupy the position of honor when displayed in company with the flags of other states, nations or international organizations; provided, however, that when the United States flag is displayed with the Texas flag, the national flag shall occupy such position of honor. Acts 1955, 54th Leg., p. 361, ch. 77, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act to regulate the display of the Texas flag so as to forbid the use of any flag other than that of the United States

in a position superior to that of the Texas flag at any place within the boundaries of the State of Texas; and declaring an emergency. Acts 1955, 54th Leg., p. 361, ch. 77.

## TITLE 108—PENITENTIARIES

## 2. REGULATIONS AND DISCIPLINE

Art.

6203c—1. Contracts for construction and paving roads in and adjacent to Prison System lands [New].

## 1. PRISON COMMISSION

## Art. 6166y. Prisoners' money

Prisoners, when received into the penitentiary, shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the manager, and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. If a prisoner with money charged to his credit should die from any cause while in the penitentiary, escape from the penitentiary, or be discharged without claiming such money, the manager shall make effort to give notice of such fact to the discharged prisoner or to the beneficiary or nearest known relative, if any, of the deceased, escaped, or discharged prisoner, and upon a valid claim presented, pay out such money to such discharged prisoner, beneficiary or nearest relative. After two years from the date of giving such notice, or a valid attempt to give such notice, or two years after the death of such prisoner, if the beneficiary or nearest relative is unknown, if such money has not been validly claimed the manager shall make an affidavit of such fact, and forward the sums of such money, together with the affidavit, to the State Treasurer, which sums shall escheat to the state. Any officer or employee having charge of the prisoner's money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the penitentiary for a term of not more than five years. As amended Acts 1955, 54th Leg., p. 565, ch. 182, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 was a severability clause.

## 2. REGULATIONS AND DISCIPLINE

6203c—1. Contracts for construction and paving roads in and adjacent to Prison System lands

Section 1. The State Highway Commission and the State Prison Board are hereby authorized to enter into and perform agreements or contracts together for the construction and paving of roads by the State Highway Department in and adjacent to the various prison units of the Texas Prison System.

Sec. 2. All methods, requirements, and procedures necessary to enter into and perform such agreements or contracts, and the payment therefor, shall be in conformity with Chapter 340, Acts of the 53rd Legislature, Regular Session, 1953, known as the Interagency Cooperation Act.<sup>1</sup>

Sec. 3. All laws or parts of laws directly in conflict with this Act are hereby expressly repealed to the extent of such conflict only, but this Act

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

shall be cumulative of all other laws or parts of laws not directly in conflict herewith. Acts 1955, 54th Leg., p. 563, ch. 180.

1 Article 4413(32).

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act authorizing the State Highway Commission and the State Prison Board to enter into contracts for the construction and paving of roads in and adjacent to the Texas Prison System; providing

that the requirements and procedures necessary for such contracts and payments therefor shall conform to the Interagency Cooperation Act; providing a repealing clause, but making this Act cumulative of all laws not directly in conflict; and declaring an emergency. Acts 1955, 54th Leg., p. 563, ch. 180.

**Art. 6203d. Rights of way for public highways, roads, streets, ditches, irrigation canals, electric lines and pipe lines over penitentiary system lands**

Section 1. The Texas Prison Board, by and with the consent of the Governor and the Attorney General of the State of Texas, is hereby authorized and empowered to grant permanent and temporary right-of-way easements for public highways, roads and streets, and ditches, and for electric lines and pipelines consisting of wires, pipes, poles and other necessary equipment for the transmission or conveyance of, or distribution of, water, electricity, gas, oil or other similar substances or commodities, such easements to be not in excess of one hundred and fifty (150) feet in width, along, across and over any and all lands now owned by the State of Texas as a part of the Penitentiary System, or to lease such right-of-ways to districts, companies, firms and individuals carrying on, or formed for the purpose of carrying on, or engaged in, the business of transmitting or conveying or distributing any such substance or commodity.

Sec. 2. Except as hereinafter stated, such grants and leases shall be executed only upon a fair and adequate consideration. All of such grants and leases shall contain full reservation of all minerals in and under said lands, sufficient guarantees as to the use by the State Prison Board of the waters, electricity, gas, oil or other substances or commodities conveyed along, across, or over such right-of-way easements for irrigation, heat, light, power and other purposes, and such other covenants, conditions, and provisions, as to the Texas Prison Board, together with the approval of the Governor and the Attorney General, shall appear to be fair, wise, and reasonable; provided, however, that all of such grants or leases shall require that the person, firm or corporation securing a right-of-way or easement shall pay all costs of any improvements at any time made necessary in crossing any right-of-way or easement, granted or leased to him or it under the provisions of this Act.

The Texas Prison Board may grant easements for state highways to the State Highway Commission without compensation, and may also grant easements to counties without compensation for connecting roads between state highways. As amended Acts 1955, 54th Leg., p. 564, ch. 181, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 109—PENSIONS

## 1. STATE AND COUNTY PENSIONS

Art.

6228a—2. Teachers' Retirement System and State Employees Retirement System; prior service credits and certificates [New].

## 1. STATE AND COUNTY PENSIONS

## Art. 6228a. Retirement system for State employees

**Benefits**

## Sec. 5. A. Service Retirement Benefits.

Any member may retire upon written application to the State Board of Trustees, setting forth at what time, not less than thirty (30) days or more than ninety (90) days subsequent to the execution of and filing thereof, he desires to be retired, provided that retirement will be effective only as of the last day of a calendar month, and provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years and shall have completed ten (10) or more years of creditable service. Any member in service who has attained the age of sixty-five (65) years shall be retired forthwith, provided that with the approval of his employer he may remain in service until seventy (70) years of age, at which date he shall be retired regardless of position with the State.

Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least fifteen (15) years of creditable service and shall become entitled to a service retirement allowance upon his attainment of the age of sixty (60) years, or at his option, at any date subsequent to his attainment of said age provided that such member was then living and had not withdrawn his contributions.

Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least thirty (30) years of creditable service and shall become entitled to a service retirement allowance immediately regardless of attained age; provided, however, that any member who shall have completed twenty (20) years or more of creditable service as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, Game and Fish Commission, Liquor Control Board, and as a custodial employee of the State Prison System, of the State of Texas, shall become entitled to his service retirement allowance immediately, regardless of age. A custodial employee shall be defined as an employee whose duties require supervision of or frequent contact with the inmates of the Prison System, including any employee who is subject to call at the risk of life to suppress riots. As amended Acts 1953, 53rd Leg., p. 882, ch. 361, § 1; Acts 1955, 54th Leg., p. 758, ch. 276, § 1.

Emergency. Effective May 20, 1955.

## G. Optional Allowances for Service Retirement.

Any member may, until the first payment on account of any service benefit becomes normally due, elect to receive his membership annuity in an annuity payable throughout life, or he may elect to receive the actuarial

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equivalent at the time, of his membership annuity in a reduced membership annuity payable throughout life with the provision that:

Option (1). Upon his death, his reduced membership annuity shall be continued throughout the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (2). Upon his death, one-half of his reduced membership annuity shall be continued through the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (3). Some other benefit or benefits shall be paid either to the member, or to such person or persons as he shall nominate, provided such other benefit or benefits, together with the reduced membership annuity, shall be certified by the actuary to be of equivalent actuarial value to his membership annuity, and approved by the State Board of Trustees.

Any member may, until the first payment on account of any service benefit becomes normally due, elect to receive his prior service annuity in an annuity payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his prior-service annuity in a reduced prior-service annuity payable as provided in Options (1), (2), or (3) above, provided that all payments under all prior-service annuities are subject to adjustment by the State Board of Trustees as provided in Section 5, Subsection B, Part 2 of this Act; provided further, that the same option must be selected by a member for the payment of his prior-service annuity as is selected by the member for the payment of his membership service annuity.

Any beneficiary who dies within thirty (30) days after service retirement and who has not elected to receive his annuity under an optional plan as provided herein, shall be considered as an active member at the time of death; provided that any member who has completed thirty (30) years of state service in Texas and who is eligible to immediate service retirement under the foregoing provisions of this Act, even though he has not retired, may by written designation in such form as the Board of Trustees may prescribe, select a nominee and an optional allowance for retirement as enumerated in this Subsection G, which shall become effective and payable to such nominee immediately upon the member's death while still an active member. Unless such member shall have selected both a nominee and an Optional Allowance for Retirement, or if such named nominee shall have died, the provisions of the preceding Subsection F shall apply upon death of the member. After such member has selected a nominee and an Optional Allowance for Retirement, he may, by written designation in such form as the Board of Trustees may prescribe, at any time before the first payment on account of any service benefit becomes normally due, change any or both of the previously designated nominee and Optional Allowance for Retirement. As amended Acts 1955, 54th Leg., p. 725, ch. 259, § 1.

Effective 90 days after June 7, 1955, date of adjournment. retirement benefits under State Employees Retirement System, see article 6228a—2;

Service credit based on employment as teacher or public school employee for re- Const. art. 16, § 63.

## Art. 6228a—2. Teachers' Retirement System and State Employees Retirement System; prior service credits and certificates

Section 1. (A) Any person who is a member of the Teacher Retirement System of Texas, or who becomes a member and continues as a teacher or auxiliary employee for five (5) consecutive years, under the provisions of Chapter 470, Acts, Regular Session, 45th Legislature (1937) as amended,<sup>1</sup> may claim service prior to September 1, 1947, as a State em-

ployee, as defined in the provisions of Chapter 352, Acts, Regular Session, 50th Legislature (1947) as amended,<sup>2</sup> creating the Employees Retirement System, and if such service has not been previously claimed and/or granted by either retirement system, and upon verification of such service claimed, the Employees Retirement System shall issue a Prior Service Certificate, or supplemental, or amended Prior Service Certificate, to include such State employee service as prior service with the Employees Retirement System to the same extent and value as provided in the Employees Retirement Act, as amended.

Average prior service compensation for the State Employees Retirement System of the State of Texas shall mean the annual average compensation of such person as a teacher, auxiliary employee, State employee, or a combination of such service, during the ten (10) years immediately preceding September 1, 1947; or if he has less than ten (10) years of such service, then his average prior service compensation shall be computed for his total years of such prior service within such ten (10) year period; or if he has no service during such ten (10) year period, his average prior service compensation shall be the annual compensation paid such person for such service as a teacher, auxiliary employee, and/or State employee, during the year nearest preceding September 1, 1937, in which the member rendered service. Provided, however, that such average prior service compensation shall not be in excess of the maximum provided in the Employees Retirement Act as amended.

(B) Any person who is a member of the Employees Retirement System of Texas, or who becomes a member and continues as an employee for five (5) consecutive years under the provisions of Chapter 352, Acts, Regular Session, 50th Legislature (1947) as amended, may claim service prior to September 1, 1937, as a teacher, or September 1, 1949 as an auxiliary employee, employed in the public schools, colleges, or universities of the State, as defined under the provisions of Chapter 470, Acts, Regular Session, 45th Legislature (1937) as amended, provided said service has not been previously claimed and/or granted by either retirement system, and upon verification of such service claimed, the Teacher Retirement System shall issue a Prior Service Certificate, or supplemental, or amended Prior Service Certificate, to include such teaching or auxiliary employee service as prior service with the Teacher Retirement System to the same extent and value as provided in the Teacher Retirement Act, as amended.

Average prior service compensation for the Teachers Retirement System of the State of Texas shall mean the average annual compensation of a person working as a teacher, auxiliary employee, or State employee, or a combination of such service, during the ten (10) years immediately preceding September 1, 1937, or if he has less than ten (10) years of such service, then his average compensation shall be computed for his total number of years of such prior service; or if he had no service during such ten (10) year period his average compensation shall be the annual compensation paid such person for service as a teacher, auxiliary employee, and/or State employee, during the year next preceding September 1, 1927, in which the member rendered service. Provided, however, that the average prior service compensation shall not be in excess of the maximum provided in the Teachers Retirement Act as amended.

As to any person who became eligible for the first time for membership in the Teachers Retirement System on or after September 1, 1949, average prior service compensation shall mean the average annual compensation of such person as an auxiliary employee, or State employee, or as both, during the ten (10) years immediately preceding September 1,

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1949; or if he has less than ten (10) years of such service, then his average prior service compensation shall be computed for his total years of such prior service within such period; or if he had no service during ten (10) years and immediately preceding September 1, 1949, his average prior service compensation shall be the average compensation paid such person for services as a teacher, auxiliary employee, or State employee, during the year nearest preceding September 1, 1939, in which the member rendered service. Provided, however, that the average prior service compensation shall not be in excess of the maximum provided in the Teachers Retirement Act as amended.

Sec. 2. (A) In the event a member of either the Teachers or the State Employees Retirement Systems shall terminate his employment, and does not withdraw his contributions from the retirement system in which he has membership, and who within sixty (60) months returns to employment in a position requiring his membership in the other retirement system, and remains in such reemployment for a minimum period of six (6) complete calendar months within the fiscal year, then such member shall be entitled to retain his prior service and accumulated membership service credited to him under the first system, and the total accumulated creditable service in both of said retirement systems will be eligible for reciprocal joint retirement under both systems as provided herein.

(B) It is expressly provided that any member of either system who has terminated an account by withdrawal, or executed a waiver of membership, but who returned to employment with either the Teachers or Employees Retirement Systems, without being absent from covered employment in one of said retirement systems for sixty (60) consecutive months, may have his previous service re-instated or granted in the system from which his account was terminated, or in which he executed a waiver, by declaring his intention to do so, in writing, within twelve (12) months from the effective date of this Act, and by the payment of said person of the amount withdrawn when terminating his account, or the amount said person would have paid had he not signed a waiver; and that further, said person shall be granted a period of five (5) years from the effective date of this Act to make such re-instatement of the amounts due the retirement system in which he terminated his account, or executed the waiver, and that no service shall be re-instated or granted until after the completion of said payments.

(C) Any person having membership in both the Teachers Retirement System and the Employees Retirement System shall pay membership fees to the Teachers Retirement System from the date of establishment of membership in that system, and to the Employees Retirement System from the date of establishment of membership in that system.

(D) It is provided that no person may claim more than one (1) year of creditable service for one year, and if any person participated by contribution or otherwise in both systems during a year, the system in which the member first participated shall credit said member with a year for retirement purposes, and such year shall be the only creditable service allowed such member for such year. It is further provided that a year is defined as beginning on September 1st and ending on the next succeeding August 31st, and the maximum service required by the respective Boards of Trustees of the Employees and Teachers Retirement Systems to constitute a year of service shall govern in granting a year of joint reciprocal creditable service under the provisions of this Act.



Sec. 3. (A) Any person who has accumulated creditable service between both systems as provided herein may retire with joint creditable service between the two systems after completing:

a. Twenty (20) years of joint creditable service in Texas, and upon attaining the age of sixty (60) years.

b. Twenty-five (25) years of joint creditable service in Texas, although not in service at the time the age of sixty (60) years is attained, but only when the member shall have attained the age of sixty (60) years, and only in instances where the member has not withdrawn his contributions from either system.

c. Thirty (30) years of joint creditable service regardless of the age attained.

(B) It is provided that any person requesting joint retirement shall make written application to the Board of Trustees of each retirement system, setting forth at what time, not less than thirty (30) days or more than ninety (90) days subsequent to the execution of and filing thereof, he desires to be retired, and providing that joint retirement will be effective only on the last day of a calendar month, and provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years and shall have completed a minimum of twenty (20) years of joint creditable service; and provided further, that if said member has completed thirty (30) years of joint creditable service he may retire regardless of age; provided however, that disability retirement may not be requested by any person after having attained the age of sixty (60) years.

(C) It is expressly provided that nothing in this Act shall be construed to prevent any beneficiary from either the Employees Retirement System or the Teachers Retirement System from being granted the same privilege as granted to members herein, and such additional service as may be claimed by him and duly acknowledged, and after verification by the Retirement System in which the additional service is claimed, shall be added to the annuity payable on the last day following ninety (90) days from the effective date of this Act.

(D) It is provided that any person who retires under joint service between the Teachers Retirement System and the Employees Retirement System may not be employed in a position where the occupant thereof would normally be eligible for membership under either retirement system.

(E) The Teachers Retirement System shall pay under its rules and regulations all creditable service qualified and accumulated under the Teacher Retirement System, and the Employees Retirement System shall pay under its rules and regulations all creditable service qualified and accumulated under the Employees Retirement System. It is provided that any person requesting joint retirement must select the same retirement plan in both systems, and that no retirement plan selection can be made by the member on joint retirement until after filing his written notice as set forth herein; and that, further, said retirement and/or retirement plan will not be effective until midnight, the last day of the month following the effective date of retirement of said member, and that any statute or law to the contrary is expressly amended for the purpose of joint retirement between the two respective retirement systems.

Sec. 4. In order that the two systems may effectively and properly operate and administer hereunder, the Boards of each system may adopt and promulgate any rules not in conflict herewith necessary to accomplish the purposes and intent of this Act.

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

Sec. 5. All laws or parts of laws in conflict herewith are amended insofar as a conflict exists with the provisions of the Act; and provided further, that the provisions of this Act shall be cumulative to the provisions of Chapter 470, Acts, Regular Session, 45th Legislature, as amended,<sup>1</sup> and Chapter 352, Acts, Regular Session, 50th Legislature, as amended.<sup>2</sup> Acts 1955, 54th Leg., p. 356, ch. 75.

<sup>1</sup> Article 2922—1.

<sup>2</sup> Article 6228a.

Emergency. Effective April 22, 1955.

Section 6 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Title of Act:**

An Act to carry into effect Section 63 of Article XVI of the Constitution of Texas, to provide for credit to members of

either the Teacher Retirement System or the Employees Retirement System of Texas for service rendered as either a teacher or person employed in the public schools, colleges, or universities of the State, or as an appointive officer or employee of the State, for retirement benefits under both of said Systems; and declaring an emergency. Acts 1955, 54th Leg., p. 356, ch. 75.

**Art. 6228b. Retirement of justices, judges and commissioners of appellate and district courts**

**Administration and responsibility for operation; rules and forms**

Sec. 8. The general administration and responsibility for the proper operation of the Judicial Retirement System and for making effective the provisions of this Act are hereby vested in the State Board of Trustees of the Employees Retirement System. The Board of Trustees shall promulgate such rules and provide for such forms as it may deem necessary in order to comply with the provisions of this Act. No retirement payments shall be made until the Chief Justice of the Supreme Court has certified to the Comptroller and to the Board of Trustees of the Employees Retirement System that a Judge is entitled to such payments. As amended Acts 1955, 54th Leg., p. 355, ch. 74, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Assessment to meet administrative costs**

Sec. 8a. Effective September 1, 1955, each Judge who is then participating, or who thereafter participates in the Judicial Retirement System shall pay each subsequent year that he is a member of the system, the sum of Two (\$2.00) Dollars, which amount shall be credited to the Employees Retirement Expense Fund to compensate for the costs of administering the Judicial Retirement System. Added Acts 1955, 54th Leg., p. 355, ch. 74, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

**2. CITY PENSIONS**

**Art. 6243e. Firemen's Relief Pension Fund**

**Contributions by cities**

Sec. 10a. All cities having fully paid firemen where Firemen's Relief and Retirement Funds have been created under the provisions of this Act, shall annually contribute and appropriate to such fund an amount equal to the annual contributions made by such fully paid firemen under the provisions of this Act, which such contributions shall not exceed the sum of three per centum (3%) of the Fire Department's annual payroll. In

addition to the amount which the city is required to contribute, the governing body of the city may authorize the city to make a further annual contribution to the Firemen's Relief and Retirement Fund in whatever amount the governing body fixes. All contributions shall be deposited to the credit of the Firemen's Relief and Retirement Fund, to be used with other money in the fund for the benefits provided for under this Act. As amended Acts 1955, 54th Leg., p. 461, ch. 127, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

#### Allowances to beneficiaries of deceased members

Sec. 12. If any member of any department, as herein defined, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or if while in service, any member shall die from any cause growing out of and/or in consequence of the performance of his duty; or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly allowance as follows: (a) to the widow, so long as she remain a widow and provided she shall have married such member prior to his retirement, a sum equal to one-third of the average monthly salary of the deceased at the time of his retirement on allowance or death; (b) to the guardian of each child until such child reaches the age of eighteen (18) years, the sum of Six Dollars (\$6) per month for part paid or volunteer Departments, and the sum of Twenty Dollars (\$20) per month for fully paid Departments; (c) to the dependent parent only in case no widow is entitled to allowance, the amount the widow would have received to be paid to but one parent and such parent to be determined by the Board of Trustees; and (d) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be Twelve Dollars (\$12) per month for each such dependent minor child for part paid or volunteer Departments, and the sum of Forty Dollars (\$40) per month for each such dependent minor child for fully paid Departments; provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided, such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries. As amended Acts 1955, 54th Leg., p. 461, ch. 127, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

#### Computation of length of service

Sec. 21. In computing the time or period for retirement for length of service as herein provided, less than one (1) year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one (1) year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years

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

through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him in so far as his retirement time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall be entitled to benefits hereunder after he has filed a statement that he desires to participate in the benefits from the Firemen's Relief and Retirement Fund, as provided in Section 10 of this Act, but he shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed. As amended Acts 1955, 54th Leg., p. 461, ch. 127, § 3.

Effective 90 days after June 7, 1955, date of adjournment.

#### Investment of surplus

Sec. 23. Whenever, in the opinion and judgment of said Board of Trustees, there is on hand in the said Firemen's Relief and Retirement Fund for that city or town, a surplus over and above a reasonably safe amount to take care of the current demands upon such Fund, such surplus or so much thereof as in the judgment of said Board is deemed proper, may be invested in Federal, State, County, or Municipal Bonds, and in shares or share accounts of building and loan associations organized under the laws of this State, or Federal Savings and Loan Associations domiciled in this State, where such shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and the interest or dividends therefrom and thereon shall be deposited into said Fund as a part thereof. As amended Acts 1955, 54th Leg., p. 904, ch. 355, § 1.

Emergency. Effective May 25, 1955.

Art. 6243f. Pensions for Policemen, Firemen and Fire Alarm Operators in cities having population of three hundred and fifty thousand (350,000) to four hundred and thirty thousand (430,000)

#### Reserve retirement fund

Sec. 17. At the end of the fiscal year all money paid into the fund that remains as a surplus over and above the orders for payments as issued by the Board, shall be paid into the Reserve Retirement Fund to accumulate at interest for the benefit of the reserve fund needs. All such funds as may accumulate in this Special Retirement Reserve shall be invested at regular intervals or at such times as the accumulations justify. The funds may be invested in the following manner:

(1) A sum not to exceed ten per cent may be deposited with a federal credit union restricted to employees of the city.

(2) A sum not to exceed thirty per cent may be invested in savings and loan associations which are insured by the Federal Deposit Insurance Corporation, but the amount invested in any one association shall not exceed Ten Thousand Dollars (\$10,000.00).

(3) A sum not to exceed twenty per cent may be invested in bank stocks and insurance stocks that are listed on an exchange registered with the Securities and Exchange Commission or its successors.

(4) An amount not to exceed fifteen per cent may be invested in open end investments trusts or in common or preferred stocks.

(5) The entire fund, or any portion thereof, may be invested in United States Treasury notes, United States Treasury bonds, bonds of the State of Texas, or bonds of any county or municipality of the State of Texas.

The Board shall have the power to make these investments for the sole benefit of this Retirement Reserve Fund. The investment shall remain in the custody of the Treasurer in the same manner as provided for the custody of the funds. The Board shall have the power and authority, by a majority vote of its members, to disburse the moneys accumulated as the retirement needs arise. As amended Acts 1955, 54th Leg., p. 673, ch. 242, § 1.

Emergency. Effective May 16, 1955.

**Art. 6243g—1. Police Officers' Pension System in cities of 500,000 or more**

**Creation of fund**

Section 1. For the purposes of this Act, there is hereby created in this State a special fund to be known and designated as the Police Officers' Pension Fund in each city in this State having a population of five hundred thousand (500,000) inhabitants or more according to the last preceding or any future Federal Census, unless any such city now has in operation a police, firemen and fire alarm operators pension system organized under another law.

**Definitions**

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement, allowance, disability and pension system for employees of any police department coming within the provisions of this Act.

(b) "Member" means any and all employees in the police department provided for and becoming members thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the police department.

(e) "Pension" means payments for life to the police department member out of the Pension Fund provided herein and becoming eligible for such payments.

(f) "Separation from service" means cessation of work for the city in the police department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

(g) The use of the masculine gender includes the feminine gender.

**Membership**

Sec. 3. (a) Any person who is an employee of such city in the police department on the effective date hereof shall be eligible for membership in the Pension System, except as hereinafter provided, and shall automatically become a member upon the expiration of ninety (90) days from the effective date hereof, unless the employee has filed with the Pension Board written election not to become a member, which shall constitute a waiver of all present and prospective benefits which would otherwise inure to him by participation in the System. But any member of the police department of such city, whose membership in the Pension System is contingent upon his own election and who elects not to participate, may later become a member provided he passes such medical examination as the Pension Board may require. If such employee becomes a member within six (6) months after the effective date of this Act, the employee shall be eligible

for prior-service credit, but if he does not become a member within such period, he shall not be eligible for prior-service credit. By prior-service credit is meant credit for service rendered such city as an employee in the police department prior to becoming a member in the Pension System. Written notice shall be given each and every member of the police department eligible for membership in the Pension System by the secretary of the Pension Board within sixty (60) days from the passage of this Act informing him of the terms and provisions of this paragraph.

(b) Any person who hereafter becomes an employee of such city in the police department shall automatically become a member of the Pension System as a condition of his employment, and he will be required to sign a letter making application for the Pension Fund.

“(c) Employees of such police department who may not become members of the Pension System shall include part-time, seasonal or other temporary employees.

#### Pension Board

Sec. 4. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management, and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The administrative head of the city, or his authorized representative.

(2) Three (3) employees of the police department having membership in the Pension System and elected by the members of such police department and system.

(3) Two (2) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years, to be chosen by the elected members of the Pension Board, being neither employees nor officers of such city.

(4) The city treasurer of the city, or the person discharging the duties of the city treasurer.

The terms of office of the members of the Pension Board shall be two (2) years and each member shall continue to serve until his successor is duly selected and qualified. A vacancy occurring by death, resignation or removal of a member representing the police department shall be filled by the election of one from the police department who is a member of the Pension System. A vacancy occurring by death, resignation or removal of a member chosen by the elected members of the Pension Board shall be filled by the elected members of the Board. A member who is selected to fill a vacancy shall hold office for the unexpired term of the member who vacated his position. The first election of members of the Pension Board shall be held in each city at such time and place as shall be fixed by the members of the police department, but shall be not more than seventy-five (75) days from the passage of this Act or from the date of publication of the final census report which shows that the city has attained a population of five hundred thousand (500,000) or more inhabitants.

(c) Each member of the Pension Board within ten (10) days after his appointment or election shall take an oath of office that he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) The Board shall elect from its membership, annually, a chairman, vice-chairman and secretary. Pursuant to the powers granted under the charter of such city, the mayor or administrative head of the city shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under the direction of the mayor or administrative head of the city and treasurer or director of the treasury shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees shall be paid by the city.

(e) Each member of the Board shall be entitled to one (1) vote in the Board. Four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board and four (4) members shall constitute a quorum.

(f) A meeting of the Pension Board may be called at any time by the chairman, secretary, or any four (4) members of the Board.

(g) Notice shall be given to all members of the Pension Board, unless waived in writing, as to any proposed meeting, by the depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check, or draft signed by the treasurer and countersigned by the chairman or secretary, upon an order by the Pension Board duly entered in the minutes.

(i) The Pension Board shall determine the prior service to be credited to each present employee of the police department who becomes a member of the Pension System. The Board shall rely upon the personnel records of the city in determining such prior-service credits. After obtaining the necessary information the Board shall furnish each member of the Pension System with a certificate showing all prior-service credits authorized and credited to such member. Such member may, within one (1) year from the date of issuance or modification of such certificate, request the Board to modify or change his prior-service certificate, otherwise such certificate shall be final and conclusive for retirement purposes as to such service.

#### **Treasurer**

Sec. 5. The city treasurer or director of the treasury is hereby designated as the treasurer of the Pension Fund for the Police Officers' Pension System, and his official bond to the city shall operate to cover his position as treasurer of such Pension Fund and his sureties shall be liable in connection with the treasurer's actions pertaining to such Fund as fully as they are liable under the term of the bond for the other actions and conduct of the treasurer. All moneys of every kind and character collected or to be collected for the Fund shall be paid over to the treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

#### **Contributions by members**

Sec. 6. Commencing with the first day of the month following the expiration of thirty (30) days after the passage of this Act or after the date of publication of the final census report which shows that the city has attained a population of five hundred thousand (500,000) or more inhabitants, each member of the Pension Fund shall pay into such Fund each month, the sum of five per cent (5%) of the base salary provided

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for the classified position in the police department held by the member. Such payments shall be deducted by the city from the salary of each member monthly and paid to the treasurer of the Pension Fund. Should an emergency arise and the Pension Board deem it necessary for the welfare of the Pension System, the Board may raise the monthly payments of each member of the Pension System to an amount not to exceed seven and one-half per cent (7½%) of the base salary provided for the classified position in the police department held by the member.

#### Monthly payment by city

Sec. 7. In addition to the payments in the next preceding section, the city shall pay monthly into the Pension Fund, from the general or other appropriate fund of the city, an amount equal to seven and one-half per cent (7½%) of the payroll of the police department, but in no event shall the city be required to pay into such Pension Fund any amount in excess of seven and one-half per cent (7½%) of the payroll of the police department, as the city's contribution to the Pension Fund.

#### Reduction of benefits

Sec. 8. In the event the Pension Fund becomes seriously depleted, in the opinion of the Pension Board, the Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners and beneficiaries as and when the Fund is, in the opinion of the Pension Board, sufficiently re-established to do so.

#### Investment of surplus

Sec. 9. Whenever in the opinion of the Pension Board there is on hand in the Pension Fund a surplus over and above a reasonable and safe amount to take care of current demands upon the Fund, such surplus or so much thereof as in the judgment of the Pension Board is deemed proper may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any political subdivision of the State of Texas.

#### Retirement; amount of pension

Sec. 11. (a) From and after the passage of this Act, any member of such Pension System who has been in the service of the city police department for the period of twenty (20) years shall be entitled to a retirement pension of an amount equal to thirty per cent (30%) of the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for the five (5) years preceding retirement.

(b) From and after the passage of this Act, any member of such Pension System who has been in the service of the city police department for a period of years in excess of twenty (20) years, and who elects to retire from the service of the police department, shall in addition to the thirty per cent (30%) of his base salary be paid an additional sum equal to one per cent (1%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. For example, a member with twenty-five years' service would be entitled to thirty-five per cent (35%); a member with thirty (30) years, forty per cent (40%); etc.



(c) It shall be compulsory for any member to retire from the service of the police department upon attaining the age of sixty-five (65) years. Failure of any member of the Pension System to comply with this provision shall deprive the member and his dependents of any of the benefits provided for herein. If at the time of retirement because of maximum age requirements, the member has completed less than twenty (20) years of service, his monthly retirement pension shall be prorated on the basis of one and one-half per cent (1½%) of the base salary of the position of the member per month for each year of service completed.

(d) Upon a member's completion of twenty (20) years of service in the police department, the Pension Board shall issue to the member a certificate showing that he is entitled to the retirement pension. Thereafter when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. However, when such member has completed twenty years' service in the police department and if the physicians of the Pension Board agree that the member is physically fit to continue his active duties in the police department, they may so certify, and the member may continue in the service of the city police department until the member attains the age of sixty-five (65) years, at which time his retirement pension shall be computed as hereinbefore stated.

(e) No member shall be required to make any payments into the Pension Fund after the member has received the aforesaid certificate and the member has retired from the service of the police department.

#### Disability benefits

Sec. 12. Any member of the police department who becomes incapacitated for the performance of his duty by reason of any bodily injury received in, or illness caused by, the performance of his duty shall, upon presentation to the Pension Board of proof of permanent disability, be retired and shall receive a retirement allowance equal to the percentage of his disability. Such allowance shall be computed on the same basis as a service retirement with regard to length of service; for example, if the member is fifty per cent (50%) disabled, he shall receive one half (½) the retirement allowance granted a member as a service retirement for the period of service he has completed, provided that in case of a disability retirement before the member has completed twenty (20) years of service, he shall receive an allowance based on the minimum allowed for twenty years' service. Such allowance as is granted by the Pension Board shall be paid the member for the remainder of his life or so long as he remains incapacitated. When any member has been retired for permanent total or partial disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member refuses to submit himself to any such examination, the Pension Board may, within its discretion, order the payments stopped. If a member who has been retired under the provisions of this section should thereafter recover, so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for the city in the police department, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the Pension Board shall order such payment stopped. No person shall be retired either for total or partial disability unless he files with the Pension Board an application for allowance, at which time the Pension Board shall have him examined by no fewer than three

(3) physicians, to be chosen by the Pension Board and who are to make their report to the Pension Board.

#### **Rights of survivors**

Sec. 13. If any member of the police department who has been retired on allowance because of length of service or disability thereafter dies from any cause whatsoever, or dies from any cause whatsoever after he has become entitled to an allowance or pension certificate, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty, and leaves surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, the Board shall order paid a monthly allowance as follows: (a) to the widow, so long as she remains a widow, a sum equal to the allowance which was granted to the member at the time of retirement or which would have been granted to the member upon service or disability pension based on his length of service in the police department; (b) to the guardian of each child, the sum of Fifteen Dollars (\$15) a month until the child reaches the age of eighteen (18) years or marries; (c) to the dependent parent, only in case no widow is entitled to allowance, the sum the widow would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board; and (d) in the event the widow dies after being entitled to her allowance, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be increased to the sum of Twenty-five Dollars (\$25) per month for each dependent child, provided that such minor child under eighteen (18) years of age is unmarried. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

(b) If any member of the Pension System has not completed twenty (20) years of service in the police department and is killed or dies from any cause growing out of or in consequence of any act which is clearly not in the actual performance of his official duty, his surviving widow and/or dependent child or children shall be refunded any contributions which the member made to the Pension System, provided that only contributions made by the member himself shall be refunded.

#### **Computation of length of service**

Sec. 14. In computing the length of service required for retirement pension, continuous service shall be required; provided, however, that in case of interruption of less than two (2) years, credit shall be given for previous service. If out of service more than two (2) years, no service prior to the interruption shall be counted, other than as provided in Section 22.

#### **Termination of employment; re-employment**

Sec. 15. When any member of the Pension System leaves the employment of the police department other than as provided for in Section 12 or Section 22, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall cease to be a member of the Pension System. No member leaving the employment of the police department and the membership in the Pension System shall be refunded any money paid by the member into the System as contributions or any of the moneys paid into the System by any source except as stated in Section 13(b) and in Section 22. If such person is thereafter re-employed by the city police department, he shall thereupon be reinstated

as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with the city police department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom and makes within six (6) months after his re-employment by the city in the police department written application to the Pension Board for reinstatement in the Pension System.

#### **Transfer from another department**

Sec. 16. No prior credit shall be allowed for service to any person who transfers from some other department in the city to the police department. For example, if one is transferred from some other department of the city to the city police department, such person's service will be computed from the day he enters the city police department.

#### **Donations**

Sec. 17. The Police Officers' Pension System may accept gifts and donations, and such gifts and donations shall be added to the Pension Fund for the use of such System.

#### **Conviction of felony**

Sec. 18. Whenever any person who has been granted an allowance hereunder is convicted of a felony, then the Board shall order the allowance so granted or allowed such person discontinued, and in lieu thereof shall order to be paid to his wife or dependent child, children, or dependent parent the amount herein provided to be paid such dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

#### **Legal advice**

Sec. 19. The city attorney of the city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, if it deems necessary, employ outside advice to the exclusion of, or to assist, the city attorney, and pay reasonable compensation therefor out of the Pension Fund.

#### **Exemption of benefits from execution, etc.; assignment**

Sec. 20. No portion of the Pension Fund, either before or after its order of disbursement by the Pension Board, and no amounts due or to become due any beneficiary or pensioner under this Act, shall be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any court of this State for the payment or satisfaction, in whole or in part, out of the Pension Fund, of any debt, damage, claim, demand, or judgment against any members, pensioners, dependents, or any person whomsoever, nor shall such Pension Fund or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereof or any claim thereto shall be void. The Pension Fund shall be sacredly held, kept, and disbursed for the purposes provided in this Act, and for no other purpose whatsoever.

**Actuary**

Sec. 21. Such Pension Board may employ an actuary and pay his compensation therefor out of the Pension Fund no more than once every ten (10) years.

**Members in military service**

Sec. 22. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided for in this Act, nor shall they lose any previous years of service with the city caused by such military service. Such military service shall count as continuous service in the police department, provided that when the member is discharged from the military service he shall return to the city police department under provisions of the city charter, and his military service shall not exceed the national emergency for that period of military service. The city, however, shall be required to make its regular monthly payments into the Pension Fund on each member while he is engaged in the military service. In the event of death of a member of the Pension System, either directly or indirectly caused from such military service, his widow or dependent parent or other dependents shall be entitled to receive a refund as stated in Section 13(b).

**Actions for funds misapplied, etc.**

Sec. 23. The Pension Board shall have the power and authority to recover by civil action from any offending party, or from his bondsmen, if any, any moneys paid out or obtained from the Pension Fund through fraud, misrepresentation, theft, embezzlement, or misapplication, and may institute, conduct and maintain such action in the name of the Board for the use and benefit of such Fund.

**Former employees on retirement when Act enacted**

Sec. 24. The former employees of any such police department now on retirement at part pay by the city shall hereafter be paid a monthly pension out of the Pension Fund provided for herein in the same amount and under the same conditions as are provided herein for present and future employees of the police department becoming members of the Pension System.

**Severability**

Sec. 25. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**Repeal of conflicting laws**

Sec. 26. All laws and parts of laws in conflict with any of the provisions of this Act are hereby repealed to the extent of such conflict. As amended Acts 1955, 54th Leg., p. 62, ch. 45, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 10 of the Act of 1955 provided that: "Immediately upon passage of this Act, the city pension officer or anyone dis-

charging the duties of the pension officer shall transfer the pro-rata share of any existing pension fund to the Police Officers' Pension Fund."

## Art. 6243h. Texas Municipal Retirement System

## Definitions

## Sec. II.

12. "Earnings" means an amount equal to the sum of the payments made to an employee for performance of personal services as certified on a written payroll of the employing Department, plus the money value as determined by the Board of any meals, lodgings, fuel or other allowances provided for such employee in lieu of money. Provided, however, that earnings in excess of Three Thousand, Six Hundred (\$3,600.00) Dollars in any one year shall not be considered in calculating the average prior service compensation of any member; and provided further, that earnings in excess of the sums specified by the municipality as provided in paragraph (c), subsection 1 of Section IV hereof, shall be excluded in calculating deposits and contributions to be made by reason of current service of each member employed by such municipality; and provided that in the event no maximum amount is so designated by the participating municipality, the maximum earnings which shall be considered for such purposes shall be limited to Three Thousand, Six Hundred (\$3,600.00) Dollars in any one year. As amended Acts 1955, 54th Leg., p. 44, ch. 33, § 1.

Emergency. Effective March 25, 1955.

## Revenue

Sec. IV. 1. (a) Each municipality hereafter electing to have one or more of its Departments participate in this System shall designate by ordinance whether the deposits to be made to the System on account of current service of the employees of each such participating Department shall be at the rate of five (5%) per centum of the earnings of the employees of such Department, or at the rate of three (3%) per centum of the earnings of such employees.

(b) Each member shall make deposits to the System at the rate of three (3%) per centum or five (5%) per centum as fixed by the employing municipality; and a participating municipality may increase the rate of deposits from three (3%) per centum to five (5%) per centum of earnings, but it may not reduce the rate of deposits, except as hereinafter provided.

(c) The employing municipality by ordinance may provide that earnings of its several employees in excess of Forty-two Hundred (\$4200.00) Dollars in any one year, or in excess of Forty-eight Hundred (\$4800.00) Dollars in any one year, or in excess of Six Thousand (\$6,000.00) Dollars in any one year shall not be considered in calculating the deposits and contributions to be made by reason of current service of its employee-members; and the maximum amount which shall be required to be paid in each month by the member as deposits shall exclude payments in excess of  $\frac{1}{12}$ th of the maximum annual earnings so designated by the participating municipality as provided in this paragraph; and in the event the municipality does not specify the maximum rate of earnings to be considered for deposits and contributions, as above provided, then in that event earnings of its member-employees in excess of Thirty-six Hundred (\$3600.00) Dollars in any one year shall not be considered.

(d) As to each and every payroll subsequent to the effective date of participation of the Department in which such person is employed, the employing municipality shall cause to be deducted from the compensa-

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

tion due to each member of the System in the employment of the municipality, the deposit which the member is required under this Act to pay to the System on account of such earnings.

(e) The Treasurer or proper disbursing officer of each participating municipality shall make deductions from salaries of members as provided in this Act, and shall transmit monthly, or at such time as the Board shall designate, a certified copy of the payroll, and the amount specified to be deducted shall be paid to the Board at its home office in cash and, after making a record of all receipts, the said Board shall deposit such receipts to the credit of the Employees Saving Fund, and such funds shall be deemed as appropriated for use according to the provisions of this Act.

(f) For the purpose of enabling the collection of members' deposits to be made as simple as possible, the City Clerk or City Secretary of each participating municipality shall within thirty (30) days after the beginning of each year, make up a list of all employees in its employ, who are members, set out their salaries by the month, and by the year, make a certificate to the correctness of this statement, and file the same with the Director. If additions to or deductions from this list should be made during the year, such additions or deductions shall likewise be certified.

(g) The records of the Board shall be open to public inspection and any member shall be furnished with a statement of the amount to the credit of his individual account upon written request, provided that the Board shall not be required to answer more than one such request of a member in any one year.

(h) Each member shall pay with the first payment to the Employees Saving Fund each year, and in addition thereto, a sum of One (\$1.00) Dollar, which amount shall be credited to the Expense Fund, said payments for the Expense Fund to be made to the Board in the same way as payments to the Employees Saving Fund are to be made as provided in this Act; provided, however, that if said payment for the Expense Fund is not made by a member with said first payment in any year, the Board may deduct the One (\$1.00) Dollar payment for the Expense Fund from such first payment.

(i) The rate of contribution required of members of the participating Departments of any participating municipality, except the police and fire departments, may be reduced from five (5%) per centum of earnings to three (3%) per centum of earnings, following an election by secret ballot, conducted under such rules and regulations as may be adopted and promulgated by the Board of Trustees of the System, provided the proposal to reduce the rate of contribution carries by affirmative vote of two-thirds of all the members of the affected participating Departments of such city; and provided further that the municipality by ordinance shall so provide. Such reduction in rate of contribution may be made effective at the end of the calendar year in which such election is held, provided that such election shall have been held and such ordinance adopted at least ninety (90) days before the end of said year, and written notice of such reduction shall have been given to the Director at least sixty (60) days before the end of such year. Nothing herein contained shall be construed as authorizing reduction of deposits by, or contributions on account of, members who are employed by the fire department or police department of a participating municipality.

2. (a) Each participating municipality shall make normal contributions to the System of a percentage of each payment of earnings made to each member by such municipality as hereinafter provided and shall make Prior Service contributions to this System of a percentage

of each payment of earnings made to each member by such municipality as hereinafter provided, subject, however, to the limitation that the total of such percentages shall not exceed seven and one-half (7½%) per cent, in the event the deposit rate required of employees of participating departments (other than fire and police) is five (5%) per cent of earnings; and subject to the limitation that the total of such percentages shall not exceed five and one-half (5½%) per cent, in the event the current service deposit rate prescribed for members of participating Departments (other than fire and police) is three (3%) per cent of earnings. The above percentages for each participating municipality shall be determined annually by the Board from the most recent data available at the time of such determination, and shall be certified to each participating municipality prior to the beginning of each calendar year.

(b) Each participating municipality shall make payment of normal contributions to the Municipality Current Service Accumulation Fund of the System each month of an amount equal to the per cent of the earnings during such month of the members of the System employed by such participating municipality, which per cent shall be calculated annually by the actuary and approved by the Board as being the necessary and required per cent: (1) to maintain a reserve in such municipality's account in the Municipality Current Service Accumulation Fund equal to the present and prospective liabilities of such municipality's account in the Municipality Current Service Accumulation Fund, and (2) to amortize over a period of five (5) years the amount by which the present and prospective liabilities of such municipality's account in the Municipality Current Service Accumulation Fund was greater or less than the amount in such account on January 1st of the year preceding the then current year. 'Present and prospective liabilities' as used herein shall mean, at any time, an amount equal to that amount in the Employees Saving Fund standing to the credit of a participating municipality's members at that time which will eventually be transferred to the Current Service Annuity Reserve Fund, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board.

(c) Each participating municipality shall make payment of Prior Service Contributions to the Municipality Prior Service Accumulation Fund of the System each month of an amount equal to a per cent of the earnings during such month of the members of the System employed by such participating municipality which per cent shall be calculated annually by the actuary and approved by the Board as being the necessary and required per cent, on the basis of regular interest, (1) to accumulate in such municipality's account in the Prior Service Accumulation Fund by or before the end of the twenty-fifth year of participation of such participating municipality, a sum equal to the reserve required, according to calculations made by the actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board at the end of such period, to meet all payments in full due after the end of such period under prior service annuities arising from prior service credits granted by such participating municipality then in effect or to become effective thereafter, and (2) to provide the amount required according to this Act to be paid during such period under prior service annuities arising from prior service credits granted by such participating municipality. If the per cent of earnings calculated as above for Prior Service Contributions when added to the per cent of earnings calculated according to the preceding paragraph for normal contributions

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

shall together exceed the maximum contributions prescribed in paragraph (a) of this subdivision, then in such event, the per cent of earnings for Prior Service Contributions shall be reduced a per cent which together with the percentage for normal contributions will equal the maximum contributions prescribed by paragraph (a) of this subsection.

(d) Each participating municipality shall make payment of expense contributions to the System each month at a rate per member of the System employed by such participating municipality as is set by the Board and certified to all participating municipalities prior to the beginning of each calendar year as being the necessary rate required to provide the excess, if any, of the estimated total administrative expense for the year above the anticipated revenue of the Expense Fund from other sources during the year adjusted for any surplus or deficiency existing at the beginning of the year; provided, however, that such rate shall never exceed Fifty (50¢) Cents per month per member.

(e) On or before the fifteenth day of each month, each participating municipality shall remit or cause to be paid to the System at its office the amounts of the normal contributions, Prior Service Contributions and Expense Contributions due for the preceding month as herein provided.

(f) Unless otherwise provided for and paid by a municipality all contributions of the municipality shall be paid out of the fund from which earnings are paid to the members or out of the General Fund of the Municipality. As amended Acts 1955, 54th Leg., p. 44, ch. 33, § 2.

Emergency. Effective March 25, 1955.





# TEXAS PROBATE CODE

ACTS 1955, CHAPTER 55, PAGE 88

Approved April 4, 1955

*An Act to establish and adopt a probate code for the State of Texas by revising and rearranging the statutes of this State which pertain to descent and distribution, wills, administration of decedents' estates, actions to declare heirship, guardianship, and other probate matters; and by making various changes in, omissions from, and additions to, such statutes; defining the meaning of certain words and terms used in the code; and fixing the effective date of the code; providing for the application of the code; validating certain proceedings had under existing and prior statutes; repealing statutes and all laws or parts of laws in conflict with the code; containing a severability clause; and declaring an emergency.*

*Be it enacted by the Legislature of the State of Texas:*

Chapter	Sec.
I. General Provisions .....	1
II. Descent and Distribution .....	37
III. Determination of Heirship .....	48
IV. Execution and Revocation of Wills .....	57
V. Probate, Grant of Administration, and Guardianship .....	72
VI. Special Types of Administration and Guardianship .....	131
VII. Executors, Administrators, and Guardians .....	178
VIII. Proceedings During Administration and Guardianship .....	248
IX. Specific Provisions Relating to Persons of Unsound Mind and Habitual Drunkards .....	415
X. Payment of Estates Into State Treasury .....	427

## CHAPTER I

### GENERAL PROVISIONS

**Sec.**

1. Short Title.
2. Effective Date and Application.
  - (a) Effective Date.
  - (b) Rights Not Affected.
  - (c) Subdivisions Have No Legal Effect.
  - (d) Severability.
  - (e) Nature of Proceeding.
3. Definitions and Use of Terms.
4. Jurisdiction of County Court With Respect to Probate Proceedings.
5. Jurisdiction of District Court With Respect to Probate Proceedings.
6. Venue for Probate of Wills and Administration of Estates of Decedents.
7. Venue for Appointment of Guardians.
8. Concurrent Venue and Transfer of Proceeding.
  - (a) Concurrent Venue.
  - (b) Proceedings in More Than One County.
  - (c) Transfer of Proceeding.
    - (1) Transfer for Want of Venue.
    - (2) Transfer for Convenience of the Estate.
  - (d) Validation of Prior Proceedings.
  - (e) Jurisdiction to Determine Venue.
9. Defects in Pleading.
10. Persons Entitled to Contest Proceedings.
11. Applications and Other Papers to be Filed With Clerk.
12. Costs and Security Therefor.
  - (a) Applicability of Laws Regulating Costs.
  - (b) Security for Costs Required, When.
13. Judge's Probate Docket.
14. Claim Docket.
15. Probate Minutes and Papers to be Recorded Therein.
16. Probate Fee Book.
17. Index.
18. Use of Records as Evidence.
19. Call of the Dockets.
20. Clerk May Set Hearings.
21. Trial by Jury.
22. Evidence.
23. Decrees and Signing of Minutes.
24. Enforcement of Orders.
25. Executions.
26. Attachments for Property.
27. Enforcement of Specific Performance.
28. Right of Appeal.
29. Appeal Bonds of Personal Representatives.
30. Certiorari.
31. Bill of Review.

## Sec.

- 32. Common Law Applicable.
- 33. Citation and Notice in Probate Matters.
  - (a) When Citation or Notice Necessary.
  - (b) Issuance by the Clerk.
  - (c) Contents of Citation and Notice.
  - (d) Where No Specific Form of Notice Is Prescribed.
  - (e) Service of Citation or Notice Upon Personal Representatives.
  - (f) Methods of Serving Citations and Notices.
    - (1) Personal Service.
    - (2) Posting.
    - (3) Publication.
  - (g) Return of Citation or Notice.
  - (h) Sufficiency of Return in Cases of Posting.
- 34. Service on Attorney.
- 35. Waiver of Notice.
- 36. Duty and Responsibility of Judge.

## Section 1. Short Title

This Act shall be known, and may be cited, as the "Texas Probate Code."

## § 2. Effective Date and Application

(a) **Effective Date.** This Code shall take effect and be in force on and after January 1, 1956. The procedure herein prescribed shall govern all probate proceedings in county and probate courts brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings in probate then pending, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(b) **Rights Not Affected.** No act done in any proceeding commenced before this Code takes effect, and no accrued right, shall be impaired by the provisions of this Code. When a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right. All things properly done under any previously existing statute prior to the taking effect of this Code shall be treated as valid. Where citation or other process or notice is issued and served in compliance with existing statutes prior to the taking effect of this Code, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing statutes in which to comply therewith.

(c) **Subdivisions Have No Legal Effect.** The division of this Code into Chapters, Parts, Sections, Subsections, and Paragraphs is solely for convenience and shall have no legal effect.

(d) **Severability.** If any provision of this Code, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable, and the Legislature hereby states that it would have enacted such portions of

the Code which can lawfully be given effect regardless of the possible invalidity of other provisions of the Code.

(e) **Nature of Proceeding.** The administration of the estate of a decedent or ward, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

### § 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

(a) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in the State of Texas for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of executors, administrators, and guardians.

(b) "Child" includes an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel, but, unless expressly so stated herein, does not include an unrecognized, illegitimate child of the father.

(c) "Claims" include liabilities of a decedent which survive, including taxes, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, estate and inheritance taxes, liabilities against the estate of a minor or incompetent, and debts due such estates.

(d) "Corporate fiduciary" means a trust company or bank having trust powers, existing or doing business under the laws of this State or of the United States which, under the Insurance Code of this State as same now exists or is hereafter amended, is authorized to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depository of money in court, without giving bond as such, and to become sole guarantor or surety in or upon any bond required to be given under the laws of this State.

(e) "County Court" and "Probate Court" are synonymous and denote county courts in the exercise of their probate jurisdiction and courts especially created and organized for the sole purpose of exercising probate jurisdiction.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction or a court especially created and organized for the sole purpose of exercising probate jurisdiction.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction and a court especially created and organized for the sole purpose of exercising probate jurisdiction.

(h) "Devise," when used as a noun, includes a testamentary disposition of real or personal property, or of both. When used as a verb, "devise" means to dispose of real or personal property, or of both, by will.

(i) "Devisee" includes legatee.

(j) "Distributee" denotes a person entitled to the estate of a decedent under a lawful will, or under the statutes of descent and distribution.

(k) "Docket" means the probate docket.

(l) "Estate" denotes the real and personal property of a decedent or ward, both as such property originally existed and as from time to time

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

changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

(m) "Exempt property" refers to that property of a decedent's estate which is exempt from execution or forced sale by the Constitution or laws of this State, and to the allowance in lieu thereof.

(n) "Habitual drunkard" and "common drunkard" are synonymous and denote one who, by reason of the habitual use of intoxicating liquor or of drugs, is incapable of taking care of himself or managing his property and financial affairs.

(o) "Heirs" denote those persons, including the surviving spouse, who are entitled under the statutes of descent and distribution to the estate of a decedent who dies intestate.

(p) "Incompetents" or "Incompetent persons" are persons non compos mentis, idiots, lunatics, insane persons, common or habitual drunkards, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(q) "Independent executor" means the executor appointed in a will which provides in substance that no action shall be had in the county court in the settlement of the estate other than the probating and recording of the will, and the return of an inventory, appraisalment, and list of claims of the estate, or which contains other provisions indicating an intention to appoint such an executor.

(r) "Interested persons" or "persons interested" means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of a minor or incompetent ward.

(s) "Legacy" includes any gift or devise by will, whether of personalty or realty. "Legatee" includes any person entitled to a legacy under a will.

(t) "Minors" are all persons under twenty-one years of age who have never been married, except persons under that age whose disabilities of minority have been removed generally, except as to the right to vote, in accordance with the laws of this State.

(u) "Minutes" means the probate minutes.

(v) "Mortgage" or "Lien" includes deed of trust, vendor's lien, chattel mortgage, mechanic's, materialman's or laborer's lien, judgment, attachment or garnishment lien, pledge by hypothecation, and Federal or State tax liens.

(w) "Net estate" means the real and personal property of a decedent, exclusive of homestead rights, exempt property, the family allowance and enforceable claims against the estate.

(x) "Person" includes natural persons and corporations.

(y) "Persons of unsound mind" are persons non compos mentis, idiots, lunatics, insane persons, and other persons who are mentally incompetent to care for themselves or to manage their property and financial affairs.

(z) "Personal property" includes interests in goods, money, choses in action, evidence of debts, and chattels real.

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, temporary administrator, guardian, and temporary guardian, together with their successors.

(bb) "Probate matter," "Probate proceedings," "Proceeding in probate," and "Proceedings for probate" are synonymous and include a matter or proceeding relating to guardianship, as well as a matter or proceeding relating to the estate of a decedent, and proceedings regarding incompetents.

(cc) "Property" includes both real and personal property.

(dd) "Real property" includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(ee) "Surety" includes both personal and corporate sureties.

(ff) "Will" includes codicil; it also includes a testamentary instrument which merely appoints an executor or guardian, and a testamentary instrument which merely revokes another will.

(gg) The singular number includes the plural; the plural number includes the singular.

(hh) The masculine gender includes the feminine and neuter.

**§ 4. Jurisdiction of County Court With Respect to Probate Proceedings**

The county court shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors and incompetents, grant letters testamentary and of administration and guardianship, settle accounts of personal representatives, and transact all business appertaining to estates subject to administration or guardianship, including the settlement, partition, and distribution of such estates. It may also appoint guardians for other persons where it is necessary that a guardian be appointed to receive funds from any governmental source or agency.

**§ 5. Jurisdiction of District Court With Respect to Probate Proceedings**

The district court shall have appellate jurisdiction and general control over the county court in all probate matters, and original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

**§ 6. Venue for Probate of Wills and Administration of Estates of Decedents**

Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

(a) In the county where the deceased resided, if he had a domicile or fixed place of residence in this State.

(b) If the deceased had no domicile or fixed place of residence in this State but died in this State, then either in the county where his principal property was at the time of his death, or in the county where he died.

(c) If he had no domicile or fixed place of residence in this State, and died outside the limits of this State, then in any county in this State where his nearest of kin reside.

(d) But if he had no kindred in this State, then in the county where his principal estate was situated at the time of his death.

(e) In the county where the applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or his estate from any governmental source or agency; provided, that unless the mother or father or spouse or adult child of the deceased is

applicant, citation shall be served personally on the living parents and spouses and adult children, if any, of the deceased person, or upon those who are alive and whose addresses are known to the applicant.

### § 7. Venue for Appointment of Guardians

A proceeding for the appointment of a guardian shall be begun:

(a) For the person and estate, or either, of a minor, in the county where his parents reside; provided such proceeding shall be begun:

(1) When the parents do not reside in the same county, then in the county where the parent having custody of the minor at the time resides.

(2) If only one parent is living, in the county where the surviving parent resides, if such parent has custody of the minor.

(3) If either or both parents are living, but no parent has custody of the minor, then in the county where such minor is found, or in the county where the principal estate of the minor is situated.

(4) If both parents are dead, but the minor was in the custody of a deceased parent, then in the county where the last surviving parent having custody resided.

(5) If both parents are dead, but, at the time of their death the minor was in the custody of a person other than a parent, then in the county where such minor is found, or in the county where his principal estate is situated.

(b) For the person and estate, or either, of an incompetent, in the county where such person resides, or where his principal estate is situated.

(c) Where a guardian has been appointed by will, in the county where the will has been admitted to probate, or in the county of the appointee's residence if he resides in Texas, or in the county in which the ward's principal estate is situated.

(d) For the estate of a person requiring the appointment of a guardian to receive funds from any governmental source or agency, in the county where such person resides.

### § 8. Concurrent Venue and Transfer of Proceedings

(a) **Concurrent Venue.** When two or more courts have concurrent venue of an estate, the court in which application for probate proceedings thereon is first filed shall have and retain jurisdiction of the estate to the exclusion of the other court or courts. The proceedings shall be deemed commenced by the filing of an application averring facts sufficient to confer venue; and the proceeding first legally commenced shall extend to all of the property of the estate. Provided, however, that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, shall be protected in such purchase unless the decree admitting the will to probate or granting administration in the prior proceeding shall be recorded in the office of the county clerk of the county in which such property is located.

(b) **Proceedings in More Than One County.** If proceedings for probate are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of venue in the county where first commenced. If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the original file to the proper county, and proceedings shall thereupon be had in the proper



county in the same manner as if the proceedings had originally been instituted therein.

**(c) Transfer of Proceeding**

**(1) Transfer for Want of Venue.** If it appears to the court at any time before the final decree that the proceeding was commenced in a court which did not have priority of venue over such proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county by transmitting to the proper court in such county the original file in such case, together with certified copies of all entries in the minutes theretofore made, and administration of the estate in such county shall be completed in the same manner as if the proceeding had originally been instituted therein; but, if the question as to priority of venue is not raised before final decree in the proceedings is announced, the finality of such decree shall not be affected by any error in venue.

**(2) Transfer for Convenience of the Estate.** If it appears to the court at any time before the final decree that it would be for the best interest of the estate, the court, in its discretion, may order the proceeding transferred to the proper court in any other county in this State.

**(d) Validation of Prior Proceedings.** When a proceeding is transferred to another county under any provision of this Section of this Code, all orders entered in connection with the proceeding shall be valid and shall be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this Code.

**(e) Jurisdiction to Determine Venue.** Any court in which there has been filed an application for proceedings in probate shall have full jurisdiction to determine the venue of such proceeding, and of any proceeding relating thereto, and its determination shall not be subject to collateral attack.

**§ 9. Defects in Pleading**

No defect of form or substance in any pleading in probate shall be held by any court to invalidate such pleading, or any order based upon such pleading, unless the defect has been timely objected to and called to the attention of the court in which such proceedings were or are pending.

**§ 10. Persons Entitled to Contest Proceedings**

Any person interested in an estate may, at any time before any issue in any proceeding is decided upon by the court, file opposition thereto in writing and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition, as in other suits.

**§ 11. Applications and Other Papers to be Filed With Clerk**

All applications for probate proceedings, complaints, petitions and all other papers permitted or required by law to be filed in the court in probate matters, shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number, and his official signature.

**§ 12. Costs and Security Therefor**

**(a) Applicability of Laws Regulating Costs.** The provisions of law regulating costs in ordinary civil cases shall apply to all matters in probate when not expressly provided for in this Code.

(b) **Security for Costs Required, When.** When any person other than the personal representative of an estate files an application, complaint, or opposition in relation to the estate, he may be required by the clerk to give security for the probable cost of such proceeding before filing the same; or any one interested in the estate, or any officer of the court, may, at any time before the trial of such application, complaint, or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the probable costs of such proceeding. The rules governing civil suits in the county court respecting this subject shall control in such cases.

### § 13. Judge's Probate Docket

The county clerk shall keep a record book to be styled "Judge's Probate Docket," and shall enter therein:

(a) The name of each person upon whose person or estate proceedings are had or sought to be had.

(b) The name of the executor or administrator or guardian of such estate or person, or of the applicant for letters.

(c) The date of the filing of the original application for probate proceedings.

(d) A minute of each order, judgment, decree, and proceeding had in each estate, with the date thereof.

(e) A number for each estate upon the docket in the order in which proceedings are commenced, and each paper filed in an estate shall be given the corresponding docket number of the estate.

### § 14. Claim Docket

The county clerk shall also keep a record book to be styled "Claim Docket," and shall enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator or guardian; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment.

### § 15. Probate Minutes and Papers to be Recorded Therein

The county clerk shall keep a record book styled "Probate Minutes," and shall enter therein in full all orders, judgments, decrees, and proceedings of the court, together with the following:

(a) All applications for the probate of wills and for the granting of administration or guardianship.

(b) All citations and notices, whether published or posted, with the returns thereon.

(c) All wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded.

- (d) All bonds and official oaths.
- (e) All inventories, appraisements, and lists of claims.
- (f) All exhibits and accounts.
- (g) All reports of hiring, renting, or sale.
- (h) All applications for sale or partition of real estate and reports of sale and of commissioners of partition.
- (i) All applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money.
- (j) All reports of lending or investing money.

**§ 16. Probate Fee Book**

The county clerk shall keep a record book styled "Probate Fee Book," and shall enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom the costs or fees are due, the date of the accrual of the same, the estate or party liable therefor, and the date on which any such costs or fees are paid.

**§ 17. Index**

The county clerk shall properly index each record book, and shall keep it open for public inspection, but shall not let it out of his custody.

**§ 18. Use of Records as Evidence**

The record books described in preceding Sections of this Code, or certified copies thereof, shall be evidence in any court of this State.

**§ 19. Call of the Dockets**

The judge of the court in which probate proceedings are pending, at such times as he shall determine, shall call the estates of decedents, minors and incompetents in their regular order upon both the probate and claim dockets and make such orders as shall be necessary.

**§ 20. Clerk May Set Hearings**

Whenever, on account of the county judge's absence from the county seat, or his being on vacation, disqualified, ill, or deceased, such judge is unable to designate the time and place for hearing a probate matter pending in his court, authority is hereby vested in the county clerk of the county in which such matter is pending to designate such time and place, entering such setting on the judge's docket and certifying thereupon why such judge is not acting by himself. If, after service of such notices and citations as required by law with reference to such time and place of hearing has been perfected, no qualified judge is present for the hearing, the same shall automatically be continued from day to day until a qualified judge is present to hear and determine the matter.

**§ 21. Trial by Jury**

There shall be no trial by jury in probate matters in the county court except in proceedings involving persons of unsound mind and habitual drunkards. In proceedings in the District Court, by appeal or otherwise, the parties shall be entitled to trial by jury as in other civil actions in the District Court.

## § 22. Evidence

In proceedings arising under the provisions of this Code, the rules relating to witnesses and evidence that govern in the District Court shall apply so far as practicable except that where a will is to be probated, and in other probate matters where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served, service may be had by posting notice of intention to take depositions for a period of ten days as provided in this Code governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of ten days, commission may issue for taking the depositions, and the judge may file cross-interrogatories where no one appears, if he so desires.

## § 23. Decrees and Signing of Minutes

All decisions, orders, decrees, and judgments of the county court in probate matters shall be rendered in open court except in cases where it is otherwise specially provided. The probate minutes shall be approved and signed by the judge on the first day of each month, except, however, that if the first day of the month falls on a Sunday, such approval shall be entered on the preceding or succeeding day.

## § 24. Enforcement of Orders

The county or probate judge may enforce obedience to all his lawful orders against executors, administrators and guardians by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, unless otherwise expressly so provided in this Code.

## § 25. Executions

Executions in probate matters shall be directed "to any sheriff or any constable within the State of Texas," made returnable in sixty days, and shall be attested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the District Court so far as applicable. Provided, however, that no execution directed to the sheriff or any constable of a specific county within this State shall be held defective if such execution was properly executed within such county by such officer.

## § 26. Attachments for Property

Whenever complaint in writing, under oath, shall be made to the county or probate judge by any person interested in the estate of a decedent, minor or incompetent that the executor or administrator or guardian is about to remove said estate, or any part thereof, beyond the limits of the State, such judge may order a writ to issue, directed "to any sheriff or any constable within the State of Texas," commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge shall make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the judge shall require, payable to the executor or administrator or guardian of such estate, conditioned for the payment of all damages and costs that shall be recovered for the wrongful suing out of such writ. Provided, however, that no writ of attachment directed to the sheriff or any

constable of a specific county within this State shall be held defective if such writ was properly executed within such county by such officer.

### **§ 27. Enforcement of Specific Performance**

When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the court of the county where the letters testamentary or of administration on the estate of the deceased obligor were granted, and cause the personal representative of such estate to be cited to appear at a date stated in the citation and show cause why specific performance of such bond or written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same cannot be filed; and if it cannot be so filed, the same or the substance thereof shall be set forth in the complaint. After the service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand specific performance thereof, a decree shall be made ordering the personal representative to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this Section, it shall refer to and identify the decree of the court authorizing it; and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same.

### **§ 28. Right of Appeal**

Any person who may consider himself aggrieved by any decision, order, decree, or judgment of the court shall have the right to appeal therefrom to the district court of the county. Pending appeals from orders or judgments appointing administrators or guardians or temporary administrators or guardians, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate. If on appeal from the county court, a different administrator or guardian is appointed, he shall be substituted in such suits.

### **§ 29. Appeal Bonds of Personal Representatives**

When an appeal is taken by an executor, administrator, or guardian, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

### **§ 30. Certiorari**

Any person interested in proceedings in probate may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward. Persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to apply for such revision and correction.

### **§ 31. Bill of Review**

Any person interested may, by a bill of review filed in the court in which the probate proceedings were had, have any decision, order, or judgment rendered by the court, or by the judge thereof, revised and corrected

on showing error therein; but no process or action under such decision, order or judgment shall be stayed except by writ of injunction, and no bill of review shall be filed after two years have elapsed from the date of such decision, order, or judgment. Persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to apply for a bill of review.

### § 32. Common Law Applicable

The rights, powers and duties of executors, administrators, and guardians shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State.

### § 33. Citation and Notice in Probate Matters

(a) **When Citation or Notice Necessary.** No person need be cited or otherwise given notice except in situations in which this Code expressly provides for citation or the giving of notice; provided, however, that even though this Code may not provide for citation or the giving of notice in a particular situation, the court may, in its discretion, require that notice be given.

(b) **Issuance by the Clerk.** The county clerk shall issue necessary notices, citations, writs and process in probate matters, without any order from the court, unless such order is required by a provision of this Code.

(c) **Contents of Citation and Notice.** Citations and all other forms of notice in probate matters shall be in writing, dated, and signed by the clerk or other person issuing them, and shall state substantially the nature of the proceeding which the party to be cited or otherwise notified is called upon to answer, and the time and place he is required to appear. All citations and notices in probate matters which are issued by the clerk, except those which are to be served by registered mail, shall be directed "to any sheriff or any constable within the State of Texas"; provided, however, that no citation or notice directed to the sheriff or any constable of a specific county within this State shall be held defective if such citation or notice is properly served within such county by such officer. Notices and citations issued by the clerk which are to be served by registered mail, and those which are not issued by the clerk, shall be directed to the person or persons to whom such notices or citations are required to be given; provided that, if such notices or citations are directed to the sheriff or constable commanding him to serve same, such service shall be valid and sufficient if so evidenced by the proper return of such officer.

(d) **Where No Specific Form of Notice Is Prescribed.** In all situations in which this Code requires that notice be given, or that a person be cited, and in which a specific method of giving such notice or of citing such person is not prescribed, such notice shall be given, or such person cited, in such manner as the Court, by written order, shall direct.

(e) **Service of Citation or Notice Upon Personal Representatives.** Except as otherwise expressly provided in this Code, where this Code provides for the citing of, or the giving of notice to, an executor, independent executor, administrator, temporary administrator, community administrator, guardian, or temporary guardian, the clerk shall serve such citation or notice by mailing a copy thereof by registered mail, stamped deliver to addressee only, with return receipt requested, addressed to the person who is to be cited or to whom notice is to be given. A copy of such citation or notice, together with the return receipt pertaining thereto, shall be

filed and recorded. If a citation or notice so mailed is returned undelivered, the clerk shall issue a new citation or notice, and such citation or notice shall be served by posting.

**(f) Methods of Serving Citations and Notices.**

**(1) Personal Service.** Where it is provided that personal service shall be had with respect to a citation or notice, such citation or notice must be served upon the party to be cited or notified, in person, by delivering to him a true copy of such citation or notice at least ten days before the return day thereof, exclusive of the day of service. If such citation or notice is returned with the notation that the person to be served cannot be found, the clerk shall issue a new citation or notice, and such citation or notice shall be served by publication.

**(2) Posting.** When citation or notice is required to be posted, it shall be posted at the courthouse door of the county in which the proceedings are pending, or at the place in or near the courthouse where public notices customarily are posted, for not less than ten days before the return day thereof, exclusive of the date of posting. The clerk shall deliver the original and a copy of such citation or notice to the sheriff or constable of the proper county who shall post said copy as herein prescribed and return the original to the clerk, stating in a written return thereon the time when and the place where he posted such copy. The date of posting shall be the date of service.

**(3) Publication.** When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the county in which the proceedings are pending, and said publication shall be not less than ten days before the return day thereof, exclusive of the date of publication. The date of publication which said newspaper bears shall be the date of service. Proof of publication shall be evidenced to the court by the affidavit of the publisher or that of an employee of the publisher, which affidavit shall show the date the issue of the newspaper bore, and have attached to or embodied therein a copy of the published notice or citation. If no newspaper is published in the county where citation or notice is to be had, service of such citation or notice shall be by posting.

**(g) Return of Citation or Notice.** All citations and notices served by personal service, by posting or by publication shall be returnable to the court from which issued on the first Monday after the service is perfected.

**(h) Sufficiency of Return in Cases of Posting.** In any probate matter where citation or notice is required to be served by posting, and such citation or notice is issued in conformity with the applicable provision of this Code, the citation or notice and the service and return thereof shall be sufficient and valid if any sheriff or constable posts a copy or copies of such citation or notice at the place or places prescribed by this Code on a day which is sufficiently prior to the return day named in such citation or notice for the period of time for which such citation or notice is required to be posted to elapse before the return day of such citation or notice, and the fact that such sheriff or constable makes his return on such citation or notice and returns same into court before the period of time for which such citation or notice is required to be posted elapses, shall not affect the sufficiency or validity of such citation or notice or the service or return thereof, even though such return is made, and such citation or notice is returned into court, on the same day it is issued.

**§ 34. Service on Attorney**

If any attorney shall have entered his appearance in writing for any party in any proceeding in probate, all notices required to be served on the party in such proceeding may be served on the attorney, and such service shall be in lieu of service upon the party for whom the attorney appears.

**§ 35. Waiver of Notice**

Any person legally competent who is interested in any hearing in a proceeding in probate may, in person or by attorney, waive in writing notice of such hearing. A guardian of the estate or a guardian ad litem may make such a waiver on behalf of his ward, and a trustee may make such a waiver on behalf of the beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof.

**§ 36. Duty and Responsibility of Judge**

It shall be the duty of the judge of each county court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court, guardians of the persons of wards, and other officers of the court, perform the duties enjoined upon them by law pertaining to such estates and wards. The judge shall annually examine into the condition of each of said estates, the well-being of each ward of the court, and the solvency of the bonds of personal representatives of estates and guardians of persons. He shall require such representatives or guardians, at any time he shall find that their bonds are not sufficient to protect such estate or wards, to execute new bonds in accordance with law. In each such case, he shall notify the personal representative or guardian, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the failure of the judge to use reasonable diligence in the performance of his duties, he shall be liable on his official bond to those damaged by such neglect.



**CHAPTER II**  
**DESCENT AND DISTRIBUTION**

Sec.

- 37. Passage of Title upon Intestacy and Under a Will.
- 38. Persons Who Take Upon Intestacy.
  - (a) Intestate Leaving No Husband or Wife.
  - (b) Intestate Leaving Husband or Wife.
- 39. No Distinction Because of Property's Source.
- 40. Inheritance By and From an Adopted Child.
- 41. Matters Affecting and Not Affecting the Right to Inherit.
  - (a) Persons Not in Being.
  - (b) Heirs of Whole and Half Blood.
  - (c) Aliens.
  - (d) Convicted Persons and Suicides.
- 42. Inheritance Rights of Illegitimate Children.
- 43. Determination of Per Capita and Per Stirpes Distribution.
- 44. Advancement Brought Into Hotchpotch.
- 45. Community Estate.
- 46. Joint Tenancies Abolished.
- 47. Passage of Title Upon Simultaneous Death.
  - (a) When Property Disposed of as if Each Survived.
  - (b) Disposal of Community Property.
  - (c) Survival of Beneficiaries.
  - (d) Joint Owners.
  - (e) Insured and Beneficiary.
  - (f) Instruments Providing Different Disposition.

**§ 37. Passage of Title upon Intestacy and Under a Will**

When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to the payment of the debts of the testator or intestate, except such as is exempted by law; and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exception aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with law.

**§ 38. Persons Who Take Upon Intestacy**

(a) **Intestate Leaving No Husband or Wife.** Where any person, having title to any estate, real, personal or mixed, shall die intestate, leaving no husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.
2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one

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

of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

**(b) Intestate Leaving Husband or Wife.** Where any person having title to any estate, real, personal or mixed, other than a community estate, shall die intestate as to such estate, and shall leave a surviving husband or wife, such estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased has neither surviving father nor mother nor surviving brothers or sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.

### § 39. No Distinction Because of Property's Source

There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof.

### § 40. Inheritance By and From an Adopted Child

For purposes of inheritance under the laws of descent and distribution, an adopted child shall be regarded as the child of the parent or parents by adoption, such adopted child and its descendants inheriting from and through the parent or parents by adoption and their kin the same as if such child were the natural legitimate child of such parent or parents

by adoption, and such parent or parents by adoption and their kin inheriting from and through such adopted child the same as if such child were the natural legitimate child of such parent or parents by adoption. The natural parent or parents of such child and their kin shall not inherit from or through said child, but said child shall inherit from and through its natural parent or parents. Nothing herein shall prevent any parent by adoption from disposing of his property by will according to law. The presence of this Section specifically relating to the rights of adopted children shall in no way diminish the rights of such children, under the laws of descent and distribution or otherwise, which they acquire by virtue of their inclusion in the definition of "child" which is contained in this Code.

#### **§ 41. Matters Affecting and Not Affecting the Right to Inherit**

(a) **Persons Not in Being.** No right of inheritance shall accrue to any persons other than to children or lineal descendants of the intestate, unless they are in being and capable in law to take as heirs at the time of the death of the intestate.

(b) **Heirs of Whole and Half Blood.** In situations where the inheritance passes to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part be of the half blood only, of the intestate, each of those of half blood shall inherit only half so much as each of those of the whole blood; but if all be of the half blood, they shall have whole portions.

(c) **Aliens.** In acquiring property by inheritance, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, or that he himself, is or has been an alien.

(d) **Convicted Persons and Suicides.** No conviction shall work corruption of blood or forfeiture of estate, except in the case of a beneficiary in a life insurance policy or contract who is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured, in which case the proceeds of such insurance policy or contract shall be paid as provided in the Insurance Code of this State, as same now exists or is hereafter amended; nor shall there be any forfeiture by reason of death by casualty; and the estates of those who destroy their own lives shall descend or vest as in the case of natural death.

#### **§ 42. Inheritance Rights of Illegitimate Children**

For the purpose of inheritance to, through, and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property, and the making of family allowances. Where a man, having by a woman a child or children shall afterwards intermarry with such woman, such child or children shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate.

#### **§ 43. Determination of Per Capita and Per Stirpes Distribution**

When the intestate's children, or brothers, sisters, uncles, and aunts, or any other relatives of the deceased standing in the first or same degree alone come into the distribution upon intestacy, they shall take per

capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead shall have right to distribution upon intestacy, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

#### § 44. Advancement Brought Into Hotchpotch

Where any of the heirs of a person dying intestate shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotch-potch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless proved to be an advancement. If an advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to had he survived the intestate, then the heir shall be charged only with such portion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited had there been no advancement.

#### § 45. Community Estate

Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. In every case, the community estate passes charged with the debts against it.

#### § 46. Joint Tenancies Abolished

Where two or more persons hold an estate, real, personal, or mixed, jointly, and one joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. Provided, however, that by an agreement in writing of joint owners of property, the interest of any joint owner who dies may be made to survive to the surviving joint owner or joint owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.

#### § 47. Passage of Title Upon Simultaneous Death

(a) **When Property Disposed of as if Each Survived.** When the title to property or the devolution thereof depends upon priority of death and there is no direct evidence that persons have died otherwise than

simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Section.

**(b) Disposal of Community Property.** When a husband and wife have died, leaving community property, and there is no direct evidence that they have died otherwise than simultaneously, one-half of all community property shall be distributed as if the husband had survived, and the other one-half thereof shall be distributed as if the wife had survived, except as provided in Subsection (e) of this Section.

**(c) Survival of Beneficiaries.** If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and there is no direct evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. Provided, however, if any interest in property is given alternatively to one of two or more beneficiaries, with the right of each to take being dependent upon his surviving the other or others, and all shall die, and there is no direct evidence that they have died otherwise than simultaneously, the property shall be divided into as many equal portions as there are beneficiaries, and those portions shall be distributed respectively to those who would have taken in the event that each beneficiary had survived.

**(d) Joint Owners.** If any stocks, bonds, bank deposits, or other intangible property shall be so owned that one of two joint owners is entitled to the whole on the death of the other, and there is no direct evidence that the joint owners shall have died otherwise than simultaneously, these assets shall be distributed one-half as if one joint owner had survived and the other one-half as if the other joint owner had survived. If there are more than two joint owners and there is no direct evidence that all have died otherwise than simultaneously, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner survived.

**(e) Insured and Beneficiary.** When the insured and the beneficiary in a policy of life or accident insurance have died and there is no direct evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

**(f) Instruments Providing Different Disposition.** When provision has been made in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation, for disposition of property different from the provisions of this Section, this Section shall not apply.

## CHAPTER III

**DETERMINATION OF HEIRSHIP**

Sec.

- 48. Actions to Declare Heirship. When and Where They May Be Instituted.
- 49. Who May Institute Action to Declare Heirship.
- 50. Notice.
- 51. Transfer of Action When Will Probated or Administration Granted.
- 52. Recorded Instruments as Prime Facie Evidence.
- 53. Evidence to be Reduced to Writing and Sworn to.
- 54. Judgment.
- 55. Effect of Judgment.
- 56. Filing of Certified Copy of Judgment.

**§ 48. Actions to Declare Heirship. When and Where They May Be Instituted**

When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the county court of the county in which such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the county court of the county in which any of the real property belonging to such estate is found, may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent, and actions therefor shall be known as actions to declare heirship.

**§ 49. Who May Institute Action to Declare Heirship**

Such action may be instituted and maintained in any of the instances enumerated above by any person or persons claiming to be the owner of the whole or a part of the estate of such decedent. In such a case a petition shall be filed in a proper court stating the name, time, and place of death and the names and residences of the heirs of the decedent, if known to the petitioner, and, if the time and place of death or the names and residences of all of the heirs of such decedent be not definitely known to such petitioner, then the petition shall set forth all of the material facts and circumstances within the knowledge or information of such petitioner, as may reasonably tend to show the time and place of death of the decedent, and the names and places of residence of the heirs, and the true share and interest of each petitioner, and of each heir, in the estate of such decedent. Such petition shall, so far as is known to any of the petitioners, contain a general description of all the real property of the decedent and a general description of all the personal property belonging to the estate of the decedent. Such petition shall be

supported by the affidavit of each petitioner to the effect that, in so far as is known to such petitioner, all the allegations of such petition are true in substance and in fact and that no such material fact or circumstance has, within the affiant's knowledge, been omitted from such petition. The unknown heirs of such decedent, all persons who are named in the petition as heirs of such decedent, and all persons who are, at the date of the filing of the petition, shown by the deed records of the county in which any of the real property described in such petition is situated to own any share or interest in any such real property, shall be made parties defendant in such action.

#### **§ 50. Notice**

Due notice of the filing of such petition shall be given to all defendants resident in this State by citation in the manner and for the length of time provided in this Code for personal service of citation. Non-resident defendants, and unknown heirs, shall be cited by publication, as in actions for partition and distribution of an estate.

#### **§ 51. Transfer of Action When Will Probated or Administration Granted**

If an administration upon the estate of any such decedent shall be granted in this State, or if the will of such decedent shall be admitted to probate in this State, after the institution of an action to declare heirship, the court in which such action is pending shall, by an order entered of record therein, transfer the cause to the court of the county in which such administration shall have been granted, or such will shall have been probated, and, thereupon, the clerk of the court in which such action was originally filed shall send to the clerk of the court named in such order, a certified transcript of all pleadings, docket entries, and orders of the court in such cause. The clerk of the court to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court, and shall docket such cause, and the same shall thereafter proceed as though originally filed in that court.

#### **§ 52. Recorded Instruments as Prima Facie Evidence**

Any statement of facts concerning any family history and showing who were the legal heirs of any deceased person shall be received in an action to declare heirship as prima facie evidence of the facts therein stated, when such statement is contained in either an affidavit or any instrument legally executed and acknowledged, and when such affidavit or instrument has been of record for five years or more in the deed records of any county in the State of Texas in which property affected by such statement is situated; but if there be any error in the statement of facts in such recorded affidavit or instrument, the true facts may be proved by any one interested in the proceeding in which said affidavit or instrument is offered in evidence.

#### **§ 53. Evidence to be Reduced to Writing and Sworn to**

All of the evidence admitted in an action to declare heirship shall be reduced to writing, and shall be subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court.

**§ 54. Judgment**

The judgment of the court in an action to declare heirship shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent, and shall state in what respects, if any, the evidence presented upon such hearing failed to develop such issues, or any of them; and all issues in the cause which are framed by the court, or under its directions, shall be embodied in the judgment.

**§ 55. Effect of Judgment**

As between the parties to an action to declare heirship who were personally served with citation or notice, and as to non-resident defendants and all bona fide purchasers of the property described in the judgment for value from them, or from any of them, such judgment shall be conclusive, and as to any and all other persons such judgment shall be prima facie evidence that the heirs of such decedent and their respective interests in the property described in such judgment are as therein stated; but such judgment shall not preclude any suit against the persons therein named as heirs of such decedent, or any one or more of them, based upon the allegations that such heir or heirs have received more than his or their proper and just share of the property of such decedent. Such judgment shall have the force and effect of a final judgment of such court; and any party or parties to such cause may appeal from such judgment in like manner and under the same conditions as is or shall be provided by law in other cases arising under the probate laws of this State.

**§ 56. Filing of Certified Copy of Judgment**

A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment is situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth therein.



CHAPTER IV

EXECUTION AND REVOCATION OF WILLS

Sec.

- 57. Who May Execute a Will.
- 58. Interests Which May Pass Under a Will.
- 59. Requisites of a Will.
- 60. Exception Pertaining to Holographic Wills.
- 61. Bequest to Witness.
- 62. Corroboration of Testimony of Interested Witness.
- 63. Revocation of Wills.
- 64. Capacity to Make a Nuncupative Will.
- 65. Requisites of a Nuncupative Will.
- 66. Posthumous Children.
- 67. After-Born or After-Adopted Children.
  - (a) Where a Child Was Living When Will Was Executed.
  - (b) Where No Child Was Living When Will Was Executed.
  - (c) Definition of "Children."
- 68. Prior Death of Legatee.
- 69. Voidness Arising From Divorce.
- 70. Provision in Will for Management of Separate Property.
- 71. Deposit of Will With Court During Testator's Lifetime.
  - (a) Deposit of Will.
  - (b) How Will Shall Be Enclosed.
  - (c) Index To Be Kept of All Wills Deposited.
  - (d) To Whom Will Shall Be Delivered.
  - (e) Proceedings Upon Death of Testator.
  - (f) Depositing Has No Legal Significance.
  - (g) Depositing Does Not Constitute Notice.

§ 57. Who May Execute a Will

Every person who has attained the age of nineteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.

§ 58. Interests Which May Pass Under a Will

Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title, and interest in possession, expectancy, reversion, or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments, or rents charged upon or issuing out of them, or shall have of, in or to any personal property whatever, including choses in action, subject to the limitations prescribed by law.

§ 59. Requisites of a Will

Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if

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

not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetimes of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this State, such acknowledgments and affidavits being evidenced by the certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said \_\_\_\_\_, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time nineteen years of age or over (or, being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

\_\_\_\_\_  
Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and acknowledged before me by the said \_\_\_\_\_, testator, and subscribed and sworn to before me by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_.  
(SEAL)

(Signed) \_\_\_\_\_  
(Official Capacity of Officer)

A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. In particular and without limiting the generality of the foregoing, a self-proved will may be contested, revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

#### § 60. Exception Pertaining to Holographic Wills

Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. Such

a will may be made self-proved at any time during the testator's lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least nineteen years of age when he executed it (or, if under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service); that he was of sound mind; and that he has not revoked such instrument.

#### **§ 61. Bequest to Witness**

Should any person be a subscribing witness to a will, and also be a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will.

#### **§ 62. Corroboration of Testimony of Interested Witness**

In the situation covered by the preceding Section, the bequest to the subscribing witness shall not be void if his testimony proving the will is corroborated by one or more disinterested and credible persons who testify that the testimony of the subscribing witness is true and correct, and such subscribing witness shall not be regarded as an incompetent or non-credible witness under Section 59 of this Code.

#### **§ 63. Revocation of Wills**

No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

#### **§ 64. Capacity to Make a Nuncupative Will**

Any person who is competent to make a last will and testament may dispose of his personal property by a nuncupative will made under the conditions and limitations prescribed in this Code.

#### **§ 65. Requisites of a Nuncupative Will**

No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his home or where he has resided for ten days or more next preceding the date of such will, except when the deceased is taken sick away from home and dies before he returns to such home; nor when the value exceeds Thirty Dollars, unless it be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

#### **§ 66. Posthumous Children**

When a testator shall have children born and his wife is enceinte, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same portion of the father's estate as such child would have been entitled to if the father had died intestate; toward which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament; provided, however, that where the surviving wife is the mother of all of the testator's children and said

surviving wife is the principal beneficiary in said testator's last will and testament to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions shall not apply or be considered in the construction of said last will and testament.

### § 67. After-Born or After-Adopted Children

(a) **Where a Child Was Living When Will Was Executed.** If a testator having a child or children born or adopted at the time of making his last will and testament shall, at his death, leave a child or children born or adopted after the making of such last will and testament, the child or children so after-born or after-adopted and pretermitted shall, unless provided for by settlement, succeed to the same portion of the testator's estate as they would have been entitled to if the testator had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament; provided, however, that where the surviving husband or wife is the father or mother of all of testator's children, exclusive of adopted children, and said surviving husband or wife is the principal beneficiary in said testator's last will and testament, to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Section shall not apply or be considered in the construction of said last will and testament.

(b) **Where No Child Was Living When Will Was Executed.** Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, either born to him or adopted by him, or shall leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born or after-adopted child, and shall be void, unless such child dies within one year after the death of the testator; provided, however, that where a surviving husband or wife is the father or mother of all of the testator's children, exclusive of adopted children, and said surviving husband or wife is the principal beneficiary in said testator's last will and testament, to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Section shall not apply or be considered in the construction of said last will and testament.

(c) **Definition of "Children."** As used in this Section and in the preceding Section, the term "children" includes descendants of whatever degree they may be, it being understood that they are counted only for the child they represent.

### § 68. Prior Death of Legatee

Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of such testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death, but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or

devisee in the same manner as if he had survived the testator and died intestate.

### **§ 69. Voidness Arising From Divorce**

If the testator is divorced after making a will, all provisions in the will in favor of the testator's spouse so divorced, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, shall be null and void and of no effect.

### **§ 70. Provision in Will for Management of Separate Property**

The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep testator's separate property together until each of the several distributees shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and subject to such other restrictions as are imposed by such will; provided, that any child or distributee entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate.

### **§ 71. Deposit of Will With Court During Testator's Lifetime**

(a) **Deposit of Will.** A will may be deposited by the person making it, or by another person for him, with the county clerk of the county of the testator's residence. Before accepting any will for deposit, the clerk may require such proof as shall be satisfactory to him concerning the testator's identity and residence. The clerk, on being paid a fee of Three Dollars therefor, shall receive and keep the will, and shall give a certificate of deposit for it. All wills so filed shall be numbered by the clerk in consecutive order, and all certificates of deposit shall bear like numbers respectively.

(b) **How Will Shall Be Enclosed.** Every will intended to be deposited with a county clerk shall be enclosed in a sealed wrapper, which shall have indorsed thereon "Will of," followed by the name, address and signature of the testator. The wrapper must also be indorsed with the name and current address of each person who shall be notified of the deposit of the will after the death of the testator.

(c) **Index To Be Kept of All Wills Deposited.** Each county clerk shall keep an index of all wills so deposited with him.

(d) **To Whom Will Shall Be Delivered.** During the lifetime of the testator, a will so deposited shall be delivered only to the testator, or to another person authorized by him by a sworn written order. Upon delivery of the will to the testator or to a person so authorized by him, the certificate of deposit issued for the will shall be surrendered by the person to whom delivery of the will is made; provided, however, that in lieu of the surrender of such certificate, the clerk may, in his discretion, accept and file an affidavit by the testator to the effect that the certificate of deposit has been lost, stolen, or destroyed.

(e) **Proceedings Upon Death of Testator.** If there shall be submitted to the clerk an affidavit to the effect that the testator of any will deposited with the clerk has died, or if the clerk shall receive any other notice or proof of the death of such testator which shall suffice to convince him that the testator is deceased, the clerk shall notify by registered mail with return receipt requested the person or persons named on the indorsement

of the wrapper of the will that the will is on deposit in his office, and, upon request, he shall deliver the will to such person or persons, taking a receipt therefor. If the notice by registered mail is returned undelivered, or if a clerk has accepted a will which does not specify on the wrapper the person or persons to whom it shall be delivered, the clerk shall open the wrapper and inspect the will. If an executor is named in the will, he shall be notified by registered mail, with return receipt requested, that the will is on deposit, and, upon request, the clerk shall deliver the will to the person so named as executor. If no executor is named in the will, or if the person so named is deceased, or fails to take the will within thirty days after the clerk's notice to him is mailed, or if notice to the person so named is returned undelivered, the clerk shall give notice by registered mail, with return receipt requested, to the devisees and legatees named in the will that the will is on deposit, and, upon request, the clerk shall deliver the will to any or all of such devisees and legatees.

**(f) Depositing Has No Legal Significance.** These provisions for the depositing of a will during the lifetime of a testator are solely for the purpose of providing a safe and convenient repository for such a will, and no will which has been so deposited shall be treated for purposes of probate any differently than any will which has not been so deposited. In particular, and without limiting the generality of the foregoing, a will which is not deposited shall be admitted to probate upon proof that it is the last will and testament of the testator, notwithstanding the fact that the same testator has on deposit with the court a prior will which has been deposited in accordance with the provisions of this Code.

**(g) Depositing Does Not Constitute Notice.** The fact that a will has been deposited as provided herein shall not constitute notice of any character, constructive or otherwise, to any person as to the existence of such will or as to the contents thereof.

CHAPTER V  
PROBATE, GRANT OF ADMINISTRATION, AND  
GUARDIANSHIP

PART 1. ESTATES OF DECEDENTS

Sec.

72. Proceedings Before Death.
73. Period for Probate.
74. Time to File Application for Probate or Administration.
75. Duty and Liability of Custodian of Will.
76. Persons Who May Make Application.
77. Order of Persons Qualified to Serve.
78. Persons Disqualified to Serve as Executor or Administrator.
79. Waiver of Right to Serve.
80. Prevention of Administration.
  - (a) Method of Prevention.
  - (b) Filing of Bond.
  - (c) Bond Secured by Lien.
81. Contents of Application for Letters Testamentary.
  - (a) For Probate of a Written Will.
  - (b) For Probate of Written Will Not Produced.
  - (c) Nuncupative Wills.
82. Contents of Application for Letters of Administration.
83. Procedure Pertaining to a Second Application.
  - (a) Where Original Application Has Not Been Heard.
  - (b) Where First Will Has Been Admitted to Probate.
  - (c) Where Letters of Administration Have Been Granted.
84. Proof of Written Will Produced in Court.
  - (a) Self-Proved Will.
  - (b) Attested Written Will.
  - (b) Holographic Will.
  - (c) Depositions if No Contest Filed.
85. Proof of Written Will Not Produced in Court.
86. Proof of Nuncupative Will.
  - (a) Notice and Proof of Nuncupative Will.
  - (b) Testimony Pertaining to Nuncupative Wills.
  - (c) When Value of Estate Exceeds Thirty Dollars.
87. Testimony to Be Committed to Writing.
88. Proof Required for Probate and Issuance of Letters Testamentary or of Administration.
  - (a) General Proof.
  - (b) Additional Proof for Probate of Will.
  - (c) Additional Proof for Issuance of Letters Testamentary.
  - (d) Additional Proof for Issuance of Letters of Administration.
  - (e) Proof Required Where Prior Letters Have Been Granted.
89. Action of Court on Probated Will.
90. Custody of Probated Wills.
91. When Will Not in Custody of Court, or Oral.
92. Period for Probate Does Not Affect Settlement.
93. Period for Contesting Probate.
94. No Will Effectual Until Probated.

## PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

Sec.

95. Probate of Foreign Will Accomplished by Filing and Recording.
96. Filing and Recording Foreign Will in Deed Records.
97. Copy of Will as Prima Facie Evidence of Probate.
98. Effect of Recording Copy of Will.
99. Recorded Copy of Will Serves as Notice of Title.
100. Contest of Foreign Wills or Testamentary Instruments.
101. Notice of Contest of Foreign Will.
102. Effect of Rejection of Will in Foreign Proceedings.
103. Original Probate of Foreign Will in This State.
104. Proof of Foreign Will in Original Probate Proceeding.
105. Executor of Will Probated in Another Jurisdiction.
106. When Foreign Executor to Give Bond.
107. Power of Sale of Foreign Executor or Trustee.

## PART 3. ESTATES OF MINORS AND INCOMPETENTS

108. Laws Applicable to Guardianships.
109. Persons Qualified to Serve as Guardians.
  - (a) Natural Guardians.
  - (b) Guardians of Orphans.
  - (c) Guardians for Persons Other Than Minors.
110. Persons Disqualified to Serve as Guardians.
111. Application for Appointment of Permanent Guardian.
112. Judge May Cause Application to be Filed.
113. Contest of Proceedings.
114. Facts Which Must Be Proved.
115. Jury Trial Not Prerequisite.
116. Only One Person to Be Appointed Guardian.
117. Appointment of Guardian by Will.
118. Selection of Guardian by Minor.
  - (a) When No Other Guardian Has Been Appointed.
  - (b) When Another Guardian Has Been Appointed.
119. Failure of Guardian to Qualify.
120. Term of Appointment of Guardian.
121. Removal of Guardianship to Another County May Be Had.
  - (a) Application for Removal of Guardianship.
  - (b) Sureties on Bond to Be Cited.
  - (c) When Guardian Shall Be Cited.
  - (d) Action of the Court.
  - (e) Transcript of Record.
  - (f) When Removal Shall Become Effective.
122. Continuation of Guardianship.
123. New Guardian May Be Appointed Upon Removal.
124. Appointment of Non-Resident Guardian.
125. Validation of Certain Letters of Guardianship Heretofore Issued.
126. Removal of Ward's Property from the State.
127. Delivery of Property.



**PART 4. CITATIONS AND NOTICES**

Sec.

128. Citations With Respect to Applications for Probate or for Issuance of Letters.
- (a) Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration.
  - (b) Where Application Is for Probate of a Written Will Not Produced or of a Nuncupative Will.
129. Validation of Prior Modes of Service of Citation.
130. Notice and Citation, Estates of Minors and Incompetents.
- (a) When Notice Issued.
  - (b) Service of Notice.
  - (c) Service of Citation.
  - (d) When Service of Citation Not Required.

**PART 1. ESTATES OF DECEDENTS**

**§ 72. Proceedings Before Death**

The probate of a will or administration of an estate of a living person shall be void; but the bonds of the executor or administrator shall not be void but may be recovered upon.

**§ 73. Period for Probate**

No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

**§ 74. Time To File Application for Probate or Administration**

All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate; provided, that this Section shall not apply in any case where administration is necessary in order to receive or recover funds or other property due the estate of the decedent.

**§ 75. Duty and Liability of Custodian of Will**

Upon receiving notice of the death of a testator, the person having custody of the testator's will shall deliver it to the clerk of the court which has jurisdiction of the estate. On sworn written complaint that any person has the last will of any testator, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited by personal service to appear before him and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless delivery is made or good cause shown, if satisfied that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall so deliver them. Any person refusing to deliver such will or papers shall also be liable to any person aggrieved for all damages sustained as a result of such refusal, which damages may be recovered in any court of competent jurisdiction.

**§ 76. Persons Who May Make Application**

An executor named in a will or any interested person may make application to the court of a proper county:

(a) For an order admitting a will to probate, whether the same is written or unwritten, in his possession or not, is lost, is destroyed, or is out of the State.

(b) For the appointment of the executor named in the will.

(c) For the appointment of an administrator, if no executor is designated in the will, or if the person so named is disqualified, or refuses to serve, or is dead, or resigns, or if there is no will. An application for probate may be combined with an application for the appointment of an executor or administrator; and a person interested in either the probate of the will or the appointment of a personal representative may apply for both.

**§ 77. Order of Persons Qualified to Serve**

Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

(a) To the person named as executor in the will of the deceased.

(b) To the surviving husband or wife.

(c) To the principal devisee or legatee of the testator.

(d) To any devisee or legatee of the testator.

(e) To the next of kin of the deceased, the nearest in order of descent first, and so on.

(f) To a creditor of the deceased.

(g) To any person of good character residing in the county who applies therefor.

(h) To any other person not disqualified under the following Section. When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

**§ 78. Persons Disqualified to Serve as Executor or Administrator**

No person is qualified to serve as an executor or administrator who is:

(a) A minor; or

(b) An incompetent; or

(c) A convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia; or

(d) A non-resident (natural person or corporation) of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or

(e) A corporation not authorized to act as a fiduciary in this State; or

(f) An alien disqualified by law; or

(g) A person whom the court finds unsuitable.

**§ 79. Waiver of Right to Serve**

The surviving husband or wife, or, if there be none, the heirs or any one of the heirs of the deceased to the exclusion of any person not equally

entitled, may, in open court, or by power of attorney duly authenticated and filed with the county clerk of the county where the application is filed, renounce his right to letters testamentary or of administration in favor of another qualified person, and thereupon the court may grant letters to such person.

### § 80. Prevention of Administration

(a) **Method of Prevention.** When application is made for letters of administration upon an estate by a creditor, and other interested persons do not desire an administration thereupon, they can defeat such application:

- (1) By the payment of the claim of such creditor; or
- (2) By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal, or barred by limitation; or
- (3) By executing a bond payable to, and to be approved by, the judge in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court in the county having jurisdiction of the amount.

(b) **Filing of Bond.** The bond provided for, when given and approved, shall be filed with the county clerk, and any creditor for whose protection it was executed may sue thereon in his own name for the recovery of his debt.

(c) **Bond Secured by Lien.** A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for herein.

### § 81. Contents of Application for Letters Testamentary

(a) **For Probate of a Written Will.** A written will shall, if within the control of the applicant, be filed with the application for its probate, and shall remain in the custody of the county clerk unless removed therefrom by order of a proper court. An application for probate of a written will shall state:

- (1) The name and domicile of each applicant.
- (2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.
- (3) Facts showing that the court has venue.
- (4) That the decedent owned real or personal property, or both, describing the same generally, and stating its probable value.
- (5) The date of the will, the name and residence of the executor named therein, if any, and if none be named, then the name and residence of the person to whom it is desired that letters be issued, and also the names and residences of the subscribing witnesses, if any.
- (6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.
- (7) The names, ages, marital status and residence, if known, of each heir and devisee, and their relationship to the decedent, if any.
- (8) That such executor or applicant, or other person to whom it is desired that letters be issued, is not disqualified by law from accepting letters.
- (9) Whether the decedent was ever divorced, and, if so, when and from whom.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by him, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

(b) **For Probate of Written Will Not Produced.** When a written will cannot be produced in court, in addition to the requirements of Subsection (a) hereof, the application shall state:

- (1) The reason why such will cannot be produced.
- (2) The contents of such will, as far as known.
- (3) The date of such will and the executor appointed therein, if any, and the names of the subscribing witnesses thereto, if any, as far as known.

(c) **Nuncupative Wills.** An application for probate of a nuncupative will shall contain all applicable statements above required with respect to written wills, and also:

- (1) The substance of the testamentary words spoken.
- (2) The names and residences of the witnesses thereto.

### § 82. Contents of Application for Letters of Administration

An application for letters of administration when no will, written or oral, is alleged to exist shall state:

- (a) The name and domicile of the applicant, relationship to the decedent, if any, and that the applicant is not disqualified by law to act as administrator.
- (b) The name and intestacy of the decedent, and the fact, time and place of death.
- (c) Facts necessary to show venue in the court to which the application is made.
- (d) The nature and probable value of the estate.
- (e) That a necessity exists for administration of the estate, alleging the facts which show such necessity.

### § 83. Procedure Pertaining to a Second Application

(a) **Where Original Application Has Not Been Heard.** If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate.

(b) **Where First Will Has Been Admitted to Probate.** If, after a will has been admitted to probate, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall determine whether the former probate should be set aside, and whether such other will should be admitted to probate, or whether the decedent died intestate.

(c) **Where Letters of Administration Have Been Granted.** Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and,

if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but, if no such executor be named in the will, or if the executor named be disqualified, be dead, or shall renounce the executorship, or shall neglect or otherwise fail or be unable to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, prior to the qualification of the executor or of the administrator with the will annexed, shall be as valid as if no such will had been discovered.

#### **§ 84. Proof of Written Will Produced in Court**

(a) **Self-Proved Will.** If a will is self-proved as provided in this Code, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

(b) **Attested Written Will.** If not self-proved as provided in this Code, an attested written will produced in court may be proved:

(1) By the sworn testimony or affidavit of one or more of the subscribing witnesses thereto, taken in open court.

(2) If all the witnesses are non-residents of the county, or those who are residents are unable to attend court, by the sworn testimony of any one or more of them by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if no opposition in writing to such will is filed on or before the date set for hearing thereon, then by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition in the manner provided herein, to the signature or the handwriting evidenced thereby of one or more of the attesting witnesses, or of the testator, if he signed the will; or, if it be shown under oath to the satisfaction of the court that, diligent search having been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

(3) If none of the witnesses is living, or if all of such witnesses are members of the armed forces of the United States of America or of any auxiliary thereof, or of the armed forces reserve of the United States of America or of any auxiliary thereof, or of the Maritime Service, and are beyond the jurisdiction of the court, by two witnesses to the handwriting of one or both of the subscribing witnesses thereto, or of the testator, if signed by him, and such proof may be either by sworn testimony or affidavit taken in open court, or by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if it be shown under oath to the satisfaction of the court that, diligent search having been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

(b) **Holographic Will.** If not self-proved as provided in this Code, a will wholly in the handwriting of the testator may be proved by two witnesses to his handwriting, which evidence may be by sworn testimony or affidavit taken in open court, or, if such witnesses are non-residents of the county or are residents who are unable to attend court, by deposi-

tion, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions.

**(c) Depositions if No Contest Filed.** If no contest has been filed, depositions for the purpose of establishing a will may be taken in the same manner as provided in this Code for the taking of depositions where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served; and, in such event, this Subsection, rather than the preceding portions of this Section which provide for the taking of depositions under the same rules as depositions in other civil actions, shall be applicable.

#### **§ 85. Proof of Written Will Not Produced in Court**

A written will which cannot be produced in court shall be proved in the same manner as provided in the preceding Section for an attested written will or an holographic will, as the case may be, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court; but, in addition thereto, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read it or heard it read.

#### **§ 86. Proof of Nuncupative Will**

**(a) Notice and Proof of Nuncupative Will.** No nuncupative will shall be proved within fourteen days after the death of the testator, or until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so.

**(b) Testimony Pertaining to Nuncupative Wills.** After six months have elapsed from the time of speaking the alleged testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof shall have been committed to writing within six days after making the will.

**(c) When Value of Estate Exceeds Thirty Dollars.** When the value of the estate exceeds Thirty Dollars, a nuncupative will must be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

#### **§ 87. Testimony to Be Committed to Writing**

All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed, and sworn to in open court by the witness or witnesses, and filed by the clerk.

#### **§ 88. Proof Required for Probate and Issuance of Letters Testamentary or of Administration**

**(a) General Proof.** Whenever an applicant seeks to probate a will or to obtain issuance of letters testamentary or of administration, he must first prove to the satisfaction of the court:

(1) That the person is dead, and that four years have not elapsed since his decease and prior to the application; and

(2) That the court has jurisdiction and venue over the estate; and

(3) That citation has been served and returned in the manner and for the length of time required by this Code; and

(4) That the person for whom letters testamentary or of administration are sought is entitled thereto by law and is not disqualified.

**(b) Additional Proof for Probate of Will.** To obtain probate of a will, the applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of executing the will, was at least nineteen years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries thereof, or of the Maritime Service of the United States, and was of sound mind; and

(2) If the will is not self-proved as provided by this Code, that the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will; and

(3) That such will was not revoked by the testator.

**(c) Additional Proof for Issuance of Letters Testamentary.** If letters testamentary are to be granted, it must appear to the court that proof required for the probate of the will has been made, and, in addition, that the person to whom the letters are to be granted is named as executor in the will.

**(d) Additional Proof for Issuance of Letters of Administration.** If letters of administration are to be granted, the applicant must also prove to the satisfaction of the court that there exists a necessity for an administration upon such estate.

**(e) Proof Required Where Prior Letters Have Been Granted.** If letters testamentary or of administration have previously been granted upon the estate, the applicant need show only that the person for whom letters are sought is entitled thereto by law and is not disqualified.

### § 89. Action of Court on Probated Will

Upon the completion of hearing of an application for the probate of a will, if the court be satisfied that such will should be admitted to probate, an order to that effect shall be entered. Certified copies of such will and of the probate of the same, or of the record thereof, and of the record of testimony, may be recorded in other counties, and may be used in evidence, as the original might be, on the trial of the same matter in any other court, when taken there by appeal or otherwise.

### § 90. Custody of Probated Wills

All original wills, together with the probate thereof, shall be deposited in the office of the county clerk of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed for inspection to another place upon order by the court where probated. If the court shall order an original will to be removed to another place for inspection, the person removing such original will shall give a receipt therefor, and the clerk of the court shall make and retain a copy of such original will.

### § 91. When Will Not in Custody of Court, or Oral

If for any reason a written will is not in the custody of the court, or if the will is oral, the court shall find the contents thereof by written order, and certified copies of same as so established by the court may be

recorded in other counties, and may be used in evidence, as in the case of certified copies of written wills in the custody of the court.

### § 92. Period for Probate Does Not Affect Settlement

Where letters testamentary or of administration shall have once been granted, any person interested in the administration of the estate may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed.

### § 93. Period for Contesting Probate

After a will has been admitted to probate, any interested person may institute suit in the proper court to contest the validity thereof, within two years after such will shall have been admitted to probate, and not afterward, except that any interested person may institute suit in the proper court to cancel a will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Provided, however, that persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to institute such contest.

### § 94. No Will Effectual Until Probated

Except as hereinafter provided with respect to foreign wills, no will shall be effectual for the purpose of proving title to, or the right to the possession of, any real or personal property disposed of by the will, until such will has been admitted to probate.

## PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

### § 95. Probate of Foreign Will Accomplished by Filing and Recording

When application is made for the probate of a will or testamentary instrument which has been probated according to the laws of any of the United States, or territories thereof, or the District of Columbia, or of any country out of the limits of the United States, a copy of such will or testamentary instrument and of the probate thereof, attested by the clerk of the court or by such other official as has custody of such will or testamentary instrument and is in charge of such probate records, with the seal of the court affixed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court that the said attestation is in due form, may be filed and recorded in the minutes of the court in this state having venue; and, when so filed and recorded, shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated in said court by order of the court, provided its validity may be contested in the manner and to the extent hereinafter provided.

### § 96. Filing and Recording Foreign Will in Deed Records

When any will or testamentary instrument conveying or in any manner disposing of land in this State has been duly probated according to the laws of any of the United States, or territories thereof, or the District of Columbia, or of any country out of the limits of the United States, a copy thereof and of its probate which bears the attestation, seal and certificate required by the preceding Section, may be filed and recorded in the deed records in any county of this State in which said real estate is situated,



in the same manner as deeds and conveyances are required to be recorded under the laws of this State, and without further proof or authentication; provided that the validity of such a will or testamentary instrument filed under this Section may be contested in the manner and to the extent hereinafter provided.

#### **§ 97. Copy of Will as Prima Facie Evidence of Probate**

A copy of such foreign will or testamentary instrument, and of its probate attested as provided above, together with the certificate that said attestation is in due form, shall be prima facie evidence that said will or testamentary instrument has been duly admitted to probate, according to the laws of the state, territory, district, or country wherein it has allegedly been admitted to probate, and shall be sufficient to authorize the same to be recorded in the proper county or counties in this State.

#### **§ 98. Effect of Recording Copy of Will**

Every such foreign will, or testamentary instrument, and the record of its probate, which shall be attested and proved, as hereinabove provided, and delivered to the clerk of the proper court in this State to be recorded, shall take effect and be valid and effectual as a deed of conveyance of all property in this State covered by said foreign will or testamentary instrument; and the record thereof shall have the same force and effect as the record of deeds or other conveyances of land from the time when such instrument is delivered to the clerk to be recorded, and from that time only.

#### **§ 99. Recorded Copy of Will Serves as Notice of Title**

The record of any such foreign will, or testamentary instrument, and of its probate, duly attested and proved and duly filed in the proper county, shall be taken and held as notice to all persons of the existence of such will or testamentary instrument, and of the title or titles conferred thereby.

#### **§ 100. Contest of Foreign Wills or Testamentary Instruments**

A foreign will or testamentary instrument offered for filing and recording may be contested only upon the ground that the conditions of this Code are not met, or that the will has been finally rejected from probate in this State in another proceeding; but the filing and recording of a will or testamentary instrument as herein authorized shall be set aside upon proof that probate or establishment of the will or testamentary instrument has been set aside in the jurisdiction where the testator died domiciled, if, within two years after such filing and recording in this State, application is made in this State to set aside such probate upon such ground, or verified notice that proceedings have been taken to contest the will in the jurisdiction where the testator died domiciled is filed and recorded in the proper county in this State.

#### **§ 101. Notice of Contest of Foreign Will**

If within two years after a foreign will or other testamentary instrument has been filed and recorded in this State, verified notice that proceedings have been taken to contest the will in the foreign jurisdiction where the will or other testamentary instrument was probated, is filed and recorded, the force and effect of the filing and recording of the will or other testamentary instrument shall cease until verified proof is filed and

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

recorded that the foreign proceedings have been terminated in favor of the will or other testamentary instrument, or that such proceedings were never actually taken.

#### **§ 102. Effect of Rejection of Will in Foreign Proceedings**

Final rejection of a will or other testamentary instrument from probate or establishment in a foreign jurisdiction shall be conclusive in this State, except where the will or other testamentary instrument has been rejected solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State, in which case the will or testamentary instrument may nevertheless be admitted to probate or continue to be effective in this State.

#### **§ 103. Original Probate of Foreign Will in This State**

Original probate of the will of a testator who died domiciled outside this State which, upon probate, may operate upon any property in this State, and which is valid under the laws of this State, may be granted in the same manner as the probate of other wills is granted under this Code, if the will does not stand rejected from probate or establishment in the jurisdiction where the testator died domiciled, or if it stands rejected from probate or establishment in the jurisdiction where the testator died domiciled solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State. The court may delay passing on the application for probate of a foreign will pending the result of probate or establishment, or of a contest thereof, at the domicile of the testator.

#### **§ 104. Proof of Foreign Will in Original Probate Proceeding**

If a testator dies domiciled outside this State, a copy of his will, authenticated in the manner required by this Code, shall be sufficient proof of the contents of the will to admit it to probate in this State if no objection is made thereto. This Section does not authorize the probate of any will which would not otherwise be admissible to probate, or, in case objection is made to the will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required, except that the original will need not be produced unless the court so orders.

#### **§ 105. Executor of Will Probated in Another Jurisdiction**

When a will or other testamentary instrument has been admitted to probate in any state of the United States, or in any of territories thereof, or in the District of Columbia, or in any country out of the limits of the United States, and the executor named in such will or other testamentary instrument has qualified, and a duly authenticated copy of such will and of the probate thereof, and of the letters of such executor, has been filed and recorded in a proper county in this state under the provisions hereof, and such executor files application in the proper court for letters testamentary, such letters shall be granted to him, if he is qualified to serve in such capacity, and an order to that effect shall be entered as in other cases; and if letters of administration have previously been granted by such court in this state to any person other than such foreign executor, such letters shall be revoked upon the application of such executor after personal service of citation upon the person to whom such letters were granted.

#### **§ 106. When Foreign Executor to Give Bond**

When letters are revoked as provided in the preceding Section, the foreign executor shall be required to give bond as in other cases, not-

withstanding any provision to the contrary in the will appointing him, and the order revoking the former letters shall not take effect until such foreign executor has given bond and qualified in accordance with law.

### § 107. Power of Sale of Foreign Executor or Trustee

When by any foreign will, or other testamentary instrument, filed and recorded in this state in the manner provided herein, power is given an executor or trustee to sell any real or personal property situated in this state, no order of a court of this state shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this state, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction.

## PART 3. ESTATES OF MINORS AND INCOMPETENTS

### § 108. Laws Applicable to Guardianships

The provisions, rules, and regulations which govern estates of decedents shall apply to and govern guardianships, whenever the same are applicable and are not inconsistent with any provision of this Code.

### § 109. Persons Qualified to Serve as Guardians

(a) **Natural Guardians.** If the parents live together, the father is the natural guardian of the person of the minor children by the marriage. If one parent is dead, the survivor is the natural guardian of the person of the minor children. The natural guardian is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered.

(b) **Guardians of Orphans.** These rules shall govern as to orphans who are minors:

(1) If the last surviving parent has appointed no guardian, the nearest ascendant in the direct line of such minor is entitled to guardianship of both the person and estate of such minor.

(2) If there be more than one ascendant in the same degree in the direct line, they are equally entitled. The guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.

(3) If the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin. If there be two or more in the same degree, the guardianship shall be given to one or the other, according to circumstances, only the best interest of the orphan being considered.

(4) If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint a qualified person to be such guardian.

(c) **Guardians for Persons Other Than Minors.** If a person is an incompetent, or one for whom it is necessary that a guardian be appointed to receive funds due from any governmental source, these rules shall govern:

(1) If such person has a spouse who is not disqualified, such spouse shall be entitled to the guardianship in preference to any other person.

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

(2) If there be no qualified spouse, the nearest of kin to such person, who is not disqualified, or in case of refusal by such spouse or nearest of kin to serve, then any other qualified person shall be entitled to the guardianship.

(3) Where two or more persons are equally entitled, the guardianship shall be given to one or the other, according to the circumstances, only the best interest of the ward being considered.

### **§ 110. Persons Disqualified to Serve as Guardians**

The following persons shall not be appointed guardians:

- (a) Minors.
- (b) Persons whose conduct is notoriously bad.
- (c) Incompetents.

(d) Those who are themselves parties, or whose father or mother is a party to a lawsuit on the result of which the welfare of the person for whom, or for whose estate, a guardian is to be appointed, may depend.

(e) Those who are indebted to the person for whom or for whose estate a guardian is to be appointed, unless they pay the debt prior to the appointment, or who are asserting any claim to any property, real or personal, adverse to the person for whom, or for whose estate, the appointment is sought.

(f) Those who are unable to read and write the English language.

(g) Aliens disqualified by law.

(h) Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate.

### **§ 111. Application for Appointment of Permanent Guardian**

A proceeding for the appointment of a guardian shall be begun by written application filed in the court of the county having venue thereof. Any person may make such application. Such application shall state:

(a) The name, sex, date of birth if a minor, and residence, of the person for whom the appointment of a guardian is sought; and

(b) If a minor, the names of the parents and next of kin of such persons, and whether either or both of the parents are deceased; and

(c) A general description of the property comprising such person's estate, if guardianship of the estate is sought; and

(d) The facts which require that a guardian be appointed; and

(e) The name, relationship, and address of the person whom the applicant desires to have appointed as guardian; and

(f) Whether guardianship of the person and estate, or of the person or of the estate, is sought; and

(g) Such other facts as show that the court has venue over the proceeding.

### **§ 112. Judge May Cause Application to be Filed**

Whenever it comes to the knowledge of the county judge that any person whose legal domicile is in his county, or who is found therein, is a minor, a person of unsound mind, or an habitual drunkard, and is without a guardian of his person or of his estate within this State, and that there is probable cause for the exercise of his jurisdiction, he may cause

proper proceedings to be commenced and application to be made as provided in the preceding Section for the appointment of a guardian of the person and of the estate of such person, or of either. Upon the filing of such application, process shall be issued and served as hereinafter provided.

### **§ 113. Contest of Proceedings**

Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he deems beneficial to the ward.

### **§ 114. Facts Which Must Be Proved**

Before appointing a guardian, the court must find:

(a) That the person for whom a guardian is to be appointed is either a minor, a person of unsound mind, an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds due such person from any governmental source. In the last case, a certificate of the executive head, or his representative, of the bureau, department, or agency of the government through which such funds are to be paid, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due such person, shall be prima facie evidence of the necessity for such appointment.

(b) That the court has venue of the case.

(c) That the person to be appointed guardian is not disqualified to act as such and is entitled to be appointed; or, in case no person who is entitled to appointment applies for it, that the person appointed is a proper person to act as such guardian.

(d) That the rights of persons or property will be protected by the appointment of a guardian.

### **§ 115. Jury Trial Not Prerequisite**

A jury trial, verdict, and judgment that a person is of unsound mind or an habitual drunkard shall not be prerequisite to an appropriate finding and adjudication by the court and appointment of a guardian for the person alleged to be of unsound mind or an habitual drunkard; nor shall it be necessary that such person be present at the trial.

### **§ 116. Only One Person to Be Appointed Guardian**

Only one person can be appointed as guardian of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so; but nothing herein shall be held to prohibit the joint appointment of a husband and wife, or of co-guardians duly appointed under the laws of another state, territory, or country, or of the District of Columbia.

### **§ 117. Appointment of Guardian by Will**

The surviving parent of a minor may, by will or written declaration, appoint any qualified person to be guardian of the person of his or her children after the death of such parent; and, if not disqualified, such person shall also be entitled to be appointed guardian of their estate after the death of such parent, upon compliance with the provisions of this Code.

**§ 118. Selection of Guardian by Minor**

(a) **When No Other Guardian Has Been Appointed.** When an application has been filed for the guardianship of the person or estate, or of both, of a minor who has attained the age of fourteen years, such minor may, by writing filed with the clerk, make choice of the guardian, subject to the court's approval of such choice.

(b) **When Another Guardian Has Been Appointed.** A minor upon attaining the age of fourteen years may select another guardian either of his person or estate, or both, if such minor has a guardian appointed by the court, or if, having a guardian appointed by will or written declaration of the parent of such minor, such last named guardian dies, resigns, or is removed from guardianship; and the court shall, if satisfied that the person selected is suitable and competent, make such appointment and revoke the letters of guardianship to the former guardian. Such selection shall be made in open court, in person or by attorney, by making application therefor.

**§ 119. Failure of Guardian to Qualify**

If a person appointed guardian fails to qualify as such according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead, upon application, but without further notice or citation.

**§ 120. Term of Appointment of Guardian**

Unless sooner discharged according to law, a guardian remains in office until the estate is closed in accordance with the provisions of this Code, as hereinafter set out.

**§ 121. Removal of Guardianship to Another County May Be Had**

(a) **Application for Removal of Guardianship.** When a guardian, or any other person, desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking authority to do so, and shall state in such application his reason for desiring such removal.

(b) **Sureties on Bond to Be Cited.** Upon the filing of such application, the sureties upon the bond of such guardian shall be cited by personal service to appear and show cause why such application should not be granted.

(c) **When Guardian Shall Be Cited.** If the application for removal is filed by any person other than the guardian, the guardian also shall be cited by personal service to appear and show cause why such application should not be granted.

(d) **Action of the Court.** Upon the hearing of the application, if no good cause be shown to the contrary, and if it appears that the removal of the guardianship would be to the best interest of the ward, the court shall enter an order authorizing such removal upon the payment on behalf of the estate of all costs that have accrued.

(e) **Transcript of Record.** When such order of removal has been made, the clerk shall record all papers of the guardianship required to be recorded that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judg-

ments, and proceedings in such guardianship; and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the county clerk of the county to which such guardianship has been ordered removed.

(f) **When Removal Shall Become Effective.** The order removing a guardianship shall not take effect until such transcript has been filed in the office of the county clerk of the county to which such guardianship has been ordered removed, and until a certificate of such fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

### **§ 122. Continuation of Guardianship**

When a guardianship has been removed from one county to another in accordance with the foregoing provisions of this Code, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.

### **§ 123. New Guardian May Be Appointed Upon Removal**

If it appears to the court that the removal of the guardianship would be to the best interest of the ward, but that, by virtue of such removal, it will be unduly expensive to the estate, or unduly inconvenient, for the guardian of the estate to continue to serve in such capacity, the court may in its order of removal, revoke the letters of guardianship and appoint a new guardian. In such event, the former guardian shall account for and deliver the estate as is provided in this Code in cases where guardians resign.

### **§ 124. Appointment of Non-Resident Guardian**

A non-resident or non-residents of Texas, being natural persons or corporations, resident of another state or of the District of Columbia, or of any territory, of any other nation or country, regardless of age, sex, relationship, or legal status, may be appointed and qualified as guardian, or co-guardian of his or its or their non-resident ward's estate situated in Texas in the same manner and by the same procedure provided in this Code for the appointment and qualification of a resident of this State as guardian of the estates of minors, persons of unsound mind, or habitual drunkards; provided that, by proceedings in and decree or decrees of a court of competent jurisdiction in another state, the District of Columbia, a territory, or another nation or country, of his or its or their residence, such non-resident applicant or applicants shall have been previously duly appointed and are still qualified as guardian, co-guardians, tutor, curator, committee, or fiduciary legal representative by whatever name known in such foreign jurisdiction, of the property or estate of his or its or their ward situated within the jurisdiction of such foreign court, whether such ward be a minor, a person of unsound mind, or an habitual drunkard; and provided further that, with his or its or their written application for appointment in the county court of any county in this state where all or part of such ward's estate is situated in this state, such non-resident applicant or applicants file also a full and complete transcript of the proceedings from the records of the court in which he or it or they were appointed in the jurisdiction of his or its or their residence, evidencing his or its or their due appointment and qualification as such guardian, co-guardians, tutor, curator, committee, or other fiduciary legal repre-

sentative, of his or its or their ward's property or estate, which transcript shall be certified to and attested by the clerk of such foreign court, if there be a clerk, and, if there be no clerk, then by the officer of said court charged by law with the custody of the records thereof, under the seal of such court, if there be a seal, to which transcript shall be attached the certificate of the judge, chief justice or presiding magistrate, as the case may be, of such foreign court to the effect that the said attestation of such transcript by the clerk or legal custodian of the court records is in due form; and provided further that, without the necessity of notice or citation of any character, an order of appointment be made and entered and that such non-resident applicant or applicants thus appointed, qualify by making and filing oath and bond, subject to the court's approval in all respects the same as required of residents thus appointed, whereupon the clerk shall issue letters of guardianship to such non-resident guardian or co-guardians.

#### **§ 125. Validation of Certain Letters of Guardianship Heretofore Issued**

All present existing letters of guardianship heretofore issued to non-resident guardians with or without the procedure, in whole or in part, and with or without notices and citations required in cases of resident guardians, are hereby validated as of their respective dates, in so far as the absence of such procedure, notices, and citations are concerned, as are also all otherwise valid conveyances, mineral leases, and other acts of such guardians so qualified and acting in connection therewith under supporting orders of county and probate courts of this state; provided, however, that this provision shall not be applicable to any letters, conveyance, lease, or other act of such guardian which is involved in any lawsuit pending in this state on the effective date of this Code wherein the absence of such procedure or of such notices or citations is an issue.

#### **§ 126. Removal of Ward's Property from the State**

Upon the recovery of the property of the ward, if it be personal property, any non-resident guardian, whether qualified under provisions of this Code or not, may remove the same out of the state, unless such removal would conflict with the tenure of such property, or with the terms and limitations under which it is held; but there shall be no removal from the state of any of such property until all debts known to exist against the estate in this state have been paid, or until the payment of such debts has been secured by bond payable to and approved by the judge of the court in which the proceedings are pending in this state.

#### **§ 127. Delivery of Property**

Any resident executor, administrator, or guardian, having any of the estate of a ward, may be ordered by the court to deliver the same to a duly qualified and acting non-resident guardian of such ward.

### **PART 4. CITATIONS AND NOTICES**

#### **§ 128. Citations With Respect to Applications for Probate or for Issuance of Letters**

(a) **Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration.** When an application for the probate of a written will produced in court, or for letters of administra-



tion, is filed with the clerk, he shall issue a citation to all parties interested in such estate, which citation shall be served by posting and shall state:

- (1) That such application has been filed, and the nature of it.
- (2) The name of the deceased and of the applicant.
- (3) The time when such application will be acted upon.

(4) That all persons interested in the estate should appear at the time named therein and contest said application, should they desire to do so.

**(b) Where Application Is for Probate of a Written Will Not Produced or of a Nuncupative Will.** When the application is for the probate of a nuncupative will, or of a written will which cannot be produced in court, the clerk shall issue a citation to all parties interested in such estate, which citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon. If the heirs of the testator be residents of this state, and their residence be known, the citation shall be served upon them by personal service. Service of such citation may be made by publication in the following cases:

- (1) When the heirs are non-residents of this state; or
- (2) When their names or their residences are unknown; or
- (3) When they are transient persons.

**(c) No Action Until Service Is Had.** No application for the probate of a will or for the issuance of letters shall be acted upon until service of citation has been made in the manner provided herein.

### **§ 129. Validation of Prior Modes of Service of Citation**

(a) In all cases where written wills produced in court have been probated prior to June 14, 1927, after publication of citation as provided by the then Article 28 of the Revised Civil Statutes of Texas (1925), without service of citation, the action of the courts in admitting said wills to probate is hereby validated in so far as service of citation is concerned.

(b) In all cases where written wills produced in court have been probated or letters of administration have been granted prior to May 18, 1939, after citation, as provided by the then Article 3334, Title 54, of the Revised Civil Statutes of Texas (1925), without service of citation as provided for in the then Article 3336, Title 54, of the Revised Civil Statutes of Texas (1925) as amended by Acts 1935, 44th Legislature, page 659, Chapter 273, Section 1, such service of citation and the action of the court in admitting said wills to probate and granting administration upon estates, are hereby validated in so far as service of citation is concerned.

(c) In all cases where written wills have been probated or letters of administration granted, prior to June 12, 1941, upon citation or notice duly issued by the clerk in conformance with the requirements of the then Article 3333 of Title 54 of the Revised Civil Statutes of Texas (1925), as amended, but not directed to the sheriff or any constable of the county wherein the proceeding was pending, and such citation or notice having been duly posted by the sheriff or any constable of said county and returned for or in the time, manner, and form required by law, such citation or notice and return thereof and the action of the court in admitting said wills to probate or granting letters of administration upon estates, are hereby validated in so far as said citation or notice, and the issuance, service and return thereof are concerned.

**§ 130. Notice and Citation, Estates of Minors and Incompetents**

(a) **When Notice Issued.** Upon the filing of an application for appointment of a guardian, the clerk shall issue a notice setting forth that such application has been filed for the guardianship of the person or estate, or both, as the case may be, of the person for whom such guardian is sought, naming such person, and stating the nature of the disability, and by whom the application is made; which notice shall cite all persons interested in the welfare of such person to appear at the time and place stated therein, and contest such application, if they so desire.

(b) **Service of Notice.** The notice shall be served by posting, and the sheriff or other officer posting the same shall return the original, signed officially, stating thereon in writing the time and place when and where he posted said copy.

(c) **Service of Citation.** Except as hereinafter provided, minors who have attained the age of fourteen years, persons alleged to be of unsound mind or habitual drunkards, and persons for whom it is alleged to be necessary to have a guardian appointed to receive funds from any governmental source or agency shall be personally served with citation to appear and answer the application for the appointment of a guardian.

(d) **When Service of Citation Not Required.** Minors who have attained the age of fourteen years may, in person or by attorney, by writing filed with the clerk, waive the issuance and personal service of such citation. No citation need be issued or served if it is represented under oath in the application that, within six months prior to filing such application, the person for whom or for whose estate such guardian is sought has been adjudged by a court of competent jurisdiction in this State, after due notice, to be a person of unsound mind or an habitual drunkard.

## CHAPTER VI

**SPECIAL TYPES OF ADMINISTRATION AND  
GUARDIANSHIP****PART 1. TEMPORARY ADMINISTRATION IN THE INTEREST OF  
(A) ESTATES OF DECEDENTS, AND (B) PERSONS OR  
ESTATES OF MINORS AND INCOMPETENTS**

Sec.

## 131. Procedure.

- (a) Necessity of Appointment.
- (b) Manner of Appointment.
- (c) Perpetuation of Appointment.
- (d) Citation Relative to Perpetuation.
- (e) Contest.

## 132. Temporary Administration Pending Contest of a Will or Administration.

- (a) Appointment of Temporary Administrator.
- (b) Additional Powers Relative to Claims.

## 133. Powers of Temporary Appointees.

- (a) Temporary Administrators.
- (b) Temporary Guardianships.

## 134. Accounting.

## 135. Closing Temporary Administration or Guardianship.

**PART 2. RECEIVERSHIP FOR MINORS AND INCOMPETENTS**

## 136. Receivership.

- (a) Appointment of Receiver.
- (b) Expenditures by the Receiver.
- (c) Investments, Loans and Contributions by the Receiver.
- (d) Receiver's Expenses, Account, and Compensation.
- (e) Closing Receivership.
- (f) Action of the Judge.
- (g) Recordation of Proceedings.

**PART 3. SMALL ESTATES**

## 137. Collection of Small Estates Upon Affidavit.

## 138. Effect of Affidavit.

## 139. Application for Order of No Administration.

## 140. Hearing and Order Upon the Application.

## 141. Effect of Order.

## 142. Proceeding to Revoke Order.

## 143. Summary Proceedings for Small Estates After Personal Representative Appointed.

## 144. Payment of Small Claims Without Guardianship.

- (a) To Residents.
- (b) To Non-residents.
- (c) When the Deposit Is Not Withdrawn by Another Person.

## PART 4. INDEPENDENT ADMINISTRATION

- Sec.  
145. Independent Administration.  
146. Applicability of this Code to Independent Executors.  
147. Enforcement of Claims by Suit.  
148. Requiring Heirs to Give Bond.  
149. Requiring Independent Executor to Give Bond.  
150. Partition and Distribution.  
151. Closing Independent Administration by Affidavit.  
    (a) Filing of Affidavit.  
    (b) Effect of Filing the Affidavit.  
152. Closing Independent Administration Upon Application by Distributee.  
153. Issuance of Letters.  
154. Powers of an Administrator Who Succeeds an Independent Executor.  
    (a) Grant of Powers by Court.  
    (b) Power to Borrow Money and Mortgage or Pledge Property.  
    (c) Powers Limited to Those Granted by the Will.  
    (d) Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property.  
    (e) Application for Grant of Powers.  
    (f) Citation.  
    (g) Hearing and Order.

## PART 5. ADMINISTRATION OF COMMUNITY PROPERTY

155. When No Administration Necessary.  
156. Liability of Community Property for Debts.  
157. When Spouse Incompetent.  
158. Duty of Guardians.  
159. Recovery of Competency.  
160. Powers of Surviving Spouse When No Administration Is Pending.  
161. Community Administration.  
162. Application for Community Administration.  
163. Appointment of Appraisers.  
164. Inventory, Appraisal, and List of Claims.  
165. Bond of Community Administrator.  
166. Order of the Court.  
167. Powers of Community Administrator.  
168. Accounting by Survivor.  
169. Payment of Debts.  
170. New Appraisal or New Bond.  
171. Creditor May Require Exhibit.  
172. Action of Court Upon Exhibit.  
173. Approval of Exhibit.  
174. Failure to File Exhibit.  
175. Termination of Community Administration.

Sec.

176. Remarriage of Surviving Wife.

177. Distribution of Powers Among Personal Representatives and Surviving Spouse.

(a) When Community Administrator Has Qualified.

(b) When No Community Administrator Has Qualified.

**PART 1. TEMPORARY ADMINISTRATION IN THE INTEREST OF  
(A) ESTATES OF DECEDENTS, AND (B) PERSONS OR ESTATES  
OF MINORS AND INCOMPETENTS.**

**§ 131. Procedure**

(a) **Necessity of Appointment.** Whenever it appears to the county judge that the interest of a decedent's estate, or the interest of any minor, person of unsound mind, or common or habitual drunkard, and his or her estate, or either of them, requires immediate appointment of a personal representative, he shall, by written order, appoint a suitable temporary representative, with such limited powers as the circumstances of the case require, and such appointment may be made permanent, as herein provided.

(b) **Manner of Appointment.** Such appointment may be made with or without written application and without notice or citation. The order shall designate the appointee appropriately, as "temporary administrator" of the decedent's estate, or as "temporary guardian" of the person or of the estate, or both, of such minor, person of unsound mind, or common or habitual drunkard, fix the bond to be given and define the powers conferred on the appointee. When any such appointee has taken and filed his oath and filed with the county clerk a bond approved by the court, the clerk shall issue to the appointee letters which shall set forth the powers to be exercised by the appointee.

(c) **Perpetuation of Appointment.** The order making the appointment shall state that, unless the same is contested after service of citation, it shall be continued in force for such period of time as the court shall deem in the interest of the estate or person involved, or it shall be made permanent, if found by the court to be necessary.

(d) **Citation Relative to Perpetuation.** Immediately after such appointment the clerk shall issue and cause to be posted a notice, and if necessary issue citations, to all interested persons to appear at the time stated in such writ and contest said appointment if they so desire; and such notice or citation shall state that, if no contest is made, the appointment will be continued for such time as appears to the interest of the estate or person involved, or that, if found necessary by the court, it shall be made permanent.

(e) **Contest.** If the appointment is contested, the court shall hear and determine the same, and, during the pendency of such contest, the temporary appointee shall continue to act as such. If the appointment is set aside, the court shall require the appointee to prepare and file, under oath, a complete exhibit of the condition of the estate which has come into his possession, and show what disposition he has made of the same or any portion thereof.

**§ 132. Temporary Administration Pending Contest of a Will or Administration**

(a) **Appointment of Temporary Administrator.** Pending a contest relative to the probate of a will or the granting of letters of administration, the court may appoint a temporary administrator, with such limited powers as the circumstances of the case require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers.

(b) **Additional Powers Relative to Claims.** When temporary administration has been granted pending a will contest, or pending a contest on an application for letters of administration, the court may, at any time during the pendency of the contest, confer upon the temporary administrator all the power and authority of a permanent administrator with respect to claims against the estate, and in such case the court and the temporary administrator shall act in the same manner as in permanent administration in connection with such matters as the approval or disapproval of claims, the payment of claims, and the making of sales of real or personal property for the payment of claims; provided, however, that in the event such power and authority is conferred upon a temporary administrator, he shall be required to give bond in the full amount required of a permanent administrator. The provisions of this Subsection are cumulative and shall not be construed to exclude the right of the court to order a temporary administrator to do any and all of the things covered by this Subsection in other cases where the doing of such things shall be necessary or expedient to preserve the estate pending final determination of the contest.

**§ 133. Powers of Temporary Appointees**

(a) **Temporary Administrators.** Temporary administrators shall have and exercise only such rights and powers as are specifically expressed in the order of the court appointing them, and as may be expressed in subsequent orders of the court. Where a court, by a subsequent order, extends the rights and powers of a temporary administrator, it may require additional bond commensurate with such extension. Any acts performed by temporary administrators that are not so expressly authorized shall be void.

(b) **Temporary Guardianships.** All the provisions of this Code relating to the guardianship of persons and estates of minors, persons of unsound mind, and habitual drunkards shall apply to temporary guardianship of the persons and estates of such persons, in so far as the same are applicable.

**§ 134. Accounting**

At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate which has come into his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such appointee.

**§ 135. Closing Temporary Administration or Guardianship**

The list, return, exhibit, and account so filed shall be acted upon by the court and, whenever temporary letters shall expire or cease to be of effect for any cause, the court shall immediately enter an order requiring such temporary appointee forthwith to deliver the estate remaining in his possession to the person or persons legally entitled to its

possession. Upon proof of such delivery, the appointee shall be discharged and the sureties on his bond released as to any future liability.

## PART 2. RECEIVERSHIP FOR MINORS AND INCOMPETENTS

### § 136. Receivership

(a) **Appointment of Receiver.** When from any cause the estate of a minor or an incompetent, or any portion thereof, appears in danger of injury, loss, or waste, and in need of a representative, there being no guardian of such estate qualified in this state and no necessity for one, the county judge of the county where such minor or incompetent resides, or where the endangered estate is situated, shall by order, with or without application, appoint a suitable person as receiver to take charge of such endangered estate, requiring bond of such person as in ordinary receiverships in such sum as the judge deems necessary to protect the estate, and specifying such duties and powers of the receiver as the judge deems necessary for the protection, conservation, and preservation of the estate. The clerk shall forthwith enter such order upon the minutes of the court; and the person so appointed shall forthwith make his bond, submit same to the judge for approval, file same, when approved, with the clerk, and proceed to take charge of such endangered estate pursuant to the duties and powers vested in him by the order of appointment and by such subsequent orders as the judge shall make from time to time.

(b) **Expenditures by the Receiver.** Whenever, during the pendency of such receivership, the needs of the minor or incompetent shall require the use of the income or corpus of the estate for the education, clothing, or subsistence of the minor or incompetent, the judge shall, with or without application, by order entered upon the minutes of his court, appropriate an amount of such income or corpus sufficient for such purpose; and the same shall be used by the receiver to pay such claims for such education, clothing, or subsistence as are presented to the judge and approved and ordered by him to be paid.

(c) **Investments, Loans and Contributions by the Receiver.** Whenever, during the pendency of such receivership, the receiver shall have on hand an amount of money belonging to such minor or incompetent in excess of the amount needed for current necessities and expenses, he may, under direction of the judge, invest, lend, or contribute such excess money or any portion or portions thereof in the manner, for the security, and on the terms and conditions provided in this Code for investments, loans, or contributions by guardians, and he shall report to the judge all such transactions in the manner that reports are required of guardians.

(d) **Receiver's Expenses, Account, and Compensation.** All necessary expenses incurred by the receiver in administering the estate may be rendered monthly to the judge in the form of a sworn statement of account, including a report of the receiver's acts, the condition of the estate, the status of the threatened danger to the estate, and the progress made toward abatement of such danger. If the judge is satisfied that such statement is correct and reasonable in all respects, he shall promptly enter his order approving the same and authorizing the receiver to reimburse himself out of the funds of the estate in his hands. For his official services rendered, the receiver shall be compensated in the same manner and amount as provided by this Code for similar services rendered by guardians of estates.

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

(e) **Closing Receivership.** When the threatened danger has abated and the estate is no longer liable to injury, loss, or waste for want of a representative, the receiver shall so report to the judge, filing with the clerk a full and final sworn account of all estate received into his hands, all sums paid out, all acts performed by him with respect to such estate, and all estate remaining in his hands; whereupon the clerk shall issue and cause to be posted a notice to all persons interested in the welfare of such minor or incompetent, and shall give personal notice to the person having custody of such minor or incompetent, to appear before the judge at a time and place specified in such notices and contest such report and account if they so desire.

(f) **Action of the Judge.** If upon hearing such report and account, the judge is satisfied that the danger of injury, loss, or waste has abated and that said report and account are correct, he shall enter an order so finding and shall direct the receiver to deliver said estate to the person from whom he took possession as receiver, or to the person having custody of the minor or incompetent, or to such other person as the judge may find to be entitled to possession of the estate, which person in turn shall execute and file with the clerk an appropriate receipt for the estate thus delivered. The order of the judge shall discharge the receiver and his sureties. If the judge is not satisfied that the danger has abated, or if he is not satisfied with the report and account, he shall enter an order continuing the receivership in effect until he is so satisfied.

(g) **Recordation of Proceedings.** All orders, bonds, reports, accounts, and notices in the receivership proceedings shall be recorded in the minutes of the court.

### PART 3. SMALL ESTATES

#### § 137. Collection of Small Estates Upon Affidavit

The distributees of an estate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, without awaiting the appointment of a personal representative when:

(a) No petition for the appointment of a personal representative is pending or has been granted; and

(b) Thirty days have elapsed since the death of the decedent; and

(c) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed One Thousand Dollars; and

(d) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by all the distributees, and approved by the judge of the court having jurisdiction and venue, to be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, the names and addresses of all the distributees, and their right to receive the money or property of the estate and/or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estate; and

(e) A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property or other right belonging to said estate.



Henceforth the county clerk of every county in this state shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

#### **§ 138. Effect of Affidavit**

The person making payment, delivery, transfer or issuance pursuant to the affidavit described in the preceding Section shall be released to the same extent as if made to a personal representative of the decedent, and he shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer, or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any personal representative thereafter appointed. In addition, the person or persons who execute the affidavit shall be liable for any damage or loss to any person which arises from any payment, delivery, transfer, or issuance made in reliance on such affidavit. If the person to whom such affidavit is delivered refuses to pay, deliver, transfer, or issue the property as above provided, such property may be recovered in an action brought for such purpose by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit.

#### **§ 139. Application for Order of No Administration**

If the value of the entire assets of an estate, not including homestead and exempt property, does not exceed the amount to which the surviving spouse and minor children of the decedent are entitled as a family allowance, there may be filed by or on behalf of the surviving spouse or minor children an application in any court of proper venue for administration, or, if an application for the appointment of a personal representative has been filed but not yet granted, then in the court where such application has been filed, requesting the court to make a family allowance and to enter an order that no administration shall be necessary. The application shall state the names of the heirs or devisees, a list of creditors of the estate together with the amounts of the claims so far as the same are known, and a description of all real and personal property belonging to the estate, together with the estimated value thereof according to the best knowledge and information of the applicant, and the liens and encumbrances thereon, with a prayer that the court make a family allowance and that, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, the same be set aside to the surviving spouse and minor children, as in the case of other family allowances provided for by this Code.

#### **§ 140. Hearing and Order Upon the Application**

Upon the filing of an application for no administration such as that provided for in the preceding Section, the court may hear the same forthwith without notice, or at such time and upon such notice as the court requires. Upon the hearing of the application, if the court finds that the facts contained therein are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall make a family allowance and, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, shall order that no administration be had of the estate and shall assign to the surviving spouse and minor children the whole of the estate, in the same manner and with the same effect as provided in this

Code for the making of family allowances to the surviving spouse and minor children.

#### **§ 141. Effect of Order**

The order that no administration be had on the estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration, and the persons so described in the order shall be entitled to enforce their right to such payment or transfer by suit.

#### **§ 142. Proceeding to Revoke Order**

At any time within one year after the entry of an order of no administration, and not thereafter, any interested person may file an application to revoke the same, alleging that other property has been discovered, or that property belonging to the estate was not included in the application for no administration, or that the property described in the application was incorrectly valued, and that if said property were added, included, or correctly valued, as the case may be, the total value of the property would exceed that necessary to justify the court in ordering no administration. Upon proof of any of such grounds, the court shall revoke the order of no administration. In case of any contest as to the value of any property, the court may appoint two appraisers to appraise the same in accordance with the procedure hereinafter provided for inventories and appraisements, and the appraisement of such appraisers shall be received in evidence but shall not be conclusive.

#### **§ 143. Summary Proceedings for Small Estates After Personal Representative Appointed**

Whenever, after the inventory, appraisement, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse and minor children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present his account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.

#### **§ 144. Payment of Small Claims Without Guardianship**

(a) **To Residents.** Whenever a resident minor, or whenever a resident person legally adjudged to be of unsound mind or to be an habitual or common drunkard, sometimes referred to in this Section as "creditor," being without a legal guardian of his person or estate, shall be entitled to money in amount not exceeding Five Hundred Dollars, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay same to the county clerk of the county in which such creditor resides in this state, for the account of such creditor, giving his name,

the nature of his disability, and his postoffice address, and the receipt for such money signed by the clerk shall be forever binding on such creditor as of the date and to the extent of such payment. Upon receipt of such payment by the clerk, he shall forthwith deposit such money in his trust account in the name and for the account of such minor or other person entitled to same and, by letter mailed to the address given by the debtor, shall apprise such creditor of the fact that such deposit has been made.

The father or mother or unestranged spouse of such creditor, priority being given to such spouse, residing in this state, or, if there be no such spouse and both father and mother be dead or non-residents of this state, then the person residing in this state who has actual custody of such creditor, may, as custodian, upon filing with such clerk written application and bond approved by the county judge of such county, withdraw such money from the clerk for the use and benefit of such creditor, such bond to be in double the amount of said money and to be payable to the judge or his successors in office and to be conditioned that such custodian will use said money for the benefit of such creditor under directions of the court and that he will, when legally called upon to do so, faithfully account to such creditor, his heirs or legal representatives, for such money and any increase thereof upon removal of the disability to which such creditor is subject, or upon his death or the appointment of a guardian. No fees or commissions shall be allowed to such custodian for taking care of, handling, or expending such money so withdrawn by him.

When such custodian shall have expended such money in accordance with directions of the court or shall have otherwise complied with the terms of his bond by accounting for said money and any increase, he shall file with the county clerk of said county his sworn report of his accounting, the filing of which report, when approved by the court, shall operate as a discharge of said person as custodian and his sureties from all further liability under said bond. The court shall satisfy itself that the report is true and correct and may require proof as in other cases.

**(b) To Non-residents.** Whenever a non-resident minor, or whenever a non-resident person duly adjudged by a court of competent jurisdiction to be of unsound mind or to be an habitual drunkard, having no legal guardian qualified in this state, is entitled to money in amount not exceeding Five Hundred Dollars owing as a result of transactions within this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state, the debtor in this state may pay such money to the guardian of such creditor duly qualified in his domiciliary jurisdiction or to the county clerk of any county in this state in which real property owned by such non-resident person is situated. If such person is not known to own any real property in any county in this state, such debtor shall have the right to pay such money to the county clerk of the county in this state in which the debtor resides. In either case, such payment to the clerk shall be for the use and benefit and for the account of such non-resident creditor, and the receipt for such payment signed by the clerk, reciting the name of such creditor and his postoffice address, if known, shall be forever binding against such creditor as of the date and to the extent of such payment. Such money so paid to such clerk shall be handled by him in the same manner as above provided for in cases of payments to the clerk for the accounts of residents of this state, and all applicable provisions of Subsection (a) above shall apply to the handling and disposition of money so paid to the clerk for the use, benefit, and account of such non-resident creditor.

(c) **When the Deposit Is Not Withdrawn by Another Person.** If no person authorized hereunder withdraws such money from the clerk as provided for in this Section, then the creditor himself, after termination of his disability, or his subsequent personal representatives or heirs, as the case may be, may at any time, without special bond for the purpose, withdraw such money upon simply exhibiting to the clerk an order of the county or probate court of the county where such money is held by the clerk, directing the clerk to deliver such money to such creditor or to his personal representative or heirs named in such order, the identity of such persons and their credentials being first proved to the satisfaction of the court.

#### PART 4. INDEPENDENT ADMINISTRATION

##### § 145. Independent Administration

Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisalment, and list of claims of his estate.

##### § 146. Applicability of this Code to Independent Executors

Independent executors shall observe all provisions of this Code relative to priority, classification, and pro-rata payment of creditors' claims. The provisions of this Code shall not apply to independent executors except where specifically made applicable thereto.

##### § 147. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the testator in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after one year from the date of the probate of the will appointing him.

##### § 148. Requiring Heirs to Give Bond

When it is provided in a will that no action shall be had in court in relation to the settlement of the estate, except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by written complaint filed in the court where such will was probated, cause all heirs at law and other persons entitled to any portion of such estate under the will to be cited by personal service to appear before such court and execute a bond for an amount equal to the full value of such estate, as shown by the inventory and list of claims, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such bond to the satisfaction of the court, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon

for the amount of their debt, or they may have their action against those in possession of the estate.

**§ 149. Requiring Independent Executor to Give Bond**

When it has been provided by will, regularly probated, that an independent executor appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such independent executor is mismanaging the property, or has betrayed or is about to betray his trust, or has in some other way become disqualified, in which case, upon proper proceedings had for that purpose, as in the case of executors or administrators acting under orders of the court, such executor may be required to give bond.

**§ 150. Partition and Distribution**

If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the independent executor may file his final account in the court in which the will was probated, and ask for partition and distribution of the estate; and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court.

**§ 151. Closing Independent Administration by Affidavit**

(a) **Filing of Affidavit.** When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a final account verified by affidavit. Such account shall show:

(1) The property of the estate which came into the hands of the independent executor; and

(2) The debts that have been paid; and

(3) The debts, if any, still owing by the estate; and

(4) The property of the estate, if any, remaining on hand after payment of debts; and

(5) The names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(b) **Effect of Filing the Affidavit.** The filing of such an affidavit shall terminate the independent administration and the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the affidavit. When such an affidavit has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of such distributees with respect to such properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in such affidavit.

**§ 152. Closing Independent Administration Upon Application by Distributee**

At any time after an estate has been fully administered and there is no further need for an independent administration of such estate, any dis-

tributee may file an application to close the administration; and, after citation upon the independent executor, and upon hearing, the court may enter an order closing the administration and terminating the power of the independent executor to act as such.

### § 153. Issuance of Letters

At any time before the authority of an independent executor has been terminated in the manner set forth in the preceding Sections, the clerk shall issue such number of letters testamentary as the independent executor shall request.

### § 154. Powers of an Administrator Who Succeeds an Independent Executor

(a) **Grant of Powers by Court.** Whenever a person has died, or shall die, testate, owning property in Texas, and such person's will has been or shall be admitted to probate by the proper court, and such probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of said will, and such will grants to such independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and such independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the court having jurisdiction of the estate, and an administrator's bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred upon such administrator under other provisions of the laws of Texas, authorize, direct, and empower such administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent portions of this Section.

(b) **Power to Borrow Money and Mortgage or Pledge Property.** The court, upon application, citation, and hearing, may, by its order, authorize, direct, and empower such administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, upon application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage upon property or assets of the estate, real, personal, or mixed, upon such terms and conditions, and for such duration of time, as the court shall deem to be to the best interest of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against such administrator in his official capacity.

(c) **Powers Limited to Those Granted by the Will.** The court may order and authorize such administrator to have and exercise the powers and privileges set forth in the preceding Subsections hereof only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of such deceased person, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of such administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing such adminis-

trator orders the business of such estate to be carried on and it becomes necessary, from time to time, under orders of the court, for such administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

**(d) Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property.** The court, in addition, may, upon application, citation, and hearing, order, authorize and empower such administrator to assume, exercise, and discharge, under the orders and directions of said court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of such deceased person, as the court finds to be to the best interest of the estate and shall, from time to time, order and direct.

**(e) Application for Grant of Powers.** The granting to such administrator by the court of some, or all, of the powers and authorities set forth in this Section shall be upon application filed by such administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

**(f) Citation.** Upon the filing of such application, the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation and show cause why such application should not be granted, should they choose to do so. Such citation shall be served by posting.

**(g) Hearing and Order.** The court shall hear such application and evidence thereon, upon the return day named in the citation, or thereafter, and, if satisfied a necessity exists and that it would be to the best interest of the estate to grant said application in whole or in part, the court shall so order; otherwise, the court shall refuse said application.

## PART 5. ADMINISTRATION OF COMMUNITY PROPERTY

### § 155. When No Administration Necessary

When a husband or wife dies intestate, leaving no child or children or descendants of any child or children surviving, the community property passes to the survivor, charged with the debts of the community, and no administration thereon, community or otherwise, shall be necessary.

### § 156. Liability of Community Property for Debts

Community property, except such as is exempt from forced sale, shall be charged with all valid and enforceable debts existing at the time of dissolution of marriage by death. In the administration of community estates, the survivor, executor, or administrator shall keep a separate, distinct account of all of the community debts allowed or paid in the administration and settlement of such estates.

### § 157. When Spouse Incompetent

Whenever a husband or wife is judicially declared to be incompetent, the other spouse, in the capacity of surviving partner of the marital partnership, thereupon acquires full power to manage, control, and dispose of the entire community estate, including the part which the incompetent spouse would legally have power to manage in the absence of such incompetency, and no administration thereon, community or otherwise, shall be

necessary. Guardianship of the estate of the incompetent spouse shall not be necessary when the other spouse is competent, unless the incompetent spouse owns separate property. The qualification of a guardian of the estate of an incompetent spouse does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this Code. To entitle the competent spouse to manage the entire community estate, such spouse shall apply to the court for the appointment of appraisers, shall return an inventory, appraisal, and list of claims, and shall give bond. Appraisers shall be appointed and the inventory, appraisal, and list of claims shall be prepared and returned in the manner hereinafter provided for administration by a surviving spouse. The bond shall be in such a sum as is found by the judge to be adequate under all the circumstances, and shall be conditioned that the competent spouse will faithfully administer the community estate so long as they remain husband and wife and so long as the other spouse continues to be incompetent.

#### **§ 158. Duty of Guardians**

A guardian of the estate of an incompetent married person who, as guardian, is administering community property as part of the estate of such ward, shall forthwith deliver such community property to the sane spouse upon demand.

#### **§ 159. Recovery of Competency**

The special powers of management, control, and disposition vested in the sane spouse by this Code shall terminate whenever the decree of a court of competent jurisdiction finds that the mental competency of the other spouse has been recovered.

#### **§ 160. Powers of Surviving Spouse When No Administration Is Pending**

When no one has qualified as executor or administrator of the estate of a deceased spouse, the surviving spouse, whether the husband or wife, as the surviving partner of the marital partnership, without qualifying as community administrator as hereinafter provided, has power to sue and be sued for the recovery of community property; to sell, mortgage, lease, and otherwise dispose of community property for the purpose of paying community debts; to collect claims due to the community estate; and has such other powers as shall be necessary to preserve the community property, discharge community obligations, and wind up community affairs.

#### **§ 161. Community Administration**

Whenever an interest in community property passes by intestacy to someone other than the surviving spouse, the surviving spouse may qualify as community administrator in the manner hereinafter provided.

#### **§ 162. Application for Community Administration**

A surviving spouse who desires to qualify as a community administrator shall, within four years after the death of the other spouse, file a written application in the court having venue over the estate of the deceased spouse, stating:

(a) That the other spouse is dead, setting forth the time and place of such death; and

(b) If there be any children or lineal descendants, the name, sex, residence, and date of birth of each child or lineal descendant; and



(c) That there is a community estate between the deceased spouse and the applicant, and that an interest in such estate has passed by intestacy to someone other than the applicant; and

(d) That, by virtue of facts set forth in the application, the court has venue over the estate of the deceased spouse; and

(e) That appraisers should be appointed to appraise such estate.

**§ 163. Appointment of Appraisers**

Upon the filing of such application, the judge shall, without notice or citation, enter an order appointing appraisers to appraise such estate as in other administrations.

**§ 164. Inventory, Appraisalment, and List of Claims**

The surviving spouse, with the assistance of any two of the appraisers, shall make out a full, fair, and complete inventory, appraisalment, and list of claims of the community estate as in other administrations, shall attach thereto a list of all indebtedness owing by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is owing, and his or their postoffice address, and shall return same to the court within twenty (20) days after the date of the order appointing appraisers. Such inventory, list of claims, and list of indebtedness of such community estate shall be sworn to by said surviving spouse, and said inventory, appraisalment, and list of claims owing said community estate shall be sworn to by said appraisers.

**§ 165. Bond of Community Administrator**

The community administrator shall at the time the inventory, appraisalment, and list of claims are returned, present to the court a bond with two or more good and sufficient sureties, payable to and to be approved by the judge and his successors in a sum equal to the whole of the gross value of such community estate as shown in the appraisalment, or a bond with one surety in a sum equal to one-half of such gross value, if the surety is an authorized corporate surety, conditioned that such surviving spouse will faithfully administer such community estate and pay one-half the surplus thereof, after the payment of the debts with which the whole of such property is properly chargeable, to such person or persons as shall be entitled to receive same.

**§ 166. Order of the Court**

When such inventory, appraisalment, list of claims, and bond are returned to the judge, he shall examine the same and approve or disapprove them by an order to that effect and, when approved, the order approving them shall also authorize the survivor as community administrator to control, manage, and dispose of the community property in accordance with the provisions of this Code.

**§ 167. Powers of Community Administrator**

When the order mentioned in the preceding Section has been entered, the survivor, without any further action in the court, shall have the right to control, manage, and dispose of the community property, as provided in this Code, in the same manner that the husband controls, manages, and disposes of community property during the lifetime of the wife, and to sue and be sued with regard to the same; and a certified copy of the order of the court shall be evidence of the qualification and right of such survivor.

After paying community debts outstanding at the death of the deceased spouse, the qualified community administrator may carry on as statutory trustee for the owners of the community estate, investing and reinvesting the funds of the estate and continuing the operation of community enterprises until the termination of the trust as provided in this Code. The qualified community administrator is not entitled to mortgage community property to secure debts incurred for his individual benefit, or otherwise to appropriate the community estate to his individual benefit; but he may transfer or encumber his individual interest in the community estate.

#### **§ 168. Accounting by Survivor**

The survivor, whether qualified as community administrator or not, shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of the community property; and, upon final partition of such estate, shall deliver to the legal heirs or devisees of the deceased spouse their interest in such estate, and the increase and profits of the same, after deducting therefrom all community debts, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. Neither the survivor nor his bondsmen shall be liable for losses sustained by the estate, except when the survivor has been guilty of gross negligence or bad faith.

#### **§ 169. Payment of Debts**

The community administrator shall pay all just and legal community debts within the time, and according to the classification, and in the order prescribed for the payment of debts in other administrations. Where there is a deficiency of assets to pay all claims of the same class, such claims shall be paid pro rata.

#### **§ 170. New Appraisal or New Bond**

Any person interested in a community estate may cause a new appraisal to be made of the same, or may cause a new bond to be required of the survivor, for the same causes and in like manner as provided in other administrations.

#### **§ 171. Creditor May Require Exhibit**

Any creditor of the community estate whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisal, list of claims, and bond by the survivor, may by written application to the court cause such survivor to be cited by personal service to appear and make an exhibit to the court in writing and under oath, showing fully and specifically:

- (a) The debts that have been presented to him against such community estate and their class; and
- (b) The debts that have been paid by him and those that remain unpaid, and the class of each; and
- (c) The property that has been disposed of by him, and the amount received therefor; and
- (d) The property remaining on hand; and
- (e) An account of losses, expenses, and commissions.

#### **§ 172. Action of Court Upon Exhibit**

When such exhibit has been returned to the court and filed, the court shall examine the same and hear exceptions and objections thereto, and

evidence in support of or against same. Should it appear to the court from such exhibit or from other evidence that such community estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, the court shall enter an order requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect the same for thirty days after the date of such order, the following proceedings shall be had:

(a) If said debt be for the amount of One Thousand Dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them by personal service to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

(b) If the amount due and payable to such creditor exceeds One Thousand Dollars, exclusive of interest, the creditor may have his action against such survivor and the sureties upon his bond in the District Court of the county where the survivor's bond is filed.

### **§ 173. Approval of Exhibit**

If, after examining the exhibit and after receiving evidence in support of or against the same, the court is satisfied that the estate has been fairly administered in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order approving such exhibit and directing the same to be recorded, and shall also in such order declare the community administration closed.

### **§ 174. Failure to File Exhibit**

Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed as if the creditor's right to the payment of his claim had been fully established.

### **§ 175. Termination of Community Administration**

After the lapse of twelve months from the filing of the bond of the survivor, the community administration may be terminated whenever termination is desired by either the survivor or the persons entitled to the share of the deceased spouse, or to any portion thereof. Partition and distribution of the community estate may be had and the administration closed either by proceedings as in other independent administration or by proceedings in the appropriate District Court. When the community administration is closed, the community administrator shall be discharged and his bondsmen released from further liability.

### **§ 176. Remarriage of Surviving Wife**

The remarriage of a surviving wife shall not terminate her powers or liabilities as a qualified community administratrix; nor shall it terminate her powers as a surviving partner.

### **§ 177. Distribution of Powers Among Personal Representatives and Surviving Spouse**

(a) **When Community Administrator Has Qualified.** The qualified community administrator is entitled to administer the entire community estate, including the part which was by law under the management of the deceased spouse during the continuance of the marriage, except that, when

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

an executor of the estate of the deceased spouse is duly qualified, such executor is entitled to administer the community property which was legally under the management of the deceased spouse during the continuance of the marriage, to the exclusion of the qualified community administrator, and except further that if a permanent administrator of the estate of a deceased spouse has qualified and has, with the actual knowledge and consent of the surviving spouse, and prior to the filing of application by the surviving spouse for community administration, taken possession of the community property which was by law under the management of the deceased spouse during the continuance of the marriage, then such administrator may retain the administration of such property for such period of time as shall be necessary to discharge the obligations with which such property is chargeable and to bring his administration of it to an orderly conclusion.

**(b) When No Community Administrator Has Qualified.** When an executor of the estate of a deceased spouse has duly qualified, or when an administrator of such estate has duly qualified prior to the filing of application by the surviving spouse for community administration, such executor or administrator, as the case may be, is authorized to administer, not only the separate property of the deceased spouse, but also the community property which was by law under the management of the deceased spouse during the continuance of the marriage; and the surviving spouse, as surviving partner of the marital partnership, is entitled to retain possession and control of all community property which was legally under the management of the surviving spouse during the continuance of the marriage and to exercise over that property all the powers elsewhere in this Part of this Code authorized to be exercised by the surviving spouse when there is no administration pending on the estate of the deceased spouse.

## CHAPTER VII

## EXECUTORS, ADMINISTRATORS, AND GUARDIANS

## PART 1. APPOINTMENT AND ISSUANCE OF LETTERS

- Sec.
178. When Letters Testamentary or of Administration Shall Be Granted.  
    (a) Letters Testamentary.  
    (b) Letters of Administration.  
    (c) Failure to Issue Letters Within Prescribed Time.
179. Opposition to Grant of Letters of Administration.
180. Effect of Finding That No Necessity for Administration Exists.
181. Order Granting Letters Testamentary or of Administration.
182. When Clerk Shall Issue Letters.
183. What Constitutes Letters.
184. Order Appointing Guardian.
185. Issuance of Letters of Guardianship.
186. Letters or Certificate Made Evidence.
187. Issuance of Other Letters.
188. Rights of Third Persons Dealing with Executors or Administrators.

## PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

189. How Executors, Administrators, and Guardians Shall Qualify.
190. Oaths of Executors and Administrators.  
    (a) Executor, or Administrator With Will Annexed.  
    (b) Administrator.  
    (c) Temporary Administrator.  
    (d) Filing and Recording of Oaths.
191. Oath of Guardian.
192. Time for Taking Oath and Giving Bond.
193. Bond of Guardian of Person.
194. Bonds of Personal Representatives of Estates.
195. When No Bond Required.  
    (a) By Will.  
    (b) Corporate Fiduciary Exempted From Bond.
196. Form of Bond.
197. Bonds to Be Filed.
198. Bonds of Joint Representatives.
199. Bonds of Married Women.
200. Bond of Married Person Under Twenty-one Years of Age.
201. Affidavit of Personal Surety.
202. Bond as Lien on Real Property of Surety.
203. When New Bond May Be Required.
204. Demand for New Bond by Interested Person.
205. Judge to Require New Bond.
206. Order Requiring New Bond.
207. Order Suspends Powers of Personal Representative.
208. Decrease in Amount of Bond.

## Sec.

- 209. Discharge of Sureties Upon Execution of New Bond.
- 210. Release of Sureties Before Estate Fully Administered.
- 211. Release of Lien Before Estate Fully Administered.
- 212. Release of Recorded Lien on Surety's Property.
- 213. Revocation of Letters for Failure to Give Bond.
- 214. Executor or Guardian Without Bond Required to Give Bond.
- 215. Order Requiring Bond.
- 216. Bond in Such Case.
- 217. Failure to Give Bond.
- 218. Bonds Not Void Upon First Recovery.
- 219. Agreement as to Deposit of Assets.

PART 3. REVOCATION OF LETTERS, DEATH,  
RESIGNATION, AND REMOVAL

- 220. Appointment of Successor Representative.
  - (a) Because of Death, Resignation, or Removal.
  - (b) Because of Existence of Prior Right.
  - (c) When Named Executor or Guardian Becomes an Adult.
  - (d) Upon Return of Sick or Absent Executor or Guardian.
  - (e) When Will Is Discovered After Administration Granted.
  - (f) When Application and Service Necessary.
  - (g) Payment or Tender of Money Due During Vacancy.
- 221. Resignation.
  - (a) Application to Resign.
  - (b) Successor Representatives.
  - (c) Citation.
  - (d) Hearing.
  - (e) Requisites of Discharge.
  - (f) Final Discharge.
- 222. Removal.
  - (a) Without Notice.
  - (b) With Notice.

PART 4. SUBSEQUENT PERSONAL REPRESENTATIVES

- 223. Further Administration With or Without Will Annexed.
- 224. Successors Succeed to Prior Rights, Powers, and Duties.
- 225. Additional Powers of Successor Appointee.
- 226. Subsequent Executors and Guardians Also Succeed to Prior Rights and Duties.
- 227. Successors Return of Inventory, Appraisalment, and List of Claims.

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

- 228. Powers and Duties of a Guardian of a Person to Receive Funds from a Governmental Agency.
- 229. Guardians of the Person.
- 230. Care of Property of Estates.
  - (a) Estates of Decedents.
  - (b) Estates of Wards.
- 231. Summary of Powers of Guardians of Person and Estate.
- 232. Representative of Estate Shall Take Possession of Personal Property and Records.
- 233. Collection of Claims and Recovery of Property.
- 234. Extending Obligations, Purchase and Compromise.

Sec.

- 235. Possession of Property Held in Common Ownership.
- 236. Sums Allowable for Education and Maintenance of Ward.
- 237. Title of Wards Not to Be Disputed.
- 238. Operation of Farm, Ranch, Factory, or Other Business.
- 239. Payment or Credit of Income.
- 240. Joint Executors or Administrators.

**PART 6. COMPENSATION, EXPENSES, AND COURT COSTS**

- 241. Compensation of Personal Representatives.
  - (a) Compensation of Executors and Administrators.
  - (b) Compensation of Guardians.
- 242. Expenses Allowed.
- 243. Allowance for Defending Will.
- 244. Expense Accounts.
- 245. When Costs Are Adjudged Against Representative.
- 246. Exemption From Fees and Costs in Guardianships for Reception of Governmental Funds.
- 247. Costs Against Estates of Incompetents.

**PART 1. APPOINTMENT AND ISSUANCE OF LETTERS**

**§ 178. When Letters Testamentary or of Administration Shall Be Granted**

(a) **Letters Testamentary.** When a will has been probated, the court shall, within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law.

(b) **Letters of Administration.** When a person shall die intestate, or where no executor is named in a will, or where the executor is dead or shall fail or neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator, shall be granted, should administration appear to be necessary. No administration of any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application. Such necessity shall be deemed to exist if two or more debts exist against the estate, or if or when it is desired to have the county court partition the estate among the distributees, but mention of these two instances of necessity for administration shall not prevent the court from finding other instances of necessity upon proof before it.

(c) **Failure to Issue Letters Within Prescribed Time.** Failure of a court to issue letters testamentary within the twenty day period prescribed by this Section shall not affect the validity of any letters testamentary which are issued subsequent to such period, in accordance with law.

**§ 179. Opposition to Grant of Letters of Administration**

When application is made for letters of administration, any person may at any time before the application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that

may seem best entitled to them, having regard to applicable provisions of this Code, without further notice than that of the original application.

#### **§ 180. Effect of Finding That No Necessity for Administration Exists**

When application is filed for letters of administration and the court finds that there exists no necessity for administration of the estate, the court shall recite in its order refusing the application that no necessity for administration exists. An order of the court containing such recital shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing or otherwise dealing with the estate, for payment or transfer to the distributees of the decedent, and such distributees shall be entitled to enforce their right to such payment or transfer by suit.

#### **§ 181. Order Granting Letters Testamentary or of Administration**

When letters testamentary or of administration are granted, the court shall make an order to that effect, which shall specify:

- (a) The name of the testator or intestate; and
- (b) The name of the person to whom the grant of letters is made; and
- (c) If bond is required, the amount thereof; and
- (d) The names of three or more disinterested persons appointed to appraise the estate, and to return such appraisal to the court; and
- (e) That the clerk shall issue letters in accordance with said order when the person to whom said letters are granted shall have qualified according to law.

#### **§ 182. When Clerk Shall Issue Letters**

Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying.

#### **§ 183. What Constitutes Letters**

Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that the executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification, and the name of the deceased.

#### **§ 184. Order Appointing Guardian**

The order of the court appointing a guardian shall specify:

- (a) The name of the person appointed.
- (b) The name of the ward.
- (c) Whether the guardian is of the person, or the estate, or of both the person and estate, of such ward, or of a person for whom it is necessary to have a guardian appointed to receive money or funds from a governmental source.
- (d) The amount of bond required, if any.



(e) If it be the guardianship of the estate, the order shall also appoint three or more disinterested persons to appraise such estate, and to return such appraisement to the court.

(f) That the clerk shall issue letters of guardianship to the person appointed when such person has qualified according to law.

#### **§ 185. Issuance of Letters of Guardianship**

When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, if bond be required, the clerk shall issue to him a certificate under seal, stating the fact of such appointment and qualification and the date thereof, which certificate shall constitute letters of guardianship, and be evidence of the authority of such person to act as guardian.

#### **§ 186. Letters or Certificate Made Evidence**

Letters testamentary, of administration, or of guardianship, or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have been issued, shall be sufficient evidence of the appointment and qualification of the personal representative of an estate or ward and of the date of qualification.

#### **§ 187. Issuance of Other Letters**

When letters have been destroyed or lost, the clerk shall issue other letters in their stead, which shall have the same force and effect as the original letters. The clerk shall also issue any number of letters as and when requested by the person or persons who hold such letters.

#### **§ 188. Rights of Third Persons Dealing With Executors or Administrators**

When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and the law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled, and declared invalid.

### **PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES**

#### **§ 189. How Executors, Administrators, and Guardians Shall Qualify**

A personal representative shall be deemed to have duly qualified when he shall have taken and filed his oath and made the required bond, had the same approved by the judge, and filed it with the clerk. In case of an executor or guardian who is not required to make bond, he shall be deemed to have duly qualified when he shall have taken and filed his oath required by law.

#### **§ 190. Oaths of Executors and Administrators**

(a) **Executor, or Administrator With Will Annexed.** Before the issuance of letters testamentary or of administration with the will annexed,

the person named as executor, or appointed administrator with the will annexed, shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of \_\_\_\_\_, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said \_\_\_\_\_."

(b) **Administrator.** Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that \_\_\_\_\_, deceased, died without leaving any lawful will (or that the named executor in any such will is dead or has failed or neglected to offer the same for probate, or to accept and qualify as executor, within the time required, as the case may be), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased."

(c) **Temporary Administrator.** Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of \_\_\_\_\_, deceased, in accordance with the law, and with the order of the court appointing me such administrator."

(d) **Filing and Recording of Oaths.** All such oaths may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

### § 191. Oath of Guardian

The guardian shall take an oath to discharge faithfully the duties of guardian of the person, or of the estate, or of the person and estate, of the ward or of a person for whom it is necessary to have a guardian to receive funds or money from a governmental source, as the case may be, according to law.

### § 192. Time for Taking Oath and Giving Bond

The oath of a personal representative may be taken and subscribed, or his bond may be given and approved, at any time before the expiration of twenty days after the date of the order granting letters testamentary or of administration or of guardianship, as the case may be, or before such letters shall have been revoked for a failure to qualify within the time allowed. All such oaths may be taken before any person authorized to administer oaths under the laws of this State.

### § 193. Bond of Guardian of Person

The bond of a guardian of the person (including persons for whom guardians must be appointed to receive funds from any governmental source) shall be in an amount to be fixed by the court granting such guardianship, not to exceed One Thousand Dollars, and shall be made payable to, and be approved by, the judge of the court where the guardianship is pending, conditioned that the guardian will faithfully discharge the duties of guardian of the person of such ward; provided that, in the case of one appointed as guardian of a person entitled to receive funds from a government source, if the gross sum to be received in any one year is more than One Thousand Dollars, the court shall determine the amount of bond necessary to protect the interest of the ward.

**§ 194. Bonds of Personal Representatives of Estates**

Except when bond is not required under the provisions of this Code, before the issuance of letters testamentary, administration, or guardianship, the recipient of letters shall enter into bond in accordance with the following rules:

1. The bond shall be payable to the judge of the court in which the proceedings are pending and to his successors, shall bear the written approval of the judge, and shall be signed by him officially.

2. The penalty of the bond shall be fixed by the judge, in an amount equal to double the estimated value of the personal property belonging to the estate, plus a reasonable amount to be fixed at the discretion of the judge to cover rents, revenues, and income anticipated to be derived from renting or use of real or personal property belonging to such estate.

3. The surety or sureties on said bonds may be authorized corporate sureties, or personal sureties, or the representative may deposit cash or securities in lieu of sureties as hereinafter provided.

4. When any such bond shall exceed Fifty Thousand Dollars in penal sum, the court may require that such bond be signed by two or more authorized corporate sureties, or by one such surety and two or more good and sufficient personal sureties. The estate shall pay the cost of a bond with corporate sureties.

5. If the sureties be natural persons, there shall not be less than two, each of whom shall certify and the judge shall be satisfied that he owns real property within this state, over and above that exempt by law, equal in value to the face amount of the bond. Except as provided above, only one surety is required if the surety is an authorized corporate surety.

6. In case of a temporary administrator or guardian, the bond shall be in such sum as the judge shall direct.

7. Where one person is appointed guardian of both the person and estate of a ward, only one bond shall be given by the guardian, in the same amount that would be required from a guardian of the estate only.

8. It shall be lawful for the personal representative of an estate, in lieu of giving surety or sureties on any bond which shall be required of him, to deposit out of his own assets, cash, or negotiable securities such as are prescribed for investment for wards, under orders of court, with a state or national bank, safe deposit corporation, or trust company authorized by law to do business as such, or with any other corporate depository approved by the court, if such deposit is otherwise proper, said deposit to be equal in amount or value to the amount of the bond required and to be deposited in such manner as to prevent the withdrawal of said money or other assets except upon presentation of certified copy of an order of the court in which the administration is pending. The following rules shall apply to the making and handling of such deposits:

(a) A receipt for a deposit in lieu of surety or sureties shall be issued by the depository, showing the amount of cash, or if securities, the amount and description thereof, and agreeing not to disburse or deliver the same except upon receipt of a certified copy of an order of the court in which the proceedings are pending, and such receipt shall be attached to the representative's bond and be delivered to and filed by the county clerk after approval by the judge.

(b) The amount of cash or securities on deposit may be increased or decreased, by order of the court from time to time, as the interest of the estate shall require.

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

(c) Deposits in lieu of sureties on bonds, whether of cash or securities, may be withdrawn or released only on order of a court having jurisdiction.

(d) Creditors or others to whom the representative shall have become personally liable by reason of his handling of the estate shall have the same rights against the representative and such deposits as are provided for recovery against sureties on a bond.

(e) The court may, upon written application by the representative or by any other person interested in the estate, require that adequate bond be given by the representative in lieu of such deposit, or authorize withdrawal of the deposit and substitution of a bond with sureties therefor. In either case, the representative shall file a sworn statement showing the condition of the estate, and unless filed within ten days after the filing of such application, he shall be subject to removal as in other cases. The deposit may not be released or withdrawn until the court has been satisfied as to the condition of the estate, has determined the amount of bond, and has received and approved the bond.

(f) Upon the closing of an estate, any such deposit or portion thereof remaining on hand shall be released by order of court and paid over to the person or persons entitled thereto. No writ of attachment or garnishment shall lie against the deposit, except as to claims of creditors of the estate being administered, or persons interested therein, including distributees and wards.

9. Cash or negotiable securities of an estate may be deposited with a domestic banking or trust company upon such terms as may be prescribed by order of the court. The amount of the bond of the personal representative shall be reduced in proportion to the value of the cash or negotiable securities so deposited. Such cash or negotiable securities so deposited may be withdrawn from such depository with permission of the court and the bond of the personal representative shall be increased in proportion to the value of the cash or negotiable securities so withdrawn.

#### § 195. When No Bond Required

(a) **By Will.** Whenever any will probated in a Texas court directs that no bond or security be required of the person or persons named as executors, or when such a will is made by a surviving parent and directs that the guardian or guardians therein appointed serve without bond, the court finding that such person or persons are qualified, letters testamentary or of guardianship, as is proper, shall be issued to the persons so named, without requirement of bond.

(b) **Corporate Fiduciary Exempted From Bond.** If a personal representative is a corporate fiduciary, as said term is defined in this Code, no bond shall be required.

#### § 196. Form of Bond

The following form, or the same in substance, may be used for the bonds of personal representatives:

"The State of Texas

"County of \_\_\_\_\_

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound unto the county (or probate) judge of the County of \_\_\_\_\_, and his successors in office, in the sum of \_\_\_\_\_ Dollars; conditioned that the above bound A. B., who has been appointed executor of the last will and testament of J. C., deceased (or has

been appointed by the said judge of \_\_\_\_\_ County, administrator with the will annexed of the estate of J. C., deceased, or has been appointed by the said judge of \_\_\_\_\_ County, administrator of the estate of J. C., deceased, or has been appointed by the said judge of \_\_\_\_\_ County, temporary administrator of the estate of J. C., deceased, as the case may be, or has been appointed by the judge of said county as guardian or temporary guardian of the estate, or of the person or person and estate of \_\_\_\_\_, stating in each case whether or not such person is a minor or a person of unsound mind or an habitual drunkard or a person for whom a guardian is necessary to receive funds or money from a governmental source), shall well and truly perform all of the duties required of him by law under said appointment.”

### **§ 197. Bonds to Be Filed**

All bonds required by preceding provisions of this Code shall be subscribed by both principals and sureties, and, when approved by the court, be filed with the clerk.

### **§ 198. Bonds of Joint Representatives**

When two or more persons are appointed representatives of the same estate or person and are required by the provisions of this Code or by the court to give a bond, the court may require either a separate bond from each or one joint bond from all of them.

### **§ 199. Bonds of Married Women**

When a married woman is appointed executrix, administratrix, or guardian, she may, jointly with her husband, or without her husband, execute such bond as the law requires; and such bond shall bind her separate estate, but shall bind her husband only if signed by him.

### **§ 200. Bond of Married Person Under Twenty-one Years of Age**

When a person under twenty-one years of age who is or has been married shall accept and qualify as executor, administrator, or guardian, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age.

### **§ 201. Affidavit of Personal Surety**

Before the judge may consider a bond with personal surety, each such surety shall execute an affidavit that he owns property subject to execution, of a value over and above his liabilities and equal at least to the amount of the bond and shall state in such affidavit the total amount of his obligation as surety on other official and statutory bonds, and such affidavit shall be presented to the judge for his consideration in support of the suretyship and shall be filed with the bond. If the amount of the bond exceeds Ten Thousand Dollars, the affidavit shall also state:

(a) An adequate description of all real property within this state offered by him as security, which identifies such real property sufficiently to establish the lien of the bond thereon as hereinafter provided; and

(b) The total amount of the liens, unpaid taxes, and other encumbrances against such property offered; and

(c) The assessed value of such property offered, its market value, and the value of the equity over and above all encumbrances, liens, and unpaid taxes.

**§ 202. Bond as Lien on Real Property of Surety**

Upon the approval and recording of the bond of a personal surety, when the amount of such bond exceeds Ten Thousand Dollars, a lien on the real property of the surety in this State which is offered by him as security in the affidavit of surety, and only upon such real property, shall arise as security for the performance of the obligation of the bond. The clerk of the court shall, before letters are issued to the representative, cause to be mailed to the office of the county clerk of each county in which is located any real property as set forth in the affidavit of the surety, a statement signed by the clerk, giving a sufficient description of such real property, the name of the principal and sureties, the amount of the bond, and the name of the estate and the court in which the bond is given. The county clerk to whom such statement is sent shall record the same in the deed records of the county. All such recorded statements shall be duly indexed in such manner that the existence and character of the liens may conveniently be determined, and such recording and indexing of such statement shall constitute and be constructive notice to all persons of the existence of such lien on such real property situated in such county, effective as of date of such indexing.

**§ 203. When New Bond May Be Required**

A personal representative may be required to give a new bond in the following cases:

(a) When the sureties upon the bond, or any one of them, shall die, remove beyond the limits of the state, or become insolvent; or

(b) When, in the opinion of the court, the sureties upon any such bond are insufficient; or

(c) When, in the opinion of the court, any such bond is defective; or

(d) When the amount of any such bond is insufficient; or

(e) When the sureties, or any one of them, petitions the court to be discharged from future liability upon such bond; or

(f) When the bond and the record thereof have been lost or destroyed.

**§ 204. Demand for New Bond by Interested Person**

Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the probate proceedings are pending, alleging that the bond of the personal representative is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such representative to be cited to appear and show cause why he should not give a new bond.

**§ 205. Judge to Require New Bond**

When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, the judge shall without delay cause the representative to be cited to show cause why he should not give a new bond.

**§ 206. Order Requiring New Bond**

Upon the return of a citation ordering a personal representative to show cause why he should not give a new bond, the judge shall, on the day named therein for the hearing of the matter, proceed to inquire into

the sufficiency of the reasons for requiring a new bond; and, if satisfied that a new bond should be required, he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order.

**§ 207. Order Suspends Powers of Personal Representative**

When a personal representative is required to give a new bond, the order requiring such bond shall have the effect to suspend his powers, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved.

**§ 208. Decrease in Amount of Bond**

A personal representative required to give bond may at any time file with the clerk a written application to the court to have his bond reduced. Forthwith the clerk shall issue and cause to be posted notice to all persons interested and to the surety or sureties on the bond, apprising them of the fact and nature of the application and of the time when the judge will hear the application. The judge, in his discretion, upon the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the estate, and upon the approval of an accounting filed at the time of the application, may permit the filing of a new bond in a reduced amount.

**§ 209. Discharge of Sureties Upon Execution of New Bond**

When a new bond has been given and approved, an order shall be entered discharging the sureties upon the former bond from all liability for the future acts of the principal.

**§ 210. Release of Sureties Before Estate Fully Administered**

The sureties upon the bond of a personal representative, or any one of them, may at any time file with the clerk a petition to the court in which the proceedings are pending, praying that such representative be required to give a new bond and that petitioners be discharged from all liability for the future acts of such representative; whereupon, such representative shall be cited to appear and give a new bond.

**§ 211. Release of Lien Before Estate Fully Administered**

If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested, if the court is satisfied that the bond is sufficient without the lien on such property, or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien which is to be released. If such personal surety who requests the release of the lien does not offer a lien on other real or personal property, and if the court is not satisfied of the sufficiency of the bond without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

**§ 212. Release of Recorded Lien on Surety's Property**

A certified copy of the court's order describing the property, and releasing the lien, filed with the county clerk of the county where the property is located, and recorded in the deed records, shall have the effect of cancelling the lien on such property.

**§ 213. Revocation of Letters for Failure to Give Bond**

If at any time a personal representative fails to give bond as required by the court, within the time fixed by this Code, another person may be appointed in his stead.

**§ 214. Executor or Guardian Without Bond Required to Give Bond**

Where no bond is required of an executor or guardian appointed by will, any person having a debt, claim, or demand against the estate, to the justice of which oath has been made by himself, his agent, or attorney, or any other person interested in such estate, whether in person or as the representative of another, may file a complaint in writing in the court where such will is probated, and the court shall thereupon cite such executor or guardian to appear and show cause why he should not be required to give bond.

**§ 215. Order Requiring Bond**

Upon hearing such complaint, if it appears to the court that such executor or guardian is wasting, mismanaging, or misapplying such estate, and that thereby a creditor may probably lose his debt, or that thereby some person's interest in the estate may be diminished or lost, the court shall enter an order requiring such executor or guardian to give bond within ten days from the date of such order.

**§ 216. Bond in Such Case**

Such bond shall be for an amount sufficient to protect the estate and its creditors, to be approved by, and payable to, the judge, conditioned that said executor or guardian will well and truly administer such estate, and that he will not waste, mismanage, or misapply the same.

**§ 217. Failure to Give Bond**

Should the executor or guardian fail to give such bond within ten days after the order requiring him to do so, then if the judge does not extend the time, he shall, without citation, remove such executor or guardian and appoint some competent person in his stead who shall administer the estate according to the provisions of such will or the law, and who, before he enters upon the administration of said estate, shall take the oath required of an administrator with the will annexed or of a guardian as the case may be, and shall give bond in the same manner and in the same amount provided in this Code for the issuance of original letters of administration or guardianship.

**§ 218. Bonds Not Void Upon First Recovery**

The bonds of personal representatives shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

**§ 219. Agreement as to Deposit of Assets**

It shall be lawful for a personal representative of an estate to agree with his surety for the deposit of any or all moneys and other assets of the estate with a state or national bank, safe deposit corporation, or trust company authorized by law to do business as such, or with another corporate depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court



made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from liability or change the liability of the principal or sureties as established by the terms of the bond.

**PART 3. REVOCATION OF LETTERS, DEATH,  
RESIGNATION, AND REMOVAL**

**§ 220. Appointment of Successor Representative**

**(a) Because of Death, Resignation, or Removal.** When a person duly appointed a personal representative fails to qualify, or, after qualifying, dies, resigns, or is removed, the court may, upon application, but without notice or citation, appoint a successor if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, a final accounting. In case of death, the legal representatives of the deceased person shall account for, pay, and deliver to the person or persons legally entitled to receive the same, all the property of every kind belonging to the estate entrusted to his care, at such time and in such manner as the court shall order.

**(b) Because of Existence of Prior Right.** Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.

**(c) When Named Executor or Guardian Becomes an Adult.** If one named in a will as executor or guardian is not an adult when the will is probated and letters in any capacity have been granted to another, such nominated executor or guardian, upon proof that he has become an adult and is not otherwise disqualified, shall be entitled to have such former letters revoked and appropriate letters granted to him. And if the will names two or more persons as executor, any one or more of whom are minors when such will is probated, and letters have been issued to such only as are adults, said minor or minors, upon becoming adults, if not otherwise disqualified, shall be permitted to qualify and receive letters.

**(d) Upon Return of Sick or Absent Executor or Guardian.** If one named in a will as executor or guardian was sick or absent from the State when the testator died, or when the will was proved, and therefore could not present the will for probate within thirty days after the testator's death, or accept and qualify as executor or guardian within twenty days after the probate of the will, he may accept and qualify as executor or guardian within sixty days after his return or recovery from sickness, upon proof to the court that he was absent or ill; and, if the letters have been issued to others, they shall be revoked.

**(e) When Will Is Discovered After Administration Granted.** If it is discovered after letters of administration have been issued that the deceased left a lawful will, the letters shall be revoked and proper letters issued to the person or persons entitled thereto.

**(f) When Application and Service Necessary.** Except as provided in Subsection (b) of this Section, letters shall not be revoked and other letters granted except upon application, and after personal service of citation on the person, if living, whose letters are sought to be revoked, that he appear and show cause why such application should not be granted; but when letters are revoked hereunder, other letters may be granted without further notice or citation.

(g) **Payment or Tender of Money Due During Vacancy.** Money or other thing of value falling due to an estate or ward while the office of the personal representative is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the estate or ward, and the debtor, obligor, or payor shall thereby be discharged of the obligation for all purposes to the extent and purpose of such payment or tender. If the clerk accepts such payment or tender, he shall issue a proper receipt therefor.

### § 221. Resignation.

(a) **Application to Resign.** A personal representative who wishes to resign his trust shall file with the clerk his written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the estate entrusted to his care.

(b) **Successor Representatives.** If the necessity exists, the court may immediately accept a resignation and appoint a successor, but shall not discharge the person resigning, or release him or the sureties on his bond until final order or judgment shall have been rendered on his final account.

(c) **Citation.** Upon the filing of an application to resign, supported by exhibit and final account, the clerk shall call the application to the attention of the judge, who shall set a date for a hearing upon the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed, and the time and place set for hearing, at which time said persons may appear and contest the exhibit and account. The citation shall be posted, unless the court directs that it be published.

(d) **Hearing.** At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, he shall proceed to examine such exhibit and account, and hear all evidence for and against the same, and shall, if necessary, restate, and audit and settle the same. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with law, he shall enter an order of approval, and require that the estate remaining in the possession of the applicant, if any, be delivered to the person or persons entitled by law to receive it. A guardian of the person shall be required to comply with all lawful orders of the court concerning his ward.

(e) **Requisites of Discharge.** No resigning personal representative shall be discharged until the application has been heard, the exhibit and account examined, settled, and approved, and until he has satisfied the court that he has delivered the estate, if there be any remaining in his possession, or has complied with all lawful orders of the court with relation to his trust.

(f) **Final Discharge.** When the resigning applicant has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if he is under bond, his sureties.

**§ 222. Removal**

(a) **Without Notice.** The court, on its own motion or on motion of any interested person, and without notice, may remove any personal representative, appointed under provisions of this Code, who:

- (1) Neglects to qualify in the manner and time required by law; or
- (2) Fails to return within sixty days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge; or
- (3) Having been required to give a new bond, fails to do so within the time prescribed; or
- (4) Absents himself from the State for a period of three months at one time without permission of the court, or removes from the State; or
- (5) Cannot be served with notices or other processes by reason of the fact that his whereabouts are unknown, or by reason of the fact that he is eluding service.

(b) **With Notice.** The court may remove a personal representative on its own motion, or on the complaint of any interested person, after the personal representative has been cited by personal service to answer at a time and place fixed in the notice, when:

- (1) Sufficient grounds appear to support belief that he has misapplied, embezzled, or removed from the state, or that he is about to misapply, embezzle, or remove from the state, all or any part of the property committed to his care; or
- (2) He fails to return any account which is required by law to be made; or
- (3) He fails to obey any proper order of the court having jurisdiction with respect to the performance of his duties; or
- (4) He is proved to have been guilty of gross misconduct, or mismanagement in the performance of his duties; or
- (5) He becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of his trust; or
- (6) As executor or administrator, he fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath; or
- (7) As guardian of the person, he cruelly treats the ward, or neglects to educate or maintain the ward as liberally as the means of such ward and the condition of his estate permit.

(c) **Order of Removal.** The order of removal shall state the cause thereof. It shall require that any letters issued to the one removed shall, if he has been personally served with citation, be surrendered, and that all such letters be cancelled of record, whether delivered or not. It shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons entitled thereto, or to one who has been appointed and has qualified as successor representative, and as to the person of a ward, that control be relinquished as required in the order.

**PART 4. SUBSEQUENT PERSONAL REPRESENTATIVES****§ 223. Further Administration With or Without Will Annexed**

Whenever any estate is unrepresented by reason of the death, removal, or resignation of the personal representative of such estate, the court shall grant further administration of the estate when necessary, and with the will annexed where there is a will, upon application therefor by a qualified person interested in the estate. Such appointments shall be made on notice and after hearing, as in case of original appointments.

**§ 224. Successors Succeed to Prior Rights, Powers, and Duties**

When a representative of the estate not administered succeeds another, he shall be clothed with all rights, powers, and duties of his predecessor, except such rights and powers conferred on the predecessor by will which are different from those conferred by this Code on personal representatives generally. Subject to this exception, the successor shall proceed to administer such estate in like manner as if his administration were a continuation of the former one. He shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give in order to enforce the delivery of the estate and the liability of the sureties of his predecessor for so much as is not delivered. He shall be excused from accounting for such of the estate as he has failed to recover after due diligence.

**§ 225. Additional Powers of Successor Appointee**

In addition, such appointee may make himself, and may be made, a party to suits prosecuted by or against his predecessors. He may settle with the predecessor, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the predecessor in his own name and capacity, for all the estate that came into the hands of the predecessor and has not been accounted for by him.

**§ 226. Subsequent Executors and Guardians Also Succeed to Prior Rights and Duties**

Whenever an executor or guardian shall accept and qualify after letters of administration shall have been granted upon the estate, such executor or guardian shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration were a continuation of the former one, subject, however, to any legal directions of the testator contained in the will in relation to the estate.

**§ 227. Successors Return of Inventory, Appraisement, and List of Claims**

An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisement, and list of claims of the estate, within sixty days after being qualified, in like manner as is required of original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims. In all orders appointing successor representatives of estates, the court shall appoint appraisers as in original appointments.

PART 5. GENERAL POWERS OF PERSONAL  
REPRESENTATIVES

**§ 228. Powers and Duties of a Guardian of a Person to Receive Funds from a Governmental Agency**

A guardian appointed to receive funds from a governmental agency shall have only the power to receive and receipt for such funds, hold same, pay costs of the guardian in connection with collecting such funds or money, accounting for same to the court, and pay all or such portion of the remainder to the ward or, if the ward is mentally incompetent, use such portion for his support and maintenance, as the court by appropriate order or orders from time to time shall authorize. Such guardian shall not be considered as a guardian of the estate of such person unless he has been expressly appointed and qualified as such by procedure prescribed for that purpose in this Code, to-wit: written application with appropriate allegations, general notice and personal citation duly served and returned, and order of court with appropriate findings, adjudicating such person to be an habitual drunkard or a person of unsound mind.

**§ 229. Guardians of the Person**

The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is properly educated; and, if necessary for his support, to see that he learns a trade or adopts a useful profession.

**§ 230. Care of Property of Estates**

(a) **Estates of Decedents.** The executor or administrator shall take care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in good repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

(b) **Estates of Wards.** The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

**§ 231. Summary of Powers of Guardians of Person and Estate**

The guardian of both person and estate has all the rights and powers, and shall perform all the duties, of the guardian of the person and of the guardian of the estate.

**§ 232. Representative of Estate Shall Take Possession of Personal Property and Records**

The personal representative of an estate, immediately after receiving letters, shall collect and take into possession the personal property, record books, title papers, and other business papers of the estate, and all such in

his possession shall be delivered to the person or persons legally entitled thereto when the administration has been closed or a successor has received letters.

### § 233. Collection of Claims and Recovery of Property

Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate to which its owners have claim or title, provided there is a reasonable prospect of collecting such claims or of recovering such property. If he wilfully neglects to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as has been lost by such neglect. Such representatives may enter into contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for services of attorneys and incidental expenses, subject only to approval of the court in which the estate is being administered.

### § 234. Extending Obligations, Purchase and Compromise

The personal representative of the estate of any person may, upon application and order authorizing same, renew or extend any obligation owing by or to such estate. When a personal representative deems it for the interest of the estate, he may, upon written application to the court, and by order granting the authority:

- (a) Purchase or exchange property.
- (b) Take claims or property for the use and benefit of the estate in payment of any debt due or owing to the estate.
- (c) Compound bad or doubtful debts due or owing to the estate.
- (d) Make compromises or settlements in relation to property or claims in dispute or litigation.
- (e) Compromise or pay in full any secured claim which has been allowed and approved as required by law against the estate by conveying to the holder of such claim the real estate or personalty securing same, in full payment, liquidation, and satisfaction thereof, and in consideration of cancellation of all notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of such claim.
- (f) Without application or order, release liens upon payment at maturity of the debt secured thereby.

### § 235. Possession of Property Held in Common Ownership

If the estate holds or owns any property in common, or as part owner with another, the representative of the estate shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled.

### § 236. Sums Allowable for Education and Maintenance of Ward

The court may direct the guardian of the person to expend, for the education and maintenance of his ward, a sum in excess of the income of the ward's estate; otherwise, the guardian shall not be allowed, for the education and maintenance of the ward, more than the net income of the estate. When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person such sums as shall be fixed by the court, at times specified by the court,

for the education and maintenance of the ward, and, on failure to do so, shall be compelled to make such payment by order of the court, after being duly cited.

#### **§ 237. Title of Wards Not to Be Disputed**

Neither the guardian nor his heirs, executors, administrators, or assigns shall dispute the right of the ward to any property that came into the possession of such guardian as guardian, except such property as shall have been recovered from the guardian, or except property on account of which there is a personal action pending.

#### **§ 238. Operation of Farm, Ranch, Factory, or Other Business**

If the estate owns a farm, ranch, factory, or other business, the disposition of which has not been specifically directed by will, and if the same be not required to be sold at once for the payment of debts or other lawful purposes, the representative, upon order of the court, shall carry on the operation of such farm, ranch, factory, or other business, or cause the same to be done, or rent the same, as shall appear to be for the best interest of the estate. In deciding, the court shall consider the condition of the estate, and the necessity that may exist for future sale of such property or business for the payment of debts, claims, or other lawful expenditures, and shall not extend the time of renting any of the property beyond what appears consistent with the speedy settlement of the estate of a deceased person, or the maintenance and education of a ward or the settlement of his estate.

#### **§ 239. Payment or Credit of Income**

In all cases where the estate of a deceased person is being administered under the direction, control, and orders of a court in the exercise of its probate jurisdiction, upon the application of the executor or administrator of said estate, or of any interested party, after notice thereof has been given by posting, if it appears from evidence introduced at the hearing upon said application, and the court finds, that the reasonable market value of the assets of the estate then on hand, exclusive of the annual income therefrom, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies, and that no creditor or legatee of the estate has then appeared and objected, the court may order and direct the executor or administrator to pay to, or credit to the account of, those persons who the court finds will own the assets of the estate when the administration thereon is completed, and in the same proportions, such part of the annual net income received by or accruing to said estate, as the court believes and finds can conveniently be paid to such owners without prejudice to the rights of creditors, legatees, or other interested parties. Nothing herein contained shall authorize the court to order paid over to such owners of the estate any part of the corpus or principal of the estate; provided, however, in this connection, bonuses, rentals, and royalties received for, or from, an oil, gas, or other mineral lease shall be treated and regarded as income, and not as corpus or principal.

#### **§ 240. Joint Executors or Administrators**

Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal

had occurred. Provided, however, that this Section shall not be construed to authorize one of several executors or administrators to convey real estate, but in such case all the executors or administrators who have qualified as such and are acting as such shall join in the conveyance, unless the court, after due hearing, authorizes less than all to act.

## PART 6. COMPENSATION, EXPENSES, AND COURT COSTS

### § 241. Compensation of Personal Representatives

(a) **Compensation of Executors and Administrators.** Executors and administrators shall be entitled to receive, and may retain in their hands, a commission of five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate; provided, no commission shall be allowed for receiving cash belonging to the testator or intestate which was on hand or on deposit to his credit in a bank at the time of his death, nor for paying out cash to the heirs or legatees as such; provided, further, however, that in no event shall the executor or administrator be entitled in the aggregate to more than five per cent, nor less than two and one-half per cent, of the gross fair market value of the estate subject to administration. If the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services. For this purpose, the county court shall have jurisdiction to receive, consider, and act on applications from independent executors.

(b) **Compensation of Guardians.** A guardian of the person alone is entitled to no compensation. The guardian of the estate, or of the person and estate, shall not be entitled to, or receive, any fee or commission on the estate of the ward when it is first delivered to him; but shall be entitled to a fee of five per cent on the gross income of the ward's estate and five per cent on all money paid out. The term "money paid out" shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. If the guardian manages a farm, ranch, factory, or other business of his ward, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services.

### § 242. Expenses Allowed

Personal representatives of estates shall also be entitled to all necessary and reasonable expenses incurred by them in the preservation, safe-keeping, and management of the estate, and in collecting or attempting to collect claims or debts, and in recovering or attempting to recover property to which the estate has a title or claim, and all reasonable attorney's fees, necessarily incurred in connection with the proceedings and management of such estate, on satisfactory proof to the court.

### § 243. Allowance for Defending Will

When any person designated as executor in a will, or as administrator with the will annexed, defends it or prosecutes any proceeding in good faith, and with just cause, for the purpose of having the will admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in such proceedings.



**§ 244. Expense Accounts**

All expense charges shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by affidavit of the representative, filed with the clerk and entered on the claim docket, and shall be acted on by the court in like manner as other claims against the estate.

**§ 245. When Costs Are Adjudged Against Representative**

When the personal representative of an estate or person neglects the performance of any duty required of him, and any costs are incurred thereby, or if he is removed for cause, he and the sureties on his bond shall be liable for all costs so incurred.

**§ 246. Exemption From Fees and Costs in Guardianships for Reception of Governmental Funds**

Whenever a guardian is appointed for the purpose of enabling a person to receive public assistance which is contingent upon need, from the State or Federal Government, the court may, in its discretion, order that no costs or fees be charged in connection with the proceeding.

**§ 247. Costs Against Estates of Incompetents**

When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate, or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly.

## CHAPTER VIII

PROCEEDINGS DURING ADMINISTRATION AND  
GUARDIANSHIP

## PART 1. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Sec.

- 248. Appointment of Appraisers.
- 249. Failure of Appraiser to Serve
- 250. Inventory and Appraisalment.
- 251. List of Claims.
- 252. Affidavit to be Attached.
- 253. Fees of Appraisers.
- 254. Waiver of Appraisalment.
- 255. Action by the Court.
  - (a) Order of Approval.
  - (b) Order of Disapproval.
- 256. Discovery of Additional Property.
- 257. Additional Inventory or List of Claims Required by Court.
- 258. Correction Required When Inventory, Appraisalment, or List of Claims Erroneous or Unjust.
- 259. Effect of Reappraisalment.
- 260. Failure of Joint Personal Representatives to Return an Inventory, Appraisalment, and List of Claims.
- 261. Use of Inventories, Appraisements, and Lists of Claims as Evidence.

PART 2. WITHDRAWING ESTATES OF DECEASED  
PERSONS FROM ADMINISTRATION

- 262. Executor or Administrator Required to Report on Condition of Estate.
- 263. Bond Required to Withdraw Estate From Administration.
- 264. Court's Order.
- 265. Order of Discharge.
- 266. Lien on Property of Estate Withdrawn From Administration.
- 267. Partition of Estate Withdrawn From Administration.
- 268. Creditors May Sue on Bond.
- 269. Creditors May Sue Distributees.

PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT  
PROPERTY, AND FIXING THE FAMILY ALLOWANCE

- 270. Liability of Homestead for Debts.
- 271. Exempt Property to Be Set Apart.
- 272. To Whom Delivered.
- 273. Allowance in Lieu of Exempt Property.
- 274. How Allowance Paid.
- 275. To Whom Allowance Paid.
- 276. Sale to Raise Allowance.
- 277. Preference of Liens.
- 278. When Estate is Solvent.
- 279. When Estate is Insolvent.
- 280. Exempt Property Not Considered in Determining Solvency.

Sec.

- 281. Exempt Property Liable for Certain Debts.
- 282. Nature of Homestead Property Immaterial.
- 283. Homestead Rights of Surviving Husband.
- 284. When Homestead Not Partitioned.
- 285. When Homestead Can Be Partitioned.
- 286. Family Allowance to Widows and Minors.
- 287. Amount of Family Allowance.
- 288. When Family Allowance Not Made.
- 289. Order Fixing Family Allowance.
- 290. Family Allowance Preferred.
- 291. To Whom Family Allowance Paid.
- 292. May Take Property for Family Allowance.
- 293. Sale to Raise Funds for Family Allowance.

#### PART 4. PRESENTMENT AND PAYMENT OF CLAIMS

- 294. Notice by Representative of Appointment.
  - (a) Giving of Notice Required.
  - (b) Proof of Publication.
  - (c) When No Newspaper Printed in the County.
- 295. Notice to Holders of Recorded Claims.
  - (a) When Notice Required.
  - (b) How Notice Shall Be Given.
  - (c) Proof of Service of Notice.
- 296. One Notice Sufficient.
- 297. Penalty for Failure to Give Notice.
- 298. Claims Against Estates of Decedents and Wards.
  - (a) Claims Against Decedent's Estate Postponed if not Presented in One Year.
  - (b) Time for Presentation of Claims to Guardians.
  - (c) Claims Barred by Limitation Not to Be Allowed or Approved.
- 299. Tolling of General Statutes of Limitation.
- 300. Claims for Expenses of Funeral and Last Illness.
- 301. Claims Must Be Authenticated.
- 302. When Defects of Form Are Waived.
- 303. Evidence Concerning Lost or Destroyed Claims.
- 304. Authentication of Claim by Others Than Individual Owners.
- 305. Guardian's Payment of Unauthenticated Claims.
- 306. Method of Handling Secured Claims.
  - (a) Specifications of Claim.
  - (b) Handling of Secured Claims Not Presented in Time.
  - (c) Approved Claim as Preferred Lien Against Property.
  - (d) Payment of Maturities on Secured Claims.
- 307. Claims Providing for Attorney's Fees.
- 308. Depositing Claims With Clerk.
- 309. Memorandum of Allowance or Rejection of Claim.
- 310. Failure to Endorse or Annex Memorandum.
- 311. When Claims Entered in Docket.
  - (a) Claims Against Estates of Decedents.
  - (b) Claims Against Estates of Wards.

Sec.

312. Contest of Claims, Action by Court, and Appeals.  
 (a) Contest of Claims.  
 (b) Court's Action Upon Claims.  
 (c) Hearing on Claims.  
 (d) Order of the Court.  
 (e) Appeal.
313. Suit on Rejected Claim.
314. Presentment of Claims a Prerequisite for Judgment.
315. Costs of Suit With Respect to Claims.
316. Claims Against Executors or Administrators.
317. Claims by Personal Representatives.  
 (a) By Executors or Administrators.  
 (b) By Guardians.  
 (c) Action on Such Claims.  
 (d) Provisions Not Applicable to Certain Claims.
318. Claims Not Allowed After Order for Partition and Distribution.
319. Claims Not to Be Paid Unless Approved.
320. Order of Payment of Claims.  
 (a) Estates of Decedents.  
 (b) Estates of Wards.
321. Deficiency of Assets.
322. Classification of Claims Against Estates of Decedents.
323. Joint Obligation.
324. Representatives Not to Purchase Claims.
325. Proceeds of Sale of Mortgaged Property.
326. Owner May Obtain Order for Payment.
327. Claims Presented Against Estate of Decedent After Twelve Months.
328. Liability for Nonpayment of Claims.  
 (a) Procedure to Force Payment.  
 (b) Penalty Against Representative.
329. Borrowing Money.  
 (a) Circumstances Under Which Money May Be Borrowed.  
 (b) Procedure for Borrowing Money.  
 (c) Order Authorizing Such Borrowing, or Extension of Lien.
330. Notices to Veterans Administration by Guardians.

## PART 5. SALES

331. Court Must Order Sales.
332. Sales Authorized by Will.
333. Certain Personal Property to Be Sold.
334. Sales of Other Personal Property.
335. Special Provisions Pertaining to Livestock.
336. Sales of Personal Property at Public Auction.
337. Sales of Personal Property on Credit.
338. Sale of Mortgaged Property.
339. Sales of Personal Property to Be Reported; Decree Vests Title.
340. Selection of Real Property to Be Sold for Payment of Debts.
341. Application for Sale of Real Estate.
342. Contents of Application for Sale of Real Estate.
343. Setting of Hearing on Application.

- Sec.
344. Citation and Return on Application.
345. Opposition to Application.
346. Order of Sale.
347. Procedure When Representative Neglects to Apply for Sale.
348. Permissible Terms of Sale of Real Estate.
- (a) For Cash or Credit.
  - (b) Reconveyance Upon Redemption.
349. Public Sales of Real Estate.
- (a) Notice of Sale.
  - (b) Method of Sale.
  - (c) Time and Place of Sale.
  - (d) Continuance of Sales.
  - (e) Failure of Bidder to Comply.
350. Private Sales of Real Estate.
351. Sales of Easements and Right of Ways.
352. Representative Not to Purchase Property of the Estate.
353. Reports of Sale.
354. Bond on Sale of Real Estate.
355. Action of Court on Report of Sale.
356. Deed Conveys Title to Real Estate.
357. Delivery of Deed, Vendor's and Deed of Trust Lien.
358. Penalty for Neglect.

#### PART 6. HIRING AND RENTING

359. Hiring or Renting Without Order of Court.
360. Liability of Personal Representative.
361. Order to Hire or Rent.
362. Procedure in Case of Neglect to Rent Property.
363. When Property is Hired or Rented on Credit.
364. Property Hired or Rented to Be Returned in Good Condition.
365. Report of Hiring or Renting.
366. Action of Court on Report.

#### PART 7. MINERAL LEASES, POOLING OR UNITIZATION AGREEMENTS, AND OTHER MATTERS RELATING TO MINERAL PROPERTIES

367. Mineral Leases After Public Notice.
- (a) Certain Words and Terms Defined.
  - (b) Mineral Leases, With or Without Pooling or Unitization.
  - (c) Rules Concerning Applications, Orders, Notices, and Other Essential Matters.
    1. Contents of Application.
    2. Order Designating Time and Place for Hearing Application.
      - (a) Duties of Clerk and Judge.
      - (b) Continuance of Hearing.
    3. Notice of Application to Lease, Service of Notice, and Proof of Service.
      - (a) Notice and Its Contents.
      - (b) Service of Notice.

Sec.

367. Mineral Leases After Public Notice—Continued
4. Preceding Requirements Mandatory.
  5. Hearing on Application to Lease and Order Thereon.
  6. Conditional Validity of Lease; Bond; Time of Execution; Confirmation Not Needed.
  7. Term of Lease Binding.
368. Mineral Leases at Private Sale.
- (a) Authorization Allowed.
  - (b) Action of the Court When Public Advertising Not Required.
369. Pooling or Unitization of Royalty or Minerals.
- (a) Authorization for Pooling or Unitization.
  - (b) Procedure for Authorizing Pooling or Unitization.
    - (1) Contents of Application.
    - (2) Notice Not Necessary.
    - (3) Hearing of Application.
    - (4) Action of Court and Contents of Order.
370. Special Ancillary Instruments Which May Be Executed Without Court Order.
371. Procedure When Representative of Estate Neglects to Apply for Authority.
372. Validation of Certain Leases and Pooling or Unitization Agreements Based on Previous Statutes.

#### PART 8. PARTITION AND DISTRIBUTION OF ESTATES OF DECEDENTS

373. Application for Partition and Distribution of Estates of Decedents.
- (a) Who May Apply.
  - (b) Contents of Application.
374. Citation of Interested Persons.
375. Citation of Executor or Administrator.
376. Guardians Ad Litem to Be Appointed in Certain Cases.
377. Facts to Be Ascertained Upon Hearing.
378. Decree of the Court.
379. Partition When Estate Consists of Money or Debts Only.
380. Partition and Distribution When Property Is Capable of Division.
- (a) Appointment of Commissioners.
  - (b) Writ of Partition and Service Thereof.
  - (c) Partition by Commissioners.
  - (d) Report of Commissioners.
  - (e) Action of the Court.
  - (f) Delivery of Property.
  - (g) Fees of Commissioners.
381. Partition and Distribution When Property of an Estate Is Incapable of Division.
- (a) Finding by the Court.
  - (b) Order of Sale.
  - (c) Purchase by Distributee.
  - (d) Applicability of Provisions Relating to Sales of Real Estate.
382. Property Located in Another County.
- (a) Court May Order Sale.
  - (b) Court May Appoint Additional Commissioners.

- Sec.  
383. To Whom Property of a Minor Shall Be Delivered.  
384. Damages for Neglect to Deliver Property.  
385. Partition of Community Property.  
    (a) Application for Partition.  
    (b) Bond and Action of the Court.  
    (c) Lien Upon Property Delivered.  
386. Partition of Property Jointly Owned.  
387. Expense of Partition.

#### PART 9. PARTITION OF WARD'S ESTATE IN REALTY

388. Partition of Ward's Interest in Realty.  
    (a) Agreement Upon Partition.  
    (b) Application for Approval of Agreement.  
    (c) Hearing on Application.  
    (d) Approval of Agreed Partition.  
    (e) Ratification of Partition Agreements.  
    (f) Judicial Proceeding to Secure Partition.

#### PART 10. INVESTMENTS, LOANS, AND CONTRIBUTIONS OF ESTATES OF WARDS

389. Investments.  
390. Purchase of Life Insurance or Annuities.  
    (a) Insurance Company Defined.  
    (b) New Insurance.  
    (c) [No Subsection Heading]  
    (d) Old or Existing Insurance.  
    (e) Joinder of Judge in Application.  
    (f) Exclusive Property of Ward Upon Maturity.  
    (g) When Guardian Can Be Beneficiary.  
391. Loans and Security Therefor.  
392. Guardian's Liability for Loans.  
393. Guardian's Investments in Real Estate.  
    (a) Application to Invest in Real Estate.  
    (b) Action of the Court.  
    (c) Approval of Contract for Purchase of Real Estate.  
    (d) Title to Real Estate.  
394. Securing Opinion of Attorney With Respect to Loans and Investments.  
395. Report of Investment and Loans.  
396. Liability of Guardian for Failure to Lend or Invest Funds.  
397. Requiring Guardian to Invest or Lend Surplus Funds.  
398. Contributions.  
    (a) Application.  
    (b) Setting Hearing on Application.  
    (c) Action of the Court.  
    (d) Consent of Certain Wards to Contributions.

**PART 11. ANNUAL ACCOUNTS AND OTHER EXHIBITS**

Sec.

**399. Annual Accounts.**

(a) Estates of Decedents.

(1) Order for Payment of Claims in Full.

(2) Order for Pro Rata Payment of Claims.

(b) Guardians of the Person.

(c) Guardians of the Estate.

**400. Penalty for Failure to File Annual Account.****401. Action Upon Annual Accounts.****402. Additional Exhibits of Estates of Decedents.****403. Penalty for Failure to File Exhibits or Reports.****PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE****404. Closing Administration of Estates of Decedents and Guardianship of Wards or Their Estates.**

(a) Estates of Decedents.

(b) Persons and Estates of Wards.

1. Of a minor.

2. Of Incompetents.

3. Of a Person Entitled to Funds From Any Governmental Source.

4. Exhaustion of Estate.

5. When Income Negligible.

**405. Account for Final Settlement of Estates of Decedents and Persons and Estates of Wards.**

(a) As to Estates of Decedents.

(b) As to Estates of Wards.

**406. Procedure in Case of Neglect or Failure to File Final Account; Payments Due Meantime.****407. Citation Upon Presentation of Account for Final Settlement.****408. Action of the Court.**

(a) Action Upon Account.

(b) Distribution of Remaining Property.

(c) Discharge of Representative When No Property Remains.

(d) Discharge When Estate Fully Administered.

**409. Money Becoming Due Pending Final Discharge.****410. Inheritance Taxes Must Be Paid.****411. Appointment of Attorney to Represent Ward.****412. Offsets, Credits, and Bad Debts.****413. Accounting for Labor or Services of a Ward.****414. Procedure if Representative Fails to Deliver Estate.****PART 1. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.****§ 248. Appointment of Appraisers**

When letters testamentary, or of administration or guardianship, are granted, the court, in the order granting such letters, shall appoint three or more disinterested persons, citizens of the county, a majority of whom



may act, to appraise the property of the estate to be administered. If deemed advisable, when property of the estate is situated in other counties, the court may appoint three or more appraisers who are disinterested citizens of such other counties, to appraise property of the estate therein situated.

#### **§ 249. Failure of Appraiser to Serve**

The court shall in all cases appoint appraisers as prescribed above. If the appraisers so appointed, or any of them, fail or refuse to act, the court shall by a like order or orders appoint another appraiser or appraisers, as the case shall require.

#### **§ 250. Inventory and Appraisalment**

It shall be the duty of every personal representative of an estate, as soon as he has collected the estate, and within sixty days after he has qualified and received letters, with the assistance of a majority of the appraisers appointed by the court, to make or cause to be made a full and correct inventory and appraisalment of all the property, both real and personal, of such estate which has come to his knowledge. In the case of a decedent's estate, the inventory shall specify what portion is separate property, if any, and what is represented as community property, if any. If any property is owned in common with others, the interest owned by the estate shall be shown, together with the names and relationship, if known, of co-owners. The appraised value of each article of property shall be stated opposite such article in the inventory; and such appraisalment shall be duly sworn to and subscribed by the appraisers.

#### **§ 251. List of Claims**

There shall also be made out and attached to said inventory a full and complete list of all claims due or owing to the estate, which shall state:

(a) The name of each person indebted to the estate and his address when known.

(b) The nature of such debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract.

(c) The date of such indebtedness, and the date when the same was or will be due.

(d) The amount of each claim, the rate of interest thereon, and time for which the same bears interest.

(e) In the case of decedent's estate, which of such claims are separate property and which are of the community.

(f) What portion of the claims, if any, is held in common with others, giving the names and the relationships, if any, of other part owners, and the interest of the estate therein.

#### **§ 252. Affidavit to be Attached**

The representative of the estate shall also attach to such inventory and list of claims his affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the said inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to his knowledge.

**§ 253. Fees of Appraisers**

Appraisers appointed by the court as herein authorized shall each be entitled to receive Five Dollars per day for each and every day that they are necessarily engaged in the performance of their duties as such.

**§ 254. Waiver of Appraisalment**

Upon agreement of all distributees, the appointment of appraisers may be dispensed with, and the court may appraise the property and make and file a report of such appraisalment; or, if the distributees so agree, the appraisalment for inheritance tax purposes required by Article 7130 of the Revised Civil Statutes (1925), as amended, may be used for all purposes in lieu of the appraisalment required by this Code.

**§ 255. Action by the Court**

Upon return of the inventory, appraisalment, and list of claims, the judge shall examine and approve, or disapprove, them, as follows:

(a) **Order of Approval.** Should the judge approve the inventory, appraisalment, and list of claims, he shall issue an order to that effect.

(b) **Order of Disapproval.** Should the judge not approve the inventory, appraisalment, or list of claims, or any of them, an order to that effect shall be entered, and it shall further require the return of another inventory, appraisalment, and list of claims, or whichever of them is disapproved, within a time specified in such order, not to exceed twenty days from the date of the order; and the judge may also, if deemed necessary, appoint new appraisers.

**§ 256. Discovery of Additional Property**

Whenever property or claims of an estate other than such as have already been inventoried, appraised, and listed, shall come to the knowledge of the representative, he shall forthwith make and return an additional inventory or list of claims, or both, of such newly discovered property or claims; and, thereupon, the judge shall appoint appraisers and cause such additional property to be appraised as in the case of original appraisements.

**§ 257. Additional Inventory or List of Claims Required by Court**

Any representative of an estate, on the written complaint of any interested person that property or claims of the estate have not been included in the inventory and list of claims filed, shall be cited to appear before the court in which the cause is pending and show cause why he should not be required to make and return an additional inventory or list of claims, or both. After hearing such complaint, and being satisfied of the truth thereof, the court shall enter its order requiring such additional inventory or list of claims, or both, to be made and returned in like manner as original inventories, and within such time, not to exceed twenty days, from the date of said order, as may be fixed by the court, but to include only property or claims theretofore not inventoried or listed.

**§ 258. Correction Required When Inventory, Appraisalment, or List of Claims Erroneous or Unjust**

Any person interested in an estate who deems an inventory, appraisalment, or list of claims returned therein erroneous or unjust in any particular may file a complaint in writing setting forth and pointing out the al-

leged erroneous or unjust items, and cause the representative to be cited to appear before the court and show cause why such errors should not be corrected. If, upon the hearing of such complaint, the court be satisfied from the evidence that the inventory, appraisalment, or list of claims is erroneous or unjust in any particular as alleged in the complaint, an order shall be entered specifying the erroneous or unjust items and the corrections to be made, and appointing appraisers to make a new appraisalment correcting such erroneous or unjust items and requiring the return of said new appraisalment within twenty days from the date of the order. The court may also, on its own motion or that of the personal representative of the estate, have a new appraisal made for the purposes above set out.

#### **§ 259. Effect of Reappraisalment**

When any reappraisalment is made, returned, and approved by the court, it shall stand in place of the original appraisalment. Not more than one reappraisalment shall be made, but any person interested in the estate may object to the reappraisalment either before or after it is approved, and if the court finds that the reappraisalment is erroneous or unjust, the court shall appraise the property upon the basis of the evidence before it.

#### **§ 260. Failure of Joint Personal Representatives to Return an Inventory, Appraisalment, and List of Claims**

If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisalment and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning shall have the whole administration, unless, within sixty days after the return, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

#### **§ 261. Use of Inventories, Appraisalments, and Lists of Claims as Evidence**

All inventories, appraisalments, and lists of claims which have been taken, returned, and approved in accordance with law, or the record thereof, or copies of either the originals or the record thereof, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this State in any suit by or against the representative of the estate, but shall not be conclusive for or against him, if it be shown that any property or claims of the estate are not shown therein, or that the value of the property or claims of the estate actually was in excess of that shown in the appraisalment and list of claims.

### **PART 2. WITHDRAWING ESTATES OF DECEASED PERSONS FROM ADMINISTRATION.**

#### **§ 262. Executor or Administrator Required to Report on Condition of Estate**

At any time after the return of inventory, appraisalment, and list of claims of a deceased person, any one entitled to a portion of the estate may, by a written complaint filed in the court in which such case is pend-

ing, cause the executor or administrator of the estate to be cited to appear and render under oath an exhibit of the condition of the estate.

#### **§ 263. Bond Required to Withdraw Estate From Administration**

When the executor or administrator has rendered the required exhibit, the persons entitled to such estate, or any of them, or any persons for them, may execute and deliver to the court a bond payable to the judge, and his successors in office, to be approved by the court, for an amount equal to at least double the gross appraised value of the estate as shown by the appraisal and list of claims returned, conditioned that the persons who execute such bond shall pay all the debts against the estate not paid that have been or shall be allowed by the executor or administrator and approved by the court, or that have been or shall be established by suit against said estate, and will pay to the executor or administrator any balance that shall be found to be due him by the judgment of the court on his exhibit.

#### **§ 264. Court's Order**

When such bond has been given and approved, the court shall thereupon enter an order directing and requiring the executor or administrator to deliver forthwith to all persons entitled to any portion of the estate the portion or portions of such estate to which they are entitled.

#### **§ 265. Order of Discharge**

When an estate has been so withdrawn from further administration, an order shall be entered discharging the executor or administrator and declaring the administration closed.

#### **§ 266. Lien on Property of Estate Withdrawn From Administration**

A lien shall exist on all of the estate withdrawn from administration in the hands of the distributees, and those claiming under them with notice of such lien, to secure the ultimate payment of the aforesaid bond and of the debts and claims secured thereby.

#### **§ 267. Partition of Estate Withdrawn From Administration**

Any person entitled to any portion of the estate withdrawn from further administration may, on written application to the court, cause a partition and distribution to be made among the persons entitled thereto, in accordance with the provisions of this Code pertaining to the partition and distribution of estates.

#### **§ 268. Creditors May Sue on Bond**

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation shall have the right to sue on the bond in his own name, and shall be entitled to judgment thereon for such debt or claim as he shall establish against the estate.

#### **§ 269. Creditors May Sue Distributees**

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation may sue any distributee who has received any of the estate, or he may sue all the distributees together, but no one of such distributees shall be liable beyond his just proportion according to the amount of the estate he shall have received in the distribution.

**PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE.**

**§ 270. Liability of Homestead for Debts**

The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon, or work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as required in making a sale and conveyance of the homestead.

**§ 271. Exempt Property to Be Set Apart**

Immediately after the inventory, appraisalment, and list of claims have been approved, the court shall, by order, set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased, all such property of the estate as is exempt from execution or forced sale by the constitution and laws of the state.

**§ 272. To Whom Delivered**

The exempt property set apart to the widow and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow. (b) If there be children and no widow, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors. (c) If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors. (d) In all cases, the homestead shall be delivered to the widow, if there be one, and if there be no widow, to the guardian of the minor children and unmarried daughters, if any, living with the family.

**§ 273. Allowance in Lieu of Exempt Property**

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed Five Thousand Dollars and the allowance for other exempted property shall in no case exceed One Thousand Dollars, exclusive of the allowance for the support of the widow and minor children which is hereinafter provided for.

**§ 274. How Allowance Paid**

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such widow or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisalment, or a part thereof, or both, as they shall select; provided, however, that property specifi-

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

cally bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

#### **§ 275. To Whom Allowance Paid**

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows: (a) If there be a widow and no children, or if all the children be the children of the widow, the whole shall be paid to such widow.

(b) If there be children and no widow, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a widow, and children of the deceased, some of whom are not children of the widow, the widow shall receive one-half of the whole, plus the shares of the children of whom she is the mother, and the remaining shares shall be paid to the children of whom she is not the mother, or, if they are minors, to their guardian.

#### **§ 276. Sale to Raise Allowance**

If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such widow and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

#### **§ 277. Preference of Liens**

If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the widow or children as exempt property, or appropriated to make up allowances made in lieu of exempt property or for the support of the widow or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

#### **§ 278. When Estate Is Solvent**

If, upon a final settlement of the estate, it shall appear that the same is solvent, the exempted property, except the homestead or any allowance in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate.

#### **§ 279. When Estate Is Insolvent**

Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

#### **§ 280. Exempt Property Not Considered in Determining Solvency**

In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the widow or children, or the allowance in lieu there-

of, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.

**§ 281. Exempt Property Liable for Certain Debts**

The exempt property, other than the homestead or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of the deceased, when claims are presented within the time prescribed therefor, but such property shall not be liable for any other debts of the estate.

**§ 282. Nature of Homestead Property Immaterial**

The homestead rights of the widow and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

**§ 283. Homestead Rights of Surviving Husband**

On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of such surviving husband, or so long as he elects to use or occupy the same as a homestead.

**§ 284. When Homestead Not Partitioned**

The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

**§ 285. When Homestead Can Be Partitioned**

When the widow dies or sells her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

**§ 286. Family Allowance to Widows and Minors**

Immediately after the inventory, appraisal, and list of claims have been approved, the court shall fix a family allowance for the support of the widow and minor children of the deceased.

**§ 287. Amount of Family Allowance**

Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

**§ 288. When Family Allowance Not Made**

No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made

for the minor children when they have property in their own right adequate to their maintenance.

#### **§ 289. Order Fixing Family Allowance**

When an allowance has been fixed, an order shall be entered stating the amount thereof, providing how the same shall be payable, and directing the executor or administrator to pay the same in accordance with law.

#### **§ 290. Family Allowance Preferred**

The family allowance made for the support of the widow and minor children of the deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of the deceased.

#### **§ 291. To Whom Family Allowance Paid**

The executor or administrator shall apportion and pay the family allowance:

(a) To the widow, if there be one, for the use of herself and the minor children, if such children be hers.

(b) If the widow is not the mother of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which she is not the mother shall be paid to the guardian or guardians of such child or children.

(c) If there be no widow, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

(d) If there be a widow and no minor child or children, the entire allowance shall be paid to the widow.

#### **§ 292. May Take Property for Family Allowance**

The widow, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisal; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

#### **§ 293. Sale to Raise Funds for Family Allowance**

If there be no personal property of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisal, and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

### **PART 4. PRESENTMENT AND PAYMENT OF CLAIMS**

#### **§ 294. Notice by Representative of Appointment**

(a) **Giving of Notice Required.** Within one month after receiving letters, personal representatives of estates shall publish in some newspaper, printed in the county where the letters were issued, if there be one, a no-



tice requiring all persons having claims against the estate being administered to present the same within the time prescribed by law. The notice shall state the time of issuance of letters held by the representative, together with his residence and postoffice address.

**(b) Proof of Publication.** A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this Code for the service of citation or notice by publication, shall be filed in the court where the cause is pending.

**(c) When No Newspaper Printed in the County.** When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this Code.

**§ 295. Notice to Holders of Recorded Claims**

**(a) When Notice Required.** Within four months after receiving letters, the representative of an estate shall give notice of the issuance of such letters to each and every person having a claim for money against the estate of a decedent, or ward, as the case may be, provided:

(1) That such claim is secured by a deed of trust, mortgage, vendor's, mechanic's or other contractor's lien upon real estate belonging to such estate; and

(2) That the instrument creating, extending, or transferring such lien was duly recorded prior to the death of a testator or intestate in the county in which the real estate covered by such lien is situated, or prior to the time at which title vested in an heir or devisee.

**(b) How Notice Shall Be Given.** The notice stating the original grant of letters shall be given by mailing same by registered letter, with return receipt requested, addressed to the record holder of such indebtedness or claim at his last known postoffice address.

**(c) Proof of Service of Notice.** A copy of such notice, together with the return receipt and an affidavit of the representative, stating that said notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed in the court from which letters were issued.

**§ 296. One Notice Sufficient**

If the notices required by the two preceding Sections have been given by a former representative, or by one where several are acting, that shall be sufficient, and need not be repeated by any successor or co-representative.

**§ 297. Penalty for Failure to Give Notice**

If the representative fails to give the notices required in preceding Sections, or to cause such notices to be given, he and the sureties on his bond shall be liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise.

**§ 298. Claims Against Estates of Decedents and Wards**

**(a) Claims Against Decedent's Estate Postponed if not Presented in One Year.** All claims for money against a testator or intestate shall be presented to the executor or administrator within one year after the original grant of letters testamentary or of administration; otherwise the

payment thereof shall be postponed until the claims which have been presented within one year and allowed by the executor or administrator and approved by the court have been first entirely paid; provided, however, that the failure of the holder of a secured claim to present his claim within said one year period shall not cause his claim to be postponed, but it shall be treated as a claim to be paid in accordance with subsequent provisions of this Code.

(b) **Time for Presentation of Claims to Guardians.** Claims may be presented to the guardian at any time when the estate is not closed and when suit on such claims has not been barred by the general statutes of limitation.

(c) **Claims Barred by Limitation Not to Be Allowed or Approved.** No claims against a decedent or ward, or against the estate of either, on which a suit is barred by a general statute of limitation applicable thereto shall be allowed by a personal representative. If allowed by the representative and the court is satisfied that limitation has run, the claim shall be disapproved.

### § 299. Tolling of General Statutes of Limitation

The general statutes of limitation are tolled:

- (a) By filing a claim which is legally allowed and approved; or
- (b) By bringing a suit upon a rejected and disapproved claim within ninety days after such rejection or disapproval.

### § 300. Claims for Expenses of Funeral and Last Illness

Claims for funeral expenses and expenses of the last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration, and, if they are not presented within such time, the exempted property set apart to the widow and children, and any allowances made to them under the provisions of this Code, shall no longer be liable for the payment of such claims or any part thereof.

### § 301. Claims Must Be Authenticated

Except as hereinafter provided with respect to the payment of unauthenticated claims by guardians, no personal representative of a decedent's estate or of the estate of a ward shall allow, and the court shall not approve, a claim for money against such estate, unless such claim be supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit shall also state the facts upon which the claim is founded. A photostatic copy of any exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.

### § 302. When Defects of Form Are Waived

Any defect of form, or claim of insufficiency of exhibits or vouchers presented, shall be deemed waived by the personal representative unless written objection thereto has been made within thirty days after presentation of the claim, and filed with the county clerk.

### § 303. Evidence Concerning Lost or Destroyed Claims

If evidence of a claim is lost or destroyed, the claimant, or someone for him, may make affidavit to the fact of such loss or destruction, stating

the amount, date, and nature of the claim and when due, and that the same is just, and that all legal offsets, payments and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim; and the claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If such claim is allowed or approved without such affidavit, or if it is approved without satisfactory proof, such allowance or approval shall be void.

#### **§ 304. Authentication of Claim by Others Than Individual Owners**

The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of such corporation. When an affidavit is made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it shall be sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

#### **§ 305. Guardian's Payment of Unauthenticated Claims**

A guardian may pay an unauthenticated claim against the estate of his ward which he believes to be just, but he and the sureties on his bond shall be liable for the amount of any such payment in the event the court should find that such claim is not just.

#### **§ 306. Method of Handling Secured Claims**

(a) **Specifications of Claim.** When a secured claim against an estate is presented, the claimant shall specify therein, in addition to all other matters required to be specified in claims:

(1) Whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) Whether it is desired to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract which secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, that the personal representative may pay said claim prior to maturity if it is for the best interest of the estate to do so.

(b) **Handling of Secured Claims Not Presented in Time.** If a secured claim is not presented within the time provided by law, it shall be treated as a claim to be paid in accordance with Paragraph (2) of Subsection (a) hereof.

(c) **Approved Claim as Preferred Lien Against Property.** When an indebtedness has been allowed and approved under Paragraph (2) of Subsection (a) hereof, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same, and the property shall remain security for the debt in any distribution or sale thereof prior to final maturity and payment of the debt.

(d) **Payment of Maturities on Secured Claims.** If property securing a claim allowed, approved, and fixed under Paragraph (2) of Subsection (a) hereof is not sold or distributed within twelve months from the date letters testamentary or of administration or guardianship are granted,

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the representative of the estate shall promptly pay all maturities which have accrued on the debt according to the terms thereof, and shall perform all the terms of any contract securing same. If the representative defaults in such payment or performance, on motion of the claimholder, the court shall require the sale of said property subject to the unmatured part of such debt and apply the proceeds of the sale to the liquidation of the maturities, or, at the option of the claimholder, a motion may be made in a like manner to require the sale of said property free of such lien and to apply the proceeds to the payment of the whole debt.

### **§ 307. Claims Providing for Attorney's Fees**

If the instrument evidencing or supporting a claim provides for attorney's fees, then the claimant may include as a part of the claim the portion of such fee that he has paid or contracted to pay to an attorney to prepare, present, and collect such claim.

### **§ 308. Depositing Claims With Clerk**

Claims may also be presented by depositing same, with vouchers and necessary exhibits and affidavit attached, with the clerk, who, upon receiving same, shall advise the representative of the estate, or his attorney, by letter mailed to his last known address, of the deposit of same. Should the representative fail to act on said claim within thirty days after it is filed, then it shall be presumed to be rejected. Failure of the clerk to give notice as required herein shall not affect the validity of the presentment or the presumption of rejection because not acted upon within said thirty day period.

### **§ 309. Memorandum of Allowance or Rejection of Claim**

When a duly authenticated claim against an estate is presented to the representative, or filed with the clerk as heretofore provided, he shall, within thirty days after the claim is presented or filed, endorse thereon, or annex thereto, a memorandum signed by him, stating the time of presentation or filing of the claim, and that he allows or rejects it, or what portion thereof he allows or rejects.

### **§ 310. Failure to Endorse or Annex Memorandum**

The failure of a representative of an estate to endorse on, or annex to, a claim presented to him, his allowance or rejection thereof within thirty days after the claim was presented, shall constitute a rejection of the claim. If the claim is thereafter established by suit, the costs shall be taxed against the representative, individually, or he may be removed on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof, as in other cases of removal.

### **§ 311. When Claims Entered in Docket**

(a) **Claims Against Estates of Decedents.** If a claim against the estate of a decedent has been presented within one year after the issuance of original testamentary letters or of administration, and all or a part of such claim is allowed by the executor or administrator, the claim shall forthwith be filed with the county clerk of the proper county, who shall enter the same in its proper place upon the claim docket. If such claim is not so presented within such time, the payment thereof, should it be approved in whole or in part, shall be postponed until all other claims which have been presented, allowed, and approved within the time prescribed have been first entirely paid.

(b) **Claims Against Estates of Wards.** After a claim against a ward's estate has been presented to and allowed by the guardian, either in whole or in part, the claim shall forthwith be filed with the county clerk of the proper county, who shall enter it on the claim docket.

### § 312. Contest of Claims, Action by Court, and Appeals

(a) **Contest of Claims.** Any person interested in an estate or ward may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(b) **Court's Action Upon Claims.** All claims which have been allowed and entered upon the claim docket for a period of ten days shall be acted upon by the court and be either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

(c) **Hearing on Claims.** Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, he shall examine the claimant and the personal representative under oath, and hear other evidence necessary to determine the issue. If not then convinced that the claim is just, he shall disapprove it.

(d) **Order of the Court.** When the court has acted upon a claim, he shall also endorse thereon, or annex thereto, a written memorandum dated and signed officially, stating the exact action taken upon such claim, whether approved or disapproved, or approved in part or rejected in part, and stating the classification of the claim. Such orders shall have the force and effect of final judgments.

(e) **Appeal.** When a claimant or any person interested in an estate or ward shall be dissatisfied with the action of the court upon a claim, he may appeal therefrom to the district court, as from other judgments of the county court in probate matters.

### § 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on or annexed thereto shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be certified within thirty days after rendition and filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

### § 314. Presentment of Claims a Prerequisite for Judgment

No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the representative of an estate or ward, and rejected by him or by the court, in whole or in part.

### § 315. Costs of Suit With Respect to Claims

All costs incurred in the probate court with respect to claims shall be taxed as follows:

- (a) If allowed and approved, the estate shall pay the costs.
- (b) If allowed, but disapproved, the claimant shall pay the costs.
- (c) If rejected, but established by suit, the estate shall pay the costs.

(d) If rejected, but not established by suit, the claimant shall pay the costs.

(e) In suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, he shall pay all costs.

### § 316. Claims Against Executors or Administrators

The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases where an executor or administrator is indebted to his testator or intestate, he shall account for the debt in the same manner as if it were cash in his hands; provided, however, that if said debt was not due at the time of receiving letters, he shall be required to account for it only from the date when it becomes due.

### § 317. Claims by Personal Representatives

(a) **By Executors or Administrators.** The foregoing provisions of this Code relative to the presentation of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but an executor or administrator holding such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified, or such claim shall be barred.

(b) **By Guardians.** A claim which the guardian held against the ward or his estate at the time of his appointment, or which has since accrued, shall be verified by affidavit as required in other cases, and presented to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket, after which it shall take the same course as other claims.

(c) **Action on Such Claims.** When a claim by an executor, administrator, or guardian has been filed with the court within the required time, such claim shall be entered upon the claim docket and acted upon by the court in the same manner as in other cases, and, when the claim has been acted upon by the court, an appeal from the judgment of the court may be taken as in other cases.

(d) **Provisions Not Applicable to Certain Claims.** The foregoing provisions relative to the presentment of claims shall not be so construed as to apply to the claim of any heir, devisee, or legatee who claims in such capacity, or to any claim that accrues against the estate after the granting of letters for which the representative of the estate has contracted.

### § 318. Claims Not Allowed After Order for Partition and Distribution

No claim for money against his testator or intestate shall be allowed by an executor or administrator and no suit shall be instituted against him on any such claim, after an order for partition and distribution has been made; but, after such an order has been made, the owner of any claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees, or legatees of the estate, limited to the value of the property received by them in such partition and distribution.

### § 319. Claims Not to Be Paid Unless Approved

Except as provided for payment at his own risk by a guardian of an unauthenticated claim, no claim for money against the estate of a decedent or ward, or any part thereof, shall be paid until it has been approved

by the court or established by the judgment of a court of competent jurisdiction.

**§ 320. Order of Payment of Claims**

(a) **Estates of Decedents.** Executors and administrators, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed One Thousand Dollars, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or administration, but if not presented within such time, their payment shall be postponed until the allowances made to the widow and children, or to either, are paid.

(2) Allowances made to the widow and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safe-keeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) **Estates of Wards.** The guardian shall pay all claims against the estate of his ward that have been allowed or approved, or established by suit, as soon as practicable.

**§ 321. Deficiency of Assets**

When there is a deficiency of assets to pay all claims of the same class, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed. No executor, administrator, or guardian shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the estate that have come to hand.

**§ 322. Classification of Claims Against Estates of Decedents**

Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed One Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safe-keeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or other lien.

Class 4. All other claims legally exhibited within one year after the original grant of letters testamentary or of administration.

Class 5. All claims legally exhibited after the lapse of one year from the original grant of letters testamentary or of administration.

**§ 323. Joint Obligation**

When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of any of the persons so bound, his estate shall be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly.

**§ 324. Representatives Not to Purchase Claims**

It shall be unlawful, and cause for removal, for an executor, administrator, or guardian, whether acting under appointment by will or under orders of the court, to purchase for his own use or for any purposes whatsoever, any claim against the estate he represents. Upon written complaint by any person interested in the estate, and satisfactory proof of violation of this provision, after citation and hearing, the court shall enter its order cancelling the claim, and no part thereof shall be paid out of the estate; and the judge may, in his discretion, remove such representative.

**§ 325. Proceeds of Sale of Mortgaged Property**

Whenever a personal representative has in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, he shall pay such proceeds to the holder or holders of such mortgage or other liens; and, if he shall fail to do so, such holder or holders, upon proof thereof, may obtain an order from the court directing such payment to be made.

**§ 326. Owner May Obtain Order for Payment**

Any creditor of an estate of a decedent whose claim, or part thereof, has been approved by the court or established by suit, may, at any time after twelve months from the granting of letters testamentary, upon written application and proof showing that the estate has on hand sufficient available funds, obtain an order directing that payment be made; or, if there are no available funds, and if to await the receipt of funds from other sources would unreasonably delay payment, the court shall then order sale of property of the estate sufficient to pay the claim; provided, the representative of the estate shall have first been cited on such written complaint to appear and show cause why such order should not be made.

**§ 327. Claims Presented Against Estate of Decedent After Twelve Months**

Unsecured claims against the estate presented to an executor or administrator after the expiration of twelve months from the original grant of letters, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what is sufficient to pay all debts of every kind against the estate that were presented within the twelve months and allowed and approved or established by judgment, or that shall be so established; and an order for the payment of any such claim may be obtained from the court, upon proof that the executor or administrator has such funds, in like manner as is provided in this Code for other creditors to obtain payment.

**§ 328. Liability for Nonpayment of Claims**

(a) **Procedure to Force Payment.** If any representative of an estate shall fail to pay on demand any money ordered by the court to be paid to any person, except to the State Treasury, when there are funds of the estate available, the person or claimant entitled to such payment, upon affidavit of the demand and failure to pay, shall be authorized to have execu-



tion issued against the property of the estate for the amount due, with interest and costs; or

(b) **Penalty Against Representative.** Upon return of the execution not satisfied, or merely upon the affidavit of demand and failure to pay, the court may cite the representative and the sureties on his bond to show cause why they should not be held liable for such debt, interest, costs, and damages. Upon return of citation duly served, if good cause to the contrary be not shown, the court shall render judgment against the representative and sureties so cited, in favor of the holder of such claim, for the amount theretofore ordered to be paid or established by suit, and remaining unpaid, together with interest and costs, and also for damages upon the amount neglected to be paid, at the rate of five per cent per month for each month, or fraction thereof, that the payment was neglected to be paid after demand made therefor, which damages may be collected in any court of competent jurisdiction.

### § 329. Borrowing Money

(a) **Circumstances Under Which Money May Be Borrowed.** Any real or personal property of an estate may be mortgaged or pledged by deed of trust or otherwise as security for an indebtedness, under order of the court, when necessary for any of the following purposes:

(1) For the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes upon the transfer of an estate or due from a decedent or ward or his estate, regardless of whether such taxes are assessed by a state, or any of its political subdivisions, or by the federal government or by a foreign country; or

(2) For payment of expenses of administration, including sums necessary for operation of a business, farm, or ranch owned by the estate; or

(3) For payment of claims allowed and approved, or established by suit, against the estate; or

(4) To renew and extend a valid, existing lien; or

(5) In the case of guardians of estates, if the real estate of the ward is not revenue producing but could be made revenue producing by certain improvements and repairs, or if the revenue therefrom could be increased by making such improvements or repairs thereon, to make such improvements or repairs.

(b) **Procedure for Borrowing Money.** When it is necessary to borrow money for any of the aforementioned purposes, or to create or extend a lien upon property of the estate as security, a sworn application for such authority shall be filed with the court, stating fully and in detail the circumstances which the representative of the estate believes make necessary the granting of such authority. Thereupon, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring such persons, if they choose so to do, to appear and show cause, if any, why such application should not be granted.

(c) **Order Authorizing Such Borrowing, or Extension of Lien.** The court, if satisfied by the evidence adduced at the hearing upon said application that it is to the interest of the estate to borrow money, or to extend and renew an existing lien, shall issue its order to that effect, setting out the terms and conditions of the authority granted; provided, however: (1) that as to the estate of a decedent, the loan or renewal shall not be for a term longer than three years from the granting of original letters to the representative of such estate, but the court may authorize an ex-

tension of such lien for not more than one additional year without further citation or notice; and (2) that as to the estate of a ward, the term of the loan or renewal shall be for such length of time as the court shall determine to be for the best interest of such estate. If a new lien is created upon property of an estate, the court may require that the representative's general bond be increased, or an additional bond given, for the protection of the estate and its creditors, as for the sale of real property belonging to the estate.

### § 330. Notices to Veterans Administration by Guardians

Whenever an annual or other account, or an application for the expenditure of funds or for the investment of funds is filed by any guardian whose ward is a beneficiary of the Veterans Administration, or when a claim against the estate of such a ward shall be filed, the court shall thereupon fix a date for the hearing of such account, application, petition, or claim, as the case may be, not less than twenty days from the date of the filing thereof. The clerk of the court in which such account, application, petition, or claim shall be filed shall give notice thereof not less than fifteen days prior to the date fixed for such hearing to the Veterans Administration in whose territory the court is located by mailing a certified copy of such account, application, petition, or claim to said office of the Veterans Administration; provided that said Administration may through its attorney waive the service of such notice and also the time within which a hearing may be had in such cases. Such account, application, petition, or claim shall be filed in duplicate, and the clerk of the court shall be entitled to a fee of Twenty-five Cents, taxable against the estate, for certifying to the copy thereof, which he shall forthwith mail to said Administration as provided herein. If not filed in duplicate, the clerk shall be entitled to a further fee of Fifteen Cents per one hundred words for making a copy thereof. Such additional costs of copying shall be taxed and collected from the guardian individually, and shall not be chargeable to the ward's estate.

## PART 5. SALES

### § 331. Court Must Order Sales

Except as hereinafter provided, no sale of any property of an estate shall be made without an order of court authorizing the same. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specially provided herein.

### § 332. Sales Authorized by Will

Whenever by the terms of a will an executor is authorized to sell any property of the testator, no order of court shall be necessary to authorize the executor to make such sale, and the sale may be made at public auction or privately as the executor deems to be in the best interest of the estate and may be made for cash or upon such credit terms as the executor shall determine; provided, that when particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

### § 333. Certain Personal Property to Be Sold

The representative of an estate, after approval of inventory and appraisal, shall promptly apply for an order of the court to sell at public

auCTION or privately, for cash or on credit not exceeding six months, all of the estate that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept. Bonds, securities, or other personal property deemed by the court not to be so liable, property exempt from forced sale, specific legacies, and personal property necessary to carry on a farm, ranch, factory, or any other business which it is thought best to operate, shall not be included in such sales.

#### **§ 334. Sales of Other Personal Property**

Upon application by the personal representative of the estate or by any interested person, the court may order the sale of any personal property of the estate not required to be sold by the preceding Section, including growing or harvested crops or livestock, but not including exempt property or specific legacies, if the court finds that so to do would be in the best interest of the estate in order to pay expenses of administration, funeral expenses, expenses of last illness, allowances, or claims against the estate, from the proceeds of the sale of such property. In so far as possible, applications and orders for the sale of personal property shall conform to the requirements hereinafter set forth for applications and orders for the sale of real estate.

#### **§ 335. Special Provisions Pertaining to Livestock**

When the personal representative of an estate has in his possession any livestock which he deems necessary or to the advantage of the estate to sell, he may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell such livestock through a bonded livestock commission merchant, or a bonded livestock auction commission merchant. Such authority may be granted by the court upon written and sworn application by the personal representative, or by any person interested in the estate, describing the livestock sought to be sold, and setting out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted. The court shall forthwith consider any such application, and may, in its discretion, hear evidence for or against the same, with or without notice, as the facts warrant. If the application be granted, the court shall enter its order to that effect, and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid his usual and customary charges, not to exceed three per cent of the sale price, for the sale of such livestock. A report of such sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the personal representative to the court, but no order of confirmation by the court is required to pass title to the purchaser of such livestock.

#### **§ 336. Sales of Personal Property at Public Auction**

All sales of personal property at public auction shall be made after notice has been issued by the representative of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

#### **§ 337. Sales of Personal Property on Credit**

No more than six months credit may be allowed when personal property is sold at public auction, based upon the date of such sale. The purchaser shall be required to give his note for the amount due, with good

and solvent personal security, before delivery of such property can be made to him, but security may be waived if delivery is not to be made until the note, with interest, has been paid.

### **§ 338. Sale of Mortgaged Property**

Any creditor holding a claim secured by a valid mortgage or other lien, which has been allowed and approved or established by suit, may obtain from the court in which the estate is pending an order that said property, or so much thereof as necessary to satisfy his claim, shall be sold, by filing his written application therefor. Upon the filing of such application, the clerk shall issue citation requiring the representative of the estate to appear and show cause why such application should not be granted. If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, he may so order; otherwise, he shall grant the application and order that the property be sold at public or private sale, as deemed best, as in ordinary cases of sales of real estate.

### **§ 339. Sales of Personal Property to Be Reported; Decree Vests Title**

All sales of personal property shall be reported to the court, and the laws regulating sales of real estate as to confirmation or disapproval of sales shall apply, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the intestate or ward in the purchaser who has complied with the terms of the sale, and shall be prima facie evidence that all requirements of the law in making the sale have been met. The representative of an estate may, upon request, issue a bill of sale without warranty to the purchaser as evidence of title, the expense thereof to be borne by the purchaser.

### **§ 340. Selection of Real Property to Be Sold for Payment of Debts**

Real property of the estate which is selected to be sold for the payment of expenses or claims shall be that which the court deems most advantageous to the estate to be sold.

### **§ 341. Application for Sale of Real Estate**

Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents and wards.

(2) Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.

(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(4) Dispose of real estate of a ward, any part of which is non-productive or does not produce sufficient revenue to make a fair return upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.

(5) Conserve the estate of a ward by selling mineral interests and/or royalties on minerals in place owned by a ward.

**§ 342. Contents of Application for Sale of Real Estate**

An application for the sale of real estate shall be in writing, shall describe the real estate or interest in or part thereof sought to be sold, and shall be accompanied by an exhibit, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit, or that have been rejected and may yet be established; the amount of each such claim, the property of the estate remaining on hand liable for the payment of such claims, and any other facts tending to show the necessity or advisability of such sale.

**§ 343. Setting of Hearing on Application**

Whenever an application for the sale of real estate is filed, it shall immediately be called to the attention of the judge by the clerk, and the judge shall designate a day for hearing said application, any opposition thereto, and any application for the sale of other land, together with the evidence pertaining thereto. The judge may, by entries on the docket, continue such hearing from time to time until he is satisfied concerning the application.

**§ 344. Citation and Return on Application**

Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land or interest or part thereof sought to be sold, requiring them to appear at the time set by the court as shown in the citation and show cause why the sale should not be made, if they so elect. Service of such citation shall be by posting.

**§ 345. Opposition to Application**

When an application for an order of sale is made, any person interested in the estate may, before an order is made thereon, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate.

**§ 346. Order of Sale**

If satisfied upon hearing that the sale of the property of the estate described in the application is necessary or advisable, the court shall order the sale to be made; otherwise, the court may deny the application and may, if it deems best, order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate shall specify:

(a) The property to be sold, giving such description as will identify it; and

(b) Whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale; and

(c) The necessity or advisability of the sale and its purpose; and

(d) Except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the same to be insufficient and specifies the necessary or increased bond, as the case may be; and

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(e) That the sale shall be made and the report returned in accordance with law; and

(f) The terms of the sale.

### **§ 347. Procedure When Representative Neglects to Apply for Sale**

When the representative of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved, or established by suit, any interested person may, upon written application, cause such representative to be cited to appear and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered. Upon hearing such application, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy such claims, it shall enter an order of sale as provided in the preceding Section.

### **§ 348. Permissible Terms of Sale of Real Estate**

(a) **For Cash or Credit.** The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public auction or private sale, as appears to the court to be for the best interest of the estate. When real estate is sold partly on credit, the cash payment shall not be less than one-fifth of the purchase price, and the purchaser shall execute notes for the deferred payments maturing in equal annual amounts, the last note to mature not later than five years from date of deed, to bear interest from date at a rate not less than four per cent per annum, payable annually. Default in the payment of principal or interest, or any part thereof, when due, shall mature the whole debt. All notes for the deferred payment shall be secured by vendor's lien retained in the deed and in the notes upon the property sold, and further secured by deed of trust upon the property sold, with the usual provisions for foreclosure and sale upon failure to make the payments provided in the deed and notes.

(b) **Reconveyance Upon Redemption.** When an estate owning real estate by virtue of foreclosure of vendor's lien or mortgage belonging to the estate, either by judicial sale or by a foreclosure suit or through sale under deed of trust or by acceptance of a deed in cancellation of a lien or mortgage owned by the estate, and it appears to the court that an application to redeem the property foreclosed upon has been made by the former owner of the real estate to any corporation or agency now created or hereafter to be created by any Act or Acts of the Congress of the United States or of the State of Texas in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate, and it further appears to the court that it would be to the best interest of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then upon proper application and proof, the court may dispense with the provisions of credit sales as provided above, and may order reconveyance of the property to the former mortgage debtor, or former owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds which the corporation or agency above named is under its rules and regulations allowed to advance, and, upon obtaining such an order, it shall be proper for the representative to indorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

**§ 349. Public Sales of Real Estate**

(a) **Notice of Sale.** Except as hereinafter provided, all public sales of real estate shall be advertised by the representative of the estate by a notice published in the county in which the estate is pending, as provided in this Code for publication of notices or citations. Reference shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold shall be given. It need not contain field notes, but if rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known, if any, shall be given.

(b) **Method of Sale.** All public sales of real estate shall be made at public auction to the highest bidder.

(c) **Time and Place of Sale.** All such sales shall be made in the county in which the proceedings are pending, at the courthouse door of said county, or other place in such county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice shall have been completed, between the hours of ten o'clock A.M. and four o'clock P.M., provided, that if deemed advisable by land is situated, in which event notice shall be published both in such county and in the county where the proceedings are pending. the court, he may order such sale to be made in the county in which the

(d) **Continuance of Sales.** If sales are not completed on the day advertised, they may be continued from day to day by making public announcement verbally of such continuance at the conclusion of the sale each day, such continued sales to be within the same hours as hereinbefore prescribed. If sales are so continued, the fact shall be shown in the report of sale made to the court.

(e) **Failure of Bidder to Comply.** When any person shall bid off property of an estate offered for sale at public auction, and shall fail to comply with the terms of sale, such property shall be readvertised and sold without any further order; and the person so defaulting shall be liable to pay to the representative of the estate, for its benefit, ten per cent of the amount of his bid, and also any deficiency in price on the second sale, such amounts to be recovered by such representative by suit in any court having jurisdiction of the amount claimed, in the county in which the sale was made.

**§ 350. Private Sales of Real Estate**

All private sales of real estate shall be made in such manner as the court directs in its order of sale, and no advertising, notice, or citation concerning such sale shall be required, unless the court shall direct otherwise.

**§ 351. Sales of Easements and Right of Ways**

It shall be lawful to sell and convey easements and rights of ways on, under, and over the lands of an estate being administered under orders of a court, regardless of whether the proceeds of such a sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for such sales shall be the same as now or hereafter provided by law for sales of real property of estates of decedents or wards at private sale.

**§ 352. Representative Not to Purchase Property of the Estate**

The personal representative of an estate shall not become the purchaser, directly or indirectly, of any property of the estate sold by him,

or by any co-representative if one be acting. If any such purchase is made, any person interested in the estate may file a written complaint with the court in which the proceedings are pending, and upon service of citation upon the representative, after hearing and proof, such sale shall be by the court declared void, and shall be set aside by the court and the property ordered to be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the representative.

### § 353. Reports of Sale

All sales of real property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. Reports shall be in writing, sworn to, and filed with the clerk, and noted on the probate docket. They shall show:

- (a) The date of the order of sale.
- (b) The property sold, describing it.
- (c) The time and place of sale.
- (d) The name of the purchaser.
- (e) The amount for which each parcel of property or interest therein was sold.
- (f) The terms of the sale, and whether made at public auction or privately.
- (g) Whether the purchaser is ready to comply with the order of sale.

### § 354. Bond on Sale of Real Estate

If the personal representative of the estate is not required by this Code to furnish a general bond, the sale may be confirmed by the court if found to be satisfactory and in accordance with law. Otherwise, before any sale of real estate is confirmed, the court shall determine whether the general bond of said representative is sufficient to protect the estate after the proceeds of the sale are received. If the court so finds, the sale may be confirmed. If the general bond be found insufficient, the sale shall not be confirmed until and unless the general bond be increased to the amount required by the court, or an additional bond given, and approved by the court. The increase, or the additional bond, shall be equal to the amount for which such real estate is sold, plus, in either instance, such additional sum as the court shall find necessary and fix for the protection of the estate; provided, that where the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of such secured claim and is in full payment, liquidation, and satisfaction thereof, no increased general bond or additional bond shall be required except for the amount of cash, if any, actually paid to the representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy such claim in full.

### § 355. Action of Court on Report of Sale

After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such



sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed by the District Court, as in other final judgments in probate proceedings.

#### **§ 356. Deed Conveys Title to Real Estate**

When real estate is sold, the conveyance shall be by proper deed which shall refer to and identify the decree of the court confirming the sale. Such deed shall vest in the purchaser all right, title, and interest of the estate to such property, and shall be prima facie evidence that said sale has met all applicable requirements of the law.

#### **§ 357. Delivery of Deed, Vendor's and Deed of Trust Lien**

After a sale is confirmed by the court and the terms of sale have been complied with by the purchaser, the representative of the estate shall forthwith execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing the purchase money note or notes shall be expressly retained in said deed, and in no event waived, and before actual delivery of said deed to purchaser, he shall execute and deliver to the representative of the estate a vendor's lien note or notes, with or without personal sureties as the court shall have ordered, and also a deed of trust or mortgage on the property as further security for the payment of said note or notes. Upon completion of the transaction, the personal representative shall promptly file or cause to be filed and recorded in the appropriate records in the county where the land is situated said deed of trust or mortgage.

#### **§ 358. Penalty for Neglect**

Should the representative of an estate neglect to comply with the preceding Section, or to file the deed of trust securing such lien in the proper county, he and the sureties on his bond shall, after complaint and citation, be held liable for the use of the estate, for all damages resulting from such neglect, which damages may be recovered in any court of competent jurisdiction, and he may be removed by the court.

### **PART 6. HIRING AND RENTING.**

#### **§ 359. Hiring or Renting Without Order of Court**

The personal representative of an estate may, without order of court, rent any of its real property or hire out any of its personal property, either at public auction or privately, as may be deemed in the best interest of the estate, for a period not to exceed one year.

#### **§ 360. Liability of Personal Representative**

If property of the estate is hired or rented without an order of court, the personal representative shall be required to account to the estate for the reasonable value of the hire or rent of such property, to be ascertained

by the court upon satisfactory evidence, upon sworn complaint of any person interested in the estate.

#### **§ 361. Order to Hire or Rent**

Representatives of estates, if they prefer, may, and, if the proposed rental period exceeds one year, shall, file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be to the interest of the estate, he shall grant the application and issue an order which shall describe the property to be hired or rented, state whether such hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of same and the period for which the property may be rented. If to be hired or rented at public auction, the court shall also prescribe whether notice thereof shall be published or posted.

#### **§ 362. Procedure in Case of Neglect to Rent Property**

Any person interested in an estate may file his written and sworn complaint in a court where such estate is pending, and cause the personal representative of such estate to be cited to appear and show cause why he did not hire or rent any property of the estate, and the court, upon hearing such complaint, shall make such order as seems for the best interest of the estate.

#### **§ 363. When Property is Hired or Rented on Credit**

When property is hired or rented on credit, possession thereof shall not be delivered until the hirer or renter has executed and delivered to the representative of the estate a note with good personal security for the amount of such hire or rent; and, if any such property so hired or rented is delivered without receiving such security, the representative and the sureties on his bond shall be liable for the full amount of such hire or rent; provided, that when the hire or rental is payable in installments, in advance of the period of time to which they relate, this Section shall not apply.

#### **§ 364. Property Hired or Rented to Be Returned in Good Condition**

All property hired or rented, with or without an order of court, shall be returned to the possession of the estate in as good condition, reasonable wear and tear excepted, as when hired or rented, and it shall be the duty and responsibility of the representative of the estate to see that this is done, to report to the court any loss, damage or destruction of property hired or rented, and to ask for authority to take such action as is necessary; failing so to do, he and the sureties on his bond shall be liable to the estate for any loss or damage suffered through such fault.

#### **§ 365. Report of Hiring or Renting**

(a) When any property of the estate with an appraised value of Three Thousand Dollars or more has been hired or rented, the representative shall, within thirty days thereafter, file with the court a sworn and written report, stating:

(1) The property involved and its appraised value.

(2) The date of hiring or renting, and whether at public auction or privately.

(3) The name of the person or persons hiring or renting such property.

(4) The amount of such hiring or rental.

(5) Whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken therefor.

(b) When the value of the property involved is less than Three Thousand Dollars, the hiring or renting thereof may be reported upon in the next annual or final account which shall be filed as required by law.

**§ 366. Action of Court on Report**

At any time after five days from the time such report of hiring or renting is filed, it shall be examined by the court and approved and confirmed by order of the court if found just and reasonable; but, if disapproved, the estate shall not be bound and the court may order another offering of the property for hire or rent, in the same manner and subject to the same rules heretofore provided. If the report has been approved and it later appears that, by reason of any fault of the representative of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the representative of the estate and his sureties to appear and show cause why the reasonable value of hire or rent of such property shall not be adjudged against him.

**PART 7. MINERAL LEASES, POOLING OR UNITIZATION AGREEMENTS, AND OTHER MATTERS RELATING TO MINERAL PROPERTIES.**

**§ 367. Mineral Leases After Public Notice**

(a) **Certain Words and Terms Defined.** As used throughout in this Part of this Chapter, the words "land" or "interest in land" include minerals or any interest in any of such minerals in place. The word "property" includes land, minerals in place, whether solid, liquid or gaseous, as well as an interest of any kind in such property, including royalty, owned by the estate. "Mineral development" includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

(b) **Mineral Leases, With or Without Pooling or Unitization.** Personal representatives of the estates of decedents, minors, and incompetents, appointed and qualified under the laws of this State, and acting solely under orders of court, may be authorized by the court in which the probate proceedings on such estates are pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, providing for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of such minerals in place, belonging to such estates.

(c) **Rules Concerning Applications, Orders, Notices, and Other Essential Matters.** All such leases, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with the following rules:

1. **Contents of Application.** The representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application, addressed to the court or the judge of

such court, asking for authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or unitization clauses. The application shall (a) describe the property fully enough by reference to the amount of acreage, the survey name or number, or abstract number, or other description adequately identifying the property and its location in the county in which situated; (b) specify the interest thought to be owned by the estate, if less than the whole, but asking for authority to include all interest owned by the estate, if that be the intention; and (c) set out the reasons why such particular property of the estate should be leased. Neither the name of any proposed lessee, nor the terms, provisions, or form of any desired lease, need be set out or suggested in any such application for authority to lease for mineral development.

## **2. Order Designating Time and Place for Hearing Application**

(a) **Duties of Clerk and Judge.** When an application to lease, as above prescribed, is filed, the county clerk shall immediately call the filing of such application to the attention of the court, and the judge shall promptly make and enter a brief order designating the time and place for the hearing of such application.

(b) **Continuance of Hearing.** If the hearing is not had at the time originally designated by the court or by timely order or orders of continuance duly entered, then, in such event, the hearing shall be automatically continued, without further notice, to the same hour or time the following day (except Sundays and holidays on which the county courthouse is officially closed to business) and from day to day until the application is finally acted upon and disposed of by order of the court. No notice of such automatic continuance shall be required.

## **3. Notice of Application to Lease, Service of Notice, and Proof of Service.**

(a) **Notice and Its Contents.** The personal representative, and not the county clerk, shall give notice in writing of the time designated by the judge for the hearing on the application to lease. The notice shall be directed to all persons interested in the estate. It shall state the date on which the application was filed, describe briefly the property sought to be leased, specifying the fractional interest sought to be leased if less than the entire interest in the tract or tracts identified, state the time and place designated by the judge for the hearing, and be dated.

(b) **Service of Notice.** The personal representative shall give at least ten days notice, exclusive of the date of notice and of the date set for hearing, by publication in one issue of a newspaper of general circulation in the county in which the proceeding is pending, or, if there be no such newspaper, then by posting by the personal representative or at his instance. The date of notice when published shall be the date the newspaper bears.

**4. Preceding Requirements Mandatory.** In the absence of: (a) a written order originally designating a time and place for hearing; (b) a notice issued by the personal representative of the estate in compliance with such order; and (c) proof of publication or posting of such notice as required, any order of the judge or court authorizing any acts to be performed pursuant to said application shall be null and void.

**5. Hearing on Application to Lease and Order Thereon.** At the time and place designated for the hearing, or at any time to which it shall have been continued as hereinabove provided, the judge shall hear such ap-

plication, requiring proof as to the necessity or advisability of leasing for mineral development the property described in the application and in the notice; and, if he is satisfied that the application is in due form, that notice has been duly given in the manner and for the time required by law, that the proof of necessity or advisability of leasing is sufficient, and that the application should be granted, then an order shall be entered so finding, and authorizing the making of one or more leases, with or without pooling provisions or unitization clauses (with or without cash consideration if deemed by the court to be in the best interest of the estate) affecting and covering the property, or portions thereof, described in the application. Said order authorizing leasing shall also set out the following mandatory contents:

(a) The name of the lessee.

(b) The actual cash consideration, if any, to be paid by the lessee.

(c) Finding that the personal representative is exempted by law from giving bond, if that be a fact and if not a fact, then a finding as to whether or not the representative's general bond on file is sufficient to protect the personal property on hand, inclusive of any cash bonus to be paid, if any. If the court finds the general bond insufficient to meet these requirements, the order shall show the amount of increased or additional bond required to cover the deficiency.

(d) A complete exhibit copy, either written or printed, of each lease thus authorized to be made, shall either be set out in the order or attached thereto and incorporated by reference in said order and made a part thereof. It shall show the name of the lessee, the date of the lease, an adequate description of the property being leased, the delay rental, if any, to be paid to defer commencement of operations, and all other terms and provisions authorized; provided, that if no date of the lease appears in such exhibit copy, or in the court's order, then the date of the court's order shall be considered for all purposes as the date of the authorized lease, and if the name and address of the depository bank, or either of them, for receiving rental is not shown in said exhibit copy, the same may be inserted or caused to be inserted in the lease by the estate's personal representative at the time of its execution, or at any other time agreeable to the lessee, his successors, or assigns.

**6. Conditional Validity of Lease; Bond; Time of Execution; Confirmation Not Needed.** If, upon the hearing of an application for authority to lease, the court shall grant the same as above provided, the personal representative of the estate shall then be fully authorized to make, within thirty days after date of the judge's order, but not afterwards unless an extension be granted by the court upon sworn application showing good cause, the lease or leases as evidenced by the aforesaid true exhibit copies, in accordance with said order; but, unless the personal representative is not required to give a general bond, no such lease, for which a cash consideration is required, though ordered, executed, and delivered, shall be valid unless the order authorizing same actually makes findings with respect to the general bond, and, in case such bond has been found insufficient, then unless and until the bond has been increased, or an additional bond given, as required by the court's order, with the sureties required by law, has been approved by the judge and filed with the clerk of the court in which the proceedings are pending. In the event two or more leases on different lands are authorized by the same order, the general bond shall be increased, or additional bonds given, to cover all. It shall not be necessary for the judge to make any order confirming such leases.

7. **Term of Lease Binding.** Every such lease, when executed and delivered in compliance with the rules hereinabove set out, shall be valid and binding upon the property or interest therein owned by the estate and covered by the lease for the full duration of the term as provided therein, subject only to its terms and conditions, even though the primary term shall extend beyond the date when the estate shall have been closed in accordance with law; provided, the authorized primary term shall not exceed five years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, bona fide drilling, or reworking operations.

### § 368. Mineral Leases at Private Sale

(a) **Authorization Allowed.** Notwithstanding the preceding mandatory requirements for setting a time and place for hearing of an application to lease and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale (without public notice or advertising) if, in the opinion of the court, sufficient facts are set out in the application required above to show that it would be more advantageous to the estate that a lease be made privately and without compliance with said mandatory requirements mentioned above. Leases so authorized may include pooling provisions or unitization clauses as in other cases.

(b) **Action of the Court When Public Advertising Not Required.** At any time after the expiration of five days and prior to the expiration of ten days from the date of filing, the court shall hear the application to lease at private sale and shall inquire into the manner in which the lease was made, and shall hear evidence for or against the same; and, if satisfied that the lease was made for a fair and sufficient consideration and on fair terms, and was properly made in conformity with law, the court shall enter an order authorizing the execution of such lease without the necessity of advertising, notice, or citation, said order complying in all other respects with the requirements essential to the validity of mineral leases as hereinabove set out, as if advertising or notice were required. No order confirming a lease or leases made at private sale need be issued, but no such lease shall be valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

### § 369. Pooling or Unitization of Royalty or Minerals

(a) **Authorization for Pooling or Unitization.** When an existing lease or leases on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals, or any one or more of them, owned by the estate being administered, to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all such minerals, where the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is to the best interest of the estate to execute the agreement. Any agreement so authorized to be executed may, among other things, provide:

(1) That operations incident to the drilling of or production from a well upon any portion of a pool or unit shall be deemed for all purposes

to be the conduct of operations upon or production from each separately owned tract in the pool or unit.

(2) That any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, or as long as operations are conducted as provided in the lease.

(3) That the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(4) That the royalties provided for on production from any tract or portion thereof within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement.

(5) That the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned.

(6) That gas obtained from other sources or other lands may be injected into a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

**(b) Procedure for Authorizing Pooling or Unitization.** Pooling or unitization, when not adequately provided for by an existing lease or leases on property owned by the estate, may be authorized by the court in which the proceedings are pending pursuant to and in conformity with the following rules:

**(1) Contents of Application.** The personal representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application for authority (a) to enter into pooling or unitization agreements supplementing, amending, or otherwise relating to, any existing lease or leases covering property owned by the estate, or (b) to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application shall also (c) describe the property sufficiently, as required in original application to lease, (d) describe briefly the lease or leases, if any, to which the interest of the estate is subject, and (e) set out the reasons why the proposed agreement concerning such property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part thereof, but the agreement shall not be recorded in the minutes. The clerk shall immediately, after such application is filed, call it to the attention of the judge.

**(2) Notice Not Necessary.** No notice of the filing of such application by advertising, citation, or otherwise, is required.

**(3) Hearing of Application.** A hearing on such application may be held by the judge at any time agreeable to the parties to the proposed agreement, and the judge shall hear proof and satisfy himself as to whether or not it is to the best interest of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.

**(4) Action of Court and Contents of Order.** If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other

mineral subject thereto; that it is to the best interest of the estate that the agreement be executed; and that the agreement conforms substantially with the permissible provisions of Subsection (a) hereof, he shall enter an order setting out the findings made by him, authorizing execution of the agreement (with or without payment of cash consideration according to the agreement). If cash consideration is to be paid for the agreement, findings as to the necessity of increased or additional bond, as in making of leases upon payment of the cash bonus therefor, shall also be made, and no such agreement shall be valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. The date of the court's order shall be the effective date of the agreement, if not stipulated in such agreement.

#### **§ 370. Special Ancillary Instruments Which May Be Executed Without Court Order**

After any mineral or pooling or unitization agreement has been executed pursuant to preceding provisions of this Code, the personal representative of the estate which is being administered may, without further order of the court, and without consideration, execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of any such lease or leases, and similar instruments pertaining to any such lease or agreement and the property covered thereby.

#### **§ 371. Procedure When Representative of Estate Neglects to Apply for Authority**

When the personal representative of an estate shall neglect to apply for authority to subject property of the estate to a lease for mineral development, pooling or unitization, or to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate may, upon written application filed with the county clerk, cause such representative to be cited to show cause why it is not for the best interest of the estate for such a lease to be made, or such an agreement entered into. The clerk shall immediately call the filing of such application to the attention of the judge of the court in which the probate proceedings are pending, and the judge shall set a time and place for a hearing on the application, and the representative of the estate shall be cited to appear and show cause why the execution of such lease or agreement should not be ordered. Upon hearing, if satisfied from the proof that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative forthwith to file his application to subject such property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedure prescribed with respect to original application to lease, or with respect to original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall then be followed.

#### **§ 372. Validation of Certain Leases and Pooling or Unitization Agreements Based on Previous Statutes**

All presently existing leases on the oil, gas, or other minerals, or one or more of them, belonging to the estates of decedents, minors, persons of unsound mind, or habitual drunkards, and all agreements with respect to pooling, or unitization thereof, or one or more of them, or any interest



therein, with like properties of others, including agreements contemplated or authorized to be made under the terms of Section 3, Article 6008-b, Vernon's Texas Revised Civil Statutes of 1925, as amended, having been authorized by the court having venue, and executed and delivered by the executors, administrators, guardians, or other fiduciaries of their estates in substantial conformity to the rules set forth in statutes heretofore existing, providing for only seven days notice in some instances, and also for a brief order designating a time and place for hearing, are hereby validated in so far as said period of notice is concerned, and in so far as the absence of any order setting a time and place for hearing is concerned; provided, this shall not apply to any lease or pooling or unitization agreement involved in any suit pending on the effective date of this Code wherein either the length of time of said notice or the absence of such order is in issue.

## PART 8. PARTITION AND DISTRIBUTION OF ESTATES OF DECEDENTS.

### § 373. Application for Partition and Distribution of Estates of Decedents

(a) **Who May Apply.** At any time after the expiration of twelve months after the original grant of letters testamentary or of administration, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request the partition and distribution of the estate.

(b) **Contents of Application.** The application shall state:

(1) The name of the person whose estate is sought to be partitioned and distributed; and

(2) The names and residences of all persons entitled to shares of such estate, and whether adults or minors; and, if these facts be unknown to the applicant, it shall be so stated in the application; and

(3) The reasons why partition and distribution should be had.

### § 374. Citation of Interested Persons

Upon the filing of such application, the clerk shall issue a citation which shall state the name of the person whose estate is sought to be partitioned and distributed, and the date upon which the court will hear the application, and the citation shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. Such citation shall be personally served upon each person residing in the state entitled to a share of the estate whose address is known; and, if there be any such persons whose identities or addresses are not known, or who are not residents of this state, or are residents of but absent from this state, such citation shall be served by publication.

### § 375. Citation of Executor or Administrator

When application for partition and distribution is made by any person other than the executor or administrator, such representative shall also be cited to appear and answer the application and to file in court a verified exhibit and account of the condition of the estate, as in the case of final settlements.

**§ 376. Guardians Ad Litem to Be Appointed in Certain Cases**

Where there are minors, or persons of unsound mind, having no guardian in this state, who are entitled to a portion of an estate, or whose guardians also have an interest in the estate, the court shall appoint a guardian ad litem to represent such minors, or persons of unsound minds and the court shall appoint an attorney to represent non-residents and unknown parties having an interest in the estate, if there be any. If a guardian ad litem or attorney so appointed shall neglect to attend to the duties of such appointment, the court shall appoint others in their places; and such guardian ad litem and attorney shall be allowed by the court a reasonable compensation for their services, to be paid out of the estate of the person they represent, and if such an allowance is not paid, an execution may issue therefor in the name of the person entitled thereto.

**§ 377. Facts to Be Ascertained Upon Hearing**

At the hearing upon the application for partition and distribution, the court shall ascertain:

(a) The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, but not paid, or which may yet be established by judgment, and also the probable future expenses of administration.

(b) The persons who are by law entitled to partition and distribution, and their respective shares.

(c) Whether advancements have been made to any of the persons so entitled and their nature and value. If advancements have been made, the court shall require the same to be placed in hotchpotch as required by the law governing intestate succession.

**§ 378. Decree of the Court**

If the court is of the opinion that the estate should be partitioned and distributed, it shall enter a decree which shall state:

(a) The name and address, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the names of their guardians, or the guardians ad litem, and the name of the attorney appointed to represent those who are unknown or who are not residents of the state.

(b) The proportional part of the estate to which each is entitled.

(c) A full description of all the estate to be distributed.

(d) That the executor or administrator retain in his hands for the payment of all debts, taxes, and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained.

**§ 379. Partition When Estate Consists of Money or Debts Only**

If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and shall order the payment and delivery thereof by the executor or administrator.

**§ 380. Partition and Distribution When Property Is Capable of Division**

(a) **Appointment of Commissioners.** If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint

three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition.

**(b) Writ of Partition and Service Thereof.** When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also command them to make due return of said writ, with their proceedings under it, on a date named in the writ. Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

**(c) Partition by Commissioners.** The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order:

(1) Of the land or other property, by allotting to each distributee a share in each parcel or shares in one or more parcels, or one or more parcels separately, either with or without the addition of a share or shares of other parcels, as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

(2) If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as nearly as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

(3) The commissioners shall proceed to make a like division in kind, as nearly as may be, of the money and other personal property, and shall determine by lot, among equal shares, to whom each particular share shall belong.

**(d) Report of Commissioners.** The commissioners, having divided the whole or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee, and its value. If it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and with the number of acres in each share. The report of a majority of the commissioners shall be sufficient.

**(e) Action of the Court.** Upon the return of such report, the court shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; otherwise, the court may set aside said report and division and order a new partition to be made.

**(f) Delivery of Property.** When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same.

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

(g) **Fees of Commissioners.** Commissioners thus appointed who actually serve in partitioning and distributing an estate shall be entitled to receive Five Dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

### § 381. Partition and Distribution When Property of an Estate Is Incapable of Division

(a) **Finding by the Court.** When, in the opinion of the court, the whole or any portion of an estate is not capable of a fair and equal partition and distribution, the court shall make a special finding in writing, specifying therein the property incapable of division.

(b) **Order of Sale.** When the court has found that the whole or any portion of the estate is not capable of fair and equal division, it shall order a sale of all property which it has found not to be capable of such division. Such sale shall be made by the executor or administrator in the same manner as when sales of real estate are made for the purpose of satisfying debts of the estate, and the proceeds of such sale, when collected, shall be distributed by the court among those entitled thereto.

(c) **Purchase by Distributee.** At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as exceeds the amount of his share of such property.

(d) **Applicability of Provisions Relating to Sales of Real Estate.** The provisions of this Code relative to reports of sales of real estate, the giving of an increased general or additional bond upon sales of real estate, and to the vesting of title to the property sold by decree or by deed, shall also apply to sales made under this Section.

### § 382. Property Located in Another County.

(a) **Court May Order Sale.** When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the court in writing; whereupon, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, the court may order a sale thereof, which sale shall be conducted in the same manner as is provided in this Code for the sale of property which is not capable of fair and equal division.

(b) **Court May Appoint Additional Commissioners.** If the court is not satisfied that such property cannot be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as are provided in this Code for commissioners to make partition.

### § 383. To Whom Property of a Minor Shall Be Delivered

If any distributee be a minor, his share of the estate shall be delivered to his guardian. If he has no guardian and is a resident of this state, the executor or administrator shall retain his share until a guardian is appointed or the disability of minority is terminated. If a distributee is a minor and resides out of this state, and has a foreign guardian, the executor or administrator in this state shall settle with and pay or deliver the estate of the minor to such guardian. Said guardian, before he re-

ceives such estate, shall have made a bond still in force as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and he shall produce to the court wherein the administration is pending in this state a certified copy of the bond and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form and in force and effect under the laws of said state; and, if the court shall be satisfied that said guardian has been legally appointed and has otherwise complied with the requirements herein, the court shall order all instruments submitted to it pursuant to the provisions of this Section to be recorded in the office of the county clerk, whereupon the guardian shall settle for the amount due his ward.

#### **§ 384. Damages for Neglect to Deliver Property**

If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally on such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of such neglect, the court shall enter an order to that effect, and the representative shall be liable to such complainant in damages at the rate of ten per cent of the amount or appraised value of the share so withheld, per month, for each and every month or fraction thereof that the share is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

#### **§ 385. Partition of Community Property**

(a) **Application for Partition.** When a husband or wife shall die leaving any community property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisal, and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such community property.

(b) **Bond and Action of the Court.** The survivor shall execute and deliver to the judge of said court a bond with a corporate surety or two or more good and sufficient personal sureties, payable to and approved by said judge, for an amount equal to the value of the survivor's interest in such community property, conditioned for the payment of one-half of all debts existing against such community property, and the court shall proceed to make a partition of said community property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this Code respecting the partition and distribution of estates shall apply to such partition so far as the same are applicable.

(c) **Lien Upon Property Delivered.** Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforementioned bond; and any creditor of said community estate may sue in his own name on such bond, and shall have judgment thereon for one-half of such debt as he shall establish, and for the other one-half he shall be entitled to be paid by the executor or administrator of the deceased.

**§ 386. Partition of Property Jointly Owned**

Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the court from which letters testamentary or of administration have been granted thereon to have a partition thereof, whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the provisions of this Code in relation to the partition and distribution of estates shall govern partition hereunder, so far as the same are applicable.

**§ 387. Expense of Partition**

Expense of partition of the estate of a decedent shall be paid by the distributees pro rata. The portion of the estate allotted each distributee shall be liable for his portion of such expense, and, if not paid, the court may order execution therefor in the names of the persons entitled thereto.

**PART 9. PARTITION OF WARD'S ESTATE IN REALTY.****§ 388. Partition of Ward's Interest in Realty**

(a) **Agreement upon Partition.** If the estate of a ward owns an interest in real estate in common with other part owner or owners, and if, in the opinion of the guardian, it is to the best interest of such ward's estate that said real estate be partitioned, the guardian may agree upon a partition with the other part owner or owners, subject to the approval of the court in which the guardianship proceedings are pending.

(b) **Application for Approval of Agreement.** When a guardian has reached an agreement with the other part owner or owners as to how said real estate is to be partitioned, he shall file with the court an application to have such agreement approved. The application shall describe the land to be divided and shall state why it is to the best interest of the ward's estate that said real estate be partitioned, and shall show that the proposed partition agreement is fair and just to the ward's estate.

(c) **Hearing on Application.** When such application is filed, the county clerk shall immediately call the attention of the judge of the court in which such guardianship is pending to the filing of the application, and the judge shall designate a day to hear such application, provided such application shall remain on file at least ten days before any orders are made, and the judge may continue such hearing from time to time until he is satisfied concerning the application.

(d) **Approval of Agreed Partition.** If the judge is satisfied that the proposed partition is for the best interest of the ward's estate, the court shall enter an order approving partition and directing the guardian to execute the necessary agreement, or agreements, for the purpose of carrying such order and partition into effect.

(e) **Ratification of Partition Agreements.** Whenever a guardian has heretofore executed agreements, or hereafter shall execute agreements, as to the partition of any lands in which the ward has an interest, without having first secured the approval of the court as provided herein, such guardian may file with the court in which the guardianship proceedings are pending, an application for the approval and ratification of said partition agreements. The application shall refer to said agreements in such manner that the court or judge can fully understand the nature of the

partition and the lands divided. It shall also state that, in the opinion of the guardian, said agreement or agreements are fair and just to the ward's estate and are for the best interest of such estate. When such application is filed a hearing shall be had thereon as provided by Subsection (c) hereof, and, if the court is of the opinion that such partition is fairly made and that the same is for the best interest of the ward's estate, an order shall be entered ratifying and approving such partition agreement or agreements, and when so ratified and approved, such partition shall be effective and binding as if originally executed after an order of the court.

(f) **Judicial Proceeding to Secure Partition.** If the guardian of the estate of a ward is of the opinion that it is for the best interest of said ward's estate that any real estate which said ward owns in common with other part owner or owners should be partitioned, he may apply to the court in which guardianship proceedings are pending for authority to bring suit in the District Court of the proper county against the other part owners for the partition of such real estate; and, if the court hearing such application is of the opinion that such real estate should be partitioned, it shall enter an order authorizing suit to be brought for such purpose.

#### PART 10. INVESTMENTS, LOANS, AND CONTRIBUTIONS OF ESTATES OF WARDS.

##### § 389. Investments

If, at any time, the guardian of the estate shall have on hand money belonging to the ward beyond that which may be necessary for the education and maintenance of such ward or wards, he shall invest such money as follows:

- (a) In bonds or other obligations of the United States; or
- (b) In tax-supported bonds of the State of Texas; or
- (c) In tax-supported bonds of any county, district, political subdivision, or incorporated city or town in the State of Texas; provided, that the bonds of counties, districts, subdivisions, cities, and towns may be purchased only subject to the following restrictions: the net funded debt of said issuing unit shall not exceed ten per cent of the assessed value of taxable property therein, "net funded debt" meaning the total funded debt less sinking funds on hand; and further, in the case of cities or towns, less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenues of which are not pledged to support other obligations; provided, however, that these restrictions shall not apply to bonds issued for road purposes in this state under authority of Section 52 of Article III of the Constitution of Texas, which bonds are supported by a tax unlimited as to rate or amount; or
- (d) In shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; or
- (e) In the shares or share accounts of any federal savings and loan association domiciled in this state, where the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; or
- (f) In collateral bonds of companies incorporated under the laws of the State of Texas, having a paid-in capital of One Million Dollars or

more, when such bonds are a direct obligation of the company issuing them, and are specifically secured by first mortgage real estate notes or other securities pledged with a trustee.

### § 390. Purchase of Life Insurance or Annuities

(a) **Insurance Company Defined.** By the term "life insurance company" as used herein, is meant any stock or mutual legal reserve company that maintains the full legal reserve required under the laws of the State of Texas, and is approved by the State Board of Insurance Commissioners.

(b) **New Insurance.** If, at any time, the guardian of the estate shall have on hand money belonging to the ward or wards beyond that which may be necessary for the education and maintenance of such ward or wards, he may purchase for said ward or wards a contract of life insurance or an annuity, or both, in a life insurance company approved by the court having jurisdiction of the estate of such ward or wards. All contracts for new life insurance issued under the provisions of this Section shall be limited to some form of single premium endowment insurance or single premium annuity; and, if the ward is a minor, all such contracts shall show the cash surrender value at the age of twenty-one years, in excess of all premium deposits made prior thereto according to the contract.

(c) At no time shall more than twenty-five per cent of the estate of a ward be invested in insurance.

(d) **Old or Existing Insurance.** If a contract for life insurance or an annuity, or both, has been issued on the life of the ward or wards, or for the benefit of the ward or wards in the case of an annuity, prior to the date of guardianship, and it is made to appear that the company issuing such contract is a life insurance company, as defined herein, it shall be lawful to continue such contract in full force and effect. All future premiums shall be paid out of the surplus funds of said ward or wards. Provided, however, that said guardian shall first apply to the court having jurisdiction and obtain an order from said court to continue said contracts according to their original terms, or to modify the same to fit any new developments affecting the welfare of said ward or wards; and provided further, that before any application is granted by the court, the guardian shall file a report in said court showing the financial condition of the estate of said ward or wards at the time said application is to be made, said report to be filed in detail; and provided further, that before the judge of the court shall approve the application, there shall be filed with the court a financial statement approved by the Chairman of the State Board of Insurance Commissioners of this State showing the solvency of said company.

(e) **Joinder of Judge in Application.** The signatures of the guardian and of the judge having jurisdiction of the estate shall appear on all applications, and any amendments thereto, made to any insurance company under the provisions hereof.

(f) **Exclusive Property of Ward Upon Maturity.** Each and every right, benefit, and interest accruing under any contract for insurance or annuity coming under the provisions hereof shall become the exclusive property of said ward or wards when disability has been terminated.

(g) **When Guardian Can Be Beneficiary.** It is expressly provided that the guardian shall in no event be authorized to contract for new life insurance on the life of his ward or wards wherein the guardian is made the beneficiary of said policy, except in cases where the guardian is the natural parent of the insured.



**§ 391. Loans and Security Therefor**

If, at any time, the guardian of the estate shall have on hand money belonging to the ward or wards beyond that which may be necessary for the education and maintenance of such ward or wards, he may lend the same for the highest rate of interest that can be obtained therefor. The guardian shall take the note of the borrower for money lent, secured by mortgage with power of sale on unencumbered real estate situated in this state, worth at least twice the amount of such note; or by collateral notes secured by vendor's lien notes, as collateral; or he may purchase vendor's lien notes, provided that at least one-half has been paid in cash or its equivalent on the land for which said notes were given.

**§ 392. Guardian's Liability for Loans**

The guardian shall not be personally responsible for money lent under the direction of the court, on security approved by the court, when the borrower is unable to pay the same, or because of failure of the security, unless such guardian has been guilty of fraud or negligence with respect to such loan or the collection of the same, in which case, he and the sureties upon his bond shall be liable for whatever loss his ward sustains by reason of such fraud or negligence.

**§ 393. Guardian's Investments in Real Estate**

(a) **Application to Invest in Real Estate.** When the guardian thinks it best for his ward who has a surplus of money on hand to invest in real estate, he shall file a written application in the court where the guardianship is pending, asking for an order of such court authorizing him to make such desired investment, and stating the reasons why the guardian is of the opinion that such investment would be for the benefit of the ward.

(b) **Action of the Court.** When such application is filed, the attention of the judge of the court shall be called thereto, and he shall make such investigation as necessary to obtain all the facts concerning the investment; but he shall not render an opinion or make any order on the application until after the expiration of ten days from date of filing. Upon the hearing of such application, if the court is satisfied that such investment will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment to be made, and shall contain such other directions as the court thinks advisable.

(c) **Approval of Contract for Purchase of Real Estate.** When any contract has been made for the investment of money in real estate under order of the court, such contract shall be reported in writing to the court by the guardian, and the court shall inquire fully into the same, and, if satisfied that such investment will benefit the estate of the ward, and that the title of such real estate is valid and unencumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until said contract has been approved by the court by an order to that effect.

(d) **Title to Real Estate.** When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed, and accounted for by the guardian as other real estate of the ward.

**§ 394. Securing Opinion of Attorney With Respect to Loans and Investments**

When the guardian lends or invests the money of his ward, he shall not pay over or transfer any money in consummation of such loan or investment until he shall have submitted all bonds, notes, mortgages, documents, abstracts, and other papers pertaining to such loan or investment to a reputable attorney for examination, and shall have received a written opinion from such attorney to the effect that all papers pertaining to such loan or investment are regular, and that the title to such bonds, notes, or real estate is good. The attorney making such examination shall be paid a reasonable fee, not to exceed one per cent of the amount so invested (unless one per cent of such amount is less than Twenty-five Dollars, in which event the fee shall be Twenty-five Dollars), which shall be paid by the guardian out of the funds of the ward. On loans, the attorney's fee shall be paid by the borrower. Provided, however, that in connection with any loan on real estate the guardian may, in his discretion, obtain a mortgagee's title insurance policy in lieu of an abstract and attorney's opinion.

**§ 395. Report of Investment and Loans**

The guardian shall report to the court in writing, verified by his affidavit, the investment or lending of money belonging to the estate, within thirty days after such transaction, stating fully the facts thereof, unless the investment or loan was made pursuant to order of the court.

**§ 396. Liability of Guardian for Failure to Lend or Invest Funds**

If the guardian neglects to invest or lend surplus money on hand at interest when he can do so by the use of reasonable diligence, he shall be liable for the principal, and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or lend the same, which amounts may be recovered in any court of competent jurisdiction.

**§ 397. Requiring Guardian to Invest or Lend Surplus Funds**

When there is any surplus money of the estate in the hands of the guardian, the court, on its own motion or upon written complaint filed by any person, may cause such guardian to be cited to appear and show cause why such surplus money should not be invested or lent at interest. Upon the hearing of such complaint, the court shall enter such order as the law and the facts require.

**§ 398. Contributions**

(a) **Application.** The guardian may at any time file his sworn application in writing with the county clerk, requesting the court in which the guardianship is pending to enter an order authorizing the guardian to contribute from the income of the ward's estate a specific amount of money, stated in said application, to one or more designated corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to some one or more designated non-profit federal, state, county, or municipal projects operated exclusively for public health or welfare.

(b) **Setting Hearing on Application.** When such an application is filed, the county clerk shall immediately call the same to the attention

of the judge of the court, and the judge shall, by written order filed with said clerk, designate a day to hear such application; provided that such application shall remain on file at least ten days before such hearing is held. The judge may postpone or continue such hearing from time to time until he is satisfied concerning such application.

(c) **Action of the Court.** Upon the conclusion of such hearing, if the court is satisfied and finds from the evidence that the amount of the proposed contribution stated in the application will probably not exceed twenty per cent of the net income of the ward's estate for the current calendar year, and that the net income of the ward's estate for such year exceeds, or probably will exceed, Twenty-five Thousand Dollars, and that the full amount of such contribution, if made, will probably be deductible from the ward's gross income, in determining the net income of the ward under the applicable income tax laws, rules, and regulations of the United States of America, and that the condition of the ward's estate is such as to justify a contribution in said amount, and that the proposed contribution is reasonable in amount and is for a worthy cause, the court in its discretion may enter an order authorizing the guardian to make such contribution from income of the ward's estate to the particular donee designated in said application and order. When such order has been entered and filed with the county clerk, the guardian shall be entitled to make such contribution, but he shall not be entitled to any commission or compensation by reason thereof or in connection therewith.

(d) **Consent of Certain Wards to Contributions.** If at the time of the hearing, the ward be fourteen years or more of age and be of sound mind and not an habitual drunkard, no order authorizing such a contribution shall be entered unless there shall have been first filed with the county clerk in said proceedings, the ward's sworn written request that the guardian's said application be granted, and that such particular contribution in the designated amount be authorized by the court, and unless such request be affirmed by personal appearance of the ward before the judge of said court at said hearing.

## PART 11. ANNUAL ACCOUNTS AND OTHER EXHIBITS.

### § 399. Annual Accounts

(a) **Estates of Decedents.** Upon the expiration of twelve months from the original grant of letters to a personal representative of the estate of a decedent, he shall return to the court an exhibit in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after said original grant of letters, specifying which have been allowed by him, which have been rejected and the date when rejected, which have been sued upon and the condition of the suit, and also setting forth fully the condition of the estate.

(1) **Order for Payment of Claims in Full.** If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the representative has in his hands sufficient funds for the payment of every character of claims against the estate, the court shall order immediate payment to be made of all claims allowed and approved or established by judgment.

(2) **Order for Pro Rata Payment of Claims.** If it shall appear from the exhibit, or from other evidence, that the funds are not sufficient for the payment of all the said claims, or if the estate is insolvent and the personal representative has any funds in his hands, the court shall order

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

such funds to be applied to the payment of all claims having a preference in the order of their priority, if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established, taking into consideration also the claims that were presented within twelve months, and those which are in suit or on which suit may yet be instituted.

(b) **Guardians of the Person.** The guardian of the person, where there is a separate guardian of the estate, shall annually return to the court his sworn account showing each item of expenditure since the last account for the education and maintenance of the ward.

(c) **Guardians of the Estate.** The guardian of an estate shall annually return to the court an account showing:

(1) All property that has come to his knowledge belonging to his ward which has not been previously inventoried or listed.

(2) Any changes in the property of the ward which have not been previously reported.

(3) A complete account of receipts and disbursements since the last annual account, and the source and nature thereof, with receipts of principal and of income to be shown separately.

(4) All claims that have been allowed by him against the estate since the last annual account that are still unpaid.

(5) All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.

(6) A complete, accurate, and detailed description of the property on hand belonging to the estate, including the cash balance on hand, and the name and location of the depository wherein such cash balance and the other personal property are kept. The description of property described in detail in a previous account may be shown by reference thereto, but such property shall be described in subsequent accounts sufficiently to identify the property. Each account shall also set forth the condition of the property and the use being made thereof, and, if rented, the terms upon which and the price for which rented. The detailed description of personal property shall, with respect to bonds, notes, and other securities, include the names of the obligor and the obligee, or if payable to bearer such fact shall appear, the date of issue and of maturity, the rate of interest, serial, or other identifying numbers, in what manner the property is secured, and any data necessary to identify fully the same and to disclose whether such investment is such as is lawful for the guardian to make or retain.

(7) Such other facts as may be necessary to show the true and exact condition of the estate.

Annexed to the accounts required by this Section shall be a certificate by the president or cashier, or a vice president, of the bank or trust company in which the money on hand of the estate or ward is deposited, showing the amount thereof, and also the affidavit of the representative filing the account that it contains a correct and complete statement of the matters to which it relates.

#### **§ 400. Penalty for Failure to File Annual Account**

Should any personal representative of an estate, or guardian of the person of a ward, fail to return any annual account required by preceding sections of this Code, any person interested in said estate or ward may, upon written complaint, cause the personal representative to be cited to return such account, and show cause for such failure. If he

fails to return said account after being so cited, or fails to show good cause for his failure so to do, the court, upon hearing, may revoke the letters of such representative, and may fine him in a sum not to exceed Five Hundred Dollars. He and his sureties shall be liable for any fine imposed, and for all damages and costs sustained by reason of such failure, which may be recovered in any court of competent jurisdiction.

**§ 401. Action upon Annual Accounts**

These rules shall govern an annual account.

(a) When presented, the filing thereof shall be noted upon the judge's docket and, before being acted on, it shall remain on file ten days.

(b) At any time after ten days from the filing of an annual account, the judge may act thereon, and may continue the hearing thereon until fully advised as to all items of said account.

(c) The representative must produce and file proper vouchers for each item of credit claimed by him in his account, or support the same by satisfactory evidence.

(d) No accounting shall be approved unless possession of the securities, if any, listed therein, is proved. The existence and possession of any securities owned by the estate, as shown by the accounting, shall be proved by one of the following means:

(1) By an affidavit of the president or cashier or a vice-president of the bank or other depository wherein said securities are held for safekeeping; provided, that if such depository is the representative, such certifying officer shall be an officer other than the officer verifying the account; or

(2) By an affidavit of an authorized representative of the corporation which is surety on the representative's bond; or

(3) By an affidavit of the clerk or a deputy clerk of a court of record in this state; or

(4) By an affidavit of any other reputable person designated by the court upon request of the representative or other interested party.

Such affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the representative as assets of the estate in which the accounting is made, and shall describe the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and shall state the time when and the place where exhibited. In lieu of using an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in his order with respect thereto, a statement that the securities shown therein as on hand were in fact exhibited to him, and that those so exhibited were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The court may require additional evidence as to the existence and custody of such securities and other personal property as in his discretion he shall deem proper; and may require the representative to exhibit them to the court, or any person designated by him, at any time at the place where held for safekeeping.

(e) If the account be found incorrect, it shall be corrected. When correct, it shall be approved by an order of the court.

**§ 402. Additional Exhibits of Estates of Decedents**

At any time after the expiration of fifteen months from the original grant of letters to an executor or administrator, any interested person

may, by a complaint in writing filed in the court in which the estate is pending, cause the representative to be cited to appear and make an exhibit in writing under oath, setting forth fully, in connection with previous exhibits, the condition of the estate he represents; and, if it shall appear to the court by said exhibit, or by other evidence, that said representative has any funds of the estate in his hands subject to distribution among the creditors of the estate, the court shall order the same to be paid out to them according to the provisions of this Code; or any representative may voluntarily present such exhibit to the court; and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made.

### § 403. Penalty for Failure to File Exhibits or Reports

Should any personal representative fail to file any exhibit or report required by this Code, any person interested in the estate may, upon written complaint filed with the clerk of the court, cause him to be cited to appear and show cause why he should not file such exhibit or report; and, upon hearing, the court may order him to file such exhibit or report, and, unless good cause be shown for such failure, the court may revoke the letters of such personal representative and may fine him in an amount not to exceed One Thousand Dollars.

## PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

### § 404. Closing Administration of Estates of Decedents and Guardianship of Wards or Their Estates

Administration of the estates of decedents and guardianship of the persons and estates of wards shall be settled and closed:

(a) **Estates of Decedents.** When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

(b) **Persons and Estates of Wards.**

1. **Of a Minor.** When the minor dies, or becomes an adult by becoming twenty-one years of age, or by removal of disabilities of minority according to the law of this state, or by marriage.

2. **Of Incompetents.** When the ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community.

3. **Of a Person Entitled to Funds From Any Governmental Source.** When the ward dies, or when the court finds that the necessity for the guardianship has ended.

4. **Exhaustion of Estate.** When the estate of a ward becomes exhausted.

5. **When Income Negligible.** When the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome. In such case the court may authorize such income to be paid to a parent, or some other person who has acted as guardian, to assist as far as possible in the maintenance of the ward, and without liability to account to the court for such income.

**§ 405. Account for Final Settlement of Estates of Decedents and Persons and Estates of Wards**

When administration of the estate of a decedent, or guardianship of person or estate, or of the person and estate of a ward, is to be settled and closed, the personal representative of such estate or of such ward shall present to the court his verified account for final settlement. In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration or guardianship, as the case may be, concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate or of the ward, as the case may be, including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

**(a) As to Estates of Decedents.**

1. The property belonging to the estate which has come into the hands of the executor or administrator.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.
7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.

**(b) As to Estates of Wards.**

1. The property, rents, revenues, and profits received by the guardian, and belonging to his ward, during his guardianship.
2. The disposition made of such property, rents, revenues, and profits.
3. The expenses and debts, if any, against the estate remaining unpaid.
4. The property of the estate remaining in the hands of such guardian, if any.
5. Such other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

**§ 406. Procedure in Case of Neglect or Failure to File Final Account; Payments Due Meantime**

If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's or ward's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation. So far as applicable, this Section shall also govern with respect to guardians of the person. Meantime, rentals or other payments becoming due to the ward, his estate, or his guardian, between the date the ward's disability terminates and the effective date of the guardian's discharge may be paid or tendered to the emancipated ward or his guardian, at obligor's option, and such payment or tender

shall constitute and be an absolute discharge of such matured obligation for all purposes to the extent of the amount thus paid or tendered.

#### § 407. Citation Upon Presentation of Account for Final Settlement

Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents or wards, or of the persons of wards, citation shall be issued by the county clerk to all interested persons, stating that such account has been filed, and the time and place when it will be considered by the court, and requiring all such persons to appear and contest the same if they see proper. Such citation shall be published, and return made as in cases of citations in original proceedings. Additional notice shall be given by the clerk as follows:

1. In case of the estates of deceased persons, such notice as shall be directed by the court by written order.
2. If a ward be a living resident of this state, and his residence be known, he shall be cited by personal service.
3. If one who has been a ward be deceased, but there be a representative of his estate other than the one filing the account, such representative shall be cited by personal service.
4. If a ward be deceased, or if his residence be unknown, or if he is a non-resident of this state, and no representative of his estate has been appointed and qualified in this state, the citation to him or to his estate shall be by publication.
5. If the court deems further additional notice necessary, it shall require the same by written order.

#### § 408. Action of the Court

(a) **Action Upon Account.** Upon being satisfied that citation has been duly served upon all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the same, and, after hearing all exceptions or objections thereto, and evidence in support of or against such account, shall audit and settle the same, and restate it if that be necessary.

(b) **Distribution of Remaining Property.** Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that it be delivered, in case of a ward, to such ward or other person legally entitled thereto; in case of a decedent, that a partition and distribution be made among the persons entitled to receive such estate.

(c) **Discharge of Representative When No Property Remains.** If, upon such settlement, there be none of the estate remaining in the hands of the representative, he shall be discharged from his trust and the estate ordered closed.

(d) **Discharge When Estate Fully Administered.** Whenever the representative of an estate has fully administered the same in accordance with this Code and the orders of the court, and his final account has been approved, and he has delivered all of said estate remaining in his hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from his trust, and declaring the estate closed.

#### § 409. Money Becoming Due Pending Final Discharge

Until the order of final discharge of the personal representative is entered in the minutes of the court, money or other thing of value



falling due to the estate or ward while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

**§ 410. Inheritance Taxes Must Be Paid**

No final account of an executor or administrator shall be approved, and no estate of a decedent shall be closed, unless the final account shows, and the court finds, that all inheritance taxes due and owing to the State of Texas with respect to all interests and properties passing through the hands of the representative have been paid. If no inheritance tax is due, such fact must be shown by an instrument in writing, approved by the State Comptroller of Public Accounts, and filed with the final papers closing the estate.

**§ 411. Appointment of Attorney to Represent Ward**

When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

**§ 412. Offsets, Credits, and Bad Debts**

In the settlement of any of the accounts of the personal representative of an estate, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation.

**§ 413. Accounting for Labor or Services of a Ward**

The guardian of a ward shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by the ward, but the guardian shall be entitled to reasonable credits for the board, clothing, and maintenance of his ward.

**§ 414. Procedure if Representative Fails to Deliver Estate**

If any personal representative of an estate or ward, upon final settlement, shall neglect to deliver to the person entitled thereto when demanded any portion of an estate or any funds or money in his hands ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally upon such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of the neglect charged, the court shall enter an order to that effect, and the representative shall be liable to such person in damages at the rate of ten per cent of the amount or appraised value of the money or estate so withheld, per month, for each and every month or fraction thereof that said estate or money or funds is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

**CHAPTER IX**  
**SPECIFIC PROVISIONS RELATING TO PERSONS OF**  
**UNSOOUND MIND AND HABITUAL DRUNKARDS**

Sec.

- 415. Information That Person of Unsound Mind or Habitual Drunkard is Without Guardian.
- 416. Issuance of Warrant Upon Information.
- 417. Hearing Upon Information.
- 418. Appointment of Guardian.
- 419. New Trial.
- 420. Applicability of Other Provisions of This Code.
- 421. Support of Ward's Family.
- 422. Confinement of Ward.
- 423. Liability for Maintenance.
- 424. Expenses of Confinement.
- 425. Recovery by County of Sums Paid by It.
- 426. Restoration of Ward to Sound Mind or Sobriety.
  - (a) Citation of Guardian.
  - (b) Trial.

**§ 415. Information That Person of Unsound Mind or Habitual Drunkard Is Without Guardian**

Any county officer, or other person, who shall discover any resident in the county who is of unsound mind or an habitual drunkard, and who is without a guardian, shall file information thereof with the county judge. Such information shall state that, to the best of the knowledge and belief of the affiant, such person is of unsound mind, or is an habitual drunkard, and is without a guardian; and, if the name of such person is unknown, such person shall be described. The information shall be subscribed and sworn to by the informant.

**§ 416. Issuance of Warrant Upon Information**

Upon information that any person residing in the county is of unsound mind, or is an habitual drunkard, and is without a guardian, the judge, if satisfied that there is good cause for the exercise of his jurisdiction, shall issue a warrant to the sheriff or constable commanding that such persons be brought before him at a time and place named in such warrant.

**§ 417. Hearing Upon Information**

When the person charged is brought before the judge, the judge shall appoint a qualified person to act as guardian ad litem for the accused at such hearing and shall cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind or is an habitual drunkard. The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant, and the proceedings and trial thereof shall be governed by the same rules that govern in ordinary suits in the county court.

**§ 418. Appointment of Guardian**

If it be found by the jury that the defendant is of unsound mind, or is an habitual drunkard, as charged, the court shall after the issuance and posting of notice as in the case of the appointment of permanent

guardians, enter judgment accordingly, and appoint a guardian of the person and estate, or of either, of such defendant.

**§ 419. New Trial**

The court may, for good cause shown, at any time within ten days after the verdict has been returned and judgment has been rendered, set aside the same and grant a new trial to either party; but, when two juries have concurred in a case, the second verdict shall not be set aside.

**§ 420. Applicability of Other Provisions of This Code**

Each provision of this Code relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of incompetents in so far as the same are applicable.

**§ 421. Support of Ward's Family**

The court by which any incompetent is committed to guardianship may make orders for the support of his family and the education of his children, when necessary.

**§ 422. Confinement of Ward**

If any person of unsound mind shall be so far disordered in his mind as to endanger his own person, or the person or property of others, the guardian or other person under whose care he is, and who is bound to provide for his support, shall confine him in a suitable place until such time, not exceeding thirty days, as the court shall make an order for the restraint, support, and safekeeping of such ward. If any such person of unsound mind shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate shall cause such person to be apprehended and may employ any person to confine him in a suitable place until the court shall make further order thereon.

**§ 423. Liability for Maintenance**

Where an incompetent has no estate of his own, he shall be maintained:

- (a) By the husband or wife of such person, if able to do so; or, if not,
- (b) By the father or mother of such person, if able to do so; or, if not,
- (c) By the children and grandchildren of such person, respectively, if able to do so; or, if not,
- (d) By the county in which said person has his residence.

**§ 424. Expenses of Confinement**

The expenses attending the confinement of an incompetent shall be paid by the guardian out of the estate of the ward, if he has an estate; and, if he has none, such expenses shall be paid by the person bound to provide for and support such incompetent; and, if not so paid, the county shall pay the same.

**§ 425. Recovery by County of Sums Paid by It**

In all cases of appropriation out of the county treasury for the support and confinement of any incompetent, the amount thereof may be recovered by the county from the estate of such person, or from any person who by law is bound to provide for the support of such incompetent, if there be any person able to pay for the same.

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

**§ 426. Restoration of Ward to Sound Mind or Sobriety**

(a) **Citation of Guardian.** If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind or an habitual drunkard has been restored to his right mind or to sober habits, the guardian of the person and of the estate of such ward shall be cited to appear before the court on a day and at a place named in such citation, and show cause why such ward should not be adjudged to be of sound mind, or no longer an habitual drunkard, and discharged from further guardianship.

(b) **Trial.** If the facts of such alleged restoration be doubtful, the court shall cause a qualified jury to be impaneled to try the issue as in the first instance, and if such jury finds that the ward has been restored to his right mind or to sober habits, he shall be adjudged a person of sound mind or no longer an habitual drunkard, and shall be discharged from guardianship by an order to that effect; and the guardian shall immediately settle his accounts and deliver all the property remaining in his hands to such ward. If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order adjudging the person to be of sound mind or no longer an habitual drunkard and discharging the ward from guardianship.

CHAPTER X

PAYMENT OF ESTATES INTO STATE TREASURY

Sec.

- 427. When Estates to Be Paid into State Treasury.
- 428. Notice to State Treasurer and Evidence Thereof.
- 429. Penalty for Neglect to Notify State Treasurer.
- 430. Receipt of State Treasurer.
- 431. Penalty for Failure to Make Payments to State Treasurer.
- 432. State Treasurer May Enforce Payment and Collect Damages.
- 433. Suit for the Recovery of Funds Paid to the State Treasurer.
  - (a) Mode of Recovery.
  - (b) Citation.
  - (c) Procedure.
  - (d) Costs.
- 434. Repeal of Laws Supplanted by This Code.
- 435. Emergency Clause.

§ 427. When Estates to Be Paid into State Treasury

If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in money to the State Treasurer; and such portion as is in other property he shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the State Treasurer, in all such cases allowing the executor or administrator reasonable compensation for his services.

§ 428. Notice to State Treasurer and Evidence Thereof

Whenever an order shall be made by the court for an executor or administrator to pay any funds to the State Treasurer under the preceding provisions of this Code, the clerk of the court in which such order is made shall mail to the State Treasurer a certified copy of such order within thirty days after the same has been made. Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, addressed to the State Treasurer at Austin, Texas, and the date when it was mailed, and shall record such certificate.

§ 429. Penalty for Neglect to Notify State Treasurer

Any clerk who shall neglect to transmit a certified copy of any such order within the time prescribed, and to take and record such certificate, as required in the preceding Section, shall be liable in a penalty of One Hundred Dollars, to be recovered in an action in the name of the state, after personal service of citation, on the information of any citizen, one-half of which penalty shall be paid to the informer and the other one-half to the state.

**§ 430. Receipt of State Treasurer**

Whenever an executor or administrator pays the State Treasurer any funds of the estate he represents, under the preceding provisions of this Code, he shall take from the State Treasurer a receipt for such payment, with official seal attached, and shall file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the minutes of the court.

**§ 431. Penalty for Failure to Make Payments to State Treasurer**

When an executor or administrator fails to pay to the State Treasurer any funds of an estate which he has been ordered by the court so to pay, within three months after such order has been made, such executor or administrator shall, after personal service of citation charging such failure and after proof thereof, be liable to pay out of his own estate to the State Treasurer damages thereon at the rate of five per cent per month for each month, or fraction thereof, that he fails to make such payment after three months from such order, which damages may be recovered in any court of competent jurisdiction.

**§ 432. State Treasurer May Enforce Payment and Collect Damages**

The State Treasurer shall have the right in the name of the state to apply to the court in which the order for payment was made to enforce the payment of funds which the executor or administrator has failed to pay to him pursuant to order of court, together with the payment of any damages that shall have accrued under the provisions of the preceding Section of this Code, and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. The State Treasurer shall also have the right to institute suit in the name of the state against such executor or administrator, and the sureties on his bond, for the recovery of the funds so ordered to be paid and such damages as have accrued. The county or district attorney, as the case may be, shall represent the State Treasurer in all such proceedings, and shall also represent the interests of the state in all other matters arising under any provisions of this Code.

**§ 433. Suit for the Recovery of Funds Paid to the State Treasurer**

(a) **Mode of Recovery.** When funds of an estate have been paid to the State Treasurer, any heir, devisee, or legatee of the estate, or their assigns, or any of them, may recover the portion of such funds to which he, she, or they are entitled. The person claiming such funds shall institute suit therefor, by petition filed in the court in which the estate was administered, against the State Treasurer, setting forth the plaintiff's right to such funds, and the amount claimed by him.

(b) **Citation.** Upon the filing of such petition, the clerk shall issue a citation for the county attorney of the county or the district attorney of the district, to be served by personal service, to appear and represent the interest of the state in such suit, and it shall be the duty of such county or district attorney to do so.

(c) **Procedure.** The proceedings in such suit shall be governed by the rules for other civil suits; and, should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall speci-

fy the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the State Treasurer to pay the same.

(d) **Costs.** The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs.

**§ 434. Repeal of Laws Supplanted by This Code**

The following statutes and laws of this State are supplanted by the provisions of this Code and are hereby repealed:

(a) Title 48 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;<sup>1</sup> Article 932 of the Revised Civil Statutes of Texas of 1925;<sup>2</sup> and Chapter 196, Acts of the 52nd Legislature (1951), page 322;<sup>3</sup> and

(b) Title 129 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;<sup>4</sup> and

(1) Sections 1 and 2 of Chapter 196, Acts of the 42nd Legislature (1931), page 329;<sup>5</sup> and

(2) Section 1 of Chapter 297, Acts of the 49th Legislature (1945), page 469;<sup>6</sup> and

(3) Sections 1 and 2 of Chapter 170, Acts of the 50th Legislature (1947), page 275;<sup>7</sup> and

(4) Section 1 of Chapter 120, Acts of the 51st Legislature (1949), page 218;<sup>8</sup> and

(c) Title 54 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;<sup>9</sup> and

(1) Acts of the 39th Legislature (1925), Section 1 of Chapter 82, page 253;<sup>10</sup> and

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 50, page 74;<sup>11</sup> Sections 1, 2 and 3 of Chapter 81, page 123;<sup>12</sup> Section 1 of Chapter 92, page 142;<sup>13</sup> Section 1 of Chapter 152, page 223;<sup>14</sup> and Section 1 of Chapter 244, page 362;<sup>15</sup> and

(3) Acts of the 41st Legislature (1929): Sections 1 and 2 of Chapter 29, page 63;<sup>16</sup> Section 1 of Chapter 63, page 130;<sup>17</sup> Section 2 of Chapter

<sup>1</sup> Vernon's Ann.Civ.St. arts. 2570-2583.

<sup>2</sup> Vernon's Ann.Civ.St. art. 932.

<sup>3</sup> Vernon's Ann.Civ.St. art. 2583a.

<sup>4</sup> Vernon's Ann.Civ.St. arts. 8281-8305.

<sup>5</sup> Vernon's Ann.Civ.St. arts. 8291, 8292.

<sup>6</sup> Vernon's Ann.Civ.St. art. 8281.

<sup>7</sup> Vernon's Ann.Civ.St. arts. 8283, 8284.

<sup>8</sup> Vernon's Ann.Civ.St. art. 8293.

<sup>9</sup> Vernon's Ann.Civ.St. arts. 3290-3703.

<sup>10</sup> Vernon's Ann.Civ.St. art. 3678.

<sup>11</sup> Vernon's Ann.Civ.St. art. 3654.

<sup>12</sup> Vernon's Ann.Civ.St. arts. 3334, 3334a, 3336.

<sup>13</sup> Vernon's Ann.Civ.St. art. 3351.

<sup>14</sup> Vernon's Ann.Civ.St. art. 3386.

<sup>15</sup> Vernon's Ann.Civ.St. art. 3597a.

<sup>16</sup> Vernon's Ann.Civ.St. arts. 3386, 3576.

<sup>17</sup> Vernon's Ann.Civ.St. art. 3393a.

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

100, page 235;<sup>18</sup> Section 1 of Chapter 132, page 288;<sup>19</sup> and Section 1 of Chapter 48, First Called Session, page 107;<sup>20</sup> and

(4) Acts of the 42nd Legislature (1931): Chapter 52, page 79;<sup>21</sup> Section 1 of Chapter 59, page 93;<sup>22</sup> Chapter 123, page 210;<sup>23</sup> Section 1 of Chapter 234, page 389;<sup>24</sup> Section 1 of Chapter 235, page 390;<sup>25</sup> Section 1 of Chapter 236, page 391;<sup>26</sup> and Section 1 of Chapter 35a, page 842;<sup>27</sup> and

(5) Acts of the 43rd Legislature, Third Called Session (1934): Section 1 of Chapter 25, page 48;<sup>28</sup> and

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 247, page 634;<sup>29</sup> Section 1 of Chapter 248, page 635;<sup>30</sup> Section 1 of Chapter 250, page 637;<sup>31</sup> Section 1 of Chapter 251, page 638;<sup>32</sup> Section 1 of Chapter 252, page 638;<sup>33</sup> Section 1 of Chapter 253, page 639;<sup>34</sup> Section 1 of Chapter 266, page 654;<sup>35</sup> Section 1 of Chapter 272, page 658;<sup>36</sup> Section 1 of Chapter 273, page 659;<sup>37</sup> Sections 1 and 2 of Chapter 277, page 662;<sup>38</sup> Section 1 of Chapter 278, page 664;<sup>39</sup> Section 1 of Chapter 280, page 665;<sup>40</sup> and Chapter 446, Second Called Session, page 1729;<sup>41</sup> and

(7) Acts of the 45th Legislature (1937): Section 1 of Chapter 193, page 391;<sup>42</sup> and Section 1 of Chapter 250, page 499;<sup>43</sup> and

(8) Acts of the 46th Legislature (1939): H. B. No. 656, page 318;<sup>44</sup> H. B. No. 158, page 319;<sup>45</sup> H. B. No. 31, page 320;<sup>46</sup> and S. B. No. 141, page 321;<sup>47</sup> and

(9) Acts of the 47th Legislature (1941): Section 1 of Chapter 382, page 633;<sup>48</sup> and Chapter 521, page 845;<sup>49</sup> and

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 234, page 356;<sup>50</sup> and

18 *Vernon's Ann.Civ.St.* art. 3334.

19 *Vernon's Ann.Civ.St.* art. 3325.

20 *Vernon's Ann.Civ.St.* art. 3310a.

21 *Vernon's Ann.Civ.St.* art. 3515a.

22 *Vernon's Ann.Civ.St.* art. 3293—A.

23 *Vernon's Ann.Civ.St.* art. 3310a.

24 *Vernon's Ann.Civ.St.* art. 3531.

25 *Vernon's Ann.Civ.St.* art. 3690.

26 *Vernon's Ann.Civ.St.* art. 3492.

27 Probably should read: "and Section 1 of Chapter 352, page 842". *Vernon's Ann.Civ. St.* art. 3432a.

28 *Vernon's Ann.Civ.St.* art. 3369.

29 *Vernon's Ann.Civ.St.* art. 3311.

30 *Vernon's Ann.Civ.St.* art. 3334.

31 *Vernon's Ann.Civ.St.* art. 3576.

32 *Vernon's Ann.Civ.St.* art. 3321.

33 *Vernon's Ann.Civ.St.* art. 3420.

34 *Vernon's Ann.Civ.St.* art. 3476.

35 *Vernon's Ann.Civ.St.* art. 3396.

36 *Vernon's Ann.Civ.St.* art. 3337.

37 *Vernon's Ann.Civ.St.* art. 3336.

38 *Vernon's Ann.Civ.St.* arts. 3430, 3576 note.

39 *Vernon's Ann.Civ.St.* art. 3417.

40 *Vernon's Ann.Civ.St.* art. 3317.

41 *Vernon's Ann.Civ.St.* arts. 3456A—3456I.

42 *Vernon's Ann.Civ.St.* arts. 3410—a, 3410—b.

43 *Vernon's Ann.Civ.St.* art. 3605.

44 *Vernon's Ann.Civ.St.* art. 3334b.

45 *Vernon's Ann.Civ.St.* art. 3336.

46 *Vernon's Ann.Civ.St.* art. 3370.

47 *Vernon's Ann.Civ.St.* arts. 3393a, 3396.

48 *Vernon's Ann.Civ.St.* art. 3432b.

49 *Vernon's Ann.Civ.St.* arts. 3333a, 3333a note.

50 *Vernon's Ann.Civ.St.* art. 3554a.



(11) Acts of the 49th Legislature (1945): Section 1 of Chapter 214, page 296;<sup>51</sup> Section 1 of Chapter 296, page 468;<sup>52</sup> Section 2 of Chapter 297, page 469;<sup>53</sup> and Sections 1 and 2 of Chapter 316, page 525;<sup>54</sup> and

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 401, page 942;<sup>55</sup> and

(13) Acts of the 52nd Legislature (1951): Chapter 37, page 62;<sup>56</sup> and

(d) Title 69 of the Revised Civil Statutes of Texas of 1925, as amended, and all Articles contained in said Title, as said Articles are amended;<sup>57</sup> and

(1) Acts of the 39th Legislature (1925): Section 1 of Chapter 156, page 367;<sup>58</sup> and Section 1 of Chapter 134, page 338;<sup>59</sup> and

(2) Acts of the 40th Legislature (1927): Section 1 of Chapter 16, page 22;<sup>60</sup> Section 2 of Chapter 31, page 43;<sup>61</sup> Section 1 of Chapter 164, page 237;<sup>62</sup> and Sections 1, 2 and 3 of Chapter 179, page 257;<sup>63</sup> and

(3) Acts of the 41st Legislature (1929): Section 1 of Chapter 31, page 65;<sup>64</sup> Chapter 126, page 281;<sup>65</sup> Sections 1 and 2 of Chapter 127, page 282;<sup>66</sup> Sections 1 and 2 of Chapter 128, page 283;<sup>67</sup> Sections 1 and 2 of Chapter 129, page 284;<sup>68</sup> Sections 1 and 2 of Chapter 130, page 285;<sup>69</sup> Sections 1, 2, 3, 4, 5 and 6 of Chapter 131, page 286;<sup>70</sup> Section 1 of Chapter 133, page 289;<sup>71</sup> and Chapter 305, page 684;<sup>72</sup> and

(4) Acts of the 42nd Legislature (1931): Section 1 of Chapter 237, page 392;<sup>73</sup> and

(5) Acts of the 43rd Legislature (1933): Chapter 47, page 93;<sup>74</sup> Chapter 239, page 838;<sup>75</sup> and Section 1 of Chapter 26, Third Called Session (1934), page 49;<sup>76</sup> and

(6) Acts of the 44th Legislature (1935): Section 1 of Chapter 13, page 5;<sup>77</sup> Section 1 of Chapter 79, page 196;<sup>78</sup> Section 1 of Chapter 84, page

<sup>51</sup> Vernon's Ann.Civ.St. art. 3310b.

<sup>52</sup> Vernon's Ann.Civ.St. art. 3344.

<sup>53</sup> Vernon's Ann.Civ.St. art. 3348.

<sup>54</sup> Vernon's Ann.Civ.St. arts. 3386, 3576.

<sup>55</sup> Vernon's Ann.Civ.St. art. 3683a.

<sup>56</sup> Vernon's Ann.Civ.St. art. 3582a.

<sup>57</sup> Vernon's Ann.Civ.St. arts. 4102-4329.

<sup>58</sup> Vernon's Ann.Civ.St. art. 4225.

<sup>59</sup> Vernon's Ann.Civ.St. arts. 4195, 4196.

<sup>60</sup> Vernon's Ann.Civ.St. art. 4231.

<sup>61</sup> Vernon's Ann.Civ.St. art. 4195a.

<sup>62</sup> Vernon's Ann.Civ.St. art. 4192.

<sup>63</sup> Vernon's Ann.Civ.St. arts. 4102, 4111, 4123.

<sup>64</sup> Vernon's Ann.Civ.St. art. 4111.

<sup>65</sup> Vernon's Ann.Civ.St. art. 4227a.

<sup>66</sup> Vernon's Ann.Civ.St. art. 4233.

<sup>67</sup> Vernon's Ann.Civ.St. art. 4143.

<sup>68</sup> Vernon's Ann.Civ.St. art. 4234.

<sup>69</sup> Vernon's Ann.Civ.St. art. 4148.

<sup>70</sup> Vernon's Ann.Civ.St. arts. 4282-4284.

<sup>71</sup> Vernon's Ann.Civ.St. art. 4142.

<sup>72</sup> Vernon's Ann.Civ.St. art. 4180.

<sup>73</sup> Vernon's Ann.Civ.St. art. 4200.

<sup>74</sup> Probably should read: "Chapter 47, page 96". Vernon's Ann.Civ.St. art. 4295a.

<sup>75</sup> Vernon's Ann.Civ.St. art. 4223a.

<sup>76</sup> Vernon's Ann.Civ.St. art. 4195a.

<sup>77</sup> Probably should read: "Section 1 of Chapter 13, page 35". Vernon's Ann.Civ.St. art. 4204.

<sup>78</sup> Vernon's Ann.Civ.St. art. 4216.

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

206; <sup>79</sup> Section 1 of Chapter 254, page 640; <sup>80</sup> Section 1 of Chapter 279, page 664; <sup>81</sup> and

(7) Acts of the 45th Legislature (1937): Chapter 289, page 579; <sup>82</sup> Chapter 336, page 673; <sup>83</sup> Sections 1 and 2 of Chapter 27, First Called Session, page 1803; <sup>84</sup> and Section 1 of Chapter 54, Second Called Session, page 1964; <sup>85</sup> and

(8) Acts of the 46th Legislature (1939): S. B. No. 189, page 340; <sup>86</sup> and

(9) Acts of the 47th Legislature (1941): Section 3 of Chapter 303, page 480; <sup>87</sup> and Sections 1, 2, 3, 4, 5, 6 and 7 of Chapter 541, page 867; <sup>88</sup> and

(10) Acts of the 48th Legislature (1943): Section 1 of Chapter 56, page 65; <sup>89</sup> Chapter 281, page 414; <sup>90</sup> and Section 1 of Chapter 378, page 684; <sup>91</sup> and

(11) Acts of the 49th Legislature (1945): Sections 3, 4 and 5 of Chapter 316, page 525; <sup>92</sup> and

(12) Acts of the 50th Legislature (1947): Section 1 of Chapter 39, page 51; <sup>93</sup> and Section 1 of Chapter 256, page 453; <sup>94</sup> and

(13) Acts of the 51st Legislature (1949): Section 1 of Chapter 499, page 923; <sup>95</sup> Section 1 of Chapter 556, page 1093; <sup>96</sup> Chapter 456, page 842; <sup>97</sup> and Section 3 of Chapter 259, page 447; <sup>98</sup> and

(14) Acts of the 52nd Legislature (1951): Section 1 of Chapter 34, page 56. <sup>99</sup>

(15) Acts of the 53rd Legislature (1953): Section 1 of Chapter 70, page 104. <sup>1</sup>

### § 435. Emergency Clause

The need for revision of the probate statutes of this state creates an emergency and an imperative public necessity that the Constitutional Rule

<sup>79</sup> Vernon's Ann.Civ.St. art. 4201.

<sup>80</sup> Vernon's Ann.Civ.St. art. 4115.

<sup>81</sup> Vernon's Ann.Civ.St. art. 4291.

<sup>82</sup> Vernon's Ann.Civ.St. art. 4112a.

<sup>83</sup> Vernon's Ann.Civ.St. art. 4130.

<sup>84</sup> Vernon's Ann.Civ.St. arts. 4285, 4286.

<sup>85</sup> Vernon's Ann.Civ.St. art. 4180.

<sup>86</sup> Vernon's Ann.Civ.St. art. 4225.

<sup>87</sup> Vernon's Ann.Civ.St. art. 4203.

<sup>88</sup> Vernon's Ann.Civ.St. arts. 4113, 4114, 4116, 4117, 4121-4123, 4128, 4228, 4229, 4272, 4123a, 4123a-1.

<sup>89</sup> Vernon's Ann.Civ.St. art. 4180.

<sup>90</sup> Vernon's Ann.Civ.St. art. 4296.

<sup>91</sup> Vernon's Ann.Civ.St. arts. 4201, 4216.

<sup>92</sup> Vernon's Ann.Civ.St. arts. 4141, 4201, 4216.

<sup>93</sup> Vernon's Ann.Civ.St. art. 4296.

<sup>94</sup> Vernon's Ann.Civ.St. art. 4141.

<sup>95</sup> Vernon's Ann.Civ.St. art. 4123a-1.

<sup>96</sup> Vernon's Ann.Civ.St. art. 4168.

<sup>97</sup> Probably should read "Chapter 458, page 842", Vernon's Ann.Civ.St. art. 4192b.

<sup>98</sup> Probably should read "Section 3 of Chapter 259, page 477", Vernon's Ann.Civ.St. art. 6008b, § 3.

<sup>99</sup> Vernon's Ann.Civ.St. art. 4192.

<sup>1</sup> Vernon's Ann.Civ.St. art. 4285.

requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate, February 9, 1955, by a viva voce vote; March 17, 1955, Senate concurred in House amendments by a viva voce vote; passed the House, March 16, 1955, with amendments, by a viva voce vote.

Approved April 4, 1955.

Effective and in force January 1, 1956. See Section 2, ante.

**TITLE 113A—REAL ESTATE DEALERS****Art. 6573a. Real estate dealers licenses****Short Title of Act**

Section 1. This Act shall be known and may be cited as "The Real Estate License Act".

**The Texas Real Estate Commission**

Sec. 2. The administration of the provisions of this Act shall be vested in a commission, to be known as "Texas Real Estate Commission," consisting of six (6) members to be appointed by the Governor with the advice and consent of two-thirds of the Senate present. They shall hold office for six (6) years and until their successors are appointed, and have qualified. The members of the Commission in office at the effective date of this Act shall be present members of the Commission and shall continue in office until the 5th day of October of the years in which their present respective terms expire, and until their successors are appointed and qualified. Such Commission is hereafter referred to in this Act as "Commission".

Each member of the Commission shall be a citizen of Texas and a qualified voter and shall be engaged in the real estate business for at least five (5) years next preceding his appointment, and shall have held a license as a regular real estate broker under House Bill No. 17, Acts of the Regular Session of the 46th Legislature, or any amendments thereto, at the time of his appointment and for five (5) years prior thereto.

The members of the Commission shall receive their actual expenses while engaged in the performance of their duties, and per diem of Ten (\$10.00) Dollars per day not exceeding thirty (30) days for any one year.

The Commission is hereby empowered to select and name an administrator, who shall also act as Executive Secretary, and to select and employ such other subordinate officers and employees as shall be necessary to properly administer this Act. The salaries of the Administrator and such officers and employees shall be as fixed by the Commission not to exceed such amounts as are fixed by the General Appropriations Bill. The Commission may designate a subordinate officer as Assistant Administrator who shall be authorized to act for the Administrator in his absence or inability to perform his duties. The Administrator and such Assistant Administrator shall take the Constitutional oath of office, and shall furnish a bond payable to the Governor of Texas in the penal sum of Ten Thousand (\$10,000.00) Dollars conditioned upon the faithful performance of his duties as provided by law.

The Commission is hereby empowered to enforce and administer the provisions of this Act and in the performance of such duties to conduct hearings, examinations and investigations. Upon receipt of written complaint it shall be the duty of the Commission to investigate persons engaging in the real estate business in this State to ascertain whether they are violating any of the provisions of this Act; to summon and require witnesses to be examined under oath; to administer oaths; to keep such records and minutes as shall be necessary to properly enforce the provisions of this Act; and to adopt such rules and regulations, not inconsistent with this Act, as shall be appropriate to its proper administration.

Whenever in this Act a power, right or duty is conferred upon the Commission, such power or right shall be exercised by the Administrator and such duty shall rest upon the Administrator unless the Commission

shall otherwise order or direct by an order entered in the minutes of such Commission; and in such case, the power, right or duty shall rest in or on the Commission. Service of process upon the Administrator or the Assistant Administrator shall be service of process upon the Commission. Any reports, notices, applications, or instruments of any kind required to be filed with the Commission shall be considered filed with the Commission if filed with the Administrator. Where a decision, order or act of the Commission is referred to in this Act (other than an order of the Commission relative to the Administrator or his powers, rights, duties), it shall also mean and include any order, decision or act of the Administrator. Wherever the Commission is authorized herein to delegate authority or to designate agents, the Administrator shall have such rights and the power to so delegate authority and designate agents, unless the Commission shall enter its order in the minutes directing otherwise. The Administrator shall act as Manager, Secretary and Custodian of all records unless the Commission shall otherwise order, and shall devote his entire time to his office.

#### License Required

Sec. 3. From and after the effective date of this Act it shall be unlawful for any person, partnership, association or corporation to engage in or carry on directly or indirectly, or to advertise or hold himself, itself, or themselves out as engaging in, or carrying on, the business, or to perform any act of a Real Estate Broker or a Real Estate Salesman, as herein defined, within this State, without first obtaining a license as a Real Estate Broker or Real Estate Salesman as provided for in this Act.

#### Definitions

Sec. 4. The following terms shall, unless the context otherwise indicates, have the following meaning:

(1) The term "Real Estate Broker" shall mean and include any person who, for another or others and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation:

- (a) Sells, exchanges, purchases, rents or leases real estate;
- (b) Offers to sell, exchange, purchase, rent or lease real estate;
- (c) Negotiates, or offers or attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (d) Lists or offers or attempts or agrees to list real estate for sale, rental, lease, exchange or trade;
- (e) Appraises or offers or attempts or agrees to appraise real estate;
- (f) Auctions, or offers or attempts or agrees to auction real estate;
- (g) Buys or sells or offers to buy or sell, or otherwise deals in options on real estate;
- (h) Collects or offers or attempts or agrees to collect rentals for the use of real estate;
- (i) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate;
- (j) Procures or assists in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
- (k) Procures or assists in the procuring of properties calculated to result in the sale, exchange, leasing or rental of any business enterprise, or sells, exchanges, purchases, rents, or leases any business enterprise;
- (l) Subdivides real estate into two or more parts or tracts which are to be sold, leased, exchanged or rented to others, or for the purpose of erecting buildings for residential or business purposes to be sold, leased, exchanged or rented.

(2) The term "Real Estate Broker" shall also include any person employed by or on behalf of the owner or owners of real estate at a stated salary or upon a commission or upon a salary and commission basis or other compensation to sell, exchange or offer for sale such real estate or any part thereof who shall sell, exchange or offer or attempt or agree to negotiate the sale or exchange of any lot or parcel of real estate; provided, however, if the owner of lots or other parcels is engaged in the business of buying, selling, exchanging, leasing, or renting a property and holding himself out as a full or part-time broker in real estate, then such person employed by said owner may be licensed as a salesman.

(3) The term "Real Estate Broker" shall also include any person, partnership, association, or corporation engaged in the business of buying, selling, exchanging, leasing, renting of property for himself or itself or who holds himself, themselves or itself out as a broker in real estate, or engages in the activities of a Real Estate Broker as an occupation, business, or profession on either a full or part-time basis.

(4) The term "Real Estate Salesman" shall mean and include any person employed or engaged by or in behalf of a licensed Real Estate Broker to do or deal in any act, acts, or transactions set out and comprehended by the definition of a "Real Estate Broker" in Subdivisions (1), (2) and (3) of this Section. The term "Real Estate Salesman" shall not include a partnership, association or corporation.

(5) The word "compensation" shall mean and include any fee, commission, salary, money or valuable consideration, as well as the promise thereof and whether contingent or otherwise.

(6) The word "person" shall mean and include any individual, firm, partnership, association or corporation.

(7) If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in the plural number, include the singular number; "and" may read "or"; and "or" may be read "and".

#### Acts Constituting Broker or Salesman

Sec. 5. Any one act set out in Section 4, Subdivision(1), when performed for another or others for compensation or valuable consideration or with the intention or in the expectation or upon the promise of receiving or collecting compensation shall constitute a person, partnership, association, or a corporation performing, offering or attempting to perform such act or acts, a Real Estate Broker or a Real Estate Salesman within the meaning of this Act.

#### Exemptions

Sec. 6. (1) The provisions of this Act shall not apply to the advertising, negotiation or consummation of any purchase, sale, rental or exchange of, or the borrowing or lending of money on, real estate by any person, firm, or corporation when such person, firm or corporation does not engage in the activities of a Real Estate Broker as an occupation, business or profession on a full or part-time basis.

(2) The provisions of this Act shall not apply to Acts performed in the management of property or investment funds by the owner thereof or his regular employees when such an owner or employee does not advertise or hold himself out as a broker in or salesman of real estate and does not conduct such management in a manner as to lead an ordinary person to believe that such owner or employee is a whole or part-time broker in or salesman of real estate.

(3) The provisions of this Act shall not apply to any person acting as attorney-in-fact under a duly executed power of attorney from the owner

authorizing the final consummation by performance of any contract for the sale, leasing, or exchanging of real estate, nor shall this Act be construed to include in any way services rendered by an attorney at law, nor shall it be held to apply to the acts of any person while acting as an escrow holder, receiver, trustee in bankruptcy, administrator or executor, or to any person doing any of the acts specified in this Act under order of any court, nor to apply to the trustee acting under a trust agreement, deed of trust or will, nor to the regular salaried employees thereof, nor shall this Act apply to public officers or employees while performing their duties as such.

(4) This Act shall not apply to the sale, lease or transfer of any property when such sale, lease or transfer is made by the owner, or one of the owners, or the attorney for said owner or owners, or his or its regular employees, unless the owner or owners or the attorney for said owner or owners is engaged wholly or in part in the business of selling real estate.

#### Eligibility for License

Sec. 7. (a) No individual applicant shall be eligible to be licensed under the terms of this Act unless such applicant is at the time of filing such application at least twenty-one (21) years of age, or shall have had his disabilities of minority removed as provided by law, an actual bona fide resident of this State and shall have been an actual bona fide resident of this State for at least sixty (60) days immediately preceding the filing of such application. No partnership or association shall be eligible to be licensed unless the members thereof have the above qualifications of an individual applicant. No corporation shall be licensed unless the officers thereof have the above qualifications of an individual applicant. Provided, however, the above provision as to residence shall not apply to non-resident applicants who may apply for license under the terms of Subdivision (b) hereinafter set forth.

(b) A nonresident of this State may be licensed as a Real Estate Broker or Salesman providing such nonresident is at the time licensed as a broker in real estate under the laws of the State where he or it resides, and which said State has legal standards of qualification which the Commission finds equivalent to this Act; provided, however, that such nonresident must procure from the agency administering such law in such State, a certificate as to such license and recognizing and approving the reliability and standing of such nonresident in such other State, and file same with the Commission; and provided further, that said nonresident licensee shall at all times maintain a place of business in this State in conformity with the requirements as to resident licensees. Nothing herein is intended to prohibit real estate transactions in this State by non-residents if conducted by a resident licensed broker or salesman.

Notwithstanding the foregoing provisions of this subsection, a non-resident of this State who resides in a city whose boundaries are contiguous at any point to the boundaries of a city of this State, and who shall have been an actual bona fide resident thereof for at least sixty (60) days immediately preceding the filing of his application, shall be eligible to be licensed as a Real Estate Broker or Salesman under this Act in the same manner as a resident of this State. If he is licensed in this manner, he shall at all times maintain a place of business either in the city in which he resides or in the city in this State which is contiguous thereto, and he shall not maintain a place of business at any other location in this State unless he also complies with the requirements of the first paragraph of this subsection; and provided further, that such place of business must satisfy the requirements of subsection (a) of Section 13 below, but such

place of business shall be deemed a definite place of business in this State within the meaning of said subsection (a) of Section 13 below.

(c) Every nonresident applicant, before the issuance of license, shall file an irrevocable consent that suits and actions may be commenced against such applicant by service of process on the Administrator; and stipulating and agreeing that said service of process shall be taken and held by all courts to be as valid and binding as if due service had been made upon said applicant personally within this State. The instrument containing such consent shall be executed and acknowledged by the applicant if an individual, by a partner if a partnership, by an officer if an association or corporation, and authenticated by the seal thereof if a corporation. All such applications, except from individuals or partnerships shall be accompanied by a certified copy of a resolution authorizing the officer to execute the same. In case of any process or service upon the Commission, it shall be by duplicate copies, one of which shall be filed in the office of the Administrator, and the other immediately forwarded by registered mail to the main office of the applicant against whom said process is directed as stated in the instrument authorizing such service.

(d) Any person, firm, partnership, association, or corporation holding a Real Estate Broker's license, who are nonresidents of the State shall pay the same filing fee as is required of resident licensees.

#### Application for License

Sec. 8: (a) Any person desiring to act as a Real Estate Broker or Salesman in this State shall file with the Commission an application for license. The application shall be in such form and contain such information as the Commission may prescribe, including but not limited to the following:

(1) The name and address of the applicant; and if the applicant shall be a partnership or association, the name and address of each member thereof; if it is a corporation, the name and address of each officer and each director thereof;

(2) The name under which the business shall be conducted;

(3) The place or places, including the street and number and the town, village or city and county, where the business is to be conducted;

(4) The business or occupation engaged in by the applicant and every member or officer thereof for a period of not less than five (5) years immediately preceding the date of application;

(5) The time and place and experience of the applicant and every member or officer thereof in the real estate business as a Real Estate Broker or Salesman;

(6) Whether the applicant or any member or officer thereof has ever been convicted of or is under indictment for forgery, embezzlement, obtaining money under false pretense, larceny, extortion, any crime involving moral turpitude, conspiracy to defraud or other like offense or offenses, and whether applicant or any member or officer thereof has ever had a license to engage in any occupation, business or profession cancelled, revoked or suspended and the reasons therefor;

(7) Whether the applicant or any member or officer thereof has ever been refused a Real Estate Broker's or Salesman's license or any other occupational, business or professional license in this or any other State;

(8) If the applicant is a partnership, association or corporation, the name of a designated member or officer thereof who is to carry on the activities of Real Estate Broker on behalf of the partnership, association or corporation, who shall be designated as agent of the partnership, association or corporation for that purpose;



(9) If the applicant is a member of a partnership or association subject to being licensed hereunder, or an officer of any corporation subject to being licensed hereunder, the name and office address of the partnership, association or corporation of which said applicant is such member or officer;

(10) Such application for a Broker's license shall be made by applicant. If such application is made by a partnership or association, it shall be filed by all members thereof. If made by a corporation, it shall be filed by the president and secretary thereof.

(b) An individual's application shall be accompanied by recommendations of at least three (3) citizens not related to the applicant, who have owned real estate for a period of three (3) years or more in the county in which the applicant resides or intends to reside or establish his place of business, and who have known applicant for a period of three (3) years or more, which recommendation shall be under oath and shall certify that the applicant has a reputation for honesty, truthfulness, fair dealings, and competency, and shall recommend that license be granted to the applicant. If the applicant cannot procure such recommendation for the reason that he has not resided in the county for three (3) years, he may furnish three recommendations from three (3) persons where the applicant may have resided for three (3) years prior to the filing of his application.

(c) Every partnership or association in its application shall designate and appoint one of its members as agent broker and every corporation in its application shall designate one of its officers as agent broker. The application of the said partnership, association, or corporation shall be accompanied by an application by such designated agent broker in the same form as individual applicants. Upon compliance with all requirements of law by the partnership, association, or corporation as well as by the said designated member or officer, the Commission shall issue a Broker's license to said partnership, association, or corporation, which shall bear the name of such member or officer and thereafter the member or officer so designated shall without payment of any further fee be entitled to perform all the acts of a Real Estate Broker contemplated by the provisions of this Act; provided, however, said license shall entitle such member or officer so designated to act as a Real Estate Broker only as officer or agent of said partnership, association or corporation and not on his own behalf; and provided further, that if in any case the person so designated shall be refused a license by the Commission, or in case such person ceases to be connected with such partnership, association, or corporation, said partnership, association or corporation shall be entitled to designate another person to qualify and act as in the first instance, upon qualification of the designated agent;

(d) Each and every member or officer of a partnership, association or corporation who acts as a Real Estate Broker, other than the Agent Broker of the partnership, association or corporation shall be required to make application for and take out a separate Broker's license in his own name individually. Should the license of any partnership, association or corporation, or the license of any member or officer thereof, be suspended, revoked or cancelled for violation of any provision of this Act, all other licenses of such concerns and their members and officers may be suspended until the business relationship with the violator is terminated to the satisfaction of the Commission.

(e) Every application for a Salesman's license shall be made in writing upon a form prescribed by the Commission and shall contain such information as required in a Broker's application, and shall also set forth a period of time, if any, said applicant has been in such business,

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stating the name and address of his last employer, the name and place of business of the person or company employing him, and in what capacity he is employed or into whose service he is about to enter. The application shall be accompanied by a certified written statement by the Broker into whose service he is about to enter, certifying that in his opinion the applicant is honest, truthful, and of good reputation, and recommending that the applicant be granted a license. Every application for a Salesman's license shall be certified by the applicant.

(f) Every application for a Real Estate Broker's license or a Salesman's license shall be accompanied by the fee prescribed in this Act. In the event the Commission does not issue the license through no fault of the applicant, the fee shall be returned to the applicant.

(g) No license shall ever be denied because such applicant or licensee may not devote full time to the real estate business.

#### **Additional Information May be Required**

Sec. 9. Application for a Real Estate Broker's or Real Estate Salesman's license shall contain such other information as to the applicant, in addition to the above prescribed, as the Commission shall require. The Commission may require such other proof through the application or otherwise as the Commission shall deem desirable with due regard to the paramount interest of the public as to the honesty, truthfulness, integrity and professional competency of the applicant. However, the professional competency of the applicant shall be judged solely on the basis of the written examination referred to in Section 10 of this Act.

#### **Examination**

Sec. 10. In addition to proof of honesty, truthfulness and good reputation of any applicant for a license, each individual applicant and designated agent must pass a written examination conducted by said Commission, or its duly authorized representative, which examination shall be of scope and wording sufficient in the judgment of the Commission to establish the professional competency of the applicant to act as Real Estate Broker or Salesman in such manner as to protect the interests of the public. The Commission shall hold examinations at such times and places as it may determine, except the Commission shall hold said examinations no less frequently than every sixty (60) days. Provided, however, that no individual applicant or designated agent who has held a license for anyone of the preceding five (5) years before the application under the Texas Real Estate Act shall be required to take such examination unless such license was suspended, revoked or cancelled for a violation of such Act. The Commission shall furnish in writing to each applicant a number of examination questions with the proper answers thereto at such time in advance of examination as the applicant may designate, not to exceed sixty (60) days, from which the questions to be given on the examination shall be chosen by the Commission. The Commission is authorized to establish educational programs and to procure and furnish personnel, facilities and material for instruction of persons desiring to become Brokers or Salesmen or to improve their proficiency as Brokers or Salesmen, provided that the Commission shall establish such programs on a self-liquidating basis from fees and charges established by the Commission for such instructional service and material. However, the Commission shall not require any applicant or licensee to purchase material or attend any school or seminar in order to obtain or retain a license.

### Bond

Sec. 11. Immediately upon approval of the application the applicant shall be notified and before the license shall be issued, a bond executed by the applicant, as principal, and a surety company authorized to do business in this State, as surety, shall be furnished to the Commission in the principal sum of Three Thousand (\$3,000.00) Dollars for a Broker and Two Thousand (\$2,000.00) Dollars for a Salesman, payable to the Commission for the use and benefit of any injured party, and conditioned that the applicant will pay any judgment recovered by any person in any suit for damages or injury caused by a violation of this Act. Every Broker and Salesman holding a license under this Act shall within thirty (30) days after the effective date of this Act, furnish and maintain such bond as a condition to the continued validity of such license. Provided, however, that no member of the Commission shall be eligible to act as agent for the writing of the bond as provided for in this Section, neither shall he be eligible to receive any emolument or commission for this service.

### Issuance and Custody of License

Sec. 12. (a) If the Commission is satisfied that the applicant for a Real Estate Broker's or Real Estate Salesman's license is of good business repute and that the business will be conducted in an honest, fair, just and equitable manner, and upon complying with all other provisions of law and conditions of this Act, a license will thereupon be granted by the Commission to the successful applicant therefor as a Real Estate Broker or Real Estate Salesman, and the applicant, upon receiving possession of the license, is authorized to conduct the business of a Real Estate Broker or Real Estate Salesman in this State.

(b) The Commission shall issue to each licensee a license in such form and size as shall be prescribed by the Commission. This license shall show the name and address of the licensee, and in case of a Real Estate Salesman's license, shall show the name of the Real Estate Broker by whom he is employed. Each license shall have imprinted thereon the seal of the State of Texas, and in addition to the foregoing shall contain such matter as shall be prescribed by the Commission. The license of each Real Estate Salesman shall be delivered or mailed to the Real Estate Broker by whom such Real Estate Salesman may be employed and shall be kept under the custody and control of such Broker.

(c) The Commission shall prepare and deliver to each licensee a pocket card, which card, among other things, shall contain an imprint of the seal of the State of Texas, and shall certify that the person whose name appears thereon is a licensed Real Estate Broker or Real Estate Salesman, as the case may be; and if it is a Real Estate Salesman's card, it shall also contain the name and address of his employer; the matter to be printed on such pocket card except as above set forth, shall be prescribed by the Commission.

### Place of Business

Sec. 13. (a) Every Real Estate Dealer licensed under this Act shall have and maintain a definite place of business in this State, and such place of business may be in a portion of licensee's home set aside for said purpose. The license of the Real Estate Broker shall at all times be prominently displayed in licensee's place of business and a duplicate of said license shall likewise be prominently displayed in all branch offices of the licensee. The said place of business shall be specified in the application for license and designated in the license. However, such place of business

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shall not be in violation of any local laws or deed restrictions which shall be determined by the applicant.

(b) All Real Estate Brokers shall also prominently display in their place or places of business the licenses of all Real Estate Salesmen employed by them therein or in connection therewith. All licenses issued to Real Estate Salesmen shall designate the employer of said Salesmen by name.

(c) Upon change of address of any Broker from that shown in any license held by him or his Salesmen, the Broker shall immediately return such licenses to the Commission together with a fee of Two (\$2.00) Dollars for each license, and the Commission shall issue new licenses for the unexpired term of the returned licenses showing the new address as designated by the Broker.

#### Change of Employer by Salesman

Sec. 14. Prompt notice in writing within ten (10) days shall be given to the Commission by any Real Estate Salesman of his change of employer and the name of the new employer into whose service he is about to enter or has entered, and a new license will thereupon be issued by the Commission to such Salesman for the unexpired term of the original license; provided, that such new employer shall be a duly licensed Real Estate Broker. The Real Estate Broker shall at the time of mailing such Real Estate Salesman's license to the Commission, notify the Salesman thereof at the address of such Real Estate Salesman that this license has been mailed or delivered to the Commission. A copy of such communication to the Real Estate Salesman shall accompany the license when mailed or delivered to the Commission. It shall be unlawful for any Real Estate Salesman to perform any of the acts contemplated by this Act, either directly or indirectly, under the authority of said license and after the date of receipt of said license from said Broker by the Commission; provided, that another license shall not be issued to such Real Estate Salesman until he has returned his former pocket card to the Commission or shall satisfactorily account to the Commission for the same; provided further, that not more than one license shall be issued to any Real Estate Salesman for the same period of time. The Commission shall issue a new license to said Salesman within ten (10) days from date of receipt of the application for transfer and the payment of the transfer fee as provided for herein.

#### Hearing on Application

Sec. 15. If the Commission declines or fails to license an applicant, it shall immediately give notice of the fact to the applicant; and upon request from such applicant, filed within ten (10) days after the receipt of such notice, shall fix a time and place for hearing, of which ten (10) days notice shall be given to such applicant, and to other persons interested or protesting, to offer evidence relating to the Real Estate Broker's and/or Salesman's application. In such case the Commission shall fix the time of such hearing on a date within thirty (30) days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. If satisfied as aforesaid as a result of such hearing, the Commission shall thereupon license the Real Estate Broker and/or Salesman if all other provisions of this Act shall have been met.

#### Revocation and Suspension of License

Sec. 16. The Commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, provided such complaint, or such complaint together with evidence, documentary or otherwise,

presented in connection therewith, shall provide reasonable cause, investigate the actions of any Real Estate Broker or Real Estate Salesman or any unlicensed person who shall assume to act in either such capacity within this State, and shall have the power to suspend or revoke any license issued under the provisions of this Act at any time when it has been determined that the license has been obtained by false or fraudulent representation or where the licensee in performing or attempting to perform any of the acts mentioned here is determined to be guilty of:

(1) Knowingly making any substantial misrepresentation; or  
(2) Making any false promises with intent to influence, persuade or induce; or

(3) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salesmen or advertising or otherwise; or

(4) Failing to make clear for which party he is acting, or receiving compensation from more than one party, except with the full knowledge and consent of all parties; or

(5) Failure within a reasonable time to account for and/or remit any moneys coming into his possession which belong to others, or the commingling of moneys belonging to others with his own funds; or

(6) Procuring a license under this Act for himself or any salesman by fraud, misrepresentation, or deceit; or

(7) Having been convicted of a felony, knowledge of which the Commission did not have at the time of the last issuance of a license to such licensee; or

(8) Paying commissions or fees to or dividing commissions or fees with anyone not licensed as a real estate broker or salesman in this or any other State; or

(9) Using any misleading or untruthful advertising including the use of any trade name or insignia of membership in any real estate organization of which he is not a member; or

(10) Accepting, receiving or charging any undisclosed commission, rebate or direct profit on expenditures made for a principal; or

(11) Soliciting, selling or offering for sale real property under any scheme or program to attract purchasers by offering bonuses or discounts, or by lottery, or deceptive practices; or

(12) Acting in the dual capacity of Broker and undisclosed principal in any transaction; or

(13) Guaranteeing, authorizing or permitting any person to guarantee future profits which may result from a resale of real property; or

(14) Placing a sign on any property offering it for sale or rent without the consent of the owner or his authorized agent; or

(15) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal; or

(16) Negotiating the sale, exchange or lease of any real property directly with an owner or lessor, knowing that such owner or lessor had a written outstanding contract granting exclusive agency in connection with such property with another real estate broker; or

(17) Offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or on any terms other than those authorized by the owner or his authorized agent; or

(18) Publishing advertisements whether printed or by radio, television, display, or any other method which was misleading, or inaccurate in any material respect or as to services of the business conducted or

which fails to carry plainly the name of the broker causing such advertisement to be published or displayed; or

(19) Having knowingly withheld from or inserted in any statement of account or invoice, any statement that made it inaccurate in any material particular; or

(20) Publishing or circulating any unjustified or unwarranted threats of legal proceedings which tended to or had the effect of harassing competitors or intimidating their customers; or

(21) Any other conduct, whether of the same or different character than hereinabove specified, which constitutes dishonest dealings; or

(22) Wilfully disregarding or violating any provisions of the law, or of this Act.

This section of this Act shall not be construed to relieve any person or company from civil liability or from criminal prosecution under this Act or under the laws of this State.

Upon complaint by affidavit of any creditable person that any licensee under the provisions of this Act has been guilty of, or has committed any of the acts mentioned in this section, the Commission shall, after proper investigation and verification of information contained in the complaint, notify the licensee of the filing of such complaint and the date a hearing will be had thereon. After hearing, the Commission shall enter such order as to it appears proper under the facts presented. Either party may appeal from that decision to any District Court of the county where such licensee resides, where a trial de novo shall be had, under the rules of procedure governing ordinary civil cases in the District Court.

#### Unlawful Practice of Law

Sec. 17. Any license granted under the provisions of this Act shall be cancelled by the Commission upon proof that the licensee, not being licensed and authorized to practice law in this State, for a consideration, reward, pecuniary benefit, present or anticipated, direct or indirect, or in connection with or as a part of his employment, agency, or fiduciary relations, as licensee, draws any deed, note, deed of trust, or will, or any other written instrument that may transfer or anyway affect the title or interest in land, or advises or counsels any person as to the validity or legal sufficiency of any such instrument above mentioned, or as to the validity of title of real estate.

#### Hearings

Sec. 18. The Commission shall, before suspending or revoking any license, notify the licensee in writing of any charges made in order to afford such licensee an opportunity to be heard, which notification shall be given at least ten (10) days prior to the date set for the hearing. The Commission shall prescribe the time and place of the hearing. The Commission shall have no authority to promulgate rules or regulations which are not definitely set forth in this Act. Such written notice may be served by mailing same by registered mail to the last known business address of such licensee. If such licensee be a Salesman, the Commission shall also notify the Real Estate Broker employing him, specifying the charges made against such Real Estate Salesman by sending a notice thereof by registered mail to the Real Estate Broker's last known address. At such hearing, or at any other provided for in this Act, such licensee, any and all persons complaining against him, as well as any other witness whose testimony is relied upon to substantiate the charges made, shall be entitled to be present. He shall also be entitled to present evidence, oral and written, as he may see fit, and as may be pertinent to the inquiry. The said hearing may be held by the Commission, and the said hearing shall be held, if the applicant or licensee so desires, within the county where the applicant

or licensee has his principal place of business. In such hearing all witnesses shall be duly sworn by the person herein authorized to preside, and stenographic notes of the proceedings shall be taken and filed as part of the records in the case. Any party to the proceedings desiring it shall be furnished with a copy of the stenographic notes upon the payment to the Commission of a fee not to exceed Fifty Cents (50¢) per page.

#### License Prerequisite to Suit for Compensation

Sec. 19. No person or company engaged in the business of acting in the capacity of a Real Estate Broker or a Real Estate Salesman within this State shall bring or maintain any action in the courts of this State for the collection of compensation<sup>1</sup> for the performance of any of the acts set out in Subdivision (1) of Section 4 hereof, without alleging and proving that such person or company was a duly licensed Real Estate Broker or Salesman at the time the alleged cause of action arose.

<sup>1</sup> So in enrolled bill. Probably should be "compensation."

#### Witnesses and Evidence

Sec. 20. (a) The Commission may require by subpoena or summons issued by the Commission, or any person duly authorized to act for the Commission, addressed to the sheriff or any constable, the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence (except such books of account as are necessary to the continued conduct of the business, which books the Commission shall have the right to examine or cause to be examined at the office of the concern, and to require copies of such portion thereof as may be deemed necessary) touching such matter in question under this Act, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 25 hereof, relating to any matter which the Commission has authority by this Act to consider or investigate; and for this purpose the Commission, or any person duly authorized by the Commission may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena or of the contumacy of any witness appearing before the Commission, the Commission or the person duly authorized to act for it may invoke the aid of the District Court within whose jurisdiction any witness may be found and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) The Commission, or any person duly authorized by the Commission, may in any investigation cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed for depositions in civil actions under the laws of Texas. Each witness required to attend any hearing provided for in this Act shall receive for each day's attendance the sum of Seven (\$7.00) Dollars and shall receive in addition the sum of Ten Cents (10¢) for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payments of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act, as hereinbefore provided. The fee for serving the subpoena shall be the same as that paid the sheriff for similar services. The fees, expenses, and costs incurred at or in connection with any hearing may be imposed by the Commission upon any party to the record or may be divided be-

tween any and all parties to the record in such proportions as the Commission may determine.

#### Judicial Review

Sec. 21. (a) Any Real Estate Broker, or Real Estate Salesman, or any person having a justiciable interest, who is aggrieved by any decision of the Commission may file within thirty (30) days thereafter in the District Court of the county in which he resides, or in the District Court in the county where his principal place of business is situated, a petition against the Commission officially as defendant, alleging therein in brief detail the action and decision complained of and for an order directing the Commission to license or reinstate the applicant. Upon service of the summons upon the Commission, returnable within ten (10) days from its date, the Commission shall on or before the return day comply or file an answer. The case shall be tried in the District Court de novo, upon its merits, and it shall take a preponderance of the evidence offered before said District Court for the court to enter a judgment. The substantial evidence rule shall not be used, and the right of trial by jury shall be had in all cases when called for.

(b) The District Courts may, upon application of either party and upon due notice given, advance the case on the docket. From the decision of the District Court, an appeal may be taken to the Court of Civil Appeals by either party, as in other cases, and no bond shall be required of the Commission. A judgment in favor of the defendant shall not bar after one year a new application by the plaintiff for a license, nor shall a judgment in favor of the plaintiff prevent the Commission from thereafter revoking or refusing the license of such person for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs.

#### License Fees

Sec. 22. The Commission shall charge and collect the following fees and shall duly pay all fees received into the State Treasury:

(a) A fee not to exceed Ten (\$10.00) Dollars for the filing of any original or renewal application of a Real Estate Broker, which fee shall include the cost of the issuance of a license if any should be issued. When a license is not issued through no fault of applicant, the filing fee shall be refunded;

(b) A fee not to exceed Ten (\$10.00) Dollars for the filing of any original or renewal application of a Real Estate Salesman, which fee shall include the cost of the issuance of the license if any should be issued; where license is not issued through no fault of the applicant, the filing fee shall be refunded;

(c) A fee of Two (\$2.00) Dollars for each duplicate license where the original license is lost or destroyed and an affidavit of such loss is made and filed, or where a duplicate is required for a branch office in this State;

(d) A fee of Two (\$2.00) Dollars for each duplicate new license upon transfer of Salesman's license.

The fees to be paid under paragraphs (a) and (b) of this Section shall be as fixed by the Commission, within the limits prescribed, at least three (3) months prior to December 1st of any year and shall continue to be effective until changed at least three (3) months prior to December 1st of any succeeding year. The fees so fixed shall apply to licenses effective after January 1st following the date the Commission prescribes such fees. Until such fees are so fixed, the rates existing on the effective date of this amendment shall prevail.



#### Expiration and Renewal

Sec. 23. Each license issued under the provisions of this Act shall expire on December 31st of the year for which it is issued, at midnight, and application for the renewal thereof shall be made in such form as the Commission shall prescribe. Applications for renewal of said licenses may be made between the 1st day of October and the 31st day of December.

#### Custody and Disposition of Funds

Sec. 24. Upon and after the effective date of this Act, all moneys derived from fees, assessments, or charges under this Act, shall be paid by the Commission into the State Treasury for safekeeping, and shall by the State Treasurer be placed in a separate fund to be available for the use of the Commission in the administration of the Act upon requisition of the Commission. So much of such moneys so paid into the State Treasury as is necessary is hereby specifically appropriated to the Commission for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Commission may occupy, and necessary traveling expenses for the Commission or persons authorized to act for it when performing duties hereunder at the request of the Commission. At the end of the State fiscal year, any unused portion of said funds in said special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be set over and paid into the General Revenue Fund. The Comptroller shall, upon requisition of the Commission, from time to time draw warrants upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund at the time of making any requisition; provided, however, that all moneys expended in the administration of this Act shall be specified and determined by itemized appropriation in the General Departmental Appropriation Bill for the Texas Real Estate Commission, and not otherwise.

#### Admissibility of Certified Documents in Evidence

Sec. 25. Copies of all papers, instruments, or documents filed in the office of the Commission certified by the Administrator or the Chairman of the Commission under the seal of the State of Texas, shall be admitted to be read in evidence in all courts of law and elsewhere in this State in cases where the original would be admitted in evidence; provided that the court may, for cause shown, require the production of the originals. In any prosecution, action, suit or proceeding before any of the several courts of this State, based upon or arising out of or under the provisions of this Act, a certificate under the seal of the State duly signed by the Commission showing compliance or non-compliance with the provisions of this Act by any Real Estate Broker or Salesman shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

#### Unlawful Commission

Sec. 26. It shall be unlawful for any Real Estate Broker or Real Estate Salesman to offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of his commission or compensation arising or accruing from any real estate transaction, to any person who is not licensed in this or another State as a Broker or Salesman, in consideration of service as a Real Estate Broker or Salesman performed or to be performed by such unlicensed person, and no Real Estate Salesman shall be

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employed by or accept compensation from any person other than the Broker under whom he is at the time licensed; and it shall be unlawful for any licensed Real Estate Salesman to pay a commission to any person except through the Broker under whom he is at the time licensed.

#### Offense Defined and Injunction Authorized

Sec. 27. (a) Any person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any land or subdivision offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning any land or subdivision contains any written statement that is false or fraudulent, issues, circulates, publishes, or distributes the same, or who shall cause the same to be issued, circulated, published, or distributed, or who, while acting as a Real Estate Broker or Salesman, commingles any funds deposited with him in escrow or in trust or who deposits such funds in any bank in any account which contains funds other than those so deposited with him in escrow or in trust, and any person who, in any respect, wilfully violates or fails to comply with any provisions of this Act, or who in any respect wilfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand, or requirement of the Commission authorized by this Act shall be guilty of a misdemeanor and upon conviction therefor shall be sentenced to pay a fine of not more than Five Hundred (\$500.00) Dollars, or to imprisonment in the county jail for not more than one (1) year, or to both such fine and imprisonment.

(b) Whenever in the judgment of the Commission any person has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of any provision of this Act, the County Attorney or District Attorney, in the county wherein such violation has occurred or is about to occur, or in the county of the defendant's residence, or the Attorney General, may maintain an action in the name of the State of Texas in the District Court of such county to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with this Act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

#### Contract for Commissions

Sec. 28. No action shall be brought in any court in this State for the recovery of any commission for the sale or purchase of real estate unless the promise or agreement upon which action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunder lawfully authorized.

At the time of the execution of any contract of sale of any real estate in this State, the Real Estate Salesman, Real Estate Broker, Real Estate Agent or Realtor shall advise the purchaser or purchasers, in writing, that such purchaser or purchasers should have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or that such purchaser or purchasers should be furnished with or obtain a policy of title insurance; and provided further, that failure to so advise as hereinabove set out shall preclude the payment of or recovery of any commission agreed to be paid on such sale. As amended Acts 1949, 51st Leg., p. 304, ch. 149, § 1; Acts 1955, 54th Leg., p. 986, ch. 383, § 1.

Emergency. Effective June 1, 1955.

Section 2 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## TITLE 115—REGISTRATION

## CHAPTER TWO—ACKNOWLEDGMENTS AND PROOF FOR RECORD

Art. 6602. 6797-8-9, 4613-14-15, 4305-6-7 Persons before whom acknowledgments or proof made; members of armed forces; presumption; absence of seal

4. In addition to the methods above provided, the acknowledgment or proof of an instrument of writing for record may be made by a member of the Armed Forces of the United States or any auxiliary thereto, or by the husband or wife of a member of the Armed Forces of the United States or any auxiliary thereto, before any Commissioned Officer in the Armed Forces of the United States of America or the auxiliaries thereto.

In the absence of pleading and proof to the contrary, it shall be presumed when any such acknowledgment is offered in evidence that the person signing such as a Commissioned Officer was such on the date signed, and that the person whose acknowledgment he took was one of those with respect to whom such action is hereby authorized.

No certificate of acknowledgment or proof of instrument taken in accordance with the provisions of this Subsection 4 of this Article shall be held invalid by reason of the failure of the officer certifying to such acknowledgment or proof of instrument to attach an official seal thereto. As amended Acts 1955, 54th Leg., p. 672, ch. 241, § 1.

Emergency. Effective May 16, 1955.

## CHAPTER THREE—EFFECT OF RECORDING

Art. 6636. 6833, 4647 Transfers of judgment

The sale of a judgment, or any part thereof, of any court of record, or the sale of any cause of action, or interest therein, after suit has been filed thereon, shall be evidenced by a written transfer, which, when acknowledged in the manner and form required by law for the acknowledgment of deeds, may be filed with the papers of such suit. When thus filed, the clerk shall make a minute of said transfer on the margin of the minute book of the court where such judgment of said court is recorded; or if judgment be not rendered when transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof. For such service, he shall be entitled to a fee of Fifty Cents (50¢), to be paid by the party applying therefor. This Article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not. As amended Acts 1955, 54th Leg., p. 591, ch. 199, § 1.

Emergency. Effective May 12, 1955.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and parts of

laws. Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

**TITLE 116—ROADS, BRIDGES, AND FERRIES****CHAPTER ONE—STATE HIGHWAYS****1. STATE HIGHWAYS****Art. 6674n. Condemnation of right of way and materials by Commissioners' Court**

Whenever, in the judgment of the State Highway Commission, the use or acquisition of any land for road, right of way purposes, timber, earth, stone, gravel or other material is necessary or convenient to any road to be constructed, reconstructed, maintained, widened, straightened or lengthened, or land not exceeding one hundred (100) feet in width for stream bed diversion in connection with the locating, relocating or construction of a designated State Highway by the State Highway Commission, the same may be acquired by purchase or condemnation by the County Commissioners Court. This authority includes the power to exercise the right of eminent domain by any County Commissioners Court within the boundaries of a municipality with the prior consent of the governing body of such municipality. Provided that the county in which the State highway is located may pay for same out of the County Road and Bridge Fund, or any available county funds.

Any Commissioners Court is hereby authorized to secure by purchase or by condemnation on behalf of the State of Texas, any new or wider right of way or land not exceeding one hundred (100) feet in width for stream bed diversion in connection with the locating, relocating or construction of a designated State Highway, or land or lands for material or borrow pits, to be used in the construction, reconstruction or maintenance of State Highways and to pay for the same out of the County Road and Bridge Fund, or out of any special road funds or any available county funds. This authority includes the power to exercise the right of eminent domain by any County Commissioners Court within the boundaries of a municipality with the prior consent of the governing body of such municipality. The State Highway Commission shall be charged with the duty of furnishing to the County Commissioners Court the plats or field notes of such right of way or land and the description of such materials as may be required, after which the Commissioners Court may, and is hereby authorized to purchase or condemn the same, with title to the State of Texas, in accordance with such field notes. Provided that in the event of condemnation by the County the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, of 1925. Provided that if the County Commissioners Court of any County in which such right of way is, in the judgment of the State Highway Commission, necessary for the construction of a part of a designated State Highway shall fail or refuse to secure by purchase or by condemnation for or on behalf of the State of Texas, such right of way or part thereof, immediately and as speedily as possible, under said Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, of 1925, after being served with a copy of an order of the State Highway Commission identifying by field notes, the part of the Highway necessary for the construction of such designated State Highway and requesting such County Commissioners Court to secure same, then and in such event and within ten (10) days after the service of such notice, said State Highway Commission shall direct the Attorney General of Texas,

to institute condemnation proceedings in the name of the State of Texas, for the purpose of securing such right of way. Such condemnation proceedings shall be instituted by the County or District Attorney of the County in which the land is situated and the venue of such proceedings shall be in the county in which the land is situated and jurisdiction and authority to appoint three (3) disinterested freeholders of such County as Commissioners is hereby conferred upon the County Judge of such County in which the land is situated and otherwise such condemnation shall be according to the provisions of said Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as amended. As amended Acts 1955, 54th Leg., p. 1128, ch. 423, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and parts

of laws. Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

## 2. REGULATION OF VEHICLES

### Art. 6675a—3 Application for registration

(a) Application for the registration of a vehicle required to be registered hereunder shall be made on a form furnished by the Department. Each such application shall be signed by the owner of the vehicle, and shall give his name and address in full, and shall contain a brief description of the vehicle to be registered. The description, in case of a new motor vehicle, shall include: the trade name of the vehicle; the year model; the style, type of body and the weight, if a passenger car, or the net carrying capacity and gross weight if a commercial motor vehicle; the motor number; the date of sale by manufacturer or dealer to the applicant. The application shall contain such other information as may be required by the Department.

(b) It is expressly provided that the owner of a vehicle previously registered in any State for the preceding or current year may, in lieu of filing an application as hereinbefore directed, present the license receipt and transfer receipts, if any, issued for the registration or transfer of the vehicle for the preceding calendar year, and the receipt or receipts shall be accepted by the County Tax Collector as an application for the renewal of the registration of the vehicle, provided the receipts show that the applicant is the rightful owner thereof. Provided, however, that if an owner or a claimed owner offering to register a vehicle has lost or misplaced the registration receipt or transfer, then upon his furnishing satisfactory evidence to the Tax Collector by affidavit or otherwise that he is the real owner of the vehicle, it shall become the duty of the Tax Collector to issue him license therefor. It shall be the duty of the Tax Collector to date each registration receipt issued for the vehicle the same date that application is made for registration of such vehicle.

(c) Owners of motor vehicles, trailers and semi-trailers which are the property of and used exclusively in the service of the United States Government, the State of Texas, or any county, city or school district thereof, shall apply annually to the Department as provided in Section 3-aa of this Act<sup>1</sup> to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or a county, city or school district thereof, as the case may be. Owners of vehicles designed and used exclusively for fire fighting shall apply to the Department as

provided in Section 3—aa of this Act to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are used exclusively for fire fighting; and provided further, that such person shall supply the Department with a reasonable description of the vehicle and the fire fighting equipment mounted thereon.

(d) Application shall be made for the registration of a new vehicle for the unexpired portion of the year in which it is acquired before it is operated on the public highways; except that a new vehicle may be operated temporarily by a dealer under the dealer's license number or by its purchaser under a special dealer cardboard number, as provided in Chapter 211, General and Special Laws of the Regular Session of the 40th Legislature, as amended.<sup>2</sup> The year for the purpose of registration of motor vehicles shall be April 1st to March 31st of the next succeeding calendar year, and may be referred to as the "Motor Vehicle Registration Year"; and "current year" where used in the statutes relating to payment of registration fees shall mean that Vehicle Registration Year. Application for the renewal of registration of a vehicle shall be made not later than April 1st of such year. As amended Acts 1955, 54th Leg., p. 749, ch. 269, § 1.

<sup>1</sup> Article 6675a—3aa.

<sup>2</sup> Articles 6686, 6688.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955, amended article 6675a—3aa.

#### **Art. 6675a—3aa. State Highway Department to approve license plates for government vehicles**

Before the issuance or delivery of a license plate or plates to an owner of a vehicle that is exempt from the payment of registration fees, as provided in Subsection 3(c) of this Act,<sup>1</sup> the application shall have the approval of the State Highway Department, and if it appears that the vehicle was transferred to any such owner or purported owner for the sole purpose of evading the payment of registration fees, or that the transfer was not made in good faith, or that the vehicle is not being used in accordance with the requirements of Subsection 3(c), such plates shall not be issued. If after the issuance of such plates, the vehicle ceases to be owned and operated by such owner, or to be used in accordance with the requirements of Subsection 3(c), then the license shall be revoked and the plates may be recalled and taken into possession by the Department. The Department may provide for the issuance of specially designated plates to those exempt by law, and such plates are not to be issued annually but after having been issued are to remain on the vehicle until it ceases to be owned and operated by those exempt under the provisions of Subsection 3(c) of Section 1 hereof, in whose name it is registered, or until the plates become mutilated, lost, or stolen. When the vehicle ceases to be owned and operated by the registered owner, or ceases to be used exclusively in the service for which an exemption is provided, the plates and registration receipts shall be forwarded to the Department for cancellation. The Department may provide rules and regulations for the issuance of exempt license plates.

It shall be unlawful for any person to operate a vehicle after the license has been revoked, and any such person shall be liable for the penalties prescribed for the failure to register a vehicle as provided by law when it is being operated upon the public highways. As amended Acts 1955, 54th Leg., p. 749, ch. 269, § 2.

<sup>1</sup> Article 6675a—3a(c).

Effective 90 days after June 7, 1955, date of adjournment.

Section 1 of the amendatory Act of 1955 amended article 6675a—3.

**Art. 6675a—8a. Fees; motor buses**

Annual license fees for the registration of motor buses shall be based upon the "gross weight" of the vehicle as follows:

Gross Weight in pounds	Fee Per 100 lbs. or Fraction thereof
1-6,000	\$ 0.67½
6,001-8,000	0.70
8,001-10,000	0.75
10,001-17,000	1.00
17,001-24,000	1.00
24,001-31,000	1.25
31,001—and up	2.00

As amended Acts 1955, 54th Leg., p. 381, ch. 102, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 6675a—8b. Repealed. Acts 1955, 54th Leg., p. 522, ch. 158, § 2. Eff. May 6, 1955.**

Prior to repeal article was amended by Acts 1949, 51st Leg., p. 376, ch. 200, § 2. Section 1 of the repealing Act, amended Vernon's Ann.P.C. art. 827a, § 3(a).

**Art. 6687b. Drivers', chauffeurs', and commercial operators' licenses; accident reports**

**Sec. 15. Disposition of fees**

All fees and charges required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department at Austin, Texas, and all such fees so collected shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

All fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act shall be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Texas Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1 of each and every year shall remain in such Fund and may be used for the purposes set forth hereinabove. As amended Acts 1951, 52nd Leg., p. 209, ch. 124, § 1; Acts 1955, 54th Leg., p. 388, ch. 108, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Sec. 19. Fees for license**

The fees as provided for in this Act shall be as follows:

For a chauffeur's license, Four Dollars (\$4); for a commercial operator's license, Three Dollars (\$3); for an operator's license, Two Dollars (\$2). As amended Acts 1951, 52nd Leg., p. 209, ch. 124, § 2; Acts 1955, 54th Leg., p. 388, ch. 108, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

Section 3 of the amendatory Act of 1955, 54th Leg., p. 388, ch. 108, repealed all inconsistent acts and parts of acts.

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

The amendatory Act of 1955, contained the following preamble:

"WHEREAS, The annual toll of human lives, personal injuries and economic loss due to motor vehicle traffic accidents constitutes a major domestic problem in this State; and

"WHEREAS, One of the best known deterrents to such continued dissipation of the State's human and economic resources is the provision of adequate personnel for the enforcement of the traffic laws; and

"WHEREAS, According to every standard which has been established by national authorities, the Texas Highway Patrol is considerably more than fifty per cent (50%) understaffed; and

"WHEREAS, An increase in the fees obtained from the issuance of driver's licenses will provide additional funds to finance expanded service and greater activity on the part of the Department of Public Safety in the control of traffic and the combatting of crime and subversive forces; now, therefore"

**Art. 6701c. Repealed. Acts 1955, 54th Leg., p. 817, ch. 303, § 1, eff. May 21, 1955**

**Art. 6701c—1. Commercial vehicles or truck-tractors; operation by other than owner**

**Filing copy of lease, memorandum or agreement; copies carried in cab; display; exceptions to application of act**

**Sec. 2.**

(a) without drivers from an individual, person, co-partnership, association or corporation whose principal business is the bona fide leasing or renting of motor vehicle equipment without drivers for compensation to the general public. As amended Acts 1955, 54th Leg., p. 754, ch. 273, § 1.

(c) and who have dated and filed within ten (10) days of January 1st, April 1st, July 1st, and October 1st of each year, with the Department of Public Safety, a complete list giving a full description of all such commercial motor vehicles and truck-tractors owned by such individual, person, co-partnership, association or corporation, as of the date of the report, and available for lease or rent without drivers for compensation. The first complete list filed herein must be accompanied by a fee of One (\$1.00) Dollar for each vehicle listed therein, together with a photostat or certified copy of the registration or title papers on every such motor vehicle; however, no such fee need be filed in subsequent quarterly filings unless such subsequent list contains additional equipment, in which event a fee of One (\$1.00) Dollar, together with photostat or certified copy of the registration or title papers on such additional equipment shall be filed. Provided, however, that the provisions of this Act shall not apply to motor vehicles, commercial motor vehicles, and truck-tractors used exclusively to transport household goods, used furniture and equipment. As amended Acts 1955, 54th Leg., p. 754, ch. 273, § 1.

**Contents of lease, memorandum or agreement; information confidential**

**Sec. 4.** Such lease, memorandum, or agreement as required by Section 2 of this Act shall contain or provide, but shall not be limited to, the name and address of the registered owner of such commercial motor vehicle or truck-tractor, the name and address of the person other than the owner, the actual consideration, the term, the commodity or commodities to be transported under such lease, memorandum, or agreement and a full description of the commercial motor vehicle or vehicles or truck-tractors covered thereby; that the operation of such vehicle shall be under the full and complete control and supervision of the person other than the registered owner, and except as to leases between regulated carriers subject to the jurisdiction of the Railroad Commission or Interstate Commerce Com-



mission, that the person other than the registered owner shall provide for public liability and property damage insurance on each and every vehicle during the term of such lease, memorandum or agreement of not less than Five Thousand (\$5,000.00) Dollars for bodily injury to any one person or a total of Ten Thousand (\$10,000.00) Dollars for any one accident involving two or more persons and property damage for any one accident of not less than Five Thousand (\$5,000.00) Dollars, and shall state that such commercial motor vehicle or vehicles or truck-tractors are not the subject of any other such lease, memorandum, or agreement which shall have been filed with the Department of Public Safety in accordance with Section 2 of this Act and which is still in effect.

All information contained in any lease, memorandum, or agreement filed with the Department of Public Safety as required by Section 2 of this Act shall, with the exception of the name and address of the registered owner, the name and address of the person other than the owner, under whose supervision, direction and control the same is being operated, and a full description of the commercial motor vehicle or truck-tractor covered thereby, shall be for the confidential use of the Department of Public Safety; except, however, that the Department of Public Safety may make such information available to the law enforcement officers of the Interstate Commerce Commission, and may further use such information in any judicial proceeding brought in the name of the State of Texas. As amended Acts 1955, 54th Leg., p. 754, ch. 273, § 1.

**Filing fee; photostat or certified copy of registration or title papers**

Sec. 5. Any filing of a lease, memorandum, or agreement, or of a release thereof, as provided for in Section 2 and Section 3 of this Act shall be accompanied by a fee of One (\$1.00) Dollar, for each and every vehicle operated, or to be operated, under such lease, memorandum or agreement, together with a photostat or certified copy of the registration or title papers on every such motor vehicle, which shall be deposited in the Treasury of the State of Texas to the credit of the Operator's and Chauffeur's License Fund to be used by the Department of Public Safety for the purpose of enforcement of this Act. As amended Acts 1955, 54th Leg., p. 754, ch. 273, § 1.

1955 amendment effective 90 days after  
June 7, 1955, date of adjournment.

**CHAPTER ONE A—TRAFFIC REGULATIONS**

**Art. 6701d. Uniform Act Regulating Traffic on Highways**

**Overtaking and passing school bus**

Sec. 104. (a) The driver of a vehicle upon a highway outside of the limits of any incorporated city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle immediately before passing the school bus, but may then proceed past such school bus at a speed which is prudent, not exceeding ten (10) miles per hour, and with due caution for the safety of such children. As amended Acts 1955, 54th Leg., p. 757, ch. 275, § 1.

Emergency. Effective May 20, 1955.

**Limitations as to trailers**

Sec. 106(a). No driver of a motor vehicle shall drive upon any highway outside of the limits of an incorporated city or town drawing or hav-

ing attached thereto more than one (1) vehicle except as herein provided; such vehicle may be a trailer, semi-trailer, pole trailer, or another vehicle; provided, however, that there may be attached to motor vehicles used exclusively in the actual harvesting of perishable fresh fruits and vegetables not to exceed two (2) trailers, under the following conditions:

1. The origin of fruits and vegetables must be an orchard or a field where the same are grown and the destination must be a packing or processing plant or shed not more than fifty (50) miles distant from such field or orchard.

2. The combination of vehicles must be operated only during the period from sunrise to sunset, and at a rate of speed not to exceed twenty-five (25) miles per hour.

3. The fruits and vegetables transported in such trailers must be in bulk or field crates.

4. The width, height, and gross weight of each trailer and/or combination of trailers shall conform to the requirements set forth in Article 827a, Revised Penal Code of the State of Texas, and all other laws of this State governing same.

5. No one harvesting trailer shall exceed seventeen (17) feet, nine (9) inches in length, nor shall any combination of two (2) trailers and motor vehicle as provided herein, exceed fifty-five (55) feet overall length.

6. No laborers or "harvesting hands" shall be carried in or on the trailers while so used. As amended Acts 1955, 54th Leg., p. 519, ch. 155, § 1.

Emergency. Effective May 6, 1955.

(d) It is hereby specifically provided that no motor vehicle shall draw more than two (2) motor vehicles attached thereto by the dual saddle mount method, that is, by mounting the front wheels of the vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination of motor vehicles exceed the width, length, height or gross weight limitations fixed by Texas statutes. Added Acts 1955, 54th Leg., p. 378, ch. 100, § 1.

Emergency. Effective April 26, 1955.

#### **Selling or using lamps or equipment**

Sec. 108A. (a) On and after September 1, 1955, no person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer or semi-trailer, or use upon any such vehicle any headlamp, auxiliary, or fog-lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or any safety glass, glass coating material, or warning devices and equipment, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the Department of Public Safety and approved by it. The foregoing provisions of this Section shall not apply to equipment in actual use when this Section is adopted, or replacement parts therefor.

(b) No person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer, or semi-trailer, any lamp or device mentioned in this Section, which has been approved by the Department, unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed. The provisions of this subsection shall not apply, however, to safety glass and glass coating material.

(c) No person shall use upon any motor vehicle, trailer, or semi-trailer, any lamps mentioned in this Section unless said lamps are mounted,

adjusted, and aimed in accordance with instructions of the Department of Public Safety. Added Acts 1955, 54th Leg., p. 817, ch. 303, § 2.

**Authority of the Department of Public Safety with reference  
to lighting devices**

Sec. 108B. (a) The Department is hereby authorized to approve or disapprove lighting devices, equipment, and material, as referred to in Section 108A, and to issue and enforce regulations not inconsistent with law, establishing standards and specifications for their approval, installation, adjustment and aiming, and adjustment when in use on motor vehicles. Such regulations shall correlate with, and, in so far as practicable, conform to the then current standards and specifications of the Society of Automotive Engineers applicable to such equipment.

(b) The Department is hereby required to approve or disapprove any lighting device, equipment, or material, of a type on which approval is specifically required in this Chapter, within a reasonable time after such device has been submitted.

(c) The Department is further authorized to establish the procedure which shall be followed when any device is submitted for approval. Any person, firm, or corporation, may submit to the Department any such lamp, device, equipment, or material, required to be approved by the Department, and to make application that the same be tested as to conformity with the requirements of the law and the regulations of the Department. Upon such application being made, the Department shall cause such test to be made as may be necessary to determine whether to approve or disapprove, and may submit any such lamp, device, equipment, or material, to the University of Texas, which is hereby designated as the official testing agency, with a request that it be tested as to conformity with the requirements of the law and the regulations of the Department. Each such applicant shall, upon the filing of his application, pay to the Department of Public Safety a fee of Fifty Dollars (\$50). All such fees shall be paid by the Department into the State Treasury to be deposited in a fund to be known as The Highway Test Light Fund. The moneys in such fund, or so much of them as may be necessary, shall be used to meet the expense of the tests as herein provided and for such use they are hereby appropriated, and the balance thereof, if any, shall be paid into the Motor Vehicle Inspection Fund, and may be used as provided in this Act.

(d) When the Department has reason to believe that an approved device as being sold commercially does not comply with the requirements of this Chapter, the Department may, after giving thirty (30) days previous notice to the person holding the certificate of approval for such device in this State, conduct a hearing upon the question of compliance of said approved device. After said hearing the Department shall determine whether said approved device meets the requirements of this Chapter. If said device does not meet the requirements of this Chapter the Department shall give notice to the person holding the certificate of approval for such device in this State. If, at the expiration of ninety (90) days after such notice, the person holding the certificate of approval for such device has failed to satisfy the Department that said approved device as thereafter to be sold meets the requirements of this Chapter, the Department shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this Chapter, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this Chapter. The Department may at the time of the retest purchase in the open market and

submit to the testing agency one or more sets of such approved devices and if such device upon such retest fails to meet the requirements of this Chapter, the Department may refuse to renew the certificate of approval of such device.

(e) Any order or act of the Department under the provisions of this Section may be subject to review within ten (10) days notice thereof by appeal to the District Court at the instance of any party in interest and in the county wherein the person aggrieved by such order or act resides, and such Court is hereby vested with jurisdiction. The proceeding on appeal shall be a trial de novo as such term is commonly used and intended in an appeal from the Justice Court to the County Court, and the burden of proof shall be on the Department. Added Acts 1955, 54th Leg., p. 817, ch. 303, § 2.

Emergency. Effective May 21, 1955.

#### **Multiple-Beam Road Lighting Equipment**

Sec. 126. Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred and fifty (350) feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred (100) feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this State after January 1, 1948, which has multiple-beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. As amended Acts 1955, 54th Leg., p. 817, ch. 303, § 3.

#### **Use of Multiple-Beam Road-Lighting Equipment**

Sec. 127. (a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 109, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(b) Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred (500) feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in Section 126(b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(c) Whenever the driver of a vehicle follows another vehicle within two hundred (200) feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this Chapter other than the uppermost distribution of light specified in paragraph (a) of Section 126. As amended Acts 1955, 54th Leg., p. 817, ch. 303, § 3.

Emergency. Effective May 21, 1955.  
Section 4 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws to the extent of the conflict and expressly provided that this Act shall

not repeal any part of Acts of 53rd Legislature, ch. 321, but shall be cumulative.

Section 5 provided that partial invalidity should not affect the remaining portions of the Act.

### Art. 6701g. Restricted traffic zones in counties of 150,000 or more population

#### Establishment

Section 1. The Commissioners Court of any county in this State having a population of one hundred fifty thousand (150,000) or more according to the last preceding Federal Census is hereby authorized to create and establish restricted traffic zones on county roads and on any other property owned by such counties, under their jurisdiction. As amended Acts 1953, 53rd Leg., p. 575, ch. 218, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 88, ch. 39, § 1; Acts 1955, 54th Leg., p. 32, ch. 24, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

#### Traffic control devices

Sec. 3. The Commissioners Court of any county having a population of one hundred fifty thousand (150,000) or more according to the last preceding Federal Census may adopt rules and regulations consistent with this Act for the establishment of a system of traffic control devices within restricted traffic zones established on county roads and on any other property owned by such county, under its jurisdiction, and such system shall conform to the State Highway Department's manual and specifications. The Court may, pursuant to an order entered on its minutes, place, erect, install and maintain upon county roads and on any other property owned by it, within traffic zones, such traffic signal lights, stop signs, and no parking signs, as it may deem necessary for the public safety. As amended Acts 1953, 53rd Leg., p. 575, ch. 218, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 88, ch. 39, § 1; Acts 1955, 54th Leg., p. 32, ch. 24, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

#### Stopping, standing or parking

Sec. 4. The Commissioners Court of any county having a population of one hundred fifty thousand (150,000) or more according to the last preceding Federal Census, with respect to roads and any other property owned by the county, under its jurisdiction, may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any road or on any property owned by the county within a restricted traffic zone where in the opinion of the Commissioners Court such stopping, standing or parking is dangerous to those using the road or the other property owned by the county or where the stopping, standing or parking of vehicles will unduly interfere with the free movement of traffic or with the necessary control of property owned by the county and its use thereof. Such signs shall be erected pursuant to an order of the Court and it shall be unlawful for any person to stop, stand, or park any vehicle in violation of the restrictions stated on such signs. As amended Acts

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

1953, 53rd Leg., p. 575, ch. 218, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 88, ch. 39, § 1; Acts 1955, 54th Leg., p. 32, ch. 24, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

## CHAPTER TWO—ESTABLISHMENT OF COUNTY ROADS

Art.

6703a. Abandoned roads [New].

### Art. 6703a. Abandoned roads

Whenever the use of a county road has become so infrequent that the adjoining land owner or owners have enclosed said road with a fence and said road has been continuously under fence for a period of twenty (20) years or more, the public shall have no further easement or right to use said road unless and until said road is re-established in the same manner as required for the establishment of a new road; this Act shall not apply to roads to a Cemetery or Cemeteries; provided however, that this Act shall not apply to access roads reasonably necessary to reach adjoining land. Added Acts 1955, 54th Leg., p. 1625, ch. 525, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

Title of Act:

An Act relating to the use of a public  
road which has been under fence for a

period of twenty (20) years or more;  
making certain exceptions; and declar-  
ing an emergency. Acts 1955, 54th  
Leg., p. 1625, ch. 525.

## CHAPTER FIVE—BRIDGES AND FERRIES

### 1. BRIDGES

Art.

6795c. Toll bridges in counties bordering  
river between Texas and Mexico  
[New].

### 1. BRIDGES

#### Art. 6795b—1. Causeways, bridges, and tunnels authorized in Gulf Coast counties of 50,000 or more

##### Construction and operation authorized; cost and expenses

Section 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate and maintain a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as 'the project') from one (1) point in said county to another, or from one (1) point in said county to a point in another county (regardless of the population of such other county), in, over, through or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto, and to issue its revenue bonds payable solely from the revenues to be derived from the operation thereof, to pay the cost of such construction, acquisition, or improvement. Among other things, the cost of the project may include the following:

the cost of construction; the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds; and the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one (1) year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed. Where any causeway, bridge, tunnel, or combination thereof constructed or acquired and financed hereunder extends from a point in the county issuing the bonds to a point in another county, it may be so constructed or acquired only after there shall have been adopted by the Commissioners Court of the county not issuing the bonds, a resolution approving and consenting to such construction or acquisition, and the Commissioners Court of any such county is hereby authorized to adopt such resolution. So long as and to the extent that the project, or part thereof, has not been designated as part of the State Highway System, that part of the project (which has not been so designated) in each county shall be considered a part of the county road system of such county, and all laws relating to the maintenance of county roads are hereby made applicable to any project constructed or acquired hereunder in so far as they do not conflict with the provisions hereof; and each county into which the project extends may acquire necessary lands or right of ways or other property by purchase, condemnation or otherwise, under the General Laws of Texas, and the county issuing the bonds shall have such powers with respect to necessary lands or right of ways or other property in each county into which the project extends; provided that provision for the payment of the purchase price, award, or other costs may be upon such terms as may be agreed upon by the Commissioners Courts of the county issuing the bonds and the other county, and the proceeds of the bonds issued hereunder may be used for such purposes; and provided, further, that no election shall be necessary to authorize the issuance of any bonds issued hereunder payable solely from revenues, but in case no election is held, notice of intention to issue such bonds shall be given as provided in Sections 2 and 3 of the Bond and Warrant Law of 1931, as amended, and the authority to issue such bonds shall be subject to the right of referendum provided in Section 4 of said Law. Bonds authorized to be issued under this law shall not be sold initially for less than par and accrued interest. No funds raised or to be raised by taxation in any county shall be expended on any such project extending between two (2) counties unless the Commissioners Court of such county is authorized to expend such funds by a vote of the electors qualified to vote at an election called by the Commissioners Court for such purpose. Notice of such election shall be published once a week for two

(2) consecutive weeks in a newspaper of general circulation in said county, the first publication to be not less than fifteen (15) days prior to the date of said election. As amended Acts 1955, 54th Leg., p. 1163, ch. 446, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and

parts of laws to the extent of such conflict. Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

### **Art. 6795c. Toll bridges in counties bordering river between Texas and Mexico**

#### **Acquisition authorized; purchase or condemnation**

Section 1. Any county in this State which borders on a river between the State of Texas and the Republic of Mexico, acting through its Commissioners Court, is hereby authorized and empowered as a part of its road and bridge system, to acquire any existing toll bridge or bridges with their rights and franchises and appurtenant properties, by purchase thereof from the owner or owners thereof; either by purchase of the properties as such, or, if such toll bridge or bridges are owned by a private corporation, either by purchase from it of the properties, as such, or by purchasing the capital stock of such corporation from the owner or owners of such stock, either all of the outstanding capital stock of such corporation, or a sufficient amount thereof as required under the law for the dissolution and liquidation of such corporation, and immediately liquidating such corporation, paying the debts and obligations or liabilities thereof, and winding up its business and affairs, and causing conveyance of its properties to said county, taking the title to such stock either in the name of such county or in the name of a trustee therefor, and voting or causing such stock to be voted to carry out and accomplish such purposes, all in such manner and to such effect as to vest title to said toll bridge or bridges with all their rights, franchises and appurtenant properties in such county. The purchase and acquisition of any such properties or stock of such corporation from the owner or owners thereof shall be for such price, upon such terms and conditions, and upon such covenants and agreements as may be mutually agreed upon in respect thereto, by and between such owner or owners and the Commissioners Court of such county, the action of the latter being expressed by appropriate resolution or order consistent with the subject and purpose of this Act, but under no event shall the said bridge or bridges be acquired by condemnation under the powers of eminent domain.

#### **Maintenance and operation; eminent domain; franchises**

Sec. 2. Any such county thus acquiring any such toll bridge or bridges, through its Commissioners Court, shall have power to maintain and operate same, and to own, hold and control same, and to make or cause to be made any repairs, or improvements thereto, and to such end shall have all rights and privileges of acquiring property by condemnation under the power of eminent domain accruing to counties of this State for public purposes under general law. Any such county thus acquiring any such properties shall have the power to renew or extend any franchise therefor, and to obtain new or additional franchises therefor, and to do any and all things required, or that may be proper or necessary to the maintenance and operation thereof, and conduct of the business thereof, and of rendering the services thereof to the public and to the patrons of said bridge or bridges; and to such end and for such purposes shall have power to make and enter into and to carry out, observe, and perform any and all contracts, agreements, and undertakings, of any and every kind,



required by the United States of America or the Republic of Mexico or any of their departments, officers, or governmental agencies, or the public authorities thereof.

**Tolls, fees and charges; power of county to collect; purpose of tolls .**

Sec. 3. Any such county thus acquiring by purchase any such toll bridge or bridges shall have power, through its Commissioners Court as expressed by appropriate resolution or order thereof, to fix and to enforce and collect tolls, fees and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge or bridges. Such tolls, fees and charges shall be fixed from time to time by the Commissioners Court and collected under its direction in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of such permits or franchises, such tolls, fees and charges shall be just and reasonable and non-discriminatory, as determined by the Commissioners Court of such county, with no free service until the bonds herein provided to be issued to purchase or otherwise to acquire such properties, together with the interest on such bonds, and all duties and obligations incident thereto or arising therefrom are first fully paid, met and discharged; and, subject to the provisions and requirements of any such permits and franchises, and such tolls, fees and charges shall be sufficient at all times to produce revenues adequate:

(a) To pay all expenses necessary for the maintenance and operation of such toll bridge or bridges, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) To pay the interest on and the principal of all bonds issued under this Act, when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds, and, payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or with any person in their behalf; out of the revenues which may be received in excess of those required for the purposes specified in subparagraphs (a), (b), (c), and (d) above, the Commissioners Court of any such county may in its discretion establish a reasonable depreciation and emergency fund, or retire (by purchase and cancellation or redemption) bonds issued under this Act, or apply the same to accomplish any of the purposes of this Act.

It is the intention of this Act that the tolls, fees and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control tolls and charges to be collected for such purposes, or to provide for bridges over any such river to be used free of any tolls or charges, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the State will not limit or alter the power hereby vested in any such county and the Commissioners Court thereof to establish and collect such fees and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c) and (d) of this Section 3 of this Act, or exercise its powers in any way which may impair the rights or remedies of the holders of the bonds, or of any person acting in their behalf until the bonds, together with interest thereon and

with interest on unpaid installments of interest and all costs and expenses in connection with any acts or proceedings by or on behalf of the bondholders and all other obligations of any such county in connection with such bonds are fully met and discharged.

#### Definition

Sec. 4. The term "toll bridge, with its rights and franchises and appurtenant properties" as used herein is hereby defined to mean and include the physical properties of any such bridge together with and including all permits, grants, franchises, rights and privileges, of every kind granted or extended by the United States of America, or the Congress thereof, or by the Republic of Mexico, or the Congress thereof or any department, officer, agency or governmental authority of either of said Nations; or by any State or municipality or political subdivision of either or both of said two (2) Nations; for or in relation to or in respect of the maintenance or operation of any such toll bridge, or the collection of tolls, fees and charges for the use thereof; and including all lands, right of ways, easements, leaseholds, contractual or other interests of any kind in the land in either or both of said two (2) Nations, held or used or in any manner incident to or for the maintenance, or operation of any such bridge or the approaches thereto, or for the use or occupancy of any buildings, structures, appurtenances, appliances, roads, streets, parks, grounds, or conveniences and facilities of any kind, relating or in any manner incident thereto; including all buildings, structures, appurtenances, appliances, equipment, conveniences and facilities of every kind, held or used or in any manner incident to or for the maintenance and operation of such bridge; and including all rights and properties of every kind incident to or used for the maintenance or operation of any such toll bridge; provided, however, that any such county, in exercising the powers herein granted may acquire by purchase as herein provided, all or any part of any such toll bridge or bridges that is, either the entire bridge or only that part thereof which is situated within the State of Texas; and either all or any part of or any of the respective grants, permits, franchises, rights, contracts, privileges, easements, leases, lands, right of ways, buildings, structures, appurtenances, appliances, equipment, facilities and other interests and items above-enumerated, as included within the meaning of the term "toll bridge with its rights and franchises and appurtenant properties" and as used in this Act, as the Commissioners Court of any such county may, in its discretion determine and deem best.

#### **Parks, recreation grounds, camps, etc.; power to acquire land and sites**

Sec. 5. Any such county acquiring any such toll bridge or bridges shall have the power, in connection with the maintenance and operation thereof, to acquire land and a site or sites for the purpose, adjacent to such bridge or bridges, and to construct, maintain and operate parks, recreation grounds and facilities, camps, quarters, accommodations and facilities for the use and convenience of the public; and to fix and enforce and collect fees, rentals and charges for the use thereof, which shall be just and reasonable and non-discriminatory, as determined by and fixed from time to time by the Commissioners Court of such county; and to make and enforce reasonable rules and regulations therefor, and to manage, control, govern, police and regulate the same but under no event shall the land, site or sites mentioned in this Section be acquired by condemnation under the powers of eminent domain.

**Borrowing money or accepting grants from Federal government  
or agencies thereof**

Sec. 6. To accomplish the purposes of this Act, any such county shall have the power to borrow money from any person or corporation, and, without limiting the generality of the foregoing to borrow money and accept grants from the United States of America, or from any corporation or agency created by the United States of America, or designated or empowered to act as agency thereof, and in connection with any such loan or grant, to enter into such agreements as the United States of America or such agency or corporation thereof may require in respect or in relation thereto.

**Bonds, power to issue**

Sec. 7. Any such county, through its Commissioners Court, shall have the power to accomplish the purposes of this Act, by the issuance, sale and delivery of its negotiable bonds; which bonds or the proceeds of the sale thereof may be used to acquire a toll bridge or bridges by construction, purchase or otherwise. In the event such bonds or the proceeds thereof are used to purchase any then existing toll bridge with its rights and franchises and appurtenant properties from the owner or owners thereof, or such part or portion thereof as may be purchased by any such county as herein provided for, either by purchase of the properties, as such, or by using such bonds or the proceeds of the sale thereof for the purchase from any owner or owners thereof of the stock of any corporation owning such toll bridge or bridges and for the liquidation and winding up of the business and affairs of such corporation and paying the debts and obligations or liabilities thereof, and all in such manner and to such effect as to vest title to such toll bridge or bridges with their rights and franchises and appurtenant properties for such part or portion thereof as may be purchased, in said county, as provided for herein; and which bonds may be exchanged for property or sold to accomplish any of the purposes of this Act as herein provided.

**Mortgage or pledge of revenues to secure bonds; sinking fund**

Sec. 8. Any such county shall have the power, in respect to any such bonds issued in pursuant<sup>1</sup> of the provisions of this Act to accomplish all or any of the purposes of this Act, to mortgage or pledge all or any part of or any interest in the said toll bridge or bridges, with their rights and franchises and appurtenant properties, or any other properties acquired or to be acquired with such bonds or the proceeds of the sale thereof, and all or any part of the gross or net revenues thereafter received by such county for or in respect of any such properties so acquired or to be acquired by such county with such bonds or the proceeds of the sale thereof; to secure the payment of the principal of and interest on such bonds, and of such sinking fund and reserve fund agreed to be made in respect of such bonds and to make and enter into such covenants and agreements with the purchasers of such bonds or any person in their behalf in respect thereto and for securing the payment thereof and for providing rights and remedies to the owners and holders of any such bonds or to any person in their behalf, as the Commissioners Court of any such county may in its discretion approve, determine and provide by appropriate resolution or order adopted for such purposes; all in accordance with the provisions of this Act.

<sup>1</sup> So in enrolled bill. Probably should be "pursuance".

**Bonds to be charge solely on revenues of bridge**

Sec. 9. No bonds authorized to be issued by this Act shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the toll bridge or bridges and appurtenances constructed and acquired through the issuance of such bonds and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. Each such bond shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Bonds issued hereunder may be presented to the Attorney General for his approval and if such bonds have been issued in accordance with the Constitution and laws of this State, they shall be approved by the Attorney General and shall be registered by the Comptroller of Public Accounts in the same manner as provided for the approval of tax bonds issued by counties of this State. After such approval and registration the bonds shall be incontestable.

**Additional bonds; trust indenture**

Sec. 10. When any county has bonds outstanding payable from the revenues of any toll bridge or bridges, additional bonds may be issued to the extent and under the conditions prescribed by the provisions of the outstanding bonds and the proceedings relating thereto including the provisions of any trust indenture securing such outstanding bonds, and any such additional bonds may be secured by a pledge of and lien on the net revenues of the bridge or bridges on a parity with such outstanding bonds to the extent, in the manner, and under the conditions set out in the proceedings and/or the trust indenture securing and authorizing such previously issued and outstanding bonds. After any such county shall have acquired a toll bridge or bridges under the provisions of this Act it may in the manner herein prescribed with relation to the issuance of original bonds, issue and deliver subsequent bonds for the purpose of repairing or improving or reconstructing or replacing a toll bridge or bridges, or for any one or more of such purposes, subject only to the restrictions contained in the resolution or orders of the Commissioners Court authorizing the original bonds and in the deed of indenture, if any, securing such original issue of bonds.

**Bonds; payable solely from revenues; tolls fixed to be sufficient to pay; depository of proceeds**

Sec. 11. The bonds issued hereunder may be authorized by resolution or order at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the toll bridge or bridges referred to in the bond proceedings and it shall be the mandatory duty of the Commissioners Court to impose such tolls and charges for the use of the bridge or bridges thus encumbered as will be fully sufficient to satisfy all the purposes set forth in Section 3 of this Act. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instrument Law of Texas. If so provided by the Commissioners Court bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may either pledge or assign the tolls, fees and revenues or mortgage the bridge or bridges or any part thereof, or both. Either the resolution or order providing for the issuance of the bonds or the trust indenture se-

curing same may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county with relation to the acquisition of properties and the construction, maintenance, operation, repair and insurance of the bridge or bridges and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the bridge or bridges and to furnish such indemnity bonds or to pledge such securities as may be required by the county.

#### **Depository of proceeds**

Sec. 12. If such bonds are sold for cash, the proceeds of the sale thereof shall be deposited in such depository and shall be paid out pursuant to such terms and conditions, as may be agreed upon between the Commissioners Court and the purchasers of such bonds.

#### **Rights of bondholders; receivers**

Sec. 13. Any holder or holders of bonds issued hereunder, including the Trustee or Trustees for such holders, shall have the right in addition to all other rights, by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the county and its officers and employees including, but not limited to, the right to require the county and its Commissioners Court to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the employment of a receiver for the bridge or bridges. If such receiver be appointed, he may enter and take possession of such bridge or bridges and maintain them and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the provisions of the county's obligations under the bond resolution or order or trust indenture and as the court may direct.

#### **Amounts and denominations of bonds; interest rate; coupon or registered; place of payment**

Sec. 14. Any such bonds issued by any such county in pursuance of and to accomplish the purposes of this Act, shall be in such aggregate principal amount or amounts, of such denominations, shall bear such date or dates, and be of such maturities, bearing interest at such rate or rates, not exceeding six per cent (6%) per annum, payable annually or semiannually on such respective dates, in such form, containing such terms, provisions and conditions, either coupon or registered, with such registration privileges, such provisions for the call or redemption thereof before maturity, payable at such place or places within or without the State of Texas, as the Commissioners Court of any such county may in its discretion approve and determine and provide by resolution or order adopted for such purposes.

#### **Sale or exchange of bonds; cash or terms**

Sec. 15. Any bonds issued by such county in pursuance of and to accomplish the purposes of this Act may either be:

(a) Sold for cash, at private or public sale, at such price or prices as the Commissioners Court of such county may determine, provided that the interest cost of the money received therefor, computed to maturity in accordance with standard bond tables in general use by banks and insurance companies, shall not exceed six per cent (6%); or

(b) May be issued on such terms as the Commissioners Court of any such county shall determine in exchange for property of any kind, real, personal or mixed, or any interest therein, which the Commissioners Court of such county shall determine to be proper and necessary to accomplish any of the purposes of this Act; or

(c) May be issued in exchange for like principal amount of any other bonds of such issue matured or unmatured.

#### **Exemption from taxation; property and bonds**

Sec. 16. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the properties acquired hereunder or on any part thereof and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State. It is provided, however, that any such county which may acquire any such toll bridge or bridges by purchase from private owner or owners thereof may make payments in lieu of ad valorem taxes previously paid by such private owner or owners to any common or independent school district in which such properties are situated. Any payments so made shall be in such amounts as may be determined upon by the Commissioners Court and shall be considered as an operation expense for all purposes of this Act.

#### **Refunding bonds**

Sec. 17. Subject to any restrictions which may appear in the bond resolutions or orders or in the trust indentures pertaining to the issuance of bonds hereunder, the Commissioners Court may by resolution or order provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding.

#### **Bonds; legal investments**

Sec. 18. All bonds issued under the law are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts or other political corporations or subdivisions of the State of Texas, including the State Permanent School Fund; and such bonds shall be lawful and sufficient security for such deposits to the extent of their par value, when accompanied by all unmatured coupons appurtenant thereto.

#### **Referendum not necessary**

Sec. 19. Such counties may purchase such properties and issue such bonds as are herein provided and may use such bonds or the proceeds of the sale thereof for the purchase of any such properties, or to accomplish any other purposes of this Act by action of its Commissioners Court as expressed by resolution or order authorizing and effecting same, and without the necessity of any referendum, and without the necessity of calling or holding any election to authorize any such action, and without the necessity of giving or publishing any notice of intention to acquire any such properties or to issue any such bonds, and without the necessity of advertising or calling for any competitive bids in respect thereto.

#### **Limitations on authority of counties**

Sec. 20. Nothing in this Act shall authorize any such county acting in pursuance hereof or to accomplish any of the purposes hereof, to levy or

collect any taxes or assessments therefor or in any respect thereto or to pledge the credit of the State in any manner; or to issue or sell or deliver any bonds or to create any obligations of any kind or to incur any liabilities of any kind or to make or enter into any contracts or agreements of any kind, to be paid or performed or met or discharged out of or from any taxes or assessments. This Act shall constitute full authority for the authorization and issuance of bonds hereunder and no other act or law with regard to the authorization or issuance of obligations, or the deposit of the proceeds thereof in any way impeding or restricting the carrying out of the acts and things herein authorized to be done shall be construed as applying thereto or to any acts or proceedings taken hereunder and acts of things done pursuant hereto and for the accomplishment of the purposes of this act.

**Act cumulative of other laws**

Sec. 21. This Act is declared cumulative of all other acts and laws; and the powers, rights, privileges and functions hereby conferred on any such county, shall not prevent the exercise by any such county of any and all other powers, rights, privileges, or functions conferred upon such county by any other act or law now existing or hereafter enacted.

**Liberal construction of Act**

Sec. 22. This Act and all of the terms and provisions thereof shall be liberally construed to effectuate the purposes set forth herein. Acts 1955, 54th Leg., p. 1072, ch. 403.

Section 23 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act. Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 117—SALARIES

Art.

6819a—10. Salaries of Supreme Court Justices and Criminal Court of Appeals Judges [New].

Art.

6819a—11. Salaries of district court judges in counties comprising judicial district of not less than four counties [New].

## Art. 6813. Enumeration

*Acts 1955, 54th Leg., p. 437, ch. 118, provides as follows:*

*Section 1. The salaries of all state officers and all state employees, except the salaries of the District Judges and other compensation of District Judges, shall be for the period beginning September 1, 1955 and ending August 31, 1957 in such sums or amounts as may be provided for by the Legislature in the general appropriations Act. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of court fees and receipts, to be paid to the clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals.*

*Sec. 2. All laws and parts of laws fixing the salaries of all state officers and employees, except the salaries of the District Judges and other compensation of District Judges, are hereby specifically suspended in so far as they are in conflict with this Act. It is specifically declared to be one of the intents hereof that any and all laws authorizing payment of supplemental salaries from court receipts and fees to clerks and other employees of the Courts of Civil Appeals, the Supreme Court, and the Court of Criminal Appeals are suspended insofar as they are in conflict with this Act.*

## Art. 6819a—9. Salaries of justices and judges

From and after August 31, 1951:

(a). Repealed. Acts 1955, 54th Leg., p. 1124, ch. 418, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

## Art. 6819a—10. Salaries of Supreme Court Justices and Criminal Court of Appeals Judges

From and after August 31, 1955 the Justices of the Supreme Court of the State of Texas and the Judges and the Commissioners of the Court of Criminal Appeals shall each be paid an annual salary of Seventeen Thousand, Five Hundred (\$17,500) Dollars, paid in equal monthly installments. Acts 1955, 54th Leg., p. 1124, ch. 418, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Title of Act:

An Act providing for and fixing the salaries of the Justices of the Supreme Court of the State of Texas and the Judges and Commissioners of the Court of Criminal Appeals; repealing subsec-

tion (a) of Section 1 of Senate Bill No. 79, Acts of the 52nd Legislature, Regular Session, 1951, Chapter 386 (compiled as subsection (a) of Article 6819a—9, Vernon's Civil Statutes of Texas) and all other laws and parts of laws in conflict; and declaring an emergency. Acts 1955, 54th Leg., p. 1124, ch. 418.



**Art. 6819a—11. Salaries of district court judges in counties comprising judicial district of not less than four counties**

In every county in this State which comprises a part of a judicial district consisting of not less than four (4) counties, of which two (2) of said counties have two (2) or more district courts, the district judge, or district judges, may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the general fund thereof, as compensation for all judicial and administrative services now rendered by said judge, or judges, and any additional judicial and administrative services hereafter to be assigned to said judge, or judges, in addition to all salary paid or hereafter to be paid to said judge, or judges, by the State of Texas out of State revenues; provided, however, that the salary herein authorized to be paid by any county Commissioners Court to any judge shall not exceed the sum of One Thousand, Two Hundred Dollars (\$1,200) per annum; and provided that the total remuneration to be received by any judge under the provisions hereof shall not exceed the sum of Two Thousand, Nine Hundred Dollars (\$2,900) per annum. Acts 1955, 54th Leg., p. 1234, ch. 493, § 1.

Emergency. Effective June 22, 1955.

**Title of Act:**

An Act providing for the fixing of compensation of judges of district courts in counties in this State which comprise a part of a judicial district consisting of not less than four (4) counties, of which two (2) of said counties have two (2) or more district courts; providing the manner of payment; establishing a limita-

tion of the amount of such compensation; providing for validity of remaining portion of Act if any part declared unconstitutional; and declaring an emergency. Acts 1955, 54th Leg., p. 1234, ch. 493.

Section 2 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act. Section 3 repealed all conflicting laws and parts of laws to the extent of such conflict.

**Art. 6820. Judicial district expenses**

All District Judges and District Attorneys when engaged in the discharge of their official duties in any county in this State other than the county of their residence, shall be allowed their actual and necessary expenses while actually engaged in the discharge of such duties. Such officers shall also receive the actual and necessary postage, telegraph and telephone expenses incurred by them in the actual discharge of their duties. Such expenses shall be paid by the State upon the sworn and itemized account of each District Judge or Attorney entitled thereto, showing such expenses. In districts containing more than one (1) county, such expenses shall never exceed in any one (1) year Two Hundred Fifty Dollars (\$250.00) for each county in the district; provided that no District Judge or Attorney shall receive more than Fifteen Hundred Dollars (\$1500.00) in any one (1) year under the provisions of this Article. The account for said services shall be recorded in the official minutes of the District Court of the county in which such Judge or Attorney resides, respectively. As amended Acts 1949, 51st Leg., p. 903, ch. 484, § 1; Acts 1955, 54th Leg., p. 1099, ch. 407, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## TITLE 118—SEAWALLS

Art.

6839g. Commissioners' courts authorized to construct breakwaters; certain Gulf counties excepted [New].

## Article 6830. 5585 Commissioners' court may construct levees

## FREEPORT, TOWN OF

"Sec. 5. The moneys herein and hereby granted and donated to the town of Freeport shall be expended solely for the purpose of paying principal and interest on seawall and breakwater bonds heretofore issued by the town of Freeport under authority of this Act; provided that, each year when there has been paid into the interest and sinking fund of all bonds heretofore issued for the aforesaid purposes and payable from the grants herein made, a sum, which, together with accumulated balances therein, is equal to all principal and interest coming due during the current calendar year and the next succeeding calendar year on such bonds, surplus moneys thereafter received during each year may be expended by the town of Freeport for the purpose of main-

taining, repairing, improving and extending such seawalls and breakwaters. The authority to expend such surplus funds as herein granted shall continue for the duration of such donation or until all legal obligations heretofore authorized by this Act shall have been fully discharged, whichever shall first occur. Nothing herein shall be construed to authorize the impairment of the obligation of any existing contract. The governing body of the town of Freeport shall be authorized to issue refunding bonds for the purpose of refunding any of said outstanding bonds heretofore issued under authority of this Act, such refunding to be accomplished in the manner provided by general law for the refunding of general obligation bonds of said town." As amended Acts 1955, 54th Leg., p. 382, ch. 103, § 1.

Emergency. Effective April 26, 1955.

## Art. 6839g. Commissioners' courts authorized to construct breakwaters; certain Gulf counties excepted

## Authority; excepted counties; payment

Section 1. The Commissioners Court of any county bordering on the coast of the Gulf of Mexico, except Nueces, Kleberg, Kenedy, Jefferson, Orange, and Willacy Counties, is hereby authorized to construct breakwaters. Payment for the same shall be made from the Constitutional Permanent Improvement Fund.

## Bonds; time warrants; certificates of indebtedness; taxation.

Sec. 2. To pay for the improvements authorized by Section 1, the Commissioners Court is hereby authorized from time to time to issue negotiable bonds, time warrants, and certificates of indebtedness of the county and to levy and collect taxes in payment therefor.

## Issuance of bonds; levy of taxes

Sec. 3. Bonds shall be issued and taxes shall be levied and collected in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, governing the issuance of bonds by cities, towns, and/or counties in this State. Time warrants shall be issued and taxes shall be levied and collected in accordance with the provisions of Chapter 163, Acts, Forty-second Legislature, 1931, as amended (Bond and Warrant Law of 1931).<sup>1</sup> Certificates of indebtedness shall be authorized by order of the Commissioners Court; shall mature in not to exceed thirty-five (35) years from their date or dates; shall bear interest at a rate not to exceed five per cent (5%) per annum, which interest may be evidenced by coupons; shall be signed by the County Judge and attested by

the County Clerk, provided that the interest coupons may be executed by the facsimile signatures of said officers; and shall be sold for not less than par value plus accrued interest. When said certificates are issued, it shall be the duty of the Commissioners Court to levy and have assessed and collected a tax sufficient to pay the principal of and interest on the certificates as the same become due. The certificates and the record relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if they have been issued in accordance with the Constitution and this Act, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of Texas, and after said certificates have been so approved and registered and delivered to the purchasers, they shall be incontestable. Said certificates shall be fully negotiable and are hereby declared to be negotiable instruments under the laws of Texas.

<sup>1</sup> Article 2368a.

#### Refunding bonds

Sec. 4. Said Commissioners Court shall have the right at all times to issue refunding bonds for the refunding of bonds and certificates issued under the terms of this Act, subject to the general laws applicable to the issuance of refunding bonds by counties and without the necessity of any notice or right to referendum vote. Said Commissioners Court shall also have the right to refund into bonds time warrants issued under the terms of this Act, subject to the provisions of the Bond and Warrant Law of 1931, as amended.<sup>1</sup>

<sup>1</sup> Article 2368a.

#### Cumulative of other laws

Sec. 5. This Act shall be cumulative of all other laws, general and special, relating to the subject matter hereof. Acts 1955, 54th Leg., p. 820, ch. 304.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 6 of the Act of 1955 provided  
that partial invalidity should not affect  
the remaining portions of the Act.

## TITLE 120—SHERIFFS AND CONSTABLES

### 2. CONSTABLES

6889e. Counties over 600,000; Two-way  
car radios [New].

### 1. SHERIFFS

Art. 6889e. Counties over 600,000; Two-way car radios

Section 1. In each county in this State having a population of six hundred thousand (600,000) inhabitants or more according to the last preceding Federal Census, the Commissioners Court, in its discretion, may furnish all constables and/or deputy constables two-way radios to be used in connection with the performance of their official duties. It is expressly understood that the provisions of this Act shall be applicable to all constables and/or deputy constables in counties having a population of six hundred thousand (600,000) or more inhabitants regardless of whether the constables and/or deputy constables drive county owned vehicles or their own personal cars in the performance of the duties of their offices.

Sec. 2. The cost of the two-way radios, the installation and charges in connection therewith, all necessary repairs that may be made thereon and other expenses in connection therewith shall be paid out of the general fund of the county. Acts 1955, 54th Leg., p. 521, ch. 157.

Emergency. Effective May 6, 1955.

## TITLE 120A—STATE AND NATIONAL DEFENSE

### COMMUNISM [NEW]

Art.

6889—3A. Suppression of Communist party  
and related organizations  
[New].

### COMMUNISM

**Art. 6889—3. Texas Communist Control Law**

Registration, fact not received in evidence, see Art. 6889—3A.

**Art. 6889—3A. Suppression of Communist party and related organizations**

#### Legislative finding and declaration

Section 1. Upon evidence and proof already presented before this Legislature, Congress, the courts of this State, and the courts of the United States, it is here now found and declared to be a fact that there exists an international Communist conspiracy which is committed to the overthrow of the government of the United States and of the several States, including that of the State of Texas, by force or violence, such conspiracy including the Communist Party of the United States, its component or related parts and members, and that such conspiracy constitutes a clear and present danger to the government of the United States and of this State.

#### Illegality of Communist Party and component or related organizations; dissolution; forfeiture of charter; property, etc.

Sec. 2. The Communist Party of the United States, together with its component or related parts and organizations, no matter under what name known, and all other organizations, incorporated or unincorporated, which engage in or advocate, abet, advise, or teach, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, are hereby declared to be illegal and not entitled to any rights, privileges, or immunities attendant upon bodies under the jurisdiction of the State of Texas or any political subdivision thereof. It shall be unlawful for such Party or any of its component or related parts or organizations, or any such other organization, to exist, function, or operate in the State of Texas. Any organization which is found by a court of competent jurisdiction to have violated any provisions of this Section, in a proceeding brought for that purpose by the District Attorney, Criminal District Attorney, or County Attorney, shall be dissolved, and if it be a corporation organized and existing under the laws of this State or having a permit to do business in this State, its charter or permit shall be forfeited, and, whether incorporated or unincorporated, all funds, records, and other property belonging to such Party or any component or related part or organization thereof, or to any such other organization, shall be seized by and forfeited to the State of

Texas, to escheat to the State as in the case of a person dying without heirs. All books, records, and files of any such organization shall be turned over to the Attorney General.

#### **Registration not evidence**

Sec. 3. The fact of the registration of any person under the provisions of Article 6889—3 of the Revised Civil Statutes of Texas as an officer or member of any Communist organization shall not be received in evidence against such person in any proceeding for any alleged violation of this Act.

#### **Prima facie evidence**

Sec. 4. As to any particular organization, proof of its affiliation with a parent or superior organization, inside or outside of this State, which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, shall constitute prima facie evidence that such particular organization engages in or advocates, abets, advises, or teaches, or has as a purpose the engaging in or advocating, abetting, advising, or teaching of, the same activities with the same intent.

#### **Unlawful acts**

Sec. 5. It shall be unlawful for any person knowingly or willfully to:

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence; or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or aid in the commission of any such act, under such circumstances as to constitute a clear and present danger to the security of the United States, or of the State of Texas, or of any political subdivision of either of them; or

(3) Conspire with one or more persons to commit any of the above acts; or

(4) Assist in the formation of, or participate in the management of, or contribute to the support of, or become or remain a member of, or destroy any books or records or files of, or secrete any funds in this State of the Communist Party of the United States or any component or related part or organization thereof, or any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, knowing the nature of such organization.

#### **Punishment for violations**

Sec. 6. Any person who shall violate any of the provisions of Section 5 of this Act shall be guilty of a felony, and upon conviction thereof shall be fined not more than Twenty Thousand (\$20,000.00) Dollars, or imprisoned not less than one (1) year nor more than twenty (20) years in the State penitentiary, or may be both so fined and imprisoned. Provided

that nothing in this Act shall be construed to repeal any part of Articles 83, 84, and 85 of the Penal Code of the State of Texas, relating to treason, nor any part of Articles 153 and 155 of the Penal Code of the State of Texas, relating to seditious writings and language; and provided further, that no person convicted of any violation of this Act shall ever be entitled to suspension or probation of sentence by the trial court.

#### **Disqualification to hold office, etc.**

Sec. 7. Any person who shall be convicted finally by a court of competent jurisdiction of violating any of the provisions of this Act shall from the date of such final conviction automatically be disqualified and barred from holding any office, elective or appointive, or any other position of profit, trust, or employment with the government of the State of Texas or any agency thereof, or of any county, municipal corporation, or other political subdivision of the State.

#### **Injunctions**

Sec. 8. The District Courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon the application of the State of Texas, acting through the District Attorney, Criminal District Attorney, or County Attorney, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this Act; no injunction or other writ shall be granted, used or relied upon under the provisions of this Act in any labor dispute or disputes. Such proceedings shall be instituted, prosecuted, tried, and heard as other civil proceedings of like nature in such courts, provided that such proceedings shall have priority over other cases in settings for hearing; provided further, that no such proceeding shall be instituted unless and until the Director of the Texas State Department of Public Safety or his assistant in charge has been notified by telephone, telegraph, or in person of the intention to institute such proceeding, and an affidavit of such notice filed with the application for such injunction proceedings shall be sufficient for the filing of the same.

Nothing in this Act shall be construed to alter in any way the powers now held by the courts of this State or of this nation under the laws of this State in labor disputes.

#### **Search warrants**

Sec. 9. A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of this Act. Search warrants may be issued by any judge of a court of record in this State upon the written application of the District Attorney, Criminal District Attorney, or County Attorney, within their respective jurisdictions, accompanied by the affidavit of a credible person setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premises is a place where some specified phase or phases of this Act are violated or are being violated, or where are kept any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or written instruments of any kind showing a violation of some phase or phases of this Act; provided that if the premises to be searched constitute a private residence, such application for a search warrant shall be

accompanied by the affidavits of two credible citizens. Except as herein provided, the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform to the applicable provisions of Title 6 of the Code of Criminal Procedure; provided that any evidence obtained by virtue of a search warrant issued under the provisions of this Act shall not be admissible in evidence in the trial of any proceeding, administrative or judicial, save and except those arising under this Act.

#### **Enforcement of law**

Sec. 9a. The Internal Security Section of the Texas Department of Public Safety shall assist in the enforcement of the provisions of this Act, and for such purpose said Department may employ and pay the salaries and wages of such personnel and make such capital outlay purchases as it may deem necessary and pay necessary expenses, including but not limited to travel expenses (including automobile maintenance), all necessary operating expenses (including seasonal help), wages and salaries of employees, and make any and all other expenditures whatsoever necessary for the proper enforcement of the provisions of this Act; and for such purposes there is hereby appropriated out of the Operators and Chauffeurs License Fund such money as may be necessary, not to exceed the sum of Seventy-five Thousand (\$75,000.00) Dollars for the biennium ending August 31, 1955. Acts 1954, 53rd Leg., 1st C.S., p. 9, ch. 3.

Emergency. Effective April 15, 1954.

Section 10 of the act of 1954 provided that partial invalidity should not affect the remainder of the act.

## TITLE 121—STOCK LAWS

## CHAPTER ONE—MARKS AND BRANDS

Art.

6899d—1. Brands and marks in Brazoria  
County [New].

Art. 6899d. Superseded by Acts 1955, 54th Leg., p. 913, ch. 361, § 2

Art. 6899d—1. Brands and marks in Brazoria County

This Act shall apply to Brazoria County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner who according to the present records of said County first recorded his mark and brand in the County shall have the right to have the same recorded in his name, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of said County shall have this Act published in some newspaper of general circulation in the County once a week for four (4) consecutive weeks, which publication shall be paid for by the County out of the General County Fund. Acts 1955, 54th Leg., p. 913, ch. 361, § 1.

Emergency. Effective May 25, 1955.

Title of Act:

An Act relating to marks and brands of livestock in Brazoria County; requiring owners of livestock to record their marks and brands within six (6) months after this Act takes effect; providing that records of marks and brands now in existence shall no longer have any force and only the records made after this Act takes effect shall be examined or considered

after the expiration of six (6) months; providing for publication of this Act; and declaring an emergency. Acts 1955, 54th Leg., p. 913, ch. 361.

Acts 1955, 54th Leg., p. 913, ch. 361, § 2, effective May 25, 1955, provided that this Act supersedes Senate Bill No. 394, Special Laws of the Forty-sixth Legislature, Regular Session, 1939, page 516, which is also known as Article 6899d of the Revised Civil Statutes.

## CHAPTER FIVE—STOCK LAW AND LIMITED RANGE

Art. 6935. 7218, 4987 Manner of Voting

All votes at such election shall be by ballot, and all ballots shall have printed thereon the words, "For letting \_\_\_\_\_ run at large" and "Against letting \_\_\_\_\_ run at large". In the blank spaces there shall be printed the name of the animal or animals designated in the order. There shall be printed just above the propositions to be voted on, this instruction note: "Scratch or mark out one statement so that the



one remaining shall indicate the way you wish to vote". The voters shall mark their ballots and the votes shall be counted in accordance with this instruction note. As amended Acts 1955, 54th Leg., p. 665, ch. 236, § 1.

Emergency. Effective May 16, 1955.  
Section 2 of the amendatory Act of 1955, amended article 6937.

#### Art. 6937. 7221, 4990 Proclamation of result

If a majority of the votes cast at such election shall be against letting such animals run at large, the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the court house door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designed any animal of the class mentioned in said proclamation. As amended Acts 1955, 54th Leg., p. 665, ch. 236, § 2.

Emergency. Effective May 16, 1955.

### CHAPTER SIX—STOCK RUNNING AT LARGE

#### Art. 6954. 7235 Petition

Upon the written petition of thirty-five (35) freeholders of any of the following counties: Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burlson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kleberg, Knox, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Nacogdoches, Navarro, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Titus, Tom Green, Travis, Upshur, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Wise, Wood, Young, Zapata, and Zavala; or upon the petition of fifteen (15) freeholders of any such subdivision of any county of this State as may be described in the petition, and defined by the Commissioners Court of the county in which said subdivision is situated, the Commissioners Court of said county shall order an election to be held in such county or such subdivision of a county as may be described in the petition and de-

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

fined by the Commissioners Court on the day named in the order for the purpose of enabling the freeholders of such county or subdivision of a county as may be described in the petition and defined by the Commissioners Court to determine whether cattle shall be permitted to run at large in such county or such subdivision of a county as may be described in the petition and defined by the Commissioners Court. As amended Acts 1949, 51st Leg., p. 726, ch. 390, § 1; Acts 1949, 51st Leg., p. 907, ch. 486, § 1; Acts 1953, 53rd Leg., p. 789, ch. 318, § 2; Acts 1954, 53rd Leg., 1st C.S., p. 65, ch. 26, § 1; Acts 1955, 54th Leg., p. 805, ch. 296, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

## CHAPTER EIGHT—LIVE STOCK SANITARY COMMISSION

### Arts. 7009. 7312-13 Commission

The Governor shall, within thirty days after this Act becomes effective, by and with the advice and consent of the Senate, appoint six citizens of this State as a Livestock Sanitary Commission of the State of Texas. The Governor shall designate one such member as a Chairman. Each Commissioner shall give bond payable to the State of Texas in the sum of Ten Thousand Dollars to be approved by the Comptroller. There shall be one Commissioner from each of the following industries, and with the following qualifications: (1) practitioner of veterinary medicine; (2) dairyman; (3) practical cattle raiser; (4) practical hog raiser; (5) sheep or goat raiser; and (6) poultry raiser.

Insofar as is practicable the Commissioners appointed hereunder shall be appointed so as to give proportionate representation from the west, from the south, from the north, and from the eastern portions of Texas; provided, however, that the present members of the Livestock Sanitary Commission of the State of Texas shall compose three of the six members hereunder authorized, and shall continue to hold office for the terms to which they have been appointed. The Governor shall designate which appointee he desires to fill each term, and that beginning with the appointment of said Commissioners, present membership excepted, the term of office of the members of the Commission shall be for a period of six years, except that those first appointed shall be appointed for two, four, and six years, and that they shall serve until their successors have been appointed and have duly qualified. All vacancies which shall occur in the Commission for any reason shall be filled in the same manner as hereinbefore provided, and shall be for the unexpired term. As amended Acts 1955, 54th Leg., p. 1167, ch. 448, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

## TITLE 122—TAXATION

## CHAPTER ONE—LEVY OF TAXES AND OCCUPATION TAXES

Art.

7047—1. Radios and television sets; excise tax on sales [New].

## Art. 7047. 7355, 5049 Occupation taxes

Section 1 of Article II of the amendatory act of 1954, p. 3, ch. 2, effective April 14, 1954, read as follows: "Section 1. Article XI of House Bill No. 8, Chapter 184 of Acts, Forty-seventh Legislature, Regular Session, as amended by Section XI of Chapter 402, Acts of the Regular Session, Fifty-second Legislature, being codified as Subdivision 46 of Article 7047, Vernon's Annotated Civil Statutes of Texas, be and the same is hereby repealed, save and except as to all carbon black manufactured or produced prior to the effective date of this Act; and as to all taxes, penalties, reports and liabilities due, effective or accruing prior to the effective date of this Act or by virtue of carbon black manufactured or produced prior to the effective date of this Act; and as to all such carbon black so manufactured or produced and as to all such taxes, penalties, interest, reports, fines, forfeitures, liabilities or duties and procedure in connection therewith such Section shall remain in full force

and effect, and all taxes, fines, interest, penalties, obligations, reports and duties owing or due to the State of Texas on the effective date of this Act or by virtue of carbon black manufactured or produced prior to the effective date of this Act and due by virtue of Article XI of Chapter 402, Acts of the Regular Session, Fifty-second Legislature, shall remain and be valid and binding obligations to the State of Texas. Nothing in this Article or this Act shall prejudice the rights of the State of Texas in any lawsuit now pending or that may be brought hereafter either by or against the State for or on account of the collection of any tax, fine, interest or penalty that has accrued or may accrue by virtue of Article XI of Chapter 402, Acts of the Regular Session, Fifty-second Legislature."

Section 2 of Art. II provided that the provisions of that article should become effective on the first day of the first month after the effective date of the act.

## Art. 7047b. Tax on producers of natural gas

## Calculation of tax; market value; payment

Section 1(1). There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

(a) From the effective date of this Act until September 1, 1955, a tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to nine per cent (9%) of the market value thereof as and when produced;

(b) From September 1, 1955, until September 1, 1956, the rate of said tax shall be eight per cent (8%) of the market value of the gas as and when produced.

(c) From and after September 1, 1956, the rate of said tax shall be seven per cent (7%) of the market value of the gas as and when produced.

Provided, however, that the amount of the tax on sweet and sour gas shall never be less than  $\frac{12}{1500}$  of One Cent (1¢) per one thousand (1,000) cubic feet.

In calculating the tax herein levied, there shall be excluded: (1) gas injected into the earth in this State, unless sold for such purpose; (2) gas produced from oil wells with oil and lawfully vented or flared; and (3) gas used for lifting oil, unless sold for such purposes. As amended Acts 1951, 52nd Leg., p. 695, ch. 402, § III; Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, Art. I, § 1.

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

(3). All condensate recovered from gas shall be taxed at the same rate as oil and shall be valued for the purpose of computing the tax due thereon at the prevailing market price for condensate in the general area where the same is recovered. The term "condensate" shall include all liquid hydrocarbons that are or can be recovered from gas by means of a separator but shall not include any liquid hydrocarbons which can only be recovered from gas by refrigeration or absorption and separated by a fractionating process.

Where additional liquid hydrocarbons other than condensate are recovered from gas the taxable value of such additional liquid hydrocarbons shall be determined by deducting from the total receipts of the producer for all liquid hydrocarbons recovered from his gas the taxable value assigned to the condensate and the applicable rate set forth in subsection (1) of this Section 1 shall be applied to the difference to determine the tax due hereunder on such additional liquid hydrocarbons. As amended Acts 1953, 53rd Leg., p. 456, ch. 142 § 1; Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, Art. I, § 2.

Section 3 of Art. I of the amendatory act of 1954, p. 3, ch. 2, makes the article effective September 1, 1954.

Art. VII, § 1, of the amendatory Act of 1954, p. 3, ch. 2, repealed conflicting laws or parts of laws in so far as conflict existed and provided that the act should prevail over conflicting provisions.

Section 2 of such article provided that partial invalidity should not affect remaining portions of the act.

Section 3 of such article read as follows: "Sec. 3. Except as otherwise provided herein, the revenues from the taxes levied herein shall be allocated as provided in Article XX of House Bill No. 8, Chapter 184, Acts of the Forty-seventh Legislature, 1941, and any amendments thereto [art. 7083a]."

## Art. 7047c—1. Cigarette Tax

### Amount of tax; stamps; disposition of revenues

Sec. 2. (a) A tax of Two Dollars (\$2) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Four Dollars and Ten Cents (\$4.10) per thousand on those weighing more than three (3) pounds per thousand is hereby imposed on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(b) Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Act; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package when the manufacturer of the cigarette reports and pays the said tax thereon directly to the State.

(c) Provided, that the tax imposed by this Act shall be in lieu of any other occupation or excise tax imposed by the State or any political subdivision thereof, on cigarettes.

(d) Cigarette stamps shall be sold by the Treasurer in unbroken sheets of one hundred (100) stamps only and shall be purchased from and sold only by said Treasurer, except as hereinafter provided. When the Comptroller deems it proper to accept the compromise provided for in Section 22, and the offender does not possess sufficient unused stamps to cover his unstamped stock of cigarettes, then and in that event the offender may purchase the required stamps from any distributor through a requisition from the Comptroller in order that his unstamped stock of cigarettes may be stamped immediately and under the direction of the Comptroller and the Comptroller shall have the authority to issue such requisition which shall be made in triplicate on a form prescribed by the Comptroller with the printed words "Original," "Duplicate," and "Triplicate," on the respective sheets thereof. The original requisition shall be kept by the Comptroller and the duplicate and triplicate shall be delivered to the purchaser and seller of said stamps, respectively, who shall hold such copies of requisition at all times open to the inspection of the Comptroller and the Attorney General for a period of two (2) years. The Comptroller shall have the power and authority in the enforcement of this Act to recall any stamps which have been sold by said Treasurer which have not been used and it shall be the duty of said Treasurer upon receipt of such recalled stamps to issue stamps of other serial numbers therefor. The purchaser of any stamps shall be required to surrender any unused stamps for exchange upon demand of said Comptroller.

(e) From the effective date of this Act, the net revenue derived from the tax levied by this Section 2 shall be allocated as follows:

One-fourth ( $\frac{1}{4}$ ) shall be credited to a special fund known as the State Hospitals and Special Schools Building Fund heretofore created by the Legislature; one-fourth ( $\frac{1}{4}$ ) of the balance of the net revenue shall be credited to the State Available School Fund; and three-fourths ( $\frac{3}{4}$ ) shall be credited to the Clearance Fund established by House Bill No. 8, Acts of the Forty-seventh Legislature, 1941, page 269, Chapter 184;<sup>1</sup> provided, however, that not in excess of Five Million Dollars (\$5,000,000) shall be credited to the State Hospitals and Special Schools Building Fund for the fiscal year ending August 31, 1955, and not in excess of Five Million Dollars (\$5,000,000) for each fiscal year thereafter, through and including the fiscal year ending August 31, 1957, shall be credited to such fund. Any balance in excess of such Five Million Dollars (\$5,000,000) in any fiscal year shall be transferred to and become a part of the State Hospital Fund heretofore created by the Legislature, which is and shall be the same State Hospital Fund as provided for in House Bill No. 3 of the First Called Session of the Fifty-first Legislature.

After August 31, 1957, all revenue from taxes levied by this Section except that allocated to the State Available School Fund shall be credited to the General Revenue Fund of the State.

This Section shall supersede the provisions of the Section 2 contained in subdivision (b) of Section 1 of House Bill No. 2, Chapter 1, Acts, First Called Session, Fifty-first Legislature. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. I, § 1.

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

Effective 90 days after June 7, 1955,  
date of adjournment.

**Additional tax; exception; stamps; disposition of revenues**

Sec. 2½. (a) In addition to the tax levied by Section 2 herein, there is hereby imposed a tax of Fifty Cents (50¢) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Fifty Cents (50¢) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(b) Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Act; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package, when the manufacturer of the cigarettes reports and pays the said tax thereon directly to the State.

(c) From the effective date of this Act the net revenue derived from the tax levied under this Section 2½ shall be credited to the General Fund of this State. Provided, no portion of the revenues derived under this Section 2½ shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided further, the net revenues collected under this Section 2½ may be credited daily to the Clearance Fund heretofore referred to in this Act and on the first day of each month following the collection of the net revenues derived under this Section 2½ the said net revenues shall be credited to the General Fund; it being specifically understood that no portion of the said net revenues of this Section 2½ shall remain or be distributed under the provisions governing the said Clearance Fund. Added Acts 1955, 54th Leg., p. 1080, ch. 404, art. I, § 2.

**Cigarette Tax Stamp Board; printing or manufacture and sale of stamps**

Sec. 3. (a) A "Cigarette Tax Stamp Board" composed of the Board of Control of this State, designated hereafter as the "Board" is hereby created and the said Board shall be and is hereby required to design and have printed or manufactured new cigarette tax stamps of such size and denominations and in such quantities as may be determined by the said Board. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes; provided that a different and separate serial number or combination letter and number may be assigned to and printed on the margin of each sheet of stamps, or other methods of identification be adopted as the Board may decide. The printing or manufacturing of the stamps shall be awarded by competitive bid and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the State in the enforcement of the provisions of this Act.

(b) The Board, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit at a discount of four per cent (4%) of three-fourths ( $\frac{3}{4}$ ) of the face value; provided, that no discount shall be allowed to out-of-state purchasers residing in the states that do not give discounts on cigarette tax stamps purchased from said states by Texas cigarette distributors; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same, such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller, setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provided further, that every distributor shall cause to be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon, before any such distributor sells, offers for sale, or consumes, or otherwise distributes or transports the same.

(c) The State Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued prior to such change in denomination and in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps for cigarette tax stamps of the new denomination. After the effective date of this Act, every person having in his possession stamps of the old denomination shall send them to the Treasurer for exchange at face value for stamps of the new denomination. Such exchange shall be made within thirty (30) days after the effective date of this Act, and it shall be unlawful for any person to have in his possession any stamps of the old denomination after the expiration of thirty (30) days from the effective date of this Act. It shall further be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old denomination are affixed. After the expiration of thirty (30) days from the effective date of this Act, stamps of the old denomination shall be void, provided, that stamps removed from cigarettes determined by the Comptroller to be unsalable may be redeemed under rules and regulations promulgated or hereafter promulgated by the Comptroller. Every retail dealer and wholesale dealer having cigarettes to which stamps of the old denomination are affixed in his stock in quantities of two thousand (2,000) or more on the effective date of this Act shall immediately inventory the same and file a report of such inventory to the Comptroller and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the amount of additional tax due on such cigarettes computed at the new rate provided in this Act. Such retail dealer or wholesale dealer shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller.

(d) All funds credited to the State Hospitals and Special Schools Building Fund under this Act are hereby appropriated to the Board for Texas State Hospitals and Special Schools for the purpose of constructing, repairing and equipping such buildings as in the opinion of the Board are necessary to the proper care of those committed or to be committed to such hospitals and special schools according to the law. Provided, however, the fees paid to an architect shall not exceed six per cent (6%) for the

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

plans, specifications and supervisions of said buildings and all contracts made for and the final acceptance in connection with such construction other than the plans and specifications, shall be subject to the review and approval of the Board of Control.

(e) All unexpended balances of funds appropriated to the said Board existing at the end of this or any succeeding biennium shall revert and be returned to the State Hospitals and Special Schools Building Fund.

(f) The Board is hereby authorized to change the design of the stamps as often as it may deem such change necessary to the best enforcement of the provisions of this Act, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided that whenever a change is made in the design of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of the issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of a new design; provided, it shall be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old design are affixed after sixty (60) days from the date of issue of a new design; provided further, that after sixty (60) days from the date of issue of any new design of stamps the old design shall be void and cigarettes with stamps of the old design affixed to the individual package shall, for the purposes of the enforcement of the provisions of this Act, be considered as cigarettes without stamps affixed thereto. It shall be the duty of the Treasurer upon receipt of any new design of stamps authorized to be printed by the Board to designate the date of issue of such new design by the issuance of a proclamation and the date of such proclamation shall be the date of issue of the new design of stamps.

Any person who shall have in his possession any cigarette tax stamps of the old design after sixty (60) days from the date of issue of a new design of stamps shall be guilty of a felony and shall be punished as set out in Section 26 of this Act.

(g) Provided that any cigarette tax stamps may be exchanged only when proof satisfactory to said Treasurer is furnished that any stamps offered to said Treasurer in exchange were properly purchased and paid for by the person offering to exchange such stamps; provided, further, that stamps which are effaced or mutilated in any manner may be refused for acceptance in exchange by said Treasurer.

The Treasurer shall keep a record of all stamps sold by him or under his direction, of all stamps exchanged by him and of all refunds made on stamps purchased.

(h) Orders for cigarette tax stamps shall be sent direct to the Treasurer and it shall be the duty of the Treasurer to invoice the stamps ordered to the purchaser upon a form invoice to be prescribed by the Treasurer, which invoice shall be issued in triplicate and numbered consecutively. The invoice shall show the date of sale, the name and address of purchaser, the number of stamps and their serial numbers, the denomination and value of stamps so purchased. The invoice shall be signed by the Treasurer and the original sent with stamps to the purchaser; the duplicate of the invoice shall be sent to the Comptroller and the triplicate kept by the Treasurer; provided further, that the purchaser of said stamps shall hold the said invoice for a period of two (2) years for inspection at



all times by the Comptroller and the Attorney General. No stamp affixed to a package of cigarettes shall be cancelled by any letter, numeral or any other mark of identification or otherwise mutilated in any manner that will prevent or hinder the Comptroller in making an examination as to the genuineness of said stamps.

(i) Stamps in unbroken sheets of one hundred (100) stamps may be exchanged, with the Treasurer only, for stamps of a different denomination. Provided further, that the Treasurer shall be authorized to make refunds on unused stamps in unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund. Such refund shall be made from revenue derived from this Act before such revenue is allocated as herein provided.

This section shall supersede the provisions of the Section 3 contained in subdivision (b) of Section 2 of House Bill No. 2, Chapter 1, Acts, First Called Session, Fifty-first Legislature. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. I, § 3.

**Art. 7047l—1. Radios and television sets; excise tax on sales****Definitions**

Section 1. The following words, terms and phrases shall, for all purposes of this Act, be defined as follows:

(a) "Radios" shall mean the apparatus or devices commonly known and sold as radios or radio receiving sets and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive oral, musical and similar sound broadcasts transmitted by radio broadcasting stations.

(b) "Television Sets" shall mean the apparatus or devices commonly known and sold as television sets or TV sets, and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive television broadcasts transmitted or projected to such sets by television broadcasting stations or systems.

(c) "Retailer" shall mean and include every person in this State who manufactures, produces, or in any other manner acquires or possesses radios and television sets for the purpose of making a resale, use, or distribution of the same in this State to the user, and it shall also include every person in this State who ships, transports or imports any radio or television set into this State and makes the first distribution of, use by, or sale to the user of same in this State.

(d) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency, or receiver.

(e) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling radios and/or television sets within this State. If any distributor shall sell, use or distribute a radio or television set as a gift, award or reward to any person not holding a valid permit as required by this Act, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State of Texas, at the time and in the manner herein provided for a retailer, the tax on such radio and television set.

(f) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

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

(g) "Retail Sale" shall mean any transfer, exchange or barter of a radio or television set, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of radio or television sets in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State of any radio or television set to the user which has been imported or brought into the State, or which has been manufactured, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been previously paid thereon in Texas.

(h) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title to a radio or television set is passed to user.

(i) "Use" shall mean the keeping or retention in this State of any radio or television set by the user for the purpose of viewing or showing any broadcast received by or projected to such radio or television set by any broadcasting station or system, or the exercise of any right or power over any such radio or television set incident to the ownership thereof. The term "use" shall not include the storing, keeping, or retention of radio or television sets in any place of business where radios or television sets are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include radio or television sets which are crated and stored in Texas for sale and delivery outside the State of Texas.

(j) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any radio and/or television set by the user, and without any deductions being made therefrom on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for trade-ins. However, the financing charges on installment sales, any reasonable installation charges, service contracts or antennas, when invoiced separately and apart from the retail selling price of the radio and/or television set, shall not be considered a part of the retail sale price.

(k) "User" shall mean and include every person who purchases, uses or acquires in any other manner a radio or television set for his own use in Texas and does not purchase or acquire same for the purpose of resale.

**Rate of tax; collection; report and payment of taxes collected;  
exemption from tax; rules and regulations**

Sec. 2. (a) There is hereby levied and shall be collected and paid upon the sale, distribution, or use of radios and television sets in this State an excise tax equal to two and two tenths per cent (2.2%) of the retail sale price of each such radio or television set sold, distributed or used in Texas.

Every retailer who makes a sale or distribution of a radio or television set in Texas to the user shall add the amount of said tax to the selling price which said tax shall be collected from the purchaser or recipient of such radio or television set at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas at the time and in the manner hereinafter provided.

From and after the effective date of this Act every person who imports or in any other manner acquires for use in Texas a radio or television set upon which said tax has not been theretofore paid to the State of Texas shall, for the purposes of this Act, be constituted as a retailer and shall report and pay said tax, equal to two and two-tenths per cent (2.2%) of the retail sale price thereof, to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed herein shall not apply to (1) radios used or acquired for use by police officers or other law enforcement agencies to receive short-wave broadcasts, (2) radios constructed by persons commonly known and referred to as "Hams" to receive short-wave broadcasts, and (3) radios installed in new motor vehicles upon which a tax imposed by Chapter 184, Article VI, Acts of the Regular Session of the Forty-seventh Legislature, as amended,<sup>1</sup> has been paid or is required to be paid.

(b) It is the intent of this Act that the tax herein, as measured by two and two-tenths per cent (2.2%) of the retail sale price of radios and television sets in Texas, shall constitute an excise tax imposed upon persons using said radios or television sets to receive broadcasts in this State, and the granting of a permit to retailers to collect tax or taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event this Act is in conflict with the Constitution of the United States or any Federal law, with respect of the tax levied on the sale, distribution, or use of radios and television sets in this State, then it is hereby declared to be the intention of this Act to impose the tax levied herein upon the first subsequent sale, distribution, or use of said radios and television sets which may be subject to being taxed.

(d) The tax imposed herein shall be in lieu of any other excise tax imposed by the State of Texas or any political subdivision thereof on the sale, distribution, or use of radios and television sets.

(e) The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not inconsistent with this Act, for the enforcement of the provisions of this Act and the collection of the revenues levied hereunder.

<sup>1</sup> Article 7047k.

**Quarterly payments and reports to Comptroller; audit and additional penalty; excess payments**

Sec. 3. (a) Every retailer who shall be required to collect the tax levied by this Act upon the sale or distribution of radios and television sets in this State, or who shall be required to pay the tax levied herein upon any radio or television set used by said retailer, shall upon the 20th of every fourth calendar month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, the amount of such tax required to be collected during the previous quarter, and the amount of tax required to be paid upon any radio or television set used by said retailer during said preceding quarter, and at the same time, such retailer shall make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date said report was executed, the name and address of said retailer, and the quarter which the report covers, and which report shall show separately by units and value in money the radios and television sets on hand at the beginning and at the end of the quarter, and complete information on all radios and television sets handled during the quarter, including value of radios and television sets received in interstate commerce, value of radios and television sets purchased or received in intrastate commerce, reflecting separately the number of units and value received with the tax paid and the number and value received without the tax having been paid, radios and television sets and value manufactured or assembled in Texas, radios and television sets and value sold in interstate commerce, radios and television sets and value returned to the manufacturer, radios and television sets

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

and value lost by fire or other accident, and radios and television sets and value used for taxable purposes by the retailer and his representatives. Provided that where a qualified retailer has not sold, used or distributed any radio or television set during any quarter or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said quarterly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report shall attach tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any radio and/or television set, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses included by the Comptroller in such audit.

(c) When it shall appear that a retailer to whom the provisions of this Act shall apply has erroneously reported and paid more taxes than were due the said State of Texas upon any radios and television sets, during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such retailer for the current period with the total amount of taxes so erroneously paid. Such credit shall be allowed before any penalty and interest shall be applicable.

**Collections by retailer for benefit of state; punishment for  
violations by retailer**

Sec. 4. (a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Act.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Act, on or before the date such payment is due as provided by this Act, such retailer or such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and jail imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Act by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Act, such director, officer, agent, em-

ployee, trustee, receiver, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and jail imprisonment. Venue of prosecution under this Section shall be in Travis County, Texas, or in the County in which the offense occurs.

**Application for retailer's permit; filing; form and requisites; issuance of permit; cancellation or suspension of permit**

Sec. 5. (a) From and after the effective date of this Act, all retailers of radios and television sets in this State now engaged, or who desire to become engaged, in the sale, use, or distribution of radios and television sets upon which the tax levied herein is required to be paid, shall file a duly acknowledged application for a radio and television retailer's permit with the Comptroller on a form prescribed by him, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such retailer transacts or intends to transact such business as retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or postoffice addresses. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use, or distribution of radios and television sets until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every retailer a nonassignable, consecutively numbered permit authorizing the sale, use, or distribution of radios and television sets in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of radios and television sets, or engage in selling radios and television sets in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Act, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, use, or distribute radios and television sets upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any radio and television set tax, penalty, or interest under the provisions of this Act.

**Bond of retailer; deposit in lieu of bond**

Sec. 6. (a) Before any permit shall be issued and before engaging in the sale, use, or distribution of radios and television sets, upon which a tax is required to be paid, in Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the

Comptroller but in no event shall said bond be less than One Hundred Dollars (\$100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Act, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of radios or television sets by said retailer, and all costs, penalties, and interest provided in this Act, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than three (3) times the highest tax said retailer has collected and paid to the State for any month during preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, a radio or television set and pays the tax to the State of Texas forthwith and before said radio and television set is used to receive broadcasts in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said units in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller as herein provided.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Act provided, the Comptroller shall proceed

to cancel the permit of said retailer in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

**Preferred lien; security for taxes, penalties, interest and costs**

Sec. 7. All taxes, penalties, interest and costs due by any retailer under the provisions of this Act and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

**Record of purchases and sales; inspection by Comptroller and Attorney General**

Sec. 8. Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete and well-bound book record of all purchases and sales of radios and television sets, and his records shall show the date of receipt, and name and address of the person from whom purchased, the means of delivery, and the quantity in units and value of all such radios and television sets. Also it shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer, and inventories on the first of each month.

**Inspection of premises; examination of books**

Sec. 9. For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where radios and television sets are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing radios and television sets. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

**Cancellation or refusal to issue, extend or reinstate retailer's permit; appeal**

Sec. 10. The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance,

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extension, or reinstatement of any radio and television retailer's permit as provided under the terms of this Act, to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Act, including any of the following offenses, which may be applicable to such permittee: (a) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or records required to be kept or any books or records authorized to be audited by the provisions of this Act; (b) failure to file any return or report required under the provisions of this Act; (c) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Act; (d) failure to keep any books and records for the period and in the manner required to be kept; (e) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (f) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (g) the engaging in any business requiring a permit under the the provisions of this Act, without obtaining and possessing a valid permit.

Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit, or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Section, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by preceding reports filed by said permittee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use, or distribution of radios and television sets in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date



of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

**Judicial proceedings to enforce; reports or audits as evidence;  
comptroller's certificate as evidence**

Sec. 11. (a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Act, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative, or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of radios and television sets by such retailer or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from said books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered or sold radios and television sets, or from the books and records of any transportation agency, who has transported any of said products, such report or audit shall be admissible in evidence in such proceedings, and shall be prima-facie evidence of the contents thereof; provided, however, that the prima-facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Act, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima-facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents, and the same provision shall apply to any bond or other instrument referred to herein.

**Penalties for violations; venue of suits or proceedings**

Sec. 12. If any person affected by this Act (a) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Act, or (b) shall fail to keep for the period of time provided herein any books or records required, or (c) shall make false entry or fail to make entry in the books and records required to be kept, or (d) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (e) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any books or records, incident to the conduct of his business that may be kept, or (f) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (g) shall refuse to permit the Comptroller, or his authorized repre-

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sentatives, to inspect any premises where radios and television sets are produced, made, assembled, stored, transported, sold, or offered for sale or exchange, or (h) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed or (i) shall fail or refuse to comply with any provision of this Act or shall violate the same, or (j) shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time prescribed by law, said retailer shall forfeit to the State two per cent (2%) of the amount due; and if said taxes are not remitted or paid within twenty (20) days from the date due, an additional penalty of eight per cent (8%) shall be forfeited. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Act, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

#### Allocation and disposition of taxes collected

Sec. 13. Before any diversion or allocation of the radio and television tax collected and paid under the provisions of this Act is made, two per cent (2%) of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Act, and so much of said proceeds of two per cent (2%) of the radio and television tax paid quarterly as may be needed in such administration and enforcement, be and is hereby appropriated for said purpose, provided, however, that should the Legislature make detailed appropriations from such fund for enforcement purposes such appropriation shall control.

Except as herein provided in this Act, one-fourth (1/4) of net revenue derived from this Act shall go to, and be placed to the credit of, the Available Free School Fund; and three-fourths (3/4) of the net revenue derived from this Act shall go to and be placed to the credit of the Clearance Fund, established by Article XX of House Bill No. 8, Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941, as amended.

#### Penalties for violations of Act

Sec. 14. (a) Whoever shall make a retail sale, distribution, or use of radios and television sets upon which a tax is required to be paid by law, without then and there holding a valid retailer's permit issued by the Comptroller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required by law to be made and delivered to said Comptroller, or (c) whoever shall knowingly make and deliver to the Comptroller any false or incomplete report required by law to be made and delivered to the Comptroller by a

retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time required by law any books and records required to be kept by a retailer, or (e) whoever shall knowingly make any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of radios and television sets for a period of six (6) months from the date of such conviction.

#### **Additional penalties**

Sec. 15. Any person who shall violate, fail or refuse to comply with any provision of this Act for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

#### **Conflicting laws repealed; saving clause**

Sec. 16. Any and all provisions of law which now impose an excise tax upon gross receipts from the sale of radios and television sets in this State are hereby repealed, it being the intent hereof to repeal only such parts of said laws that are applicable to radios and television sets and this Act shall prevail over all other laws or parts of laws that conflict herewith. Provided, however, that all taxes, penalties and interest accruing to the State of Texas by virtue of the repealed provisions of law, before the effective date of this Act, shall be and remain valid and binding obligations due the State of Texas, and all such taxes now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State of Texas. And further provided, that no offense committed and no fine or penalty incurred under such above-repealed provisions of law before the effective date of this Act shall be affected by the repeal herein of any such laws, but the punishment of such offense and the recovery of such penalties and fines shall take place as if the provisions of law so repealed had remained in force. Acts 1955, 54th Leg., p. 1607, ch. 522.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 17 of the Act of 1955, was a  
severability clause. Section 18 made the  
Act effective Sept. 1, 1955.

#### **Art. 7048b. Contracts for accomplishment of plans and programs**

The Commissioners Court of any county in the State may enter into contracts for the accomplishment of plans and programs for flood control and soil conservation with the Federal Soil Conservation Service, State Soil Conservation Districts, State Extension Service, Conservation and Reclamation Districts, Drainage Districts, Water Control and Improvement Districts, Navigation Districts, Flood Control Districts, Levee Improvement Districts and Municipal Corporations, as provided in Section 5 of Chapter 464 of the Acts of the Fifty-first Legislature, 1949,<sup>1</sup> and the responsibility for carrying out such plans and the expenditure of funds

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

of the county and such agencies, districts and municipal corporations may by such agreement be divided between the parties or delegated to either the county or to one or more of said agencies, districts and municipal corporations, and such contracts may be for a specified term of years or until certain plans or programs have been accomplished, provided further that in the event any such agency, district or municipal corporation shall issue its bonds payable from and secured by revenues to be derived from any such contract it may be provided therein that such contract will continue in effect until such bonds, or any refunding bonds issued in lieu thereof, have been fully paid. Any contracts of the kind authorized hereby, which have heretofore been entered into, shall be valid and binding contracts. Acts 1951, 52nd Leg., p. 140, ch. 84, § 1; Acts 1955, 54th Leg., p. 1071, ch. 402, § 1.

<sup>1</sup> Article 7048a, § 5.

Emergency. Effective June 6, 1955.

Section 2 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER TWO—TAXES BASED UPON GROSS RECEIPTS

Art.

7065b—14a. Liquefied gas and other liquid fuels; excise tax; amount; transit companies, application to [New].

### Art. 7060a. Occupation tax on certain services in connection with oil wells

Section 1. (a) The term "person" shall for the purpose of this Article mean and include individuals, partnerships, firms, joint stock companies, associations and corporations.

(b) An occupation tax at the rate and in the manner hereinafter provided is hereby imposed upon every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation with the use of any tools, instruments or equipment, whether electrical or mechanical, owned, controlled, or furnished by such person, or by means of any chemical, electrical or mechanical processes when such service or duty is performed in or at any oil or gas well during and in connection with the drilling and completion, or reworking or reconditioning of any such well, in (1) cementing the casing seat of any oil or gas well, or (2) shooting, fracturing or acidizing the sands or other formations of the earth in any such well, or (3) surveying or testing such formations or the contents thereof, in any such well through the use of instruments or equipment at least a portion of which instruments or equipment is located within the well bore when the survey or test is made; provided, however, that nothing herein contained shall be construed or held to impose a tax upon the business of drilling or reworking any oil or gas well, or upon any service incidental thereto performed by persons engaged in such drilling or reworking business.

The tax hereby imposed shall be at the rate of 2.42% of the gross amount received from the services or duty specified above after deducting from such gross amount the reasonable value at the well of any material used, consumed, expended in or incorporated into the well. The amount received from such taxable services during the calendar month next preceding shall be reported under oath by the person subject to the tax

imposed hereby on a form prescribed and furnished by the Comptroller and the tax thereon shall be paid to the Comptroller at his office in Austin, Texas, on or before the 20th day of each month. As amended Acts 1951, 52nd Leg., p. 695, ch. 402, § XIV; Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, Art. V, § 1.

Emergency. Effective April 14, 1954.  
Section 2 of Art. V of the act of 1954, ch. 2 read as follows:

"Sec. 2. All obligations, taxes, penalties and interest which have accrued to the State of Texas by virtue of the above Section as it existed before the passage of this Act, shall be and remain valid and binding obligations to the State of

Texas, and are expressly preserved to the State.

"The passage of this Act shall not affect offenses committed or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offenses."

**Art. 7065b—2. Motor fuel; excise tax on each gallon; amount; interstate commerce; in lieu of other motor fuel taxes**

(a) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of motor fuel in this State an excise tax of Five Cents (5¢) per gallon or fractional part thereof so sold, distributed, or used in this State. Every distributor who makes a first sale or distribution of motor fuel in this State for any purpose whatsoever shall, at the time of such sale or distribution, collect the said tax from the purchaser or recipient of said motor fuel, in addition to his selling price, and shall report and pay to the State of Texas the taxes collected at the time and in the manner as hereinafter provided. Every such distributor shall also be liable to the State of Texas for the said tax of Five Cents (5¢) per gallon on each gallon of motor fuel or fractional part thereof used or consumed by him, and shall report and pay said tax as hereinafter provided. In each subsequent sale or distribution of motor fuel upon which the tax of Five Cents (5¢) per gallon has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said motor fuel for the purpose of generating power for the propulsion of any motor vehicle upon the public highways of this State.

It is the intent and purpose of this Article to collect the tax levied herein at the source of said motor fuel in Texas or as soon thereafter as the same may be subject to being taxed. No person, however, shall be required to pay a tax on motor fuel brought into this State in a quantity of thirty (30) gallons or less in a fuel tank, with a capacity of not more than thirty (30) gallons, when said fuel tank is connected with and feeds the carburetor of said motor vehicle and the motor fuel contained therein is used in the operation of said motor vehicle and not otherwise. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. II, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

**Art. 7065b—5. Sales without payment of tax for further refining, exporting and certain other purposes**

(a) The Comptroller may authorize and permit any person producing natural gasoline, casing-head gasoline, drip gasoline, or any derivative or condensate of crude oil or natural gas, in their natural and unrefined state, or any person operating a pipeline as a common carrier, or any licensed distributor of motor fuel in this State to make a sale, resale, or distribution of such products or of motor fuel, without collecting the tax levied herein, to any distributor holding a valid permit under the terms of this Article, when such distributor purchasing the same has, in the

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opinion of the Comptroller, a satisfactory and sufficient bond, and when the product is sold and purchased for the purpose of exportation, further refining, further processing, further treating, blending or compounding with other products to produce motor fuel, or for resale to the Federal Government for the exclusive use of said Federal Government, or for resale for some one (1) or more of such purposes, and not otherwise. If the distributor purchasing said products without paying said tax shall thereafter sell, or distribute said products, either alone or when compounded with other products, in this State, for any purpose other than that hereinabove provided, he shall be required to collect and pay over to the State of Texas at the time and in the manner herein provided, the tax at the rate of Five Cents (5¢) per gallon upon each gallon or fractional part thereof sold or distributed. Said distributor shall also be liable for and shall be required to pay to the State of Texas said tax at the aforesaid rate upon each gallon of such motor fuel used by said distributor. Failure or refusal to collect and pay over to the State of Texas the tax on motor fuel so sold or distributed by said distributor, or to pay the tax on motor fuel used by said distributor, shall subject him to all the liabilities, penalties, forfeitures, interest and costs provided in this Article.

This section shall supersede the provisions of House Bill No. 688 [Chapter 316], Acts, Regular Session, Fifty-fourth Legislature.<sup>1</sup> As amended Acts 1955, 54th Leg., p. 849, ch. 316, § 1; Acts 1955, 54th Leg., p. 1080, ch. 404, art. II, § 4.

<sup>1</sup> Acts 1955, 54th Leg., p. 849, ch. 316, § 1, art. 7065b—5(a).

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 2 of Acts 1955, 54th Leg., p.  
849, ch. 316, repealed conflicting laws.  
Section 3 was a severability clause.

#### Art. 7065b—8. Lien

All taxes, penalties, interest and costs due by any distributor under the provisions of this Article and all taxes collected and required to be paid by said distributor to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include refinery, blending plants, storage tanks, warehouses, office building and equipment, tank trucks or other motor vehicles, stocks on hand of every kind and character whatsoever used or usable in such business, including crude oil or other materials for the manufacture, refining, blending, or compounding of motor fuels and the refined products therefrom, and the proceeds from the sale of such materials and refined products, including cash on hand and in bank, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated devoted to such use, and each tract of land on which such refinery, blending plant, tanks, or other property is located, or which is used in carrying on such business.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle," as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interests, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Section as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any distributor, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such distributor, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission. As amended Acts 1955, 54th Leg., p. 1235, ch. 494, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 4 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

Sec. 5 provided that in the event that any provisions of this Act conflict or are inconsistent with the provisions of any other law, the provisions of this Act shall take precedence over such conflict or inconsistent provision and shall prevail.

**Art. 7065b—14. Liquefied gas and other liquid fuels; tax; permits; bonds; records; payment of tax; reports; enforcement; registration of vehicles**

(a) There is hereby levied and imposed an excise tax of Five Cents (5¢) per gallon on all "liquefied gas" used, or delivered into a fuel tank for use in propelling a motor vehicle upon the public highways of Texas, and Six and Five-tenths Cents (6.5¢) per gallon on all other liquid fuels used, or delivered into a fuel tank for use, in propelling a motor vehicle upon the public highways of Texas, and every user-dealer who sells and delivers liquefied gas or other liquid fuels into a fuel tank or tanks used to supply fuel for the propulsion of any licensed motor vehicle or any other motor vehicle being operated or intended to be operated upon the public highways of this State shall, at the time of such sale and delivery, collect the said tax at the rate or rates imposed from the purchaser or recipient of said special fuels, in addition to his selling price, and shall report and pay to the State of Texas the tax so collected at the time and in the manner as herein provided. Every user-dealer shall likewise report and pay to the State of Texas, the tax at the rate or rates imposed hereinabove on each gallon of liquefied gas or other liquid fuels, hereinafter referred to as special fuels, acquired in any manner tax free by said user-dealer and thereafter used, or delivered into a fuel tank for use, in propelling a motor vehicle upon the public highways of Texas.

It is the intent and object of this Section that the tax or taxes imposed herein on special fuels, as that term is defined, shall be paid by the persons using or consuming said special fuels to generate power for the propulsion of motor vehicles upon the public highways of this State, and the granting of a permit to user-dealers to collect said excise taxes for and in behalf of the State of Texas shall be deemed to establish a fiduciary relationship. Provided, however, that no tax shall be imposed upon the sale or delivery of special fuels to the United States Government for its exclusive use.

Provided that no tax shall be paid on special fuels brought into Texas in quantities of not more than thirty (30) gallons in a fuel tank connected to and feeding the carburetor of a motor vehicle entering the State; if said quantities exceed thirty (30) gallons, the tax and penalties shall apply to

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the full amount being used on the Texas highways. Provided further, that a licensed user-dealer may deduct from his report and tax remittance the tax on one per cent (1%) of the taxable gallonage to cover the expenses of collecting the taxes, keeping records, making reports and furnishing bond.

Provided, however, the tax free importations of special fuels in fuel tanks shall not apply to motor vehicles operating over the Texas highways for hire or compensation or for commercial purposes, and it is expressly provided that every person importing special fuels in a fuel tank of a motor vehicle used to transport passengers or merchandise over the Texas highways for hire or compensation, or used on the Texas highways for other commercial purposes, shall qualify as a licensed user-dealer in Texas and shall report and pay the tax on all special fuels imported and used to propel motor vehicles upon the public highways of Texas as hereinafter provided. Such user-dealers shall maintain a complete and accurate record of the total miles traveled in Texas and elsewhere by each motor vehicle using special fuels both within and without the State of Texas, and such other records as the Comptroller may prescribe by rule and regulation. In case it is not practicable for a user-dealer to accurately measure the special fuels in the fuel tank of his motor vehicle when entering the State the Comptroller may determine the gallons of special fuels used in this State by dividing the total miles traveled in Texas by the applicable mileage factor, as hereinafter set forth: For motor vehicles with a gross loaded weight capacity of less than twenty-two thousand five hundred (22,500) pounds, the mileage factor shall be eight (8); for all motor vehicles with a gross loaded weight capacity of twenty-two thousand five hundred (22,500) pounds or more, the mileage factor shall be five (5); for any motor vehicle in which the user-dealer has kept an accurate record acceptable to the Comptroller of the total miles traveled and the total gallons of special fuels used in such travel, the mileage factor shall be the average miles per gallon traveled by said motor vehicle as determined from dividing the total miles traveled in Texas and elsewhere by the total gallons of fuel used in such travel, and the Comptroller is hereby authorized to accept and approve the payment of taxes on such basis.

Provided, however, that all taxes, penalties and interest accruing to the State of Texas before the effective date of this Act by virtue of the amended or re-enacted provisions of Chapter 184, Article XVII, Acts of the Regular Session of the Forty-seventh Legislature, as amended by Chapter 298, Acts of the Regular Session of the Forty-eighth Legislature, as further amended by Section XXII, Chapter 402, Acts of the Regular Session of the Fifty-second Legislature, and all taxes, penalties and interest accruing under the provisions of pre-existing gasoline, motor fuel or special fuels tax laws, prior to the effective date of this Act, shall be and remain valid and binding obligations due the State of Texas, and such taxes, penalties and interest are hereby declared to be legal and valid obligations to the State, and all liens and other obligations created and all bonds executed to secure their payment under the terms of said amended or re-enacted Act are hereby declared to be and shall remain in full force and effect. It is further provided, that no offense committed and no fine, forfeiture, or penalty incurred under such above amended and re-enacted Act before the effective date of this Act, shall be affected by the amendment herein of any such laws, but the punishment of such offense and recovery of such fines and forfeitures shall take place as if the law amended and re-enacted had remained in force. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. II, § 2.

Effective 90 days after June 7, 1955,  
date of adjournment.



(g) All taxes, penalties, interest, and costs due by any user-dealer to the State under the provisions of this Article, and all taxes collected and required to be paid by said user-dealer to the State shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all of the property of any user-dealer devoted to or used in his business as a user-dealer, which property shall include all plants, storage tanks, warehouse, office buildings and equipment, tank trucks or other vehicles, stocks on hand of every kind and character used or usable in such business, and the proceeds from the sale of such stocks and materials, including cash on hand and in banks, accounts and notes receivable and all other property of every kind and character whatsoever and wherever situated devoted to such use and including each tract of land on which such business and the property used in carrying on such business is located.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle," as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interest, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Section as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any user-dealer, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such user-dealer, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission. As amended Acts 1955, 54th Leg., p. 1235, ch. 494, § 2.

Effective 90 days after June 7, 1955,  
date of adjournment.

**Art. 7065b—14a. Liquefied gas and other liquid fuels; excise tax; amount; transit companies, application to**

Provided, however, that in lieu of the taxes hereinabove levied by Subdivision (a) of Section 2<sup>1</sup> hereof and by Section 14<sup>2</sup> hereof, there shall be and are hereby levied, excise taxes as follows:

(a) An excise tax of Four Cents (4¢) per gallon or fractional part thereof upon the first sale, distribution or use of motor fuel in this State; and

(b) An excise tax of Four Cents (4¢) per gallon or fractional part thereof on all users of liquefied gases, and of Six Cents (6¢) per gallon or fractional part thereof on all users of other liquid fuels, upon the use

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

of such liquefied gases and other liquid fuels within this State only when such liquefied gases and other liquid fuels are used in an internal combustion engine for the generation of power to propel motor vehicles upon the public highways of this State.

The taxes levied herein shall be applicable "only" when such motor fuel, liquefied gases and other liquid fuels are used or consumed, or are to be used or consumed by a transit company (a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (b) which holds a franchise from such city or town; (c) whose rates are regulated by such city or town; and (d) which pays to such city or town a tax on its gross receipts. Said taxes shall be collected and paid in the same manner as the taxes levied by Subdivision (a) of Section 2 and by Section 14 hereof.

Where the first sale, distribution or use of motor fuel, or the use of liquefied gases or other liquid fuels, in this State, is to or by a transit company, and such company shall furnish to the distributor or seller, or to the Comptroller of Public Accounts, as the case may be, an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it will use such motor fuel, liquefied gases or other liquid fuels only in the operation of its transit vehicles, the distributor or seller, or the Comptroller of Public Accounts, as the case may be, shall collect from such transit company only the taxes levied herein.

Where the first sale or distribution of motor fuel in this State is not to a transit company, with the result that the distributor or seller has collected the tax levied by Subdivision (a) of Section 2 hereof, but such motor fuel is thereafter sold or distributed to, or used by, a transit company, such transit company may obtain a refund in the amount of One Cent (1¢) per gallon or fractional part thereof of such motor fuel by conforming to the refund procedure set forth in Section 13<sup>3</sup> hereof, and by furnishing to the Comptroller of Public Accounts an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it has used, or will use, such motor fuel only in the operation of its transit vehicles. Added Acts 1955, 54th Leg., p. 1080, ch. 404, art. II, § 3.

<sup>1</sup> Article 7064b—2.

<sup>2</sup> Article 7064b—14.

<sup>3</sup> Article 7064b—13.

**Art. 7065b—14b. Record of certificates filed kept by Highway Department; fees**

The State Highway Department shall keep a record of the certificates filed by the Comptroller of Public Accounts and it shall charge a fee of One Dollar (\$1.00) and no more for answering any inquiry directed to its office as to certificates filed by the Comptroller of Public Accounts under the terms of this Act. Acts 1955, 54th Leg., p. 1235, ch. 494, § 3.

Effective 90 days after June 7, 1955,  
date of adjournment.

**Art. 7066b. Motor bus companies; motor carriers; contract carriers; occupation tax**

(aa) No suit shall be brought for the collection of the taxes levied by the preceding Section 1(a) unless instituted within two (2) years after the same shall have become delinquent; provided however this shall not affect or be applicable to any law suit pending on the effective date of this Act. Added Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, Art. VI, § 1.

Emergency. Effective April 14, 1954.

Art. 7083a. Allocation of revenue derived from certain occupations and gross receipts taxes; appropriations and allocations for certain funds; construction of farm to market roads

(1) There shall be allocated, transferred and credited to the special fund in the Treasury known as the "Blind Assistance Fund" for the purpose of providing assistance to the blind in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, Forty-sixth Legislature, 1939, and any amendments thereto,<sup>1</sup> the sum of One Million, Two Hundred Thousand Dollars (\$1,200,000) for the fiscal year beginning September 1, 1955, and for each fiscal year thereafter, said amount to be provided for on a basis of equal monthly payments payable on the first day of each calendar month. As amended Acts 1955, 54th Leg., p. 1036, ch. 392, § 1.

<sup>1</sup> Article 695c.

(2) There shall be allocated, transferred and credited to the special fund in the Treasury known as the "Children's Assistance Fund" for the purpose of providing assistance on behalf of dependent children in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, Forty-sixth Legislature, 1939, and any amendments thereto, the sum of Three Million, Six Hundred Thousand Dollars (\$3,600,000) for the fiscal year beginning September 1, 1955, and for each fiscal year thereafter, said amount to be provided on the basis of equal monthly payments payable on the first day of each calendar month. As amended Acts 1955, 54th Leg., p. 1036, ch. 392, § 1.

(4) After the above allocations and payments have been made from such "Clearance Fund" there shall be allocated, transferred and credited to the special fund in the Treasury known as the "Old Age Assistance Fund" for the purpose of providing assistance to the needy aged in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, Forty-sixth Legislature, 1939, and any amendments thereto, such sum as is required, when taken together with any other funds received from any other sources by reason of other State laws still in effect, which will total Thirty-seven Million, Two Hundred Thousand Dollars (\$37,200,000) for the fiscal year beginning September 1, 1955, and for each fiscal year thereafter, said allocation to be provided in monthly installments, one (1) installment being payable on the first day of each calendar month.

If, on the first day of any calendar month, the amount on that day transferred from the "Clearance Fund" to the "Blind Assistance Fund," the "Children's Assistance Fund," and the "Old Age Assistance Fund" is not sufficient to provide the allocation from State funds as herein provided for that month, then in that event, there shall be deposited to the credit of the "Blind Assistance Fund," the "Children's Assistance Fund," or the "Old Age Assistance Fund" from the first revenues collected after the first day of the month, which would otherwise go into the General Revenue Fund, such sum, as with the balance on hand in the fund plus the payment from the "Clearance Fund," will make available in the various funds the total amount of State funds for that month as is herein provided.

The allocations shall be and are in lieu of all other State allocations for aid to the blind, aid to dependent children, and old age assistance, and such allocations and appropriations shall not include any funds received from the Federal Government.

None of the money herein allocated for old age assistance payments, aid to the blind payments, or aid on behalf of needy children shall be used for the purpose of paying assistance to any person who disposes of property, either personal or real, for the purpose of qualifying or increasing need

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

for assistance, provided that the property, if still available, would affect either eligibility or the amount of the assistance payment. As amended Acts 1955, 54th Leg., p. 1036, ch. 392, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 2 of the amendatory Act of 1955  
provided that the provisions of this act  
shall become operative Sept. 1, 1955.

(4-c). The allocations provided for in Section 2 of Article 7083a, Vernon's Texas Civil Statutes (Annotated), shall be made in the following manner:

A. Of the amount in the Clearance Fund the following allocations shall be made on the first of each month, after the amounts for enforcement and the one-fourth ( $\frac{1}{4}$ ) to the Available School Fund are taken out:

- First. Sec. 2. (4-b) Farm to Market Road Fund
- Second. Sec. 2. (1) Blind Assistance Fund
- Third. Sec. 2. (2) Children Assistance Fund
- Fourth. Sec. 2. (3) Teacher Retirement System
- Fifth. Sec. 2. (4) Old Age Assistance

B. The cash balance in the fund on the fifth (5th) working day of the month shall be allocated on the fifth (5th) working day of the month in the following manner, after the amounts for enforcement and the one-fourth ( $\frac{1}{4}$ ) to the Available School Fund are taken out:

First. Sec. 2 (4-a) Foundation School Fund

Second. Balance to General Revenue Fund. Added Acts 1955, 54th Leg., p. 1080, ch. 404, art. V, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

### CHAPTER THREE—FRANCHISE TAX

#### Article 7084. Amount of tax

(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas, or doing business in Texas, shall, on or before May 1st of each year, pay in advance to the Secretary of State a franchise tax for the year following, based upon that proportion of the stated capital, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures (outstanding bonds, notes and debentures shall include all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue, and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, and it is further provided that this term shall not include instruments which have been previously classified as surplus), as the gross receipts from its business done in Texas bear to the total gross receipts of the corporation from its entire business, which tax shall be computed on the basis of Two Dollars and Twenty-five Cents (\$2.25) per One Thousand Dollars (\$1,000) or fractional part thereof; provided, that such tax shall not be less than Twenty-five Dollars (\$25) in the case of any corporation, including those without capital stock, and provided further that the tax shall in no case be computed on a sum less than the assessed value for county ad valorem tax purposes, of the property owned by the corporation in this State. Stated capital as applied to corporations without stated capital shall mean the net assets of such cor-

poration. As used in this Act, the phrase "stated capital" shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

(2) Corporations, other than those enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, which are required by law to pay annually a tax upon intangible assets, and corporations incorporated only for the purpose of owning or operating street railways or passenger bus systems in any city or town and suburbs thereof, and corporations incorporated only for the purpose of maintaining or owning or operating electric interurban railways, shall be required to hereafter pay a franchise tax equal to one-fifth ( $\frac{1}{5}$ ) of the franchise tax herein imposed against all other corporations under Section (1) herein.

(3) Except as provided in preceding clause (2), all public utility corporations, which shall include every such corporation engaged solely in the business of a public utility as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article, except the same shall be based on that proportion of the stated capital, surplus, and undivided profits, which the gross receipts of the business of said corporation done in this State bear to its total gross receipts instead of the gross assets; and in lieu of the rate hereinbefore prescribed said tax shall be computed on the basis of Two Dollars and Twenty-five Cents (\$2.25) per One Thousand Dollars (\$1,000) or fractional part thereof.

For the purpose of computing the tax of corporations, issuing shares without par value, such shares shall be taken and considered as being of the value actually received at the time of the issuance thereof; and foreign corporations issuing such shares shall furnish the Secretary of State with the same information now required of domestic corporations issuing such shares.

The tax levied herein shall in no case be computed on a sum less than the assessed value, for county ad valorem tax purposes, of the property owned by the corporation in this State.

(4) Corporations engaged partly in the business of a public utility as defined in clause (3) and partly in business embraced in clause (1) shall pay the franchise tax in the following manner: as to those businesses which come under clause (1) the tax shall be computed as provided in clause (1) on that proportion of the entire taxable capital under said clause (1) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation; and to those businesses which come under clause (3) the tax shall be computed as provided in clause (3) on that proportion of the entire taxable capital under said clause (3) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation. The period for which such gross receipts are taken shall be for the same period used in computing the proportion of Texas taxable capital under clauses (1) and (3).

(5) A corporation now required to pay a separate franchise tax for each purpose or business authorized by its charter shall hereafter pay only the tax provided hereunder for one purpose, and, until said corporation adopts the provisions of the Texas Business Corporation Act, it shall, in addition, pay one-fourth ( $\frac{1}{4}$ ) of such amount for each additional purpose named in its charter; provided, however, this Article shall not apply to corporations organized under the Electric Cooperative Corporation Act. Provided further, that this Article does not amend, alter, or change in anywise any provisions of Chapter 86, page 163, Forty-fifth Legisla-

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

ture, Acts, 1937,<sup>1</sup> and provided further that nothing in this Article shall repeal any total exemption from franchise taxes now provided by law. As amended Acts 1951, 52nd Leg., p. 695, ch. 402, § IX; Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, art. III, § 1; Acts 1955, 54th Leg., p. 1080, ch. 404, art. IV, § 1.

<sup>1</sup> Article 1528b.

Effective June 7, 1955, date of adjournment.

Section 2 of Art. III of the amendatory act of 1954, p. 3, ch. 2, read as follows:

"Sec. 2. Section 1 of this Article shall become effective on the first day of May, 1954, if this Act receives sufficient votes to make it effective at that time. In that event, as to the fiscal year May 1, 1954, to May 1, 1955, any corporation owing taxes under this Article shall pay, on or before May 1, 1954, only five-eighths ( $\frac{5}{8}$ ) of the amount of tax levied in Section 1 of this Article; and the remaining three-eighths ( $\frac{3}{8}$ ) of such tax shall be due and payable, and shall be paid on or before September 1, 1954.

"But should Section 1 of this Article not become effective on May 1, 1954, it shall become effective on September 1, 1954.

In that event, as to the fiscal year May 1, 1954, to May 1, 1955, any corporation owing taxes under this Article, shall pay to the Secretary of State on or before September 1, 1954, in addition to the amount already paid on May 1, 1954, an amount equal to one-fourth ( $\frac{1}{4}$ ) of the annual franchise taxes levied in Section 1 of this Article.

"As to the fiscal year May 1, 1954 to May 1, 1955, all corporations paying the minimum tax of Twenty-five Dollars (\$25) shall pay the entire amount on May 1, 1954; and those corporations which have heretofore paid the Twenty-five Dollars (\$25) minimum shall pay such on or before May 1, 1954, and if any excess over the minimum is owed by virtue of Section 1 of this Article, such excess shall be paid on or before September 1, 1954."

#### Art. 7086. 7395 Initial tax to be paid

(1) Whenever a private domestic corporation is chartered in this State or whenever a foreign corporation applying for a permit has theretofore done no business in Texas, its initial tax shall be payable within ninety (90) days after the expiration of one (1) year from the date of the filing of such charter or the granting of such permit, as the case may be, at which time the tax shall be computed according to its first year's business as prescribed by Article 7084, Revised Civil Statutes of Texas, as amended, and at the same time, such corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including April 30th following.

Where such corporation's first year from the filing of its charter or from the granting of its permit ends between January first and May first, there shall also be computed and paid an additional year's tax for the year beginning May first following the end of the first year as above defined, which tax shall be computed from the data contained in the first report filed by such corporation. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. IV, § 2.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 7089. Report of corporation

(1) Except as herein provided all corporations required to pay an annual franchise tax shall, between January first and March fifteenth of each year, make a sworn report, in duplicate, to the Secretary of State, on forms furnished by that officer, showing the condition of such corporation on the last day of the preceding fiscal year. The Secretary of State may for good cause shown by any corporation extend such time to any date up to May first. Said report shall give the cash value of all gross assets of the Corporation, the amount of its authorized capital stock actually subscribed, and the amount paid in, the surplus and undivided profits or deficit, if any, the amount of mortgage, bonded and current indebtedness, the

amount and date of payment of the last annual, semiannual, quarterly, or monthly dividend, the assessed value, for county ad valorem tax purposes of all property of the corporation, real, personal or mixed, owned by the corporation in this State and the county in which assessed for such purposes, the amount of all taxes paid, or due and payable to the State of Texas, or to any county, city or town, school district, road district, or other taxing subdivision of Texas for the preceding tax year, the total gross receipts of such corporation from all sources and the gross receipts from its business done in Texas for the fiscal year preceding, with a detailed balance sheet and income and profit and loss statement in such form as the Secretary of State may prescribe. Where a domestic corporation is chartered in this State or where a foreign corporation which has heretofore done no business in this State and is granted a permit to do business in Texas, it shall file its first report within ninety (90) days from the expiration of one (1) year from the date such charter was filed or permit was granted, as the case may be, showing its condition as of the end of such first year. Any corporation which shall fail or refuse to make its report when due shall be assessed a penalty of five per cent (5%) of the amount of franchise tax due by such corporation which shall be payable to the Secretary of State, together with its franchise tax. Said report shall be deemed to be privileged and not for the inspection of the general public, but a bona fide stockholder owning one (1) or more shares of the outstanding stock of any corporation, may examine such returns upon presentation of evidence of such ownership to the Secretary of State. No other examination, disclosures, or use, shall be permitted of said report except in the course of some judicial proceedings in which the State or any bona fide stockholder is a party or in a suit by the State to cancel the permit or forfeit the charter of such corporation or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws, including the Comptroller of Public Accounts, the State Auditor and the State Tax Commissioner; provided that the Secretary of State, in his discretion, upon good cause shown, may disclose to any interested person the names of the officers and directors and agents for service and the principal office and place of business of any corporation as disclosed by the franchise tax reports. Each report shall be sworn to by either the president, vice-president, secretary, treasurer or general manager, and shall give the name and address of each officer and director. In order to provide a means for service of process to collect any franchise tax or penalties, and in all other cases, each corporation, either domestic or foreign, shall, for such purpose, designate some person residing in this State whose name and address shall be given in each report. The forms hereinbefore prescribed shall contain such other information as the Secretary of State may require; and the Secretary of State shall have the power and authority to make and publish rules and regulations, not inconsistent with any existing laws or with the Constitution of this State or of the United States, for the enforcement of the provisions of this Article. The Secretary of State may require any corporation to furnish such additional information from its books and records as may be necessary in determining the amount of taxes that may be due hereunder. The Secretary of State or his authorized representative, or the State Auditor or his authorized representative, shall have full and complete authority to investigate and inquire into and examine the books and records of any such corporation for the purpose of ascertaining the correctness of its franchise tax liability.

Any foreign corporation doing business in Texas under a permit granted under the laws of this State, or any officer or agent thereof, or any

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

domestic corporation which shall fail or refuse to permit the Secretary of State, or his authorized representative, or the State Auditor or his authorized representative, to examine its books and records, whether the same be situated within this State or any other state within the United States, shall thereby forfeit its right to do business in this State; and its permit or charter shall be cancelled or forfeited. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. IV, § 3.

Effective 90 days after June 7, 1955,  
date of adjournment.

#### Art. 7091. 7399 Failure to pay tax

Any corporation, either domestic or foreign which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, shall thereupon become liable to a penalty of ten per cent (10%) of the amount of such franchise tax due by such corporation. If the reports required by Article 7087 or Article 7089 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth day after notice of delinquency is mailed to such corporation as provided in Article 7092, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, "right to do business forfeited" and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or permit of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this Chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporations were partners. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. IV, § 4.

Effective 90 days after June 7, 1955,  
date of adjournment.

#### Art. 7092. 7400 Notice of forfeiture

The Secretary of State shall notify each domestic and foreign corporation which may be or become subject to a franchise tax under the laws of this State, which has failed to file such report or pay franchise tax on or before the first day of May, that unless such overdue report is filed or such overdue tax together with said penalties thereon shall be paid within thirty (30) days of the mailing of such notice, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation. A record of the date of mailing



such notice shall be kept in the office of the Secretary of State, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Secretary of State at any time prior to the forfeiture of the charter or permit of such a corporation as hereinafter provided, the full amount of the franchise taxes and penalties due by it, together with an additional amount of five per cent (5%) of such taxes for each month, or fractional part of a month, which shall elapse after such forfeiture as a revival fee; provided, that such amount shall in no case be less than Five Dollars (\$5). When such taxes and penalties and the revival fee shall be paid to the Secretary of State, he shall revive the right of the corporation to do business within the State by cancelling the words "right to do business forfeited," upon his record and endorsing thereon the word "revived," and the date of such revival. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Secretary of State within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this by judgment of any court of competent jurisdiction, of the charter of such domestic corporation, or of the permit of such foreign corporation. It shall be the duty of the Secretary of State, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General the names of all corporations, domestic and foreign, whose Chapter, such failure shall constitute sufficient ground for the forfeiture, right to do business within this State shall have been forfeited as hereinbefore provided, and upon receiving such certificate the Attorney General shall forthwith institute suits against such corporations under the provisions of Article 7095, Revised Civil Statutes, as amended. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. IV, § 5.

**Art. 7094. 7403 Corporations exempt**

The franchise tax imposed by this Chapter shall not apply to any insurance company, surety, guaranty or fidelity company, transportation company or sleeping, palace car and dining car company now required to pay an annual tax measured by their gross receipts, or to any corporation organized as a railway terminal corporation and having no annual net income from the business done by it, or to corporations having no capital religious worship or for providing places of burial not for private profit, stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of or to corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity, or to State-chartered building and loan associations, or to any mutual investment company registered under the Federal Investment Company Act of 1940,<sup>1</sup> as from time to time amended, which holds stocks, bonds or other securities of other companies solely for mutual investment purposes. As amended Acts 1951, 52nd Leg., p. 245, ch. 143, § 1; Acts 1955, 54th Leg., p. 1080, ch. 404, art. IV, § 6.

## CHAPTER FOUR—INTANGIBLE TAX BOARD

Art.

7105a. Contract motor carriers operating under permits; intangible assets tax [New].

## Art. 7105a. Contract motor carriers operating under permits; intangible assets tax

Each contract motor carrier operating under a contract motor carrier permit issued by the Railroad Commission of Texas, doing business wholly or in part within this State, whether incorporated under the laws of this State, or of any other state, territory or foreign country, and every other individual, company, corporation, or association doing business of the same character in this State, in addition to the ad valorem taxes on tangible properties which are or may be imposed upon them respectively by law, shall pay an annual tax to the State, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925. The county or counties in which such taxes are to be paid, and the manner of apportionment of the same, shall be determined in accordance with the provisions of Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925. The intangible taxable values of said contract carrier<sup>1</sup> motor carriers shall be apportioned to the counties in or through which they operate in proportion to the distance in miles of the highways traversed by said carriers in each respective county. Acts 1955, 54th Leg., p. 909, ch. 358, § 1.

<sup>1</sup> So in enrolled bill. Word "carrier" should probably be omitted.

Emergency. Effective May 25, 1955.  
Title of Act:

An Act levying an intangible assets tax on all contract motor carriers operating

under permits issued by the Railroad Commission of Texas; and declaring an emergency. Acts 1955, 54th Leg., p. 909, ch. 358.

## CHAPTER FIVE—INHERITANCE TAX

## Art. 7122. Class E—Foreign Bequest

If passing to or for the use of the United States, to or for the use of any other person or religious, educational or charitable organization or institution, or to any other person, corporation or association not included in any of the classes mentioned in the preceding portions of the original Act known as Chapter 29 of the General Laws of the Second Called Session of the 38th Legislature,<sup>1</sup> the tax shall be:

5% on any value in excess of	500 and not exceeding \$	10,000
6% on any value in excess of	10,000 and not exceeding	25,000
8% on any value in excess of	25,000 and not exceeding	50,000
10% on any value in excess of	50,000 and not exceeding	100,000
12% on any value in excess of	100,000 and not exceeding	500,000
15% on any value in excess of	500,000 and not exceeding	1,000,000
20% on any value in excess of	1,000,000	

Provided, however, that this Article shall not apply on property passing to or for the use of the United States, or to or for the use of any religious, educational or charitable organization, incorporated, unincorporated,

rated or in the form of a trust, when such bequest, devise or gift is to be used within this State. The exemption from tax under the preceding provisions of this Article shall, without limiting its application under other appropriate circumstances, apply to all or so much of any bequest, devise or gift to or for the use of the United States, or a religious, educational or charitable organization, which is, in writing and prior to the payment of the tax, irrevocably committed for use exclusively within the State of Texas or transferred to a religious, educational or charitable organization for use exclusively within this State. As amended Acts 1955, 54th Leg., p. 1032, ch. 389, § 1.

1 Article 7118 et seq.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory act of 1955 provided that the provisions of this Act

shall apply only in respect to a decedent dying after the passage of this Act. Section 3 repealed all conflicting laws and parts of laws.

## CHAPTER SIX—PROPERTY SUBJECT TO TAXATION AND RENDITION

### Art. 7150. 7507, 5065 Exemption from taxation

20. American Legion and other Veterans' Organizations. Hereafter all buildings, together with the lands belonging to and occupied by such organizations known as The American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans and Catholic War Veterans, or any non-profit organization chartered or incorporated under the Texas Statutes for the purpose of preserving historical buildings, sites and landmarks, not leased or otherwise used with a view to profit, shall be exempt from taxation in this State. Provided, however, that no organization listed by the Attorney General of the United States or the Secretary of State of this State as subversive shall be entitled to exemption from taxation under the laws of this State. Added Acts 1955, 54th Leg., p. 752, ch. 271, § 1.

Emergency. Effective May 20, 1955.

Section 2 of the amendatory Act of 1955, provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER TEN—DELINQUENT TAXES

Art.

7345b—2. Payment of publication costs  
[New].

### Art. 7336f. Remission of delinquent taxes, compilation of record of delinquent taxes not barred

Sec. 2. In a county having as many as two (2) years taxes delinquent which have not been included in the delinquent tax record, the Assessor-Collector of taxes shall within two (2) years from the effective date of this Act, cause to be compiled a delinquent tax record of all delinquent taxes not barred by this Act. The form of the delinquent tax record shall be prescribed by the Comptroller of Public Accounts. In addition to the information or data that may be required on the form prescribed by the Comptroller, the delinquent tax record shall contain substantially the following:

a. Items described under grantee name and abstract number shall be shown first on the record; abstracts shall appear in numerical order

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by abstract number. In certain abstracts which have been platted into tracts, lots and blocks, divisions of subdivisions items may be shown according to the platting of the particular abstract.

b. Cities, towns and villages shall appear in alphabetical order.

c. Additions to the respective cities and towns shall be shown under the city or town to which same is attached, and in alphabetical order by addition name.

d. Within the original plat of any city or town, and within additions, the blocks shall appear in numerical order by block number, if numbered blocks, and alphabetically, if lettered blocks.

e. Within the block, lots shall appear in numerical order by lot number, if numbered lots, and alphabetically, if lettered lots.

f. Mineral, lease and royalty items may be shown in a separate section of the record and/or with the fee items. If mineral, lease and royalty items are shown in a separate section of the record, such items may appear in alphabetical order by owner name and/or as herein provided for lands and platted property.

g. Items having insufficient descriptions may appear in alphabetical order by owner name under any section of the record to which same may be correctly attached, and/or in a separate section of the record.

h. In all instances, items arranged and shown on the record as herein provided shall appear with the years in chronological order beginning with the earliest year delinquent.

The delinquent tax record shall be examined by the Commissioners Court or governing body and the Comptroller; corrections may be ordered made, and when found correct and approved by them, payment for the compilation thereof shall be authorized at actual cost to the Tax Assessor-Collector, proportionately from each state and county taxes, district taxes, or municipal taxes first collected from such record; such cost in no case to exceed a sum equal to Ten Cents (10¢) per item or written line of the original copy of such record, and in no event shall any compiling cost be charged to the taxpayer. The delinquent tax record, when approved, shall be prima-facie evidence of the delinquency shown thereon; and when there shall be as many as two (2) years of delinquency accumulated which are not shown on the record, a re-compilation, or a two-year supplement thereto shall then be made as herein provided. The Tax Assessor-Collector shall cause to be compiled like records of taxes delinquent due any district for which he collects from tax rolls other than the state and county rolls, and when approved by the governing body of the particular district the cost of same shall be allowed in the manner herein provided. If any Tax Assessor-Collector fails to compile the delinquent tax record, or re-compile or supplement as provided for in this Act, all fees, commissions, payments or compensations accruing to him for the collection of delinquent taxes shall be held in abeyance until such delinquent tax record has been compiled; provided, however, should the Commissioners Court and Comptroller of Public Accounts find in any instance the Tax Assessor-Collector was unable to comply with the requirements of this Act relative to compiling delinquent tax records because of the maximum compensation herein fixed, this provision shall not be applicable. If for any reason the Assessor-Collector of taxes and his regular deputies are unable to perform the duties required by this Act, then such Assessor-Collector shall contract with a competent person or persons to compile, re-compile or supplement the delinquent tax record, as the case may be, at a fee not to exceed Ten Cents (10¢) per item or written line of the original copy of such record. Any contract, entered into by the Assessor-Collector and

some person to perform this service, shall be approved by the Commissioners Court and Comptroller of Public Accounts. As amended Acts 1951, 52nd Leg., p. 304, ch. 181, § 1; Acts 1955, 54th Leg., p. 650, ch. 226, § 1.

Emergency. Effective May 16, 1955.

Sections 2 and 3 of the amendatory Act of 1955, read as follows:

"Sec. 2. All laws or parts of laws in conflict herewith are repealed in so far as a conflict exists with the provisions of this Act; and provided further, that the provisions of this Act shall be cumulative of the provisions of Chapter 10, Title 122, Delinquent Taxes, of Revised Civil Statutes, 1925, and amendments thereto.

"Sec. 3. If any part of this Act is declared to be invalid or unconstitutional, the

remainder of this Act shall not be invalidated."

Sections 2 and 3 of the amendatory act of 1951, read as follows:

"Sec. 2. All laws or parts of laws in conflict herewith are repealed in so far as a conflict exists with the provisions of this Act; and provided further, that the provisions of this Act shall be cumulative to the provisions of Chapter 10, Title 122, Delinquent Taxes, of Revised Civil Statutes, 1925, and amendments thereto.

#### Art. 7345b—2. Payment of publication costs

Section 1. Whenever costs for publishing citation or any other notice in a newspaper are incurred in a suit brought by any taxing unit for the collection of delinquent taxes, the cost of such publication shall be paid to the newspaper making such publication out of the general funds of the taxing unit as soon as practicable after receipt of the publisher's claim for payment. If more than one taxing unit is a party to the suit, payment of the publication costs shall be made to the newspaper by the taxing unit which filed the suit, and that taxing unit shall be entitled to reimbursement from the other taxing units which are parties to the suit for their pro-rata share of the costs upon satisfaction of the tax indebtedness or any portion thereof, either by voluntary payment of the indebtedness or by sale of property to a purchaser other than a taxing unit which is a party to the suit.

Sec. 2. The cost of publishing notice of sale of real or personal property to be sold under execution to satisfy any claim or judgment in favor of the State or any county, city, school district, or any other political subdivision, shall be paid to the newspaper publishing such notice as soon as practicable after receipt of the publisher's claim for payment. If the property has not yet been sold or proceeds from the sale have not yet been realized, such publication costs shall be paid out of the general funds of the claimant or judgment holder; and after sale and collection of the proceeds thereof the general fund shall be reimbursed for the publication costs before distribution of the proceeds to the proper fund or funds. Acts 1955, 54th Leg., p. 514, ch. 150.

**TITLE 125A.—TRUSTS AND POWERS**

Art.

PENSION TRUSTS [NEW]

7452d. Pension Trusts.

**PENSION TRUSTS [NEW]**

**Art. 7425d. Pension Trusts**

**Definition of pension trust; existence of employer-employee relationship**

Section 1. For the purposes of this Act the term "Pension Trust" means an express Trust heretofore or hereafter created in relation to or consisting of real, personal or mixed property created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan or profit sharing plan for the benefit of some or all of the employees of such employer, to which contributions are made by such employer, by some or all of such employees, or both, for the principal purpose of distributing to such employees, or to the successors to their beneficial interest in such Trust, the earnings or the principal or both earnings and principal of the fund so held in Trust. For the purposes of this definition, the relationship of employer and employee shall be deemed to exist between a corporation, its own employees and the employees of each other corporation which it controls, by which it is controlled or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.

**Texas Trust Act; applicability**

Sec. 2. A Pension Trust shall be a Trust within the meaning of Section 2 of the Texas Trust Act.

**Rule against perpetuities**

Sec. 3. A Pension Trust shall not be deemed to be invalid as violating the so-called Rule Against Perpetuities, any other law against perpetuities or any law restricting or limiting the duration of Trusts and any Pension Trust may continue for such time as may be necessary to accomplish the purposes for which it was created.

**Accumulation of income**

Sec. 4. The income arising from any Pension Trust may be accumulated in accordance with the terms of such Trust for so long a time as may be necessary to accomplish the purposes for which the same was created, notwithstanding any law or laws limiting the period during which Trust income may be accumulated.

**Application of Act**

Sec. 5. The provisions of this Act shall apply to Pension Trusts created under the laws of this State and to Pension Trusts wherever created in so far as the laws of this State are applied to them. Acts 1955, 54th Leg., p. 1606, ch. 521.

Emergency. Effective June 24, 1955.

**Title of Act:**

An Act to define Pension Trusts; to provide that Pension Trusts are Trusts within the meaning of the Texas Trust Act; to provide that such Pension Trusts shall not be deemed perpetuities nor unreasonable accumulations; to declare the

effect of this Act upon Pension Trusts created under the laws of this State and those created elsewhere; to express the intent of the Legislature in passing this Act; and declaring an emergency. Acts 1955, 54th Leg., p. 1606, ch. 521.

**TITLE 126—TRUSTS—CONSPIRACIES AGAINST TRADE****1. DEFINITIONS, FORFEITURES AND OTHER PROVISIONS**

Anti-trust laws of state not repealed or impaired by Sales Limitation Act, see P.C. art. 1111m, note.

**TITLE 128—WATER****I. IRRIGATION AND WATER RIGHTS****CHAPTER ONE—USE OF STATE WATER****2. BOARD OF WATER ENGINEERS**

Art.

7472e. Federal Projects Affecting Public Waters of State; Approval by Board Required [New].

**3. REGULATION OF USE**

Art.

7612b. Riparian or state boundary land owners; vested rights not abridged or enhanced [New].

**1. PUBLIC RIGHTS****Art. 7466. [4991] [3115] Public Rights**

Complementary Laws — La. Acts 1954, No. 36, LSA-R.S. 38:2329 note; Act of Congress Aug. 10, 1954, c. 668, 68 Stat. 866.

**2. BOARD OF WATER ENGINEERS**

**Art. 7472e. Federal Projects Affecting Public Waters of State; Approval by Board Required**

**Definitions**

Section 1. For the purpose of this Act, the term

- a. "Governor" means the Governor of Texas.
- b. "Board" means the Board of Water Engineers, or its successors.
- c. "Federal project" means any engineering undertaking or work for the purpose of the construction, enlargement or extension of any dam, lake, reservoir, or other water storage or flood control work, or any drainage, reclamation, or canalization undertaking, or for any one or more of such purposes, financed in whole or in part with funds of the Government of the United States of America.
- d. "Engineering report" means the plans, data, profiles, maps, estimates, drawings, etc., prepared in connection with and as a basis for a "Federal project."
- e. "Federal agency" means the Corps of Engineers of the United States Army, the Bureau of Reclamation of the United States Department of Interior, the Soil Conservation Service of the United States Department of Agriculture, the United States Section of the International Boundary and Water Commission, and any other agency of the United States Government whose functions include the conservation, development, retardation

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by impounding, control, or study of the water resources of the State of Texas or the Nation.

**Report of Federal Agency to Governor transmitted to Board;  
Hearing and Notice of Hearing**

Sec. 2. Upon receipt by the Governor of Texas of any engineering report submitted by a Federal agency seeking the Governor's approval of a Federal project, the Governor shall forthwith forward such report to the Board of Water Engineers, or its successors, for board study and recommendations to the Governor as to the feasibility of the Federal project. The Board shall cause a public hearing to be held to receive the views of persons and groups who might be affected should the Federal project be initiated and completed. Notice of the time, place, nature and purpose of such public hearing shall be published once each week for two (2) consecutive weeks prior to the date stated in such notice for the hearing on such engineering report in some newspaper having a general circulation in that section of the State where the Federal project is to be located or the work done.

**Manner of hearing; Order of approval or Disapproval by Board**

Sec. 3. The hearing by the Board shall be held in the same manner as in the case of a hearing on an application for a permit to appropriate State waters. After the Board has heard all of the evidence both for and against the approval of such Federal project, it shall enter its order either approving or disapproving the feasibility of the Federal project, giving its reasons therefor in such order.

**Matters to be considered by board in determining feasibility**

Sec. 4. In determining feasibility, Board consideration shall be given, but not limited, to the following:

- (a) Effect of such Federal project on water users on the stream;
- (b) The public interest to be served;
- (c) Development of dam sites to the optimum potential for water conservation;
- (d) Integration of such Federal project with other water conservation activities;
- (e) Protection of the State's interests in the Texas water resources;
- (f) Engineering practicality of the Federal project, including cost of construction, operation, and maintenance.

**Certified copy of order of Board to Governor; Finality of order;  
notice to Federal Agency**

Sec. 5. The Board shall forward to the Governor a certified copy of its order. Should the Board find the Federal project to be either feasible or not feasible, such finding shall be final and the Governor shall then notify the Federal agency that such Federal project has been either approved or disapproved.

**State Soil Conservation Board, application of Act to**

Sec. 6. The provisions of this Act shall not apply to the State Soil Conservation Board so long as such Board has been designated by the Governor as the authorized State agency having supervisory responsibility to approve or disapprove of projects designed to effectuate watershed protection and flood prevention programs initiated in cooperation with the United States Department of Agriculture.



**Conflicting laws repealed; partial invalidity**

Sec. 7. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict, and should any section or provision hereof be declared unconstitutional or invalid, such invalidity shall not impair any remaining sections or provisions of this Act, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions hereof, regardless of the invalidity of any part. Acts 1955, 54th Leg., p. 72, ch. 47.

Effective 90 days after June 7, 1955,  
date of adjournment.

**3. REGULATION OF USE****Art. 7612. Information required; exemption of domestic and livestock water takers; riparian owners' rights**

On or before the first day of March of each year hereafter, every person, association of persons, corporation, water district, municipality or other body politic, and every agency of the State or United States, which is now taking, or in the future may take, any waters, public, private or otherwise, flowing in a natural stream or natural water course which is wholly or partially within the State or forms a boundary of the State, or any of such waters stored in reservoirs located on any such natural stream or natural water course, by virtue of a water permit from the State or certified filing authorizing the appropriation of public waters, riparian right, prescriptive right, or otherwise, shall file with the Board of Water Engineers of the State of Texas or its successor a sworn statement, on forms to be furnished by the Board upon request, containing such information on water use for the preceding year as the Board or its successor may require as necessary to aid in the administration of the water laws of the State and the inventorying of the water resources, in addition to such information as may be required to be kept by the provisions of Article 7611, Revised Civil Statutes of Texas, 1925. Provided, however, that with the exception of public utilities and political subdivisions furnishing water for municipal uses, nothing in this Act shall require the filing of any information with the Board or its successor where water is taken solely for domestic or stock-raising purposes. Provided, further, if the water reported as being used by a riparian owner is not all of the water which the riparian user has the right to use, the amount reported shall in no way limit the right of the riparian user to use all of the water which he has a right to use. As amended Acts 1955, 54th Leg., p. 394, ch. 114, § 1.

Section 4 of the amendatory Act of 1955, provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 7612a. Penalty for failure to file report**

Any one who shall under the provisions of Section 1 of this Act<sup>1</sup> be required to file such annual statement and information, and who shall fail or refuse to so file same as therein provided, shall be liable to a penalty of Twenty-five Dollars (\$25) and a further penalty of One Dollar (\$1) per day for each day he so fails to file same after the expiration of the day therein provided upon which same shall be filed, and the State may recover such a penalty by suit therefor; provided, however, the maximum penalty for failure to file such statement and information shall not exceed

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

the sum of One Hundred and Fifty Dollars (\$150). As amended Acts 1955, 54th Leg., p. 394, ch. 114, § 2.

Effective 90 days after June 7, 1955,  
date of adjournment.

1 Article 7612.

**Art. 7612b. Riparian or state boundary land owners; vested rights not abridged or enhanced**

No provision of this Act<sup>1</sup> shall ever be construed to abridge, affect, enhance, add to or detract from any vested rights of owners of any lands riparian to the waters of the streams of this State or streams forming a boundary of this State. Acts 1955, 54th Leg., p. 394, ch. 114, § 3.

<sup>1</sup> Acts 1955, 54th Leg., p. 394, ch. 114, amending Articles 7612, 7612a.

Effective 90 days after June 7, 1955,  
date of adjournment.

**CHAPTER TWO—WATER IMPROVEMENT DISTRICTS**

Art.

7652b. Employment of manager, tax assessor and collector and other employees in certain districts for term not longer than four years [New].

**Art. 7652b. Employment of manager, tax assessor and collector and other employees in certain districts for term not longer than four years**

Section 1. This Act shall apply only to water improvement districts operating under contract with the Department of the Interior of the United States of America, the major portion of the irrigation works for which district shall have been constructed under authority of the United States.

Sec. 2. From and after the effective date of this Act, the Board of Directors of such district may employ a Manager and a Tax Assessor and Collector and such other persons as said Board of Directors shall deem necessary for the proper operation of such district and the administration of its affairs, each of such employees to have such powers and perform such duties as may now or hereafter be conferred by law and as may be provided by the Board of Directors. Provided, that no contract shall ever be made with any manager, tax assessor and collector, or other person or employee, for a longer period of time than four (4) years, and the salaries of all employees, or the compensation to be received by them, shall be fixed annually by the Board of Directors. Acts 1955, 54th Leg., p. 362, ch. 79.

Effective 90 days after June 7, 1955,  
date of adjournment.

**Title of Act:**

An Act providing for the employment of a Manager, Tax Assessor and Collector, and other employees, by the Directors of Water Improvement Districts operating under contract with the Department of the Interior of the United States of America, the major portion of the irrigation works for which District shall have been constructed under au-

thority of the United States; defining the powers and duties of such employees; limiting the term of employment of such employees to four (4) years; providing that the salaries or compensation of such employees shall be fixed annually by the Board of Directors; and declaring an emergency. Acts 1955, 54th Leg., p. 362, ch. 79.

Art. 7717. Term of office

Employment of manager, tax assessor and collector and other employees in certain districts for term not longer than four years, see article 7652b.

CHAPTER THREE A—WATER CONTROL AND IMPROVEMENT DISTRICTS

Art. 7880—20a. Selection of directors of certain districts; validation of organization, bonds, acts and proceedings [New].

7880—147c9. Validating proceedings and acts of districts in counties of over 800,000 [New].

Art. 7880—147z2. Validation of Orange County Water Control and Improvement District No. 3; proceedings, bonds, etc. [New].

Art. 7880—3c. Underground water conservation districts

Definitions

A.

(5) "Subdivision of an underground water reservoir" is that reasonably definable part of an underground water reservoir within which the underground water supply will not be unreasonably affected by withdrawals of water from any other part of such reservoir, based upon known geological and hydrological conditions and relationships and upon foreseeable economic development at the time of the designation or alteration of such subdivision. When the Board of Water Engineers has ascertained the boundaries of a subdivision, pursuant to this Act, its findings on the location of such boundaries, the questions of "Reasonableness" and "Affect" in the foregoing definition, and all other questions essential to the existence of a subdivision, shall be conclusive and final unless a suit is instituted, pursuant to paragraph F hereof, within thirty (30) days from the date on which the order of such Board is entered. As amended Acts 1955, 54th Leg., p. 1239, ch. 496, § 1.

(6) "Waste" shall mean:

(e) Willfully causing, suffering, or permitting underground water produced for irrigation or agricultural purposes to escape into any river, creek, or other natural watercourse, depression, or lake, reservoir, drain, or into any sewer, street, highway, road, road ditch, or upon the land of any other person than the owner of such well, or upon public land. Added Acts 1955, 54th Leg., p. 1239, ch. 496, § 2.

(9) "Grazing land" shall mean land in tracts of not less than six hundred and forty (640) acres used exclusively for grazing purposes on which water is being produced for domestic and stock raising purposes only. Grazing land as defined above within the boundaries of an underground Water Conservation District shall, upon petition to the directors of the District, be excluded therefrom and shall not be liable for the bonded indebtedness of such District; provided that such land shall be excluded only so long as such conditions continue to exist. If, after exclusion, underground water is produced therefrom for irrigation, municipal, or industrial purposes, and in an amount in excess of one hundred thousand (100,000) gallons per day from any well, such excluded land shall promptly be brought back within the District and shall thereafter be subject to taxation and bonded indebtedness as any other land within the District, and shall thereafter be subject to the rules and regulations of the District. The lands may be brought back within the District on petition of the land-

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

owner or the owner of the water rights thereunder, or by the directors of the District on their own motion, or upon petition of any landowner in the District. The owner of the land shall be entitled to a reasonable notice and hearing to determine whether his land should be brought back within the District. The issue at such hearing before the directors of the District shall be whether or not water has been or is being produced for irrigation, municipal, or industrial purposes, and in an amount in excess of one hundred thousand (100,000) gallons per day from any well thereon. If the directors find, upon substantial evidence, that water is being so produced, they shall enter an order in their minutes so finding; and the land shall thereafter be a part of the District for all purposes. If the owner of the land desires to appeal from the finding of the directors, he may do so pursuant to Subsection F hereof. As a condition to such exclusion, it shall be specified and understood that when such land is excluded, no well capable of producing one hundred thousand (100,000) gallons of water per day shall be drilled thereon unless such well complies with the rules of the District. Production from any such well drilled in violation of the above condition may be enjoined by the District; or upon the land being taken back into the District, the District may regulate the production therefrom so as to protect the rights of other landowners or to prevent waste. As amended Acts 1955, 54th Leg., p. 1239, ch. 496, § 3.

#### Creation of districts; powers and functions

##### B.

(3) To require permits for the drilling, equipping or completion of water wells or the substantial alteration of the size of the wells or the pumps used therein, or all or any of such acts, and to issue such permits subject to the rules and regulations promulgated by the District pursuant to subparagraph (4) next below, and subject to such terms and provisions with reference to the drilling, equipping, completion or alteration thereof as may be necessary to preserve and conserve the underground water, to prevent waste, to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, or to lessen interference between wells. No person, firm, or corporation shall hereafter begin to drill or drill a well or substantially alter the size of a well or pump used therein, within the boundaries of a District organized hereunder which well could reasonably be expected to produce in excess of one hundred thousand (100,000) gallons per day from the underground water reservoir or subdivision thereof without first having applied to the Underground Water Conservation District for and had issued a permit to do so, unless the drilling and operation of the well is otherwise exempt herein.

The District shall promptly consider and pass upon applications for permits required in the preceding Section 3. If an application shall not have been passed upon within twenty (20) days from the receipt thereof by the District, or has not been set down, within that time, for a hearing upon a day certain, the applicant may go into the District Court where the land lies and obtain a mandamus to compel the District to act upon the application or set it down for a hearing.

“The hearings above provided for shall be held within thirty (30) days from the date the hearing is called, and the District shall act on such application within ten (10) days after such hearing. As amended Acts 1955, 54th Leg., p. 1239, ch. 496, § 4.

(4) Either (a) to provide for the spacing of wells to be drilled for the production of water from the underground water reservoir or subdivision

thereof; or, (b) to regulate the production of wells producing underground water from such source, unless such wells are otherwise exempt herein, or both (a) and (b), so as to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure; or to prevent waste. Provided further, however, that the owner of any tract of land, his heirs, assigns, and lessees who have no well capable of producing in excess of one hundred thousand (100,000) gallons per day on said tract, shall not be denied either a permit to drill a well on his land or the privilege to produce underground water from his land subject to the rules and regulations of the District. As amended Acts 1955, 54th Leg., p. 1239, ch. 496, § 5.

(10) The drilling of any well for which a permit from the District is required and for which no permit has been obtained, or the operation of any well at a higher rate of production than the rate approved for such well, is hereby declared to be illegal, wasteful per se, and nuisance. Any person having an estate in land adjacent to or any part of which lies within one-half mile of such well may, with or without the joinder of the District, bring suit in court of competent jurisdiction to restrain or enjoin such illegal drilling or operation or both. He may also sue for and recover any damages which he may have suffered by reason of such illegal operation and such further relief as he may be entitled to in law or in equity. In any suit for damages, the existence of such well in violation of the rules of the District, or the operation thereof in violation of the rules of the District, or both, shall be taken by the courts, to constitute prima-facie evidence of illegal or illegitimate drainage. Such suit may be brought in any county where (a) the illegal well is located, or (b) the affected land of the plaintiff, or any part thereof, is located. The cause of action and rights here created or recognized shall constitute a cumulative or additional remedy and shall not be considered to exclude, impair, or abridge any other rights, remedies, or causes of action which are or may be available to any individual or to the District. Such suits shall be advanced for trial and be determined as expeditiously as possible, and no postponement thereof or continuance, including a first motion therefor, shall be granted except for reasons deemed imperative by the court. Added Acts 1955, 54th Leg., p. 1239, ch. 496, § 6.

#### Ownership of underground waters; application of laws

##### D.

(4) nothing in this Section 3c shall authorize or permit:

(a) The requirement of a permit for the drilling or producing of a well drilled to supply water for the drilling of any one or more wells mentioned in (3) next preceding, so long as such well and the production therefrom is being used for such purpose or purposes and not thereafter. When the well has ceased to be so used, it may thereafter be used as an ordinary water well if it meets the spacing and other rules of the District; and if used, such well shall thereafter be subject to the rules and regulations of the District. As amended Acts 1955, 54th Leg., p. 1239, ch. 496, § 7.

(5) The provisions of this Act and the rules and regulations promulgated hereunder shall apply only within the area designated by the Board of Water Engineers as a reservoir or a subdivision thereof over which a District shall have been organized. They shall not apply outside of such areas. Added Acts 1955, 54th Leg., p. 1239, ch. 496, § 8.

Emergency. Effective June 22, 1955.

Section 9 of the amendatory act of 1955, provided that if any section, clause, sentence, or provision of this Act, or rules and regulations issued pursuant thereto,

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as applied to a particular individual or set of circumstances shall be held for any reason to be invalid, such holding shall not affect in anywise the validity of the remaining provisions of this Act, or rules and regulations issued hereunder, or the application of this Act; and such rules

and regulations to other and different individuals and circumstances not so held invalid, and all those portions of such Act or such rules and regulations not held invalid shall remain in full force and effect.

**Art. 7880—20a. Selection of directors of certain districts; validation of organization, bonds, acts and proceedings**

Section 1. Whenever any water control and improvement district heretofore or hereafter created or organized under the provisions of Section 59 of Article 16 of the Constitution, where its boundaries are or were co-terminous, at the date of its creation, with those of any town, city or municipal corporation which includes the total area of such district, such municipal corporation, whose boundaries are or were co-terminous with such district, and such district, may have the benefit and powers herein provided.

A. After due enactment of an ordinance by the governing body of such municipality, finding that the appointment of the board of directors of such district by the mayor of such municipality will be advantageous to such municipality and such district and authorizing the appointment of directors of such district in the manner hereinafter set forth, and after the due adoption of a resolution by the unanimous vote of the board of directors of such district finding that the appointment of the board of directors of such district by the mayor of such municipality will be advantageous to such municipality and such district and confirming the same, the mayor of such municipality shall, effective on the second Tuesday in January thereafter, subject to the approval by a majority vote of the governing body of said town, city or municipal corporation, appoint the five directors of such district to succeed those originally appointed by the Commissioners Court, or the State Board of Water Engineers, or those who have been duly elected directors of such district. Three (3) of the directors first appointed by the mayor shall serve two (2) years. The other two (2) directors first appointed by him shall serve for one (1) year. On the second Tuesday in January of each year thereafter, the mayor of such municipality shall, subject to the approval by a majority vote of the governing body of such municipality, appoint directors to serve for two (2) years to succeed those whose terms expire in that year. Vacancies occurring in the board of directors shall be filled for the unexpired term by appointment by the mayor of such municipality, subject to the approval by a majority vote of the governing body of such municipality.

B. The authority provided in this Act for the appointment of directors of such a district by the mayor, with the approval of the governing body of such municipality, shall not be effective until the second Tuesday in January next after the effective date of this Act.

Sec. 2. The organization of all water control and improvement districts heretofore created or organized under the provisions of Section 59 of Article 16 of the Constitution, where the boundaries of such district or districts are or were co-terminous, at the date of creation, with those of any town, city or municipal corporation which includes the total area of such district, and any district created by Acts 1949, 51st Legislature, page 326, Chapter 159,<sup>1</sup> is hereby ratified, validated and confirmed in all respects. All of the proceedings had and taken for the appointment, election and qualification of the officers and directors in such districts, and all acts of the board or boards of directors in such districts in or-

dering an election or elections, and declaring the results of such election or elections, and all elections in such districts at which bonds were voted, and all acts of such board or boards of directors and/or Commissioners Courts and/or County Tax Assessors and Collectors of the counties of such districts in levying, assessing, or attempting or purporting to levy and assess taxes for and on behalf of such districts, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, and all water supply contracts heretofore executed between any such district and any municipal corporation, are hereby in all things ratified, validated and confirmed. It is expressly provided that all acts of the officials in creating or attempting to create any such district, in ordering any hearing, election, or elections, and giving notices thereof, declaring the results thereof, or levying the taxes for such district, or in issuance of the bonds of any such district, and the execution of all such water supply contracts by and between any such district and any municipal corporation, and all elections in such districts at which bonds were voted, are in all respects ratified, validated and confirmed; the fact that any election held by any such district or districts at which bonds were voted may not in all respects have been ordered and held in accordance with statutory requirements and provisions; and the fact that any such district or districts in the authorization, issuance and sale of any such bonds, failed or neglected, or lacked the power to do all things necessary to make said bonds legal, shall in no wise impair such bonds, but such bonds are in all things validated, confirmed, approved and legalized; and when the Attorney General has approved such bonds and they have been registered by the Comptroller of Public Accounts of the State of Texas and sold and delivered, they shall be binding, legal, valid and enforceable obligations of such district or districts; provided, however, that the provisions of this section shall apply only to such bonds as were authorized at an election or elections wherein at least a majority of the qualified property taxpaying voters voting thereat voted in favor of the issuance thereof, and that the provisions of this section shall not apply to those districts where litigation with respect to a bond issue is now pending if the final judicial determination is against such validity. Acts 1955, 54th Leg., p. 726, ch. 260.

<sup>1</sup> Article 8280—134.

Emergency. Effective May 18, 1955.

**Title of Act:**

An Act relating to the method of selection of directors of certain water control and improvement districts, and validating

bonds of such districts; and declaring an emergency. Acts 1955, 54th Leg., p. 726, ch. 260.

**Art. 7880—38a. Election of directors in large districts including two or more counties**

**Precinct method**

Section 1. In any water control and improvement district, now or hereafter created, containing within its boundaries more than eighty thousand (80,000) acres of land and whose boundaries embrace lands within two (2) or more counties, the directors thereof may be selected either (a) by elections held throughout such district as provided in Section 37, Chapter 25 of the Acts of the Thirty-ninth Legislature, Regular Session, 1925, as amended by Section 6, of Chapter 107 of the Acts of the First Called Session of the Fortieth Legislature, 1927;<sup>1</sup> or, (b) by elections held in separate precincts for election of one (1) director in each precinct, which method of selecting directors may hereinafter be referred to as "precinct method". Directors of such districts shall be elected in the manner pro-

vided in (a) above unless and until the 'precinct method' of selecting same is adopted by any such district in the manner hereinafter provided; but after such precinct method is adopted by any such district such method shall be followed in the election of all directors of such district. As amended Acts 1955, 54th Leg., p. 74, ch. 48, § 1.

<sup>1</sup> Article 7880-37.

Emergency. Effective April 2, 1955.

**Art. 7880—147c9. Validating proceedings and acts of districts in counties of over 800,000**

Section 1. All proceedings and actions had and taken in the creation of any Water Control and Improvement District or Districts created or sought to be created under Article XVI, Section 59, of the Constitution of Texas, the appointment or election of directors or the governing body or bodies of said District or Districts, and all proceedings and actions had and taken by the Board of Directors or governing body or bodies of said District or Districts in organizing, authorizing and issuing bonds, including the sale of said bonds, appointing officers of said District or Districts, and any and all proceedings or actions relating to any of the foregoing are hereby in all things and all respects ratified, confirmed, approved and validated, notwithstanding that any of the aforementioned proceedings and actions may not in all respects have been had in accordance with statutory provisions.

Sec. 2. All bonds heretofore voted and issued or authorized by any such Water Control and Improvement District for any purpose, and all elections at which bonds were voted for any purposes, are hereby in all things and all respects ratified, confirmed, approved and validated notwithstanding the fact that the governing body of such District or Districts may have failed to comply with all statutory requirements, and notwithstanding that any election held by any such District or Districts or any hearing may not in all respects have been ordered and held in accordance with statutory provisions; and when the Attorney General has approved such bonds, and they have been registered by the Comptroller of Public Accounts of the State of Texas, and sold and delivered, they shall be binding, legal, valid and enforceable obligations of such District or Districts, and said bonds shall be incontestable. Provided, however, that this Act shall apply only to such bonds as were authorized at an election or elections wherein at least a majority of the qualified property taxpaying voters, owning property in said District or Districts, and who had duly rendered the same for taxation, voting thereat voted in favor of the issuance thereof.

Sec. 3. The organization of all said Water Control and Improvement District or Districts and all proceedings relating thereto are hereby in all things and all respects ratified, confirmed, approved and validated.

Sec. 4. This Act shall apply only to said Water Control and Improvement District or Districts in counties having a population in excess of eight hundred thousand (800,000) according to the last preceding Federal Census. Provided, however, this Act shall not be construed as validating any such proceedings or bonds issued or to be issued, the validity of which is contested or under attack in any suit or litigation pending at the time this Act becomes effective, if such suit or litigation is ultimately determined against the validity thereof. Provided, further that this Act shall not apply to said Water Control and Improvement District or Districts which



have not at the time of the effective date of this Act held a confirmation election. Acts 1955, 54th Leg., p. 1194, ch. 469.

Emergency. Effective June 15, 1955.

Section 5 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 7880—147z2. Validation of Orange County Water Control and Improvement District No. 3; proceedings; bonds, etc.**

Section 1. Orange County Water Control and Improvement District No. 3, hereinafter referred to as "District," in Orange County, Texas, is hereby in all things validated. Without in any way limiting the generalization of the foregoing, it is specifically provided that the order adopted by the State Board of Water Engineers of Texas on the 13th day of April, 1953, creating said District; the election held within said District on the 27th day of June, 1953, for the confirmation of the organization of said District; and the bond election held within said District on the 26th day of March, 1955, and all proceedings in connection with the order and elections, are hereby in all things validated; and the bonds authorized at said election are in all respects validated, and when said bonds have been approved by the Attorney General of Texas, registered by the Comptroller of Texas, and delivered to the purchaser or purchasers thereof, they shall be incontestable.

Sec. 2. All governmental proceedings and acts performed by the governing board of said District and all officers thereof and all governmental proceedings and acts performed by State, county and municipal officials in connection with said District are hereby in all things validated as of the respective date of such proceedings and acts.

Sec. 3. The area and boundary lines of said District are in all things validated.

Sec. 4. It is hereby found and determined that all of the lands and other property included within the boundaries of the District are, and will be, benefited by said District and its improvements and facilities to be constructed and acquired. The ad valorem basis or plan of taxation shall be used by said District, and it shall not be necessary for the Board of Directors of said District to hold a hearing on the adoption of a plan of taxation.

Sec. 5. The Legislature hereby exercises the authority conferred upon it by Section 59, Article 16, Constitution of Texas, and declares that said District is essential to the accomplishment of the purposes of said Constitutional provision, finds that all of the land and other property included therein are, and will be, benefited thereby, and declares the District to be a governmental agency, a body politic and corporate, and a municipal corporation.

Sec. 6. This Act shall have no application to any litigation pending upon the effective date hereof in which the validity of the creation of the District or of said bonds is involved, if such litigation is ultimately determined against the legality thereof. Acts 1955, 54th Leg., p. 703, ch. 253.

Emergency. Effective May 16, 1955.

Section 7 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER FOUR—FRESH WATER SUPPLY DISTRICTS

## 3. POWERS OF DISTRICTS

Art.

7930—5. Division of districts of 800,000 or more; exclusion of lands; procedure [New].

## 3. POWERS OF DISTRICTS

## Art. 7922. Powers: indebtedness

In the accomplishment of the purposes enumerated in the fourth preceding article, such districts may or may not issue bonds, and may or may not incur indebtedness. No tax bonds by or on behalf of such districts shall be issued nor shall any indebtedness against the same which is to be paid out of taxes be incurred, unless the proposition to issue such bonds or to incur such indebtedness shall be first submitted to the qualified property taxpaying voters of such districts, and the proposition adopted by a majority vote at an election held to determine such question.

The Board of Supervisors of the district shall have the power, without the necessity of an election, to borrow money upon notes of the district at a rate of interest not to exceed six per cent (6%) per annum, to be paid solely from gross revenues derived from the operation of the district's water system, after deduction of the reasonable cost of maintaining and operating such system; but no such obligation shall ever be a charge upon the property of the district or upon taxes levied or collected by the district but shall be solely a charge upon the revenues pledged for the payment thereof, and no part of the obligation shall ever be paid from taxes levied or collected by the district. The issuance of such notes must be authorized by a majority vote of the members of the Board of Supervisors, and the Board shall at the time of the authorization thereof fix rates and charges for the use of the facilities or the services rendered by the district in an amount which will be sufficient to assure the prompt and punctual payment of the principal of and interest on such notes as same mature. As amended Acts 1955, 54th Leg., p. 853, ch. 319, § 1.

Emergency. Effective May 24, 1955.

## Art. 7930—5. Division of districts of 800,000 or more; exclusion of lands; procedure

## Authority of board of supervisors

Section 1. In any Fresh Water Supply District situated in any county within this State having a population of eight hundred thousand (800,000) or more, according to the last preceding Federal Census, which Fresh Water Supply District has no outstanding bonded debt, and which is not levying any ad valorem taxes, the Board of Supervisors of such Districts shall, in addition to all other powers conferred upon them by law, have the authority to order a special election or elections, either upon petition of twenty (20) or more qualified property taxpaying voters in said District who own taxable property and who have duly rendered it for taxation, or upon their own motion, for the purposes herein provided, including a division of the existing District into two (2) Fresh Water Supply Districts.

## Election; procedure

Sec. 2. The petition for election, if there be one, and the order and notices of election, shall contain the metes and bounds of the two (2)

proposed successor Districts. The order for the election shall provide that it shall be held in thirty (30) days from the date of the order, and notice shall be given by posting copies of the election order at each of three (3) public places within the District at least ten (10) days before the date of the election; or by publication of such notice in a newspaper of general circulation in the county in which the District is situated; or by both such posting and publication. The Board shall appoint a presiding judge and two (2) or more clerks to assist him in holding such election, which shall be held as required by the General Election laws, except as herein otherwise specifically provided. The order shall further provide that, if the election results in favor of a division of the District, a Board of five (5) Supervisors, elected in the same election, shall immediately qualify and take over the affairs of the new District created out of such pre-existing District, and shall proceed to administer its properties and affairs. If no Board is elected, or a full Board is not elected, the Commissioners Court shall appoint the members of the Board. The election order and notices shall state in a general way how the properties and any money on hand shall be divided between the two (2) new Districts, in the event that division of the existing District into two (2) is approved by the electorate, and the basis so fixed shall control.

**Ballots; election supplies; election expenses**

Sec. 3. All ballots and election supplies for the holding of such election shall be furnished and paid for by the Board of Supervisors of the existing District and be paid for out of the funds of the District. All expenses of holding the election shall be similarly paid. The officers holding the election shall make due return thereof to the Board of Supervisors immediately after the holding of such election, and the Board of Supervisors shall canvass the returns and declare the result.

**Candidates; procedure; qualifications, etc.**

Sec. 4. Any person desiring to become a candidate for the position of supervisor of either of the new Districts proposed to be created may have his name printed on the ballot by filing written application with the Secretary of the Board of Supervisors of the existing District at least ten (10) days before the date of holding the election. Such candidates shall be residents of the territory which will be included within the boundaries of the new District, and must have resided within the county six (6) months and within the State one (1) year before the date of the election. They shall possess the qualifications prescribed by law for Supervisors of Fresh Water Supply Districts. The five (5) candidates receiving the highest number of votes in each District shall be declared elected, and shall immediately qualify by taking the constitutional oath of office, which shall be filed with the County Clerk, and shall immediately enter upon the discharge of the duties of their office and shall hold office until the next regular election of Supervisors and until their successors are elected and qualified. Their successors shall be elected at the same time and in the same manner as provided by the laws relating to elections in other Fresh Water Supply Districts.

**Act cumulative of other laws**

Sec. 5. This Act shall be cumulative of all other laws governing Fresh Water Supply Districts in such counties, as such Districts now exist. Any successor District created out of a part of such existing District shall possess all of the powers and shall be governed by all of the laws relating to Fresh Water Supply Districts generally. The successor Districts shall

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have all of the taxing and bond powers provided by the General Laws, or by any classifications Statute which now applies in such Districts, it being intended that any laws now in effect relating to or governing the powers of existing Districts shall not be curtailed, but that this law shall be cumulative.

#### Power of supervisors to exclude lands

Sec. 6. The Board of Supervisors of Fresh Water Supply Districts of the class to which this Act applies and having no outstanding bonded debt and not now levying any taxes shall have the same power and authority to exclude territory from such Districts as are now conferred by law upon Fresh Water Supply Districts before such Districts have issued any bonds or before they have levied any taxes, such exclusions to be accomplished in the manner now provided by law for Fresh Water Supply Districts before the issuance of any bonds and before the levy of any taxes therein. Acts 1955, 54th Leg., p. 551, ch. 175.

Emergency. Effective May 7, 1955.

### III. DRAINAGE

#### CHAPTER SEVEN—DRAINAGE DISTRICTS

##### 1. ESTABLISHMENTS

Art.

§176b. Annexation of territory to drainage district converted into a conservation and reclamation district, wholly within one county [New].

##### 1. ESTABLISHMENT

#### Art. 8120. [2585] Commissioners' Salary; Additional Compensation in Counties over 30,000

The commissioners of drainage districts shall receive for their services not more than Two and 50/100 Dollars (\$2.50) per day for the time actually engaged in the work of their district, which compensation shall be fixed by an order of the Commissioners Court. Before the accounts of such commissioners shall be approved by the Commissioners Court such commissioners shall first submit a detailed report in writing, under oath, to the Commissioners Court of their county showing the time actually consumed in the work for said district, and describing the work done, and such reports shall be audited and allowed by the Commissioners Court in such amount as it may determine; provided that in all counties having a population of more than thirty thousand (30,000) inhabitants according to the last preceding or any future Federal Census and having one or more drainage districts therein, the Commissioners Courts of such counties, upon application therefor in writing by the commissioners of drainage districts located in such counties showing the necessity therefor, may allow commissioners of such drainage districts for work thereafter to be done and services thereafter to be performed an additional sum not to exceed Two and 50/100 Dollars (\$2.50) per day, and such courts may upon written application therefor permit an automobile or automobiles to be used by such commissioners in the discharge of their duties and allow not to exceed Two and 50/100 Dollars (\$2.50) per day for their use, expense, oil, gas, repairs and upkeep of each automobile so permitted to be used; provided that such courts, after having heard such petitions, may deny or grant the

same in whole or in part and shall enter their written orders in the premises fixing the amount of such allowance or allowances within the limits aforesaid, stating the reasons and necessity therefor and fixing the number of days in which allowances are to be in effect. As amended Acts 1955, 54th Leg., p. 657, ch. 230, § 1.

Emergency. Effective May 16, 1955.

Section 2 of the amendatory Act of 1955, provided that this Act shall be cumulative of all other laws, both general and special, relating to compensation and ex-

penses of drainage district commissioners and shall not be deemed to repeal any other law on this subject.

**Art. 8176b. Annexation of territory to drainage district converted into a conservation and reclamation district, wholly within one county**

Section 1. Any drainage district in this State heretofore or hereafter organized under the provisions of Section 52, Article III, Constitution of Texas, which district has heretofore or shall hereafter be converted into a conservation and reclamation district under Section 59, Article XVI, Constitution of Texas, and which district lies wholly within one (1) county, may have defined areas of territory lying wholly within the same county added to said district (whether such territory is contiguous to said district or not) in the following manner:

(1) A petition praying for the annexation of such territory shall be filed with the Commissioners Court of said county, which petition shall describe the territory by metes and bounds, and which petition shall be signed by fifty (50) or a majority of those qualified resident voters of said territory who own taxable property within said territory and who have duly rendered the same for taxation.

(2) If the Commissioners Court finds that such petition meets the requirements set forth in (1) above, said Court shall order a hearing upon such petition, setting the time and place thereof, which hearing shall be held within thirty (30) days after the date of such order. Notice of said hearing shall consist of a substantial copy of the order calling the same, and said notice shall be published in a newspaper giving general circulation within the district and within the territory proposed to be annexed at least one (1) time not less than ten (10) nor more than twenty (20) days before the date set for said hearing.

(3) All persons whose land or other property might be affected by the proposed annexation, and all other interested persons, may appear at the hearing and offer testimony or evidence either for or against said annexation, and said hearing may be adjourned from day to day. If the Commissioners Court shall at the conclusion of said hearing determine that both the district and the territory proposed to be annexed would be benefited by the same, it shall order an election upon the proposition of whether said Court shall annex such territory. Provision shall be made in the order calling said election for a voting place or places both in the district and in the territory proposed to be annexed, and only duly qualified resident electors of the district or of the territory proposed to be annexed, as the case may be, who own taxable property within said territory and who have duly rendered the same for taxation, shall be qualified to vote at said election. If the district has outstanding bonds payable in whole or in part from taxes, the proposition shall also include the assumption of such bonds. The ballots shall have written or printed thereon "FOR ANNEXATION" and "AGAINST ANNEXATION," or if the district has outstanding tax bonds, "FOR ANNEXATION AND ASSUMPTION OF BONDS" and "AGAINST ANNEXATION AND ASSUMPTION OF BONDS." Notice of said election shall be given in the same manner

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

as the notice of hearing, as above provided. Except as provided herein, said election shall be called and held in accordance with the General Election Laws of this State. The Commissioners Court shall pass an order canvassing the returns cast at said election, and if a majority of those voting at said election within said district and if a majority of those voting at said election within the territory proposed to be annexed shall vote in favor of the proposition, said Commissioners Court shall pass an order declaring the annexation of said territory, and, in the case that there are outstanding district tax bonds, the assumption of said bonds by the district as enlarged by the annexation.

(4) If said election results favorably to the annexation of said territory, the Commissioners Court shall adopt an order defining the boundaries of the district as enlarged by the annexation, and a copy of such order shall be filed and recorded in the deed records of the county.

Sec. 2. The provisions of this Act shall be cumulative of all other laws pertaining to such conservation and reclamation district. Acts 1955, 54th Leg., p. 847, ch. 315.

Emergency. Effective May 24, 1955.

Section 3 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## V. NAVIGATION

### CHAPTER NINE—NAVIGATION DISTRICTS

#### 1. ORGANIZATIONS

Art.  
8227a. Retirement, disability and death compensation fund; authority to provide and administer [New].

#### 2. SPECIAL POWERS

##### A. PART FACILITIES

Art.  
8244a. Deposit of revenues of certain districts in banking corporations; validating proceedings [New].  
8247f. Exchange or sale of lands; districts containing city of 375,000 or more [New].

#### 1. ORGANIZATION

Art. 8198. [5955] Scope of district

Creating and Validating  
Willacy County Navigation District,  
validation, see Acts 1955, 54th Leg., p.  
481, ch. 135.

Art. 8227a. Retirement, disability and death compensation fund; authority to provide and administer

Commissioners, authority of; adoption and change of plans

Section 1. The Commissioners of any navigation district heretofore organized or hereafter to be organized under General or Special Law shall have the right to provide for and administer a retirement, disability and death compensation fund for such officers and employees of the district as the Commissioners may from time to time determine; and the Commissioners of said district shall have power and authority to adopt such plan or plans to effectuate the purpose of this Act, including such forms of insurance or annuities, (either or both), all as may be deemed advisable by

said Commissioners; provided that said Commissioners shall have the power and authority from time to time, after notice to their employees and a hearing thereon, to change any such plan, rule or regulation.

#### Investment of funds

Sec. 2. All funds provided from the compensation of such officers or employees, and by the district, for such retirement, disability and death compensation fund, after they are received by the district, shall be invested in either or both of the following ways: (1) in bonds of the United States, the State of Texas, or county or city or other governmental subdivisions of this State, or in bonds issued by any agency of the United States Government, the payment of the principal and interest on which is guaranteed by the United States, provided that a sufficient amount of said fund shall be kept on hand to meet the immediate payment of amounts likely to become due each year out of said fund, such amount of funds to be kept on hand to be determined by the Commissioners of the district; or (2) in such life insurance policies, endowment or annuity contracts, or interest-bearing certificates of legal reserve life insurance company or companies authorized to write such contracts in Texas, as may be determined by the Commissioners of the district; provided that said Commissioners shall have power and authority, from time to time, as they may deem advisable, to change from one of said ways of investment to the other, or any combination of the two; and provided that the recipients or beneficiaries from said fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless the fund, the creation of which is provided for herein, contributed by the district, is released to the State of Texas as a condition precedent to receiving such other pension aid.

#### Hospitalization and medical benefits

Sec. 3. The Commissioners of any navigation district heretofore organized or hereafter to be organized, under General or Special Law, shall have the right to include hospitalization and medical benefits to their officers and employees as part of the compensation currently paid to such officers and employees by such districts, all as may be provided for in any plan, rule or regulation from time to time made by said Commissioners, or otherwise as said Commissioners may determine, provided that said Commissioners shall have power and authority from time to time to change any such plan, rule or regulation.

#### Cumulative of other laws

Sec. 4. This Act shall be cumulative of other laws governing such navigation districts and shall not be construed to repeal any other Statutes or regulations for the government of such districts, except to the extent that this Act may conflict therewith, in which event this Act shall control. All other Statutes governing such navigation districts, or applying to them and regulating the handling of their accounts, the payment of money and the time, method and manner of making reports and all other matters shall continue in full force and effect and shall regulate the handling of funds under this Act, except as otherwise herein expressly provided. Acts 1955, 54th Leg., p. 701, ch. 252.

Emergency. Effective May 16, 1955.

Section 5 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## 2. SPECIAL POWERS

### A. PORT FACILITIES

Art. 8235a. Districts having city over 375,000; governing body's powers and duties

#### Contracts; purchases

Sec. 3. (a) No contract may be made by the Board which encumbers future revenues of the District, unless the Commissioners Court shall have levied a special tax therefor, or unless the revenues of a particular facility or facilities are encumbered to discharge the obligation.

(b) The Board shall be authorized to make, or to authorize the General Manager to make, routine purchases or contracts not to exceed the sum of Two Hundred Fifty Dollars (\$250) upon requisitions signed by at least two (2) Commissioners, or the General Manager, which requisitions shall be executed at least in triplicate, one (1) copy to be delivered to the person, firm or corporation from whom the purchase is made, one (1) copy to be delivered to the County Auditor, and one (1) copy to remain on file with the Board, before any purchase shall be made. Such purchases and requisitions shall be subject to ratification and approval at the next succeeding meeting of the Board.

(c) Cumulative of the provisions of Section 3(b) of this Act and the authority thereby extended, the Board may, by an order or regulation entered in its minutes, provide for the making of routine purchases or contracts in amount not to exceed Two Hundred Fifty Dollars (\$250) in any one instance or for the payment of wages or salaries of its hourly-rated employees, in the interim between meetings of the Board, and such purchases, contracts or payroll payments shall be subject to ratification and approval at the next succeeding meeting of the Board; provided, however, that the making of such interim purchases or contracts or the interim payment of such payrolls shall be approved by the General Manager and by at least three (3) of the Navigation Commissioners; and when so approved, any requisition issued, and signed as and in the manner provided for in this Section 3(c), and any warrant issued or authorized by the provisions of Section 4 of this Act, may be approved and certified by the County Auditor in full and complete reliance thereon in the same manner and to the same extent as if the same had been made and issued pursuant to the provisions of this Section 3(c) of this Act or other applicable laws; provided further, however, that nothing in this Section 3(c) shall apply or operate as a limitation upon the authority of the Board in cases of public calamity where it becomes necessary to act at once to appropriate money to relieve the distress of the citizens or to protect the property of the District; in cases of unforeseen damage to Navigation District property, machinery, or equipment, or in the handling of ships where time will not permit of advertisement; nor shall they apply to contracts for professional services. In all such cases the Board shall set out in the minutes of the District that an emergency exists and the facts which gave rise to the emergency. In instances provided in this Section 3(c), requisitions shall be executed at least in triplicate, signed by the General Manager, and to which shall be attached or with which shall be filed with the County Auditor a letter of approval of the item, account or subject covered by such requisitions, signed by said General Manager and at least three (3) of the Navigation Commissioners, one (1) copy of such requisition to be delivered to the person, firm or corporation from whom the purchase is made or with whom the contract is made, one (1) copy to be delivered to the County Auditor,



and one (1) copy to remain on file with the Board, before any such purchase or contract shall be made; -provided, however, that it shall be sufficient to issue only one (1) requisition (in at least triplicate) covering or in respect of any payroll for wages or salaries of all hourly-rated employees.

(d) In cases in which the materials, supplies, machinery, equipment, or other items sought to be purchased or the contract sought to be made shall exceed Two Hundred Fifty Dollars (\$250) but not exceed One Thousand Dollars (\$1,000), it shall not be necessary to advertise for bids but sealed proposals shall be asked from at least three (3) persons, firms, or corporations, or from as many more as in the opinion of the Board may appear advisable, or as offer to bid based upon written specifications. The substance of the bids shall be tabulated by the Secretary in the minutes. Copies of all specifications shall be filed with the County Auditor at least forty-eight (48) hours in advance of the awarding of any contract.

(e) In cases in which the materials, supplies, machinery, equipment or other items sought to be purchased or the contract sought to be made shall exceed One Thousand Dollars (\$1,000) written specifications shall be filed with the County Auditor and advertisement shall be published once a week for two (2) successive weeks or for such added time as the Board may require in a daily newspaper published within said District, the first publication to be fourteen (14) days prior to the date of the opening of the bids, in which advertisement shall be stated the items or things to be purchased or the contract sought to be made; the time and the place of the opening of the bids; and the place where specifications may be obtained. The specifications shall state in detail what is desired; shall require that bids be sealed; and shall require the attachment to said bid of a certified or cashier's check payable to the Navigation District, drawn on a bank which is a member of the Federal Reserve System, for five per cent (5%) of the total amount of the bid, conditioned that the successful bidder will enter into a contract and give bond as required by the specifications. All such contracts shall be awarded by the Board at a regularly scheduled or specially called meeting; shall be reduced to writing; executed for the District by the Chairman or General Manager; and filed with the proper officers of said District with a copy thereof filed with the County Auditor. Before any contract or requisition shall be placed into effect or become binding upon the Navigation District, it shall be submitted to the County Auditor for his approval and certification that funds are or will be available to meet the contract when due and a requisition, purchase order or work order issued in triplicate, one (1) copy to be delivered to the contractor, one (1) copy to be delivered to the County Auditor, and one (1) copy to remain on file with the Navigation District. Provided, however, that the provisions of this Section shall not apply in cases of public calamity where it becomes necessary to act at once to appropriate money to relieve the distress of the citizens or to protect the property of the District; in cases of unforeseen damage to Navigation District property, machinery, or equipment, or in the handling of ships where time will not permit of advertisement; nor shall they apply to contracts for professional services. In all such cases the Board shall set out in the minutes of the District that an emergency exists and the facts which gave rise to the emergency. In such cases, bids and the advertisement therefor may be waived.

(f) Any purchase or contract made without compliance with the provisions of this Act shall be void and unenforceable in any courts in this State. As amended Acts 1955, 54th Leg., p. 606, ch. 211, § 1.

Emergency. Effective May 13, 1955.

### Claims and obligations

Sec. 4. All claims against the Navigation District and all obligations of the Navigation District shall be paid only after approval of claims by the Board or after approval by the General Manager and at least three (3) of the Navigation Commissioners in instances covered and provided for in Section 3(c) of this Act and upon warrants issued or authorized by the governing board thereof or authorized by at least three (3) members of the governing board thereof in cases and under circumstances provided for in Section 3(c) of this Act after such claims have been submitted to and approved by the County Auditor. When authorized to do so, the General Manager may execute contracts previously awarded by the governing Board or by at least three (3) of the Navigation Commissioners in instances provided for in Section 3(c) of this Act and may issue and sign any warrant upon the funds of the District when the account or accounts in payment of which such warrant is issued shall have been approved and ordered paid as herein provided. The General Manager may issue requisitions to put into effect contracts executed and entered into pursuant to the provisions of this Act or other applicable law and may issue requisitions to give effect to and carry out, under the provisions of and conditions contemplated and provided for in this Act, contracts, purchases, payroll payments authorized and provided for by the terms and provisions of this Act. He may issue and sign all payroll vouchers and checks, after the payroll shall have been approved by the governing board or at least three (3) of the Navigation Commissioners in instances covered and provided for in Section 3(c) of this Act, and payment of the sums thereon listed authorized by the Board or by at least three (3) of the Navigation Commissioners in instances covered and provided for in Section 3(c) of this Act. As amended Acts 1955, 54th Leg., p. 606, ch. 211, § 2.

Emergency. Effective May 13, 1955.

### Provisions cumulative

Sec. 9. The provisions of this Act, as the same was originally enacted by the Act of the Forty-ninth Legislature, Regular Session, Chapter 90, page 130, as the same was amended by the Act of the Fiftieth Legislature, Regular Session, Chapter 242, page 436, as the same is amended by this Act are cumulative of the provisions of Title 128, Subdivision V, Chapter 9, and Title 34, Subdivision 2, Revised Civil Statutes of Texas, 1925, as amended by any Act of the Legislature heretofore passed and approved, and other applicable laws, which laws shall remain in full force and effect except wherein conflict with the provisions of this Act, as heretofore or hereby amended, in which event the provisions of this Act, as heretofore or hereby amended, shall govern and control. As amended Acts 1955, 54th Leg., p. 606, ch. 211, § 3.

Emergency. Effective May 13, 1955.

## Art. 8244a. Deposit of revenues of certain districts in banking corporations; validating proceedings

### Applicability of Act; definitions

Section 1. This Act shall apply to all navigation districts heretofore or hereafter created under the provisions of Chapter 5, Acts 39th Legislature, Regular Session, 1925, as originally enacted or as subsequently amended or as hereafter amended, hereinafter referred to as "Districts". The term "revenues" as used herein shall include all revenues, income,

moneys, funds, or increment which may grow out of the ownership and operation of a District's improvements and facilities, but moneys derived from taxation are specifically excluded from said term and this Act shall have no application to tax funds.

**Deposit of revenue in banking corporation authorized; exceptions**

Sec. 2. At the option of the governing board of any such District, rather than depositing the revenues of the District as is provided by the General Laws for the deposit of funds of Navigation Districts, said revenues may be deposited in a banking corporation selected by said Board in accordance with Section 3 hereof, and upon such selection any revenues held by anyone other than said banking corporation shall, upon the order of said Board, be paid over and deposited in said banking corporation to the credit of the District. Provided, however, that nothing in this Act shall ever be construed as applying in any manner either directly or indirectly in any way to the following named counties: Matagorda, Fort Bend, Brazoria, Chambers, Galveston, and Harris.

**Selection of depository; term of selection; procedure**

Sec. 3. Said banking corporation shall be selected, and the banking corporation so selected shall secure the deposit of said revenues, in accordance with provisions of the statutes relating to county depositories insofar as they are applicable, and "Commissioners Court" and "County Judge" as used in said statutes shall mean the Governing Board of the District and the chairman thereof, respectively. Said Governing Board may select the banking corporation for any period of time not to exceed two (2) years from the date of selection. At least sixty (60) days prior to the end of any such period, the Governing Board shall determine whether to continue to deposit its revenues as provided by this Act or whether at the end of such period to deposit the same in accordance with the General Laws governing Navigation Districts; and if it determines to continue under this Act, it shall select a depository banking corporation in accordance with the terms of this Act; and if said Board determines to follow the General Laws in the deposit of said revenues, it may at any time thereafter elect to select a depository banking corporation under the terms of this Act and thereupon it shall deposit its revenues in accordance with the provisions herewith. Funds of a District on deposit in a banking corporation may be paid out pursuant to such terms and conditions as may be agreed upon between the District and said banking corporation.

**Audit of revenues on deposit; open to public inspection**

Sec. 4. The Governing Board of any District which deposits its revenues with a banking corporation under the provisions of this Act shall not later than March 1st of each year cause an audit to be made of the revenues of the District on deposit with the banking corporation for the preceding calendar year or part thereof, and said audit shall be made by the county auditor of the county in which the District lies (or, in case the District lies in more than one county, by the county auditor of the county in which is located the greater amount of acreage of such District) or by an independent certified accountant or firm of independent certified public accountants employed by said Board, and the cost of such audit shall be paid by the Board out of available revenues. Such audit shall be retained at the main office of the Board, and shall be open to public inspection at all reasonable times.

**Conflicts between Act and prior bonds or with other laws**

Sec. 5. If the provisions of this Act conflict with the provisions of any bonds heretofore or hereafter issued by any District secured in whole or in part by a pledge of revenues, or with the provisions of the proceedings authorizing such bonds, said bonds and proceedings shall control over this Act insofar as said conflicts are concerned; and if the provisions of this Act conflict with the provisions of any special Act heretofore or hereafter enacted by the Legislature, which special Act pertains to one District or specific Districts, said special Act shall control over this Act insofar as said conflicts are concerned.

**Validation of districts, acts and proceedings**

Sec. 6. All Districts as defined by this Act (including the boundaries thereof) heretofore created are in all things validated, and all acts and proceedings had or performed by the Governing Board of any such District and its officers are hereby in all things validated.

**Saving clause**

Sec. 7. This Act shall not be construed to validate the organization of any District now involved in litigation questioning the legality of the organization if such litigation is ultimately determined against the legality of such organization; nor shall this Act be construed to validate the legality of any bonds of any District now involved in litigation questioning the legality of such bonds if such litigation is ultimately determined against the legality of such bonds. Acts 1955, 54th Leg., p. 668, ch. 238.

Emergency. Effective May 16, 1955.

Section 8 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of the conflict. Section 9 provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 8247f. Exchange or sale of lands; districts containing city of 375,000 or more**

Section 1. The Governing Board of any navigation district in this State heretofore or hereafter created under the laws of this State and having within its limits a city containing three hundred and seventy-five thousand (375,000) population or more according to the latest preceding or any future Federal Census shall have and there is hereby conferred the right, power and authority, when in the opinion of a majority of said Governing Board it is necessary, desirable or advantageous to the interest of said navigation district so to do, to exchange lands with any other landowner, or, as an incident to the acquisition of lands for the uses and purposes of said navigation district, to make conveyance to another person, firm or corporation of lands owned and held by said navigation district the ownership and use of which was no longer necessary or desirable or the use of which lands was not as feasible or desirable for the public purposes of said navigation district as is and as will be the lands to be acquired by said navigation district.

Sec. 2. The right, power and authority hereby conferred shall be cumulative of the power and authority conferred by subsection (b) and subsection (c) of the Acts of the Forty-fourth Legislature, Regular Session, 1935, Chapter 134; and navigation districts as aforesaid shall have the power and authority to make and to continue to make leases for oil, gas and minerals in the manner and upon the provisions and conditions

appearing in said subsection (b), and to make and to continue to make leases or sales of all or any part of the surplus lands owned by such navigation districts in the manner and upon the provisions and conditions appearing in said subsection (c); and the powers granted therein shall not be or operate as a limitation upon the power and authority hereby conferred.

Sec. 2a. All contracts for sale or exchange of land entered into and all conveyances of land made prior to the effective date of this Act by any navigation district having within its limits a city of three hundred and seventy-five thousand (375,000) or more population, according to the latest or any future Federal Census, under the authority of Chapter 134, Acts of 1935, page 368, compiled as Article 8247b of Vernon's Civil Statutes, are hereby ratified and confirmed in all respects and they are and shall be valid and binding contracts and conveyances as though each of the requirements of such Article had been fully satisfied. Provided that nothing in this section shall be construed to apply to or affect any suit or petition in litigation now pending which questions the validity of any such contract or conveyance. Acts 1955, 54th Leg., p. 554, ch. 176.

Emergency. Effective May 7, 1955.

Section 3 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

Title of Act:

An Act relating to the disposition of land owned by navigation districts heretofore created under the laws of this State and having within their limits a city containing three hundred and seventy-five thousand (375,000) population or more; authorizing the governing boards

of such navigation districts to make exchanges of land or sales pursuant to exchange of lands; making the provisions hereof cumulative of the provisions of subsections (b) and (c) of the Acts of the Forty-fourth Legislature, Regular Session, 1935, Chapter 134; validating sales and exchanges of land heretofore made; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 554, ch. 176.

## CHAPTER TEN—PILOTS

### Art. 8274. [6309], [3800] Pilotage

The rate of pilotage, which may be fixed under Articles 8267 and 8269, on any class of vessels shall not, in any port of this State with the exception of the Port of Galveston, exceed Six (\$6.00) Dollars for each foot of water which the vessel at the time of piloting draws; and whenever a vessel, except of the classes below excepted, shall decline the services of a pilot offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall on so going out be liable for the payment of half pilotage to the pilot who had first offered his services before she came in; but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage on the

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

lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate, to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, she shall be entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in, but if such off-shore service be declined, no portion of said compensation shall be recovered. As amended Acts 1955, 54th Leg., p. 648, ch. 224, § 1.

Emergency. Effective May 16, 1955.

## VI. GENERAL PROVISIONS

### CHAPTER ELEVEN—IN GENERAL

Art.

8280—7. Water districts; filing certified copies of act or order creating or altering boundaries; public inspection; penalties [New].

**Art. 8280—7. Water districts; filing certified copies of act or order creating or altering boundaries; public inspection; penalties**

Section 1. Every river authority, water conservation and reclamation district, water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, levee improvement district, drainage district, navigation district, irrigation district and any type of water district, heretofore or hereafter created by either the Legislature, Board of Water Engineers or its successor or any County Commissioners Court, pursuant to Section 59 of Article XVI or Section 52 of Article III of the Constitution of Texas, shall file within sixty (60) days after the effective date of this Act or within sixty (60) days after its organization or creation with the Board of Water Engineers or its successor a certified copy of the Legislative Act, with amendments, creating such district or authority, or if authorized to be created by the Board of Water Engineers, or its successor or any County Commissioners Court, a certified copy of the order creating or authorizing the creation of such district. If the boundaries of any district have been altered or are hereafter altered by inclusions or exclusions of land, the district shall file within sixty (60) days after such alteration with the Board of Water Engineers or its successor a certified copy of the order of the district's governing body altering such boundaries.

Sec. 2. Every such district or authority shall file within sixty (60) days in the office of the Board of Water Engineers or its successor a list of the names and addresses of the officers and members of the Board of Directors or other governing body of such district, which list shall set forth the date that the term of office of each director or member of the governing body shall expire. Thereafter, the district shall notify the Board immediately of any changes in membership due to resignation or death, giving the name of the newly elected or appointed member. After any election or selection of a director or member, the district shall notify the Board within thirty (30) days of such election the name of the director or member chosen, together with the date that each term of office shall expire.

Sec. 3. The Board of Water Engineers or its successor shall adopt a system for the filing of the information required by the provisions of this

Act, which file shall be open for inspection by the public during the office hours of the Board.

Sec. 4. Failure on the part of any district to fully comply with the provisions of this Act shall subject the district to a civil penalty of Fifty Dollars (\$50) and a further civil penalty of Two Dollars (\$2) per day for each day of failure to comply with such provisions after the effective date of this Act; and the State may recover such a penalty by suit therefor; provided, however, the maximum penalty shall not exceed the sum of Three Hundred Dollars (\$300). Acts 1955, 54th Leg., p. 236, ch. 62.

Effective 90 days after June 7, 1955, date of adjournment.

Section 5 of the Act of 1955 repealed all conflicting laws and parts of laws to the extent of such conflict and provided also that partial invalidity should not affect the remaining portions of the Act.

Title of Act:

An Act requiring every water district, created pursuant to the Constitution of Texas, to file with the Board of Water Engineers or its successor a certified

copy of the Act or order creating same or altering its boundaries, as well as such information necessary to maintain the Board to file such information an up-to-date list of its officers; require public inspection; providing penalties for violation; repealing all conflicting laws; providing a saving clause; and declaring an emergency. Acts 1955, 54th Leg., p. 236, ch. 62.

VII. PARTICULAR WATER SUPPLY AND CONTROL DISTRICTS

CHAPTER TWELVE—CREATION, POWERS AND OBLIGATIONS

Art.		Art.	
8280—101.	Brazos River Authority.	8280—121.	San Jacinto River Authority.
8280—102.	Liberty County Conservation and Reclamation District No. 3.	8280—122.	Upper Red River Flood Control and Irrigation District.
8280—103.	Lower Neches Valley Authority.	8280—123.	Lower Concho River Water and Soil Conservation Authority.
8280—104.	Valley Conservation and Reclamation District.	8280—124.	Upper Guadalupe River Authority.
8280—105.	Guadalupe River Authority.	8280—125.	Webb County Conservation and Reclamation District.
8280—106.	Guadalupe-Blanco River Authority.	8280—126.	Bexar County Metropolitan Water District.
8280—107.	Lower Colorado River Authority.	8280—127.	Dallas County Flood Control District.
8280—108.	Neches River Conservation District.	8280—128.	Lavaca County Flood Control District.
8280—109.	Upper Colorado River Authority.	8280—129.	Colorado County Flood Control District.
8280—110.	Lower Rio Grande Flood Control District.	8280—130.	Fayette County Flood Control District.
8280—111.	Central Colorado River Authority.	8280—131.	Jackson County Flood Control District.
8280—112.	Gulf Water Supply District.	8280—132.	Dallas County Park Cities Water Control and Improvement District No. 2.
8280—113.	Leon River Flood Control District.	8280—133.	Sabine River Authority.
8280—114.	Pease River Flood Control District.	8280—134.	Lower Nueces River Water Supply District.
8280—115.	Nueces River Conservation and Reclamation District.	8280—135.	Trinity Bay Conservation District.
8280—116.	Sulphur River Conservation and Reclamation District.	8280—136.	Fort Bend County Drainage District.
8280—117.	Comal County Water Recreational District No. 1.	8280—137.	Colorado River Municipal Water District.
8280—118.	Panhandle Water Conservation Authority.	8280—138.	Jim Wells—Duval Counties Conservation and Reclamation District.
8280—119.	San Antonio River Authority.		
8280—120.	Harris County Flood Control District.		

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

- | Art.      |   | Art.      |  |
|-----------|---|-----------|--|
| 8280—139. | Eastland County Water Supply District.                                | 8280—167. | Yorks Creek Improvement District [New].  |
| 8280—140. | Matagorda County Water Control and Improvement District No. 1.        | 8280—168. | Travis County Improvement District No. 1 [New].  |
| 8280—141. | North Texas Municipal Water District.                                 | 8280—169. | San Augustine Water Authority [New].   |
| 8280—142. | Fisher County Water Authority.  | 8280—170. | Colorado County Water Control and Improvement District No. 1 [New].  |
| 8280—143. | Valley Acres Water District.  | 8280—171. | Shelby County Water Supply District [New].   |
| 8280—144. | Lower Rio Grande Authority.   | 8280—172. | Boling Municipal Water District [New].   |
| 8280—145. | San Patricio Municipal Water District.                                | 8280—173. | Haltom City Water Authority [New].   |
| 8280—146. | Brookshire Municipal Water District.                                  | 8280—174. | Newton County Water Supply District [New].   |
| 8280—147. | Northeast Texas Municipal Water District.                             | 8280—175. | Atascosa and Frio Counties Improvement District No. 1 [New].   |
| 8280—148. | Dallas County Water Supply and Control District.                      | 8280—176. | Runnels County Water Improvement District [New].   |
| 8280—149. | West Trinity Water, Sewer and Improvement District.                   | 8280—177. | City of McAllen Water and Sewer Authority [New].   |
| 8280—150. | North Waco Water Supply District.                                     | 8280—178. | Travis—Williamson County Water Control and Improvement District No. 1 [New].   |
| 8280—151. | Wilbarger County Water Supply District.                               | 8280—179. | Ground Water Conservation District No. 2, North of Canadian River; validation and creation and bond proceedings [New]. |
| 8280—152. | Medina County Water Control and Improvement District No. 2.           | 8280—180. | South Main Street Municipal Water District [New].  |
| 8280—153. | Refugio County Water Control and Improvement District No. 1.          | 8280—181. | Reagan County Water Supply District [New].   |
| 8280—154. | Canadian River Municipal Water Authority.                             | 8280—182. | Bell County Water Control and Improvement District No. 3 [New].  |
| 8280—155. | Wise County Water Supply District.                                    | 8280—183. | Bell County Water Control and Improvement District No. 4 [New].  |
| 8280—156. | Harris County Sanitation Authority.                                   | 8280—184. | Upper Jasper County Water Authority [New].   |
| 8280—157. | Upper Neches River Municipal Water Authority.                         | 8280—185. | Tyler County Water Control and Improvement District No. 1 [New].   |
| 8280—158. | North Montague County Water Supply District.                          | 8280—186. | Two Mile Creek Conservation and Reclamation District of Calhoun County [New].  |
| 8280—159. | Grayson County Water Improvement District No. 1.                      | 8280—187. | Fort Bend County Water Supply District [New].  |
| 8280—160. | Green Belt Municipal and Industrial Water Authority.                  | 8280—188. | Trinity River Authority of Texas [New].  |
| 8280—161. | Jackson County Water Control and Improvement District [New].          | 8280—189. | Bell County Water Control and Improvement District No. 1 [New].  |
| 8280—162. | West Central Texas Municipal Water District [New].                    | 8280—190. | Harris County Improvement District No. 1 [New].  |
| 8280—163. | Benbrook Sewer and Water Authority [New].                             |           |  |
| 8280—164. | Haskell County Water Supply District [New].                           |           |  |
| 8280—165. | Sulphur River Municipal Water District [New].                         |           |  |
| 8280—166. | Jefferson County Water Control and Improvement District No. 10 [New]. |           |  |



*The complete text of Acts relating to particular Water Supply and Control Districts, as amended, is set out in Vernon's Annotated Civil Statutes, Article 8280—101 et seq.*

**Art. 8280—101. Brazos River Authority**

Acts 1929, 41st Leg., 2nd C.S., Sp.L., p. 22, ch. 13.	Acts 1935, 44th Leg., 1st C.S., p. 1527, ch. 368, § 14.
Acts 1931, 42nd Leg., 1st C.S., p. 8, ch. 5, § 1.	Acts 1953, 53rd Leg., p. 531, ch. 194, §§ 1, 2, 4.
Acts 1935, 44th Leg., p. 56, ch. 19, §§ 1-4, 8.	

**Art. 8280—102. Liberty County Conservation and Reclamation District No. 3**

Acts 1931, 42nd Leg., Sp.L., p. 236, ch. 124.

**Art. 8280—103. Lower Neches Valley Authority**

Acts 1933, 43rd Leg., 1st C.S., p. 169, ch. 63.	Acts 1941, 47th Leg., p. 1112, ch. 570, §§ 1-4.
Acts 1934, 43rd Leg., 4th C.S., p. 47, ch. 17, §§ 1, 2.	Acts 1949, 51st Leg., p. 1109, ch. 567, § 1.

**Art. 8280—104. Valley Conservation and Reclamation District**

Acts 1933, 43rd Leg., 1st C.S., p. 186, ch. 68.

**Art. 8280—105. Guadalupe River Authority**

Acts 1933, 43rd Leg., 1st C.S., p. 198, ch. 75.

**Art. 8280—106. Guadalupe-Blanco River Authority**

Acts 1933, 43rd Leg., 1st C.S., p. 198, ch. 75.	Acts 1935, 44th Leg., 1st C.S., p. 1615, ch. 410, § 1.
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**Art. 8280—107. Lower Colorado River Authority**

Acts 1934, 43rd Leg., 4th C.S., p. 19, ch. 7.	Acts 1939, 46th Leg., Spec.L., p. 1048, §§ 1, 2.
Acts 1935, 44th Leg., 1st C.S., p. 1604, ch. 405, § 1.	Acts 1941, 47th Leg., p. 657, ch. 398, § 1.
Acts 1937, 45th Leg., p. 694, ch. 350, § 1.	Acts 1949, 51st Leg., p. 101, ch. 61, § 1.
	Acts 1951, 52nd Leg., p. 151, ch. 90, § 1.
	Acts 1955, 54th Leg., p. 532, ch. 165.

**Art. 8280—108. Neches River Conservation District**

Acts 1935, 44th Leg., p. 237, ch. 97.	Acts 1945, 49th Leg., p. 456, ch. 287, §§ 1, 2.
Acts 1939, 46th Leg., Spec.L., p. 1080, §§ 1-4.	

**Art. 8280—109. Upper Colorado River Authority**

Acts 1935, 44th Leg., p. 336, ch. 126.	Acts 1943, 48th Leg., p. 270, ch. 170, §§ 1, 2.
Acts 1936, 44th Leg., 3rd C.S., p. 2099, ch. 505, §§ 1-2a.	Acts 1947, 50th Leg., p. 208, ch. 119, §§ 1-4.
Acts 1939, 46th Leg., Spec.L., p. 1060.	
Acts 1941, 47th Leg., p. 258, ch. 174, § 1.	

**Art. 8280—110. Lower Rio Grande Flood Control District**

Acts 1935, 44th Leg., p. 731, ch. 319.

**Art. 8280—111. Central Colorado River Authority**

Acts 1935, 44th Leg., p. 777, ch. 388. Acts 1939, 46th Leg., Spec.L., p. 1045,  
 Acts 1937, 45th Leg., p. 680, ch. 341, §§ 1-5.  
 1-7. Acts 1941, 47th Leg., p. 83, ch. 69.

**Art. 8280—112. Gulf Water Supply District**

Acts 1935, 44th Leg., p. 1027, ch. 361.

**Art. 8280—113. Leon River Flood Control District**

Acts 1935, 44th Leg., 1st C.S., p. 1630,  
 ch. 414.

**Art. 8280—114. Pease River Flood Control District**

Acts 1935, 44th Leg., 1st C.S., p. 1646, ch.  
 420.

**Art. 8280—115. Nueces River Conservation and Reclamation District**

Acts 1935, 44th Leg., 1st C.S., p. 1660, Acts 1943, 48th Leg., p. 701, ch. 390, §§  
 ch. 427. 1, 2.  
 Acts 1937, 45th Leg., 2nd C.S., p. 1891, Acts 1945, 49th Leg., p. 489, ch. 305, §§  
 ch. 20, §§ 1-4. 1, 2.  
 Acts 1939, 46th Leg., Spec.L., p. 1074,  
 § 1.

**Art. 8280—116. Sulphur River Conservation and Reclamation District**

Acts 1935, 44th Leg., 2nd C.S., p. 1714,  
 ch. 445.

**Art. 8280—117. Comal County Water Recreational District No. 1**

Acts 1937, 45th Leg., p. 96, ch. 57.

**Art. 8280—118. Panhandle Water Conservation Authority**

Acts 1937, 45th Leg., p. 507, ch. 256. Acts 1949, 51st Leg., p. 676, ch. 349, § 1.

**Art. 8280—119. San Antonio River Authority**

Acts 1937, 45th Leg., p. 556, ch. 276.  
 Acts 1939, 46th Leg., Spec.L., p. 1083, § 1.  
 Acts 1953, 53rd Leg., p. 82, ch. 60, §§ 1-3a.

**Art. 8280—120. Harris County Flood Control District**

Acts 1937, 45th Leg., p. 714, ch. 360.

**Art. 8280—121. San Jacinto River Authority**

Acts 1937, 45th Leg., p. 861, ch. 426. Acts 1941, 47th Leg., p. 1350, ch. 613, § 1.  
 Acts 1939, 46th Leg., Spec.L., p. 1097, § 1. Acts 1943, 48th Leg., p. 653, ch. 371, § 1.  
 Acts 1941, 47th Leg., p. 769, ch. 480, §§ 1-5. Acts 1951, 52nd Leg., p. 618, ch. 367, § 1.

**Art. 8280—122. Upper Red River Flood Control and Irrigation District**

Acts 1937, 45th Leg., p. 1128, ch. 454.

**Art. 8280—123. Lower Concho River Water and Soil Conservation Authority**

Acts 1939, 46th Leg., Spec.L., p. 1053.

**Art. 8280—124. Upper Guadalupe River Authority**

Acts 1939, 46th Leg., Spec.L., p. 1062.

**Art. 8280—125. Webb County Conservation and Reclamation District**

Acts 1939, 46th Leg., Spec.L., p. 1074, §§  
2-9.

Acts 1945, 49th Leg., p. 491, ch. 306.

**Art. 8280—126. Bexar County Metropolitan Water District**

Acts 1953, 53rd Leg., p. 100, ch. 66, § 1.

**Art. 8280—127. Dallas County Flood Control District**

Acts 1945, 49th Leg., p. 619, ch. 355.

Acts 1951, 52nd Leg., p. 79, ch. 50, §§ 1, 2.

**Art. 8280—128. Lavaca County Flood Control District**

Acts 1947, 50th Leg., p. 301, ch. 183.

**Art. 8280—129. Colorado County Flood Control District**

Acts 1947, 50th Leg., p. 308, ch. 184.

**Art. 8280—130. Fayette County Flood Control District**

Acts 1947, 50th Leg., p. 314, ch. 185.

**Art. 8280—131. Jackson County Flood Control District**

Acts 1947, 50th Leg., p. 321, ch. 186.

Acts 1953, 53rd Leg., p. 921, ch. 383, §§  
1, 2.

Acts 1955, 54th Leg., p. 845, ch. 313, § 1.

**Art. 8280—132. Dallas County Park Cities Water Control and Im-  
provement District No. 2**

Acts 1947, 50th Leg., p. 1066, ch. 456.

**Art. 8280—133. Sabine River Authority**

Acts 1949, 51st Leg., p. 193, ch. 110.

Acts 1955, 54th Leg., p. 373, ch. 93, § 1.

Acts 1955, 54th Leg., p. 379, ch. 101, §§  
1-3.

**Art. 8280—134. Lower Nueces River Water Supply District**

Acts 1949, 51st Leg., p. 326, ch. 159.

**Art. 8280—135. Trinity Bay Conservation District**

Acts 1949, 51st Leg., p. 510, ch. 282.

Acts 1950, 51st Leg., 1st C.S., p. 116, ch.  
45, § 1.

**Art. 8280—136. Fort Bend County Drainage District**

Acts 1949, 51st Leg., p. 550, ch. 303, §§

1-6.

**Art. 8280—137. Colorado River Municipal Water District**

Acts 1949, 51st Leg., p. 655, ch. 340.

**Art. 8280—138. Jim Wells—Duval Counties Conservation and Reclamation District**

Acts 1949, 51st Leg., p. 737, ch. 398.

**Art. 8280—139. Eastland County Water Supply District**

Acts 1949, 51st Leg., p. 855, ch. 465.

Acts 1953, 53rd Leg., p. 923, ch. 384, § 1.

Acts 1955, 54th Leg., p. 658, ch. 231, §§  
1, 2.

**Art. 8280—140. Matagorda County Water Control and Improvement District No. 1**

Acts 1950, 51st Leg., 1st C.S., p. 107, ch.  
40.

**Art. 8280—141. North Texas Municipal Water District**

Acts 1951, 52nd Leg., p. 96, ch. 62.

**Art. 8280—142. Fisher County Water Authority**

Acts 1951, 52nd Leg., p. 181, ch. 115.

**Art. 8280—143. Valley Acres Water District**

Acts 1951, 52nd Leg., p. 418, ch. 261.

**Art. 8280—144. Lower Rio Grande Authority**

Acts 1951, 52nd Leg., p. 507, ch. 309.

Acts 1953, 53rd Leg., p. 952, ch. 403, §§  
1-5.

**Art. 8280—145. San Patricio Municipal Water District**

Acts 1951, 52nd Leg., p. 632, ch. 373.

Acts 1954, 53rd Leg., 1st C.S., p. 59, ch.  
24, §§ 1-8.

**Art. 8280—146. Brookshire Municipal Water District**

Acts 1951, 51st Leg., p. 766, ch. 418.

**Art. 8280—147. Northeast Texas Municipal Water District**

Acts 1953, 53rd Leg., p. 114, ch. 78.

**Art. 8280—148. Dallas County Water Supply and Control District**

Acts 1953, 53rd Leg., p. 423, ch. 123.

Acts 1955, 54th Leg., p. 877, ch. 332, §§  
1, 2.

**Art. 8280—149. West Trinity Water, Sewer and Improvement District**

Acts 1953, 53rd Leg., p. 432, ch. 124.

**Art. 8280—150. North Waco Water Supply District**

Acts 1953, 53rd Leg., p. 507, ch. 185.

**Art. 8280—151. Wilbarger County Water Supply District**

Acts 1953, 53rd Leg., p. 514, ch. 186.

**Art. 8280—152. Medina County Water Control and Improvement District No. 2**

Acts 1953, 53rd Leg., p. 549, ch. 198.

**Art. 8280—153. Refugio County Water Control and Improvement District No. 1**

Acts 1953, 53rd Leg., p. 597, ch. 240.

**Art. 8280—154. Canadian River Municipal Water Authority**

Acts 1953, 53rd Leg., p. 616, ch. 243.

Acts 1955, 54th Leg., p. 587, ch. 196, §§  
1, 2.

**Art. 8280—155. Wise County Water Supply District**

Acts 1953, 53rd Leg., p. 695, ch. 268.

**Art. 8280—156. Harris County Sanitation Authority**

Acts 1953, 53rd Leg., p. 941, ch. 399.

**Art. 8280—157. Upper Neches River Municipal Water Authority**

Acts 1953, 53rd Leg., p. 990, ch. 412.

Acts 1955, 54th Leg., p. 581, ch. 193, §§  
1-8.

**Art. 8280—158. North Montague County Water Supply District**

Acts 1954, 53rd Leg., 1st C.S., p. 30, ch.  
12.

**Art. 8280—159. Grayson County Water Improvement District No. 1**

Acts 1954, 53rd Leg., 1st C.S., p. 39, ch.  
13.

**Art. 8280—160. Green Belt Municipal and Industrial Water Authority**

Acts 1954, 53rd Leg., 1st C.S., p. 73, ch.  
35.

**Art. 8280—161. Jackson County Water Control and Improvement District**

Acts 1955, 54th Leg., p. 227, ch. 60.

**Art. 8280—162. West Central Texas Municipal Water District**

Acts 1955, 54th Leg., p. 311, ch. 66.

Acts 1955, 54th Leg., p. 898, ch. 349, § 1.

**Art. 8280—163. Benbrook Sewer and Water Authority**

Acts 1955, 54th Leg., p. 447, ch. 123.

**Art. 8280—164. Haskell County Water Supply District**

Acts 1955, 54th Leg., p. 488, ch. 141.

**Art. 8280—165. Sulphur River Municipal Water District**

Acts 1955, 54th Leg., p. 610, ch. 212.

**Art. 8280—166. Jefferson County Water Control and Improvement District No. 10**

Acts 1955, 54th Leg., p. 677, ch. 245.

**Art. 8280—167. Yorks Creek Improvement District**

Acts 1955, 54th Leg., p. 691, ch. 250.

**Art. 8280—168. Travis County Improvement District No. 1**

Acts 1955, 54th Leg., p. 763, ch. 279.

**Art. 8280—169. San Augustine Water Authority**

Acts 1955, 54th Leg., p. 777, ch. 282.

**Art. 8280—170. Colorado County Water Control and Improvement District No. 1**

Acts 1955, 54th Leg., p. 783, ch. 283.

**Art. 8280—171. Shelby County Water Supply District**

Acts 1955, 54th Leg., p. 790, ch. 285.

**Art. 8280—172. Boling Municipal Water District**

Acts 1955, 54th Leg., p. 791, ch. 286.

**Art. 8280—173. Haltom City Water Authority**

Acts 1955, 54th Leg., p. 832, ch. 308.

**Art. 8280—174. Newton County Water Supply District**

Acts 1955, 54th Leg., p. 910, ch. 359.

**Art. 8280—175. Atascosa and Frio Counties Improvement District No. 1**

Acts 1955, 54th Leg., p. 951, ch. 373.

**Art. 8280—176. Runnels County Water Improvement District**

Acts 1955, 54th Leg., p. 966, ch. 376.

**Art. 8280—177. City of McAllen Water and Sewer Authority**

Acts 1955, 54th Leg., p. 1060, ch. 400.

**Art. 8280—178. Travis-Williamson County Water Control and Improvement District No. 1**

Acts 1955, 54th Leg., p. 1067, ch. 401.

**Art. 8280—179. Ground Water Conservation District No. 2, North of Canadian River; validation of creation and bond proceedings**

Acts 1955, 54th Leg., p. 1245, ch. 498.

**Art. 8280—180. South Main Street Municipal Water District**

Acts 1955, 54th Leg., p. 1259, ch. 504.

Tex.St.Supp. '56—56

**Art. 8280—181. Reagan County Water Supply District**

Acts 1955, 54th Leg., p. 1263, ch. 505.

**Art. 8280—182. Bell County Water Control and Improvement District  
No. 3**

Acts 1955, 54th Leg., p. 1267, ch. 506.

**Art. 8280—183. Bell County Water Control and Improvement District  
No. 4**

Acts 1955, 54th Leg., p. 1277, ch. 507.

**Art. 8280—184. Upper Jasper County Water Authority**

Acts 1955, 54th Leg., p. 1282, ch. 508.

**Art. 8280—185. Tyler County Water Control and Improvement Dis-  
trict No. 1**

Acts 1955, 54th Leg., p. 1284, ch. 509.

**Art. 8280—186. Two Mile Creek Conservation and Reclamation Dis-  
trict of Calhoun County**

Acts 1955, 54th Leg., p. 1286, ch. 510.

**Art. 8280—187. Fort Bend County Water Supply District**

Acts 1955, 54th Leg., p. 1290, ch. 511.

**Art. 8280—188. Trinity River Authority of Texas**

Acts 1955, 54th Leg., p. 1314, ch. 518.

**Art. 8280—189. Bell County Water Control and Improvement District  
No. 1**

Acts 1955, 54th Leg., p. 1618, ch. 523.

**Art. 8280—190. Harris County Improvement District No. 1**

Acts 1955, 54th Leg., p. 1627, ch. 527.

**TITLE 129—WILLS**

**Arts. 8281—8305. Repealed. Acts 1955, 54th ch. Leg., p. 88, ch. 55, § 434.  
Eff. Jan. 1, 1956**

Saving clause and application of Pro-  
bate Code, see Probate Code § 2.

**TITLE 130—WORKMEN'S COMPENSATION LAW,**

## Part 4

Art.

8309e. City, town and village employees  
[New].**PART I****Art. 8306. Damages and compensation for personal injuries****Increase of weekly compensation**

Sec. 15a. In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the Board that the amount of compensation being paid is inadequate to meet the necessities of the employee or beneficiary, the Board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, allowing discount for present payment at the rate of four (4%) per cent, compounded annually; provided that in no case shall the amount to which it is increased exceed the amount of the average weekly wages upon which the compensation is based; provided it is not intended hereby to prevent lump sum settlement when approved by the Board.

The provisions of this section shall also apply to compensation which is payable under any law enacted pursuant to Section 59, Section 60, or Section 61 of Article III of the Constitution of Texas. As amended Acts 1951, 52nd Leg., p. 127, ch. 78, § 1; Acts 1955, 54th Leg., p. 36, ch. 26, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 3 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws to the extent of the conflict.

**"Injury" and "personal injury" defined; occupational diseases, what are**

Sec. 20. Wherever the terms "injury" or "personal injury" are used in the Workmen's Compensation Law of this state, such terms shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom. Unless from the context the meaning is clearly to the contrary, such terms shall also be construed to mean and include occupational diseases, as hereinafter defined. The following diseases only shall be deemed to be occupational diseases:

(a) Poisoning by: (1) Aluminum Trioxide; (2) Arsenic; (3) Benzol or its homologues and derivatives; (4) Beryllium; (5) Cadmium; (6) Carbon Bisulphide; (7) Carbon Dioxide; (8) Carbon Monoxide; (9) Chlorine; (10) Cyanide; (11) Formaldehyde; (12) Halogenated Hydrocarbons; (13) Hydrochloric Acid; (14) Hydrofluoric Acid; (15) Hydrogen Sulphide; (16) Lead; (17) Manganese; (18) Mercury; (19) Methanol (Wood Alcohol); (20) Methanol Chloride; (21) Nitrous Fumes; (22) Nitric Acid; (23) Petroleum or Petroleum Products; (24) Phosphorus; (25) Selenium; (26) Sulphuric Acid; (27) Sulphuric Dioxide; (28) Sulphur Trioxide; (29) Tellurium; (30) Thallium; (31) Zinc;

(b) Anthrax caused by handling of wool, hair, bristles, hides and skins;

(c) Blisters caused by prolonged or repeated use of tools or mechanical appliances;



(d) Synovitis, Tenosynovitis, or Bursitis due to an occupation involving continual or repeated pressure on the parts affected;

(e) Chrome ulceration;

(f) Compressed air illness;

(g) Dermatitis; that is, inflammation of the skin due to oil, cutting compounds or lubricants, dust, liquids, fumes, gases or vapors;

(h) Diseased condition caused by exposure to x-rays or radio-active substances;

(i) Diseased condition of the eyes due to electric arc and welding, and cataract in glass workers;

(j) (Epitheliomatous cancer) or ulceration of the skin or the corneal surface of the eye caused by tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue of any of these substances;

(k) Glanders and other diseased conditions caused in handling any equine animal or the carcass of any such animal;

(l) Infectious or contagious disease contracted in the course of employment in or in immediate connection with a hospital or sanatorium in which persons or animals suffering from such disease are cared for or treated;

(m) Nystagmus incurred in underground work;

(n) Asbestosis;

(o) Silicosis;

(p) Psittacosis (ornithosis) caused by the handling or processing of meat and poultry. Added Acts 1947, 50th Leg., p. 176, ch. 113, § 2, as amended Acts 1955, 54th Leg., p. 662, ch. 233, § 1.

Emergency. Effective May 16, 1955.

#### Art. 8306a. Discount for present payment

In all cases when the payments of weekly compensation due an injured employee or beneficiary coming within the provisions of the Workmen's Compensation Act are accelerated by increasing the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, and when the liability of the insurance company is redeemed by the payment of a lump sum, by agreement of parties interested, or as a result of an order made by the Industrial Accident Board or a judgment rendered by a court of competent jurisdiction, and when advanced payments of compensation are made, and in all cases when compensation is paid before becoming due, discount shall be allowed for present payment at four (4%) per cent, compounded annually.

Provided, however, where suits are legally brought by any claimant or beneficiary under any of the provisions of this Act and recovery is had for past due weekly installments, such claimant or beneficiary shall be entitled to recover interest on such past due installments at the rate of four (4%) per cent, compounded annually. Any judgment rendered pursuant to any of the provisions of this Act shall bear interest from the date it is rendered until paid at the rate of four (4%) per cent, compounded annually.

Provided, however, future installments of compensation payable to alien beneficiaries, not residents of the United States, may be commuted and paid according to the terms and provisions of Section 17, Article 8306 of the Revised Civil Statutes of 1925; and provided further, when either party shall appeal from the award of the Industrial Accident Board to the District Court, the District Court shall try the matter appealed from only, and shall not in said trial adjudicate in any way any right to ex-

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

emplary damages, as is granted in Section 26 of Article XVI of the Constitution of Texas.

The provisions of this section shall also apply to compensation which is payable under any law enacted pursuant to Section 59, Section 60, or Section 61 of Article III of the Constitution of Texas. As amended Acts 1951, 52nd Leg., p. 127, ch. 78, § 2; Acts 1955, 54th Leg., p. 36, ch. 26, § 2.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 3 of the amendatory Act of 1955  
repealed all conflicting laws and parts of  
laws to the extent of the conflict.

#### PART 4

### Art. 8309e. City, town and village employees

#### **Insurance; acceptance of provisions; departments and divisions**

Sec. 3. Cities, towns and villages are hereby authorized to become either self-insurers or provide insurance under workmen's compensation insurance contracts or policies, extending workmen's compensation benefits to their employees. The provisions of this Act authorizing cities, towns and villages to provide workmen's compensation benefits or to take out workmen's compensation insurance is permissive only and the provision hereof with respect to either self-insurance or insurance under a policy of insurance is not mandatory. Workmen's compensation benefits, as provided in this Act, may be provided for all of the employees of a city, town or village, or may be provided only for one or more departments of the city, or for one or more groups of employees engaged in similar or related lines of work. All, or as a classified group or groups of employees engaged in the operation, maintenance, extension and improvement of a municipally owned public utility system or systems of any kind may be treated as a separate group or groups of employees for the purpose of extending workmen's compensation benefits under this Act. The governing body of any city, town or village may by ordinance or resolution adopt the provisions of this Act and make the same applicable to all or a department or group of employees paid out of funds subject to the appropriation or use of such governing body, and said ordinance shall specify whether the city elects to become a self-insurer under the provisions hereof or to take out a policy of workmen's compensation insurance with a qualified insurance company. Upon taking such action notice thereof shall be given to the Board stating the effective date of such self-insurance or such insurance policy and the departments or general group or groups of employees to be covered, and the approximate number of employees to be covered in each and the estimated amount of the payroll or payrolls. Notice shall also be given to the employees of the city, town or village of the provision so made for such workmen's compensation benefits and the effective date thereof; and employees of the city, town or village shall be conclusively deemed to have accepted such compensation provisions in lieu of common law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries so received. In cities, towns or villages in which a public utility or utilities is operated by a Board of Trustees set up and appointed in accordance with Article 1115, Revised Civil Statutes, 1925, or any similar law, such Board of Trustees shall have all of the powers and authority of the governing body of the city with reference to the adoption of a program of self-insurance under this Act or in the taking out of a policy or policies of workmen's compensation insurance hereunder, and all funds set aside or expended for such,

purposes shall be considered operating expenses of such municipal utilities. All funds set aside or paid by such Boards of Trustees in connection with self-insurance or for premiums on policies of insurance shall be paid out of the revenues of such utilities operated by such Board of Trustees and neither the provisions for self-insurance nor the obligations incurred under insurance policies shall be general liabilities of the city, town or village but shall constitute only obligations payable out of such revenues. Such Boards of Trustees shall be authorized to adopt all resolutions, give all notices and to do all things concerning workmen's compensation under this Act with reference to employees employed by such Boards of Trustees which the governing body of the city, town or village would be authorized to do with reference to other city employees, or groups of employees. As amended Acts 1955, 54th Leg., p. 466, ch. 131, § 1.

Emergency. Effective April 30, 1955.

**Questions determined by board; suit to set aside decisions; suit on order, ruling or decision; suit to collect award**

Sec. 10. All questions arising under this Act, if not settled by agreement of the parties interested therein and within the provisions of this Act, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act and the suit of the injured employee or person suing on account of the death of such employee shall be against the city, town or village. If the final order of the Board is against the city, town or village, then the city, town or village shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in court upon request, free of charge, with a certified copy of the notice of the city, town or village becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any court in this State upon trial of such claim therein pending and shall be prima-facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein.

In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the city, town or village, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the city, town or village and the city, town or village shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section

may bring suit in a court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent (12%) as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the city, town or village requiring the payment to an injured employee or his beneficiaries of any weekly or monthly payments, under the terms of this Law, and the city, town or village should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employee or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent (12%) penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one (1) or more of such claimants may have his place of residence at the time of the institution of the suit. As amended Acts 1955, 54th Leg., p. 466, ch. 131, § 2.

*Emergency. Effective April 30, 1955.*

#### **City, town or village attorney, duties of**

Sec. 17. The city, town or village attorney or his assistants, shall represent the city, town or village in the bringing or defense of suits and proceedings in connection with workmen's compensation benefits provided by such city, town or village, as a self-insurer, except in cases where municipal utilities are operated by Board of Trustees set up and appointed in accordance with Article 1115, Revised Civil Statutes, 1925, and similar statutes, and in such instances the regularly employed attorneys for such Boards of Trustees shall represent the city in all cases and proceedings involving workmen's compensation for the employees employed under the jurisdiction of such Boards of Trustees and for whom such benefits have been provided by the Board on a self-insurer basis. As amended Acts 1955, 54th Leg., p. 466, ch. 131, § 3.

*Emergency. Effective April 30, 1955.*

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# TEXAS RULES OF CIVIL PROCEDURE

## PART II. RULES OF PRACTICE IN DISTRICT AND COUNTY COURTS

### SECTION 5. CITATION.

Rule  
119—a. Copy of Decree.

### SECTION 11. TRIAL OF CAUSES.

#### A. APPEARANCE AND PROCEDURE

Rule  
237—a. Cases Remanded from Federal  
Court.

### J. NEW TRIALS

Rule  
329—a. County Court Cases.  
329—b. District Court Cases.

### SECTION 4. PLEADING

#### C. PLEADINGS OF DEFENDANT

#### Rule 86. Plea of Privilege

A plea of privilege to be sued in the county of one's residence shall be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of process therein, nor at the time of filing such plea, a resident of the county in which suit was instituted, and shall state the county of his residence, and the post office address of himself or his attorney and that "no exception to exclusive venue in the county of one's residence provided by law exists in said cause"; and such plea of privilege when filed shall be prima facie proof of the defendant's right to change of venue; provided that such plea shall not constitute a denial under oath of any allegations of plaintiff's petition required to be denied under oath by Rule 93 unless specifically alleged in such plea. A copy of such plea of privilege shall be served on the adverse party or his attorney of record by actual delivery in person to him or by mailing a copy of such pleading to him by registered mail return receipt requested. If such adverse party desires to controvert the plea of privilege, he shall within ten days after he or his attorney of record received the copy of the plea of privilege file a controverting plea under oath, setting out specifically the grounds relied upon to confer venue of such cause on the court where the cause is pending. Amended by order of June 16, 1943, effective Dec. 31, 1943; order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 2008(part)

Change: Service of notice of the controverting affidavit by registered mail is substituted for service by officer. Provision for appeals from order sustaining or overruling pleas of privilege is made in Art. 2008, which is deemed jurisdictional insofar as it grants the right to appeal, and hence not repealed. This part of 2008 is carried for context following Rule 384. See also Rule 385, which prescribes the

procedure for appeals, when allowed, from interlocutory orders.

Change by amendment effective December 31, 1941: The second sentence has been added.

Change by amendment effective December 31, 1943: The words "or shall have been delivered to defendant or his attorney" have been interpolated between the words "privilege" and "at."

Change by amendment effective December 31, 1947: The sentence commencing "If the defendant" and ending "at the same time" has been added.

Change by amendment effective January 1, 1955: Copy of plea of privilege required

to be served on the adverse party or his attorney by delivery to him in person or by registered mail, and requiring filing of controverting affidavit within ten days after receipt thereof.

## SECTION 5. CITATION

### Rule 113. Citation by Publication in Actions Against Unknown Owners or Claimants of Interest in Land

If the plaintiff in an action authorized under Acts 1931, 42nd Leg., p. 369, ch. 216, his agent or attorney shall make and file with the clerk of the court an affidavit, stating

(a) the name of the grantee as set out in the conveyance constituting source of title of defendants, and

(b) stating that affiant does not know the names of any persons claiming title or interest under such conveyance other than as stated in plaintiff's petition and

(c) if the conveyance is to a company or association name as grantee, further stating whether grantee is incorporated or unincorporated, if such fact is known, and if such fact is unknown, so stating.

Said clerk shall thereupon issue a citation for service upon all persons claiming any title or interest in such land under such conveyance. The citation in such cases shall contain the requisites and be served in the manner provided in T.R.C.P. 114, 115 and 116. Amended by order of July 20, 1954, effective Jan. 1, 1955.

Source: Acts 1931, 42nd Leg., p. 369, ch. 216, Sec. 3 (Art. 2041a, Vernon's Tex. Ann. Civ. St.) with minor textural change.

Change by amendment effective January 1, 1955: Letters "T.R.S." in last sentence changed to "T.R.C.P."

### Rule 119. Acceptance of Service

The defendant may accept service of process, or waive the issuance or service thereof by a written memorandum signed by him or by his duly authorized agent or attorney, sworn to before a proper officer other than an attorney in the case, and filed among the papers of the cause, and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. The party signing such memorandum shall be delivered a copy of plaintiff's petition, and the receipt of the same shall be acknowledged in such memorandum. In every divorce action such memorandum shall also include the defendant's mailing address. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 2045.

Change: Addition of requirement that the waiver of service be sworn to before an officer authorized to administer oaths.

Change by amendment effective Decem-

ber 31, 1941: It is provided that the officer shall be "other than an attorney in the case," and the last sentence is added.

Change by amendment effective January 1, 1955: Last sentence added.

### Rule 119—a. Copy of Decree

The district clerk shall forthwith mail a certified copy of the final divorce decree or order of dismissal to the party signing a memorandum waiving issuance or service of process. Such divorce decree or order of dismissal shall be mailed to the signer of the memorandum at the address

stated in such memorandum or to the office of his attorney of record. Promulgated by order of July 20, 1954, effective Jan. 1, 1955.

Note: New rule.

## SECTION 9. EVIDENCE AND DEPOSITIONS

### B. DEPOSITIONS

#### Rule 209. Submission to Witness; Changes; Signing

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties; provided that when the witness is a party to the suit with an attorney of record the deposition officer shall notify such attorney of record in writing by registered mail that the deposition is ready for such examination and reading at the office of such deposition officer, and if the witness does not appear and examine, read and sign his deposition within twenty (20) days after the mailing of such notice the deposition shall be returned as provided herein for unsigned depositions.

Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with the statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed; unless on motion to suppress, made as provided in Rule 212 the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. Amended by order of July 20, 1954, effective Jan. 1, 1955.

Source: Federal Rule 30(e).

Change by amendment effective January

Change: Substitution of reference to Rule 212 for reference to Federal Rule 32 (d). 1, 1955: Proviso added in first paragraph.

## SECTION 11. TRIAL OF CAUSES

### A. APPEARANCE AND PROCEDURE

#### Rule 237. Appearance Day

If a defendant, who has been duly cited, is by the citation required to answer on a day which is in term time, such day is appearance day as to him. If he is so required to answer on a day in vacation, he shall plead or answer accordingly, and the first day of the next term is appearance day as to him. Amended by order of March 31, 1941; order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 2152.

Change by amendment of March 31, 1941:

Change: Appearance day, where the answer is to be filed during the term, depends upon the date of service rather than on terms of court.

The last paragraph has been added.

Change by amendment effective January 1, 1955: Second paragraph dealing with removal to Federal Court eliminated.

#### Rule 237—a. Cases Remanded from Federal Court

When any cause is removed to the Federal Court and is afterwards remanded to the state court, the plaintiff shall file a certified copy of the



order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties. All such adverse parties shall have fifteen days from the receipt of such notice within which to file an answer. Promulgated by order of July 20, 1954, effective Jan. 1, 1955.

Note: New Rule.

#### J. NEW TRIALS

##### Rule 320. Motion

New trials may be granted and judgment set aside on motion for good cause, on such terms as the court shall direct. Each such motion shall be in writing and signed by the party or his attorney and shall specify each ground on which it is founded, and no ground not specified shall be considered. Amended by order of July 20, 1954, effective Jan. 1, 1955.

Source: Texas Rule 67 (for District and County Courts), unchanged. ary 1, 1955: Paragraphs (a) and (d) of original Rule eliminated as these requirements are covered in Rules 329-a and 329-b.

Change by amendment effective Janu-

ary 1, 1955: Paragraphs (a) and (d) of original Rule eliminated as these requirements are covered in Rules 329-a and 329-b.

##### Rule 324. Prerequisites of Appeal

In all cases tried in the county or district court, where parties desire to appeal from a judgment of the trial court, a motion for new trial shall be filed as a prerequisite to appeal; provided that it shall not be so prerequisite where a peremptory instruction is given, a case is withdrawn from the jury and judgment is rendered by the court without a jury, a judgment is rendered, or denied, non obstante veredicto or notwithstanding the finding of the jury on one or more special issues, or a motion for judgment on the verdict is made by the party who becomes appellant and is overruled; nor shall a motion for new trial be so required in a non-jury case, in a case coming within the proviso of Rule 329-a, or in a case where the appeal is based upon some error of the trial court arising after its action upon the motion for new trial. But motion for new trial shall be a necessary prerequisite to consideration of the complaints mentioned in Rule 325. When judgment is rendered non obstante veredicto or notwithstanding the finding of the jury on one or more special issues, the appellee may complain of any prejudicial error committed against him over his objection on the trial. A motion for new trial shall not be necessary in behalf of appellee where he does not complain of the judgment or a part thereof. Amended by order of July 20, 1954, effective Jan. 1, 1955.

Source: Texas Rule 71a (for District and County Courts).

Change: Reference to fundamental error as an exceptional situation not requiring motion for new trial eliminated. Addition of last sentence commencing "Provided, however".

Change by amendment of March 31, 1941: The second paragraph above has been added.

Change by amendment effective December 31, 1941: In the first paragraph the concluding wording beginning "by cross

assignments of error" has been omitted, and the sentence beginning "A motion for new trial" has been added. Also, in the last paragraph as appearing in the amendment of March 31, 1941, after the words "instructed verdict" the following wording has been interpolated "or in withdrawing the case from the jury and rendering judgment."

Change by amendment effective January 1, 1955: The Rule has been largely re-written and re-arranged.

##### Rule 327. For Misconduct

Where the ground of the motion is misconduct of the jury or of the officer in charge of them, or because of any communication made to the jury or that they received other testimony, or that a juror gave an erroneous or incorrect answer on voir dire examination, the court shall hear evidence thereof from the jury or others in open court, and may

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

grant a new trial if such misconduct proved, or the testimony received, of the communication made, or the erroneous or incorrect answer on voir dire examination, be material, and if it reasonably appears from the evidence both on the hearing of the motion and the trial of the case and from the record as a whole that injury probably resulted to the complaining party. Amended by order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 2234.

Change: Imposing burden on complaining party to show probability of injury.

Change by amendment effective January 1, 1955: Phrase "or that a juror gave an erroneous or incorrect answer on voir dire examination" inserted.

#### Rule 329—a. County Court Cases

Motion for new trial, when required in any case tried in a County Court shall be made within two (2) days after the rendition of judgment if the term of court shall continue so long, if not, then before the end of the term, and may be amended under leave of the court. Such motions for new trial, original or amended, shall be determined at the term of the court, at which made. Provided, however, that if there is not remaining in the term five full days' time from the rendition of the judgment to the adjournment of the court for the term in which the judgment is rendered, the filing of a motion for new trial shall never be a prerequisite to an appeal in a case tried in a county court. Promulgated by order of July 20, 1954, effective Jan. 1, 1955.

Note: New Rule.

#### Rule 329—b. District Court Cases

The following rules shall be applicable to motions for new trial filed in all district courts:

1. A motion for new trial when required shall be filed within ten (10) days after the judgment or other order complained of is rendered.
2. An original motion for new trial filed within said ten (10) day period may be amended by leave of the court. Said amended motion shall be filed before the original motion is acted upon and within twenty (20) days after the original motion for new trial is filed. Not more than one amended motion for new trial may be filed.
3. All motions and amended motions for new trial must be determined within not exceeding forty-five (45) days after the original or amended motion is filed, unless by written agreement of the parties in the case, the decision of the motion is postponed to a later date.
4. It shall be the duty of the proponent of an original or amended motion for new trial to present the same to the court within thirty (30) days after the same is filed. However, at the discretion of the district judge, an original motion or amended motion for new trial may be presented or hearing thereon completed after such thirty (30) day period. Such delayed hearing shall not operate to extend the time within which the original or amended motion must be determined, unless such time be extended by agreement as provided for in the preceding subdivision of this Rule. In the event an original motion or amended motion for new trial be not presented within thirty (30) days after the date of the filing thereof, and the district judge in his discretion refuses to consider the same or refuses to hear evidence relating thereto, such motion will be overruled by operation of law forty-five (45) days after the same is filed, unless disposed of by an order rendered before said date.

5. Judgments in the district court shall become final after the expiration of thirty (30) days after the date of rendition of judgment or order overruling an original or amended motion for new trial. After the expiration of thirty (30) days from the date the judgment is rendered or motion for new trial is overruled, the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law. The failure of a party to file a motion for new trial within the ten (10) day period prescribed in subdivision (1) of this rule shall not deprive the district court of jurisdiction to set aside a judgment rendered by it, provided such action be taken within thirty (30) days after the judgment is rendered. The filing of a motion for new trial after ten (10) days have expired and before thirty (30) days have expired since the rendition of the judgment shall not operate to extend the district court's jurisdiction over the judgment for a period of more than thirty days from the date of the rendition of judgment.

6. In district courts having continuous terms, that is, successive terms in a county throughout the year, without more than two days intervening between any such terms, the following rules shall apply:

(a) A motion for new trial filed during one term of court may be heard and acted upon at the next term of court.

(b) No motion for new trial shall be considered as waived or overruled because not acted upon at the term of court at which it was filed, but may be acted upon at any time within the next term of court agreeable to the provisions of this Rule 329-b.

(c) Judgments of such courts shall become as final after the expiration of thirty (30) days after the date of judgment or after a motion for new trial is overruled as if the term of court had expired.

7. In district courts which do not have continuous terms as defined above, the following provisions shall apply:

(a) Whenever a judgment is rendered and the remaining portion of the term does not extend for a period of thirty (30) days after such date of rendition, the term of said court insofar as the case in which the judgment is rendered is concerned shall be automatically extended for a period of thirty (30) days from and after the date of rendition of judgment.

(b) If original or amended motions for new trial be timely filed in accordance with this Rule 329-b, then the term of court, insofar as the particular case is concerned, shall be further automatically extended until the expiration of thirty (30) days after the time such motion for new trial shall have been disposed of in accordance with the provisions of this Rule. Promulgated by order of July 20, 1954, effective Jan. 1, 1955.

Note: New Rule.

#### K. CERTAIN DISTRICT COURTS

#### Rule 330. Rules of Practice and Procedure in Certain District Courts

##### (j) Acts in Succeeding Terms.

If a case or other matter is on trial, or in the process of hearing when the term of court expires, such trial, hearing or other matter may be proceeded with at the next term of court and no motion or plea shall be considered as waived or overruled, because not acted upon at the term of court at which it was filed, but may be acted upon at any time the

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

judge may fix or at which it may have been postponed or continued by agreement of the parties with leave of the court. This subdivision is not applicable to original or amended motions for new trial which are governed by Rule 329-b. Amended by order of July 20, 1954, effective Jan. 1, 1955.

Note: New Rule. The provisions of old Rule 330(j) are incorporated in Rule 329-b.

(k). Repealed, eff. Jan. 1, 1955

Note: The provisions of old Rule 330(k) are incorporated in Rule 329-b.

(l). Repealed, eff. Jan. 1, 1955

Note: The provisions of old Rule 330(l) are incorporated in Rule 329-b.

## PART III. RULES OF PROCEDURE FOR THE COURTS OF CIVIL APPEALS

### SECTION 3. PROCEEDINGS IN THE COURTS OF CIVIL APPEALS.

Rule

389—a. Statements of Facts. Duty of Clerk on Receiving.

### SECTION 1. PERFECTING APPEAL

#### Rule 355. Party Unable to Give Cost Bond

(a) When the appellant is unable to pay the costs of appeal or give security therefor, he shall be entitled to prosecute an appeal by filing with the clerk his affidavit stating that he is unable to pay the costs of appeal or any part thereof, or to give security therefor.

(b) The appellant or his attorney shall forthwith give notice of the filing of such affidavit to the opposing party or his attorney.

(c) Any interested officer of the court or party to the suit, may, by sworn pleading, contest the affidavit within ten days after the giving of such notice whereupon the court trying the case (if in session) or (if not in session) the judge of the court or county judge of the county in which the case is pending shall set the contest for hearing, and the clerk shall give the respective parties notice of such setting.

(d) Upon such hearing the burden of proof shall rest upon the appellant to sustain the allegations of his affidavit.

(e) Where no contest is filed in the allotted time the allegations of the affidavit shall be taken as true.

(f) Where the appellant is able to pay or give security for a part of the costs of appeal he shall be required to make such payment or give such security (one or both) to the extent of his ability. Amended by order of Oct. 10, 1945, effective Feb. 1, 1946; order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 2266.

Change: Subdivision (b) is new. Burden of proof is placed upon appellant. Provision for requiring payment or securing of part of costs where appellant can not pay or secure all of such costs is new.

Change by amendment effective February 1, 1946:

In subdivision (c) the words "by sworn pleading" have been added after the word "may."

Change by amendment effective January 1, 1955: Appellant or his attorney, rather than clerk, required to give notice provided in paragraph (b).

**SECTION 3. PROCEEDINGS IN THE COURTS OF CIVIL APPEALS****Rule 389—a. Statement of Facts. Duty of Clerk on Receiving**

Upon receipt of a statement of facts, the clerk shall ascertain if it has been agreed to by the parties under the provisions of Rule 377(d) or Rule 378, or if it has been settled and approved by the judge of the trial court under the provisions of Rule 377(d). The clerk shall also determine if such statement of facts be presented for filing within the time prescribed by Rule 384, 385 or 386, as the case may be. If the clerk finds that the statement of facts has been agreed to by the parties or approved by the trial judge and timely presented, he shall forthwith file the same, otherwise he shall endorse thereon the time of the receipt of such statement of facts and hold the same subject to the order of the Court of Civil Appeals, and notify the party (or his attorney) tendering such statement of facts of his action and state his reasons therefor. A party who agrees to a statement of facts shall be deemed to have waived the filing of the same in the trial court. The approval of the trial judge of a statement of facts shall be deemed tantamount to filing the same in the trial court. Promulgated by order of July 20, 1954, effective Jan. 1, 1955.

Note: New Rule.

**PART IV. RULES OF PRACTICE FOR THE SUPREME COURT****SECTION 1. PROCEEDINGS IN THE SUPREME COURT****Rule 474. Original Proceeding**

A petition seeking to institute an original proceeding for writ of mandamus, prohibition, injunction, and other like proceedings in the Supreme Court shall be presented to the clerk, accompanied with a motion for leave to file, and such written argument in behalf of the motion as may be desired. The motion will be filed and, together with the petition and argument, if any, will be sent at once to the consultation room for the action of the court. If the court should be clearly of the opinion that the facts set out in the petition entitle petitioner to the relief sought, the motion will be granted, the petition filed, and the cause placed upon the trial docket. Otherwise the motion will be overruled.

If the leave is granted, the petitioner shall deliver to the opposite party a copy of the petition and advise the clerk that he has done so, or deliver to the clerk an extra copy for delivery to the opposite party. The clerk shall give notice of the filing of the petition to the opposite party or his attorney of record by mail, or give such other notice as may be ordered by the court. Amended by order of June 16, 1943, effective Dec. 31, 1943; order of Aug. 18, 1947, effective Dec. 31, 1947; order of July 20, 1954, effective Jan. 1, 1955.

Source: New rule superseding Texas Rule 18 (For Supreme Court).

Change by amendment effective December 31, 1943: The first part of the last sentence, above.

Change by amendment effective December 31, 1947: The original proceeding has been characterized and other alterations have been made in the first paragraph of a minor textural nature. The former sen-

tence commencing "The clerk" and ending "Courts of Civil Appeals" has been eliminated. The paragraph commencing "If the leave" and ending "by the court" and the one commencing "A motion for leave" and ending "Court of Civil Appeals" have been added.

Change by amendment effective January 1, 1955. Last paragraph eliminated.

**Rule 475. Repealed, effective Jan. 1, 1955****Rule 483. Order on Application for Writ of Error**

In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation "Refused". In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application, with the notation "Refused. No Reversible Error." In all cases where the Supreme Court is without jurisdiction of the case as presented in the application it will dismiss the application with the docket notation, "Dismissed for want of jurisdiction."

In cases of conflict named in subdivision 2 of Art. 1728 of the Revised Civil Statutes of Texas, as amended, the Supreme Court shall grant the application for writ of error, unless it be in agreement with the decision of the Court of Civil Appeals, in the case wherein the application is filed, in which event said Supreme Court shall so state in its order, with such explanatory remarks as may be deemed appropriate. In cases where the decision of the Court of Civil Appeals is in conflict with a previous opinion of the Supreme Court, the Supreme Court may, in its discretion, without the necessity of granting the writ and hearing the case, reverse the same on the application for writ of error, making, at the same time, such further orders as may be appropriate. Amended by order of Oct. 10, 1945, effective Feb. 1, 1946; by order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 1728, last two sub-paragraphs.

Change: Substitution of notation "Refused for want of merit" for the notation under the present practice, "Dismissed for want of jurisdiction, correct judgment."

Change by amendment effective February 1, 1946:

The second sentence has been reworded. Change by amendment effective January 1, 1955: Second paragraph revised to conform to the provisions of Article 1728, Revised Civil Statutes, 1925, as last amended by Acts 1953, 53rd Leg., p. 1026, ch. 424.

**Rule 485. Deposit for Costs**

When an application for writ of error is filed with the Clerk of the Court of Civil Appeals, the petitioner shall deliver to said Clerk the sum of \$10.00 as costs in the Supreme Court, and the Clerk shall forward said deposit to the Supreme Court with the record. If the writ is granted, the petitioner shall deposit with the Clerk of the Supreme Court the additional sum of \$25 to cover the costs in the Supreme Court. In all proceedings originating in the Supreme Court, the petitioner, upon the filing of the motion for leave to file, shall deposit with the Clerk the sum of \$10.00 as costs and if the leave to file is granted, he shall deposit the additional sum of \$15.00 to cover the costs in the Supreme Court. In all other original proceedings in the Supreme Court and in all direct appeals from the district court as provided for in Rule 499a, the petitioner shall deposit, upon the filing of the petition or record, the sum of \$25 to cover the costs in the Supreme Court. The court reserves the right to dismiss the proceedings for failure to make proper deposit for costs; provided, however, that no such deposit shall be required of any petitioner who, under these rules or the statutes, is not required to give security for costs. If the petitioner is unable to pay the costs as above required, he may make

affidavit of his inability to do so and deliver same to the Clerk of the Court of Civil Appeals to be forwarded to the Supreme Court with the record, and mail a copy of the affidavit to the attorney of record for the respondent. Contest of such affidavit in the Supreme Court shall be governed by the provisions of Rule 355. As amended by order of Aug. 18, 1947, effective Dec. 31, 1947; by order of Oct. 12, 1949, effective March 1, 1950; by order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 1747, with minor textual change.

Change by amendment effective December 31, 1947: The previous rule has been completely redrafted and a new procedure has been substituted.

Change by amendment effective January 1, 1955: "Appellant" changed to "petitioner" in next to last sentence, and petitioner required to mail copy of affidavit to attorney for respondent.

## **PART VII. RULES RELATING TO SPECIAL PROCEEDINGS**

### **SECTION 3. PARTITION OF REAL ESTATE**

#### **Rule 758. Where Defendant is Unknown or Residence is Unknown**

If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in plaintiff's petition in said suit is owned by some person unknown to affiant, or that the place of residence of any known party owning an interest in land sought to be partitioned is unknown to affiant, the clerk of the court shall issue citation for publication, conforming to the requirements of Rules 114 and 115, and served in accordance with the directions of Rule 116. In case of unknown residence or party, the affidavit shall include a statement that after due diligence plaintiff and the affiant have been unable to ascertain the name or locate the residence of such party, as the case may be, and in such case it shall be the duty of the court trying the action to inquire into the sufficiency of the diligence so stated before granting any judgment, but the proviso of Rule 109, adapted to this situation, shall apply. Amended by order of July 20, 1954, effective Jan. 1, 1955.

Source: Art. 6085.

Change: Elimination of specific declaration of requisites of citation by publication and service thereof and adoption (by reference) of the general rules.

Change by amendment effective January 1, 1955: Words "or that the place of residence of any known party owning an interest in the land sought to be partitioned is unknown to affiant" inserted in first sentence, and last sentence added.

# THE PENAL CODE

## TITLE 4—OFFENSES AGAINST THE STATE, ITS TERRITORY, AND REVENUE

Chap. Art.  
7A. The State Seal [New] ----- 157a

### CHAPTER ONE—TREASON AND MISPRISION OF TREASON

#### Arts. 83-85

These sections not repealed by act relating to the Communist party, see Vernon's Ann.Civ.St. art. 6889—3A.

This section not repealed by act relating to the Communist party, see Vernon's Ann.Civ.St. art. 6889—3A.

### CHAPTER TWO—MISAPPLICATION OF PUBLIC MONEY

#### Art. 105. 116 Report of fees collected

Sec. 1. On or before the second Mondays in March, June, September and December of each year, said officers shall make written sworn report to the Commissioners Court of all such moneys and fees so collected by them during the quarter last preceding and remaining in their hands uncalled for, giving the number and style of each cause in which the same accrued and the name of the person entitled thereto, which report shall be filed with the county clerk and by him kept for future reference and examination.

Sec. 2. In any county in the State, containing a population of six hundred thousand (600,000) or more according to the preceding Federal Census, where all such moneys and fees required by this Article to be reported are on deposit with the county treasurer, subject to disbursement by warrants approved by the county auditor, all such district, county and precinct officers are hereby permitted to dispense with such quarterly reports. A full report of all moneys and fees shall be made by each such officer as a part of his annual report of fees, on forms designed by the county auditor for that purpose. As amended Acts 1955, 54th Leg., p. 599, ch. 206, § 1.

Emergency. Effective May 12, 1955.

### CHAPTER SEVEN—THE FLAG AND LOYALTY

#### Art. 153. Disloyalty in writing

This section not repealed by act relating to the Communist party, see Vernon's Ann. Civ.St., art. 6889—3A.

#### Art. 155. Disloyal language

This section not repealed by act relating to the Communist party, see Vernon's Ann. Civ.St., art. 6889—3A.

Tex.St.Supp. '56



**CHAPTER SEVEN A—THE STATE SEAL [NEW]**

Art.

157a. Advertising and other prohibited uses of Great Seal of Texas.

**Art. 157a. Advertising and other prohibited uses of Great Seal of Texas**

No person, firm, or corporation, or any agent, servant, representative, employee, or receiver, of any firm or corporation, shall use any facsimile, imitation, label, trademark, design, device, imprint or form of the Great Seal of Texas for the purpose of advertising or giving publicity to any goods, wares or merchandise or any commercial undertaking, or for any trade or commercial purpose. Any person, whether in his individual capacity, or as an officer, agent, servant, representative, employee or receiver of any corporation, who shall violate this Article shall be fined not less than Fifty Dollars (\$50) nor more than One Hundred Dollars (\$100), and each day of such use shall be a separate offense. Provided, however, the reproduction of official documents bearing the Great Seal of Texas shall not be a violation hereof if such documents are reproduced in full and are used for a purpose related to the purpose for which said documents were issued by the State. Acts 1955, 54th Leg., p. 898, ch. 350, § 1.

Emergency. Effective May 24, 1955.

Title of Act:

An Act to regulate the use of the Great Seal of Texas so as to prohibit the use thereof for advertising or any unofficial

use except as is provided in this Act; providing a penalty therefor; and declaring an emergency. Acts 1955, 54th Leg., p. 898, ch. 350.

**TITLE 10—OFFENSES AGAINST MORALS, DECENCY AND CHASTITY**

**CHAPTER SEVEN—MISCELLANEOUS OFFENSES**

Art.  
527a. Requiring retailer to purchase particular publication to obtain others [New].

527b. Lewd or corruptive comic books; Display or sale [New].

**Art. 527. 509 Immoral publications, motion pictures, penny arcade machine pictures, and indecent objects**

Whoever shall within this State engage in the business of editing, publishing or disseminating any pamphlet, magazine, or any printed paper devoted mainly or purporting to be devoted mainly to the publications of whoring, lechery, assignations, intrigues between men and women and immoral conduct of persons, or of depraved acts showing violent brutality, or shall knowingly have in his possession for sale or shall keep for sale or distribute or in any way assist in the sale or shall give away such pamphlet, magazine or printed matter in this State; or whoever shall within this State engage in the showing and exhibition of lewd, lascivious, or depraved motion pictures, or of lewd, lascivious, or depraved pictures in penny arcade machines, or of indecent objects or images, or shall knowingly have in his possession for sale, or shall keep for sale or distribute or in any way assist in the sale or give away any such lewd, lascivious, or depraved pictures in penny arcade machines, or of indecent objects or images, or shall knowingly have in his possession for sale, or shall keep for sale or distribute or in any way assist in the sale or give away any such lewd, lascivious, or depraved motion pictures, penny arcade pictures, or indecent objects or images; or whoever shall within this State engage in the business of editing, publishing, disseminating, printing, designing, manufacturing, or in any manner preparing any advertisement, notice, picture, placard, book-cover, book-jacket, magazine cover, frontispiece, illustration, figure, image, article or thing to be used in connection with the sale, distribution, advertisement, exhibition or display of any pamphlet, magazine, or placard, book-cover, book-jacket, magazine cover, frontispiece, illustration, figure, image, article or thing portrays nude or partly denuded female figures in compromising and obscene poses or which are in any manner lewd, lascivious, obscene, indecent, immoral, or depraved, and which represents or purports to represent to any prospective purchaser or reader that the contents, text or subject matter of such pamphlet, magazine or any printed paper or matter is devoted in whole or in part to the publication of whoring, lechery, assignations, intrigues between men and women, immoral conduct of persons, or of depraved acts showing violent brutality, or shall knowingly show, exhibit, or display any such advertisement, notice, picture, placard, book-cover, book-jacket, magazine cover, frontispiece, illustration, figure, image, article or thing in this State shall upon conviction be deemed guilty of a misdemeanor and be punished by confinement in the County Jail for not more than six (6) months or be fined not more than One Thousand Dollars (\$1,000), or by both such fine and imprisonment. As amended Acts 1955, 54th Leg., p. 386, ch. 107, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 3 of the amendatory Act of 1955 repealed all conflicting laws and parts of

laws to the extent of such conflict. Section 4 provided that partial invalidity should not affect the remaining portions of the Act.

**Art. 527a. Requiring retailer to purchase particular publication to obtain others**

It shall be unlawful for any person, firm, or corporation, or any agent or servant thereof, acting as a wholesale distributor or news agency to require, or demand of, any person, firm, or corporation selling goods, wares, and merchandise at retail to purchase or accept from such distributor or agency any particular pamphlet, magazine, or printed matter in order that such retailer might purchase or secure from such distributor or agency any other magazine, pamphlet, or printed matter. Any person violating this provision of this Act shall be punished by confinement in the county jail not more than six (6) months or fined not more than One Thousand (\$1,000.00) Dollars, or by both such fine and imprisonment. Acts 1955, 54th Leg., p. 386, ch. 107, § 2 as amended Acts 1955, 54th Leg., p. 386, ch. 107, § 2; Acts 1955, 54th Leg., p. 1174, ch. 453, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

**Art. 527b. Lewd or corruptive comic books; display or sale**

**Section 1.** Any person, firm, company, or corporation who writes, draws, prints, publishes, or who offers for distribution, or who distributes as a wholesale distributor, or news agency; or displays, exhibits, sells, offers for sale; or who possesses for the purpose of distribution, display, exhibition, or sale, any lewd, depraved, or corruptive comic book, shall be guilty of a misdemeanor, and be punished by confinement in the county jail for not more than six (6) months, or by fine of not more than One Thousand Dollars (\$1,000), or by both such fine and imprisonment. Any person, firm, or corporation, or any agent or servant thereof, acting as a wholesale distributor or news agency, who requires, or demands of, any person, firm, or corporation, selling comic books at retail to purchase, or accept on consignment, from such distributor or agency, any particular comic book in order that such retailer might purchase or secure from such distributor or agency, any other magazine, pamphlet, or printed matter, shall also be guilty of a misdemeanor, and be punished by confinement in the county jail for not more than six (6) months, or by fine of not more than One Thousand Dollars (\$1,000), or by both such fine and imprisonment.

**Sec. 2.** The District Courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon application by any District or County Attorney within their respective jurisdictions, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this Act.

**Sec. 3.** For the purposes of this Act, the following words and terms shall be defined as follows:

a. "Comic book" shall mean and include any book, magazine, pamphlet, or other publication wherein a story, narrative, theme, or other account is depicted or portrayed by words, and by the use of consecutive drawings, pictures, photographs, or other pictorial impressions, or any combination thereof.

b. "Lewd comic book" shall mean and include any comic book depicting or portraying, or which contains advertising matter depicting or portraying, nudity, indecent exposure of the person, or sexually suggestive posture, scenes, likenesses, or activities.

c. "Depraved comic book" shall mean and include any comic book depicting sadism, any gruesome crime, or any form of sexual perversion, or containing profanity, obscenity, or filth.

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

d. "Corruptive comic book" shall mean and include any comic book containing material designed to create sympathy for a criminal, promote distrust of law, teach methods of committing any crime, or material depicting evil triumphing over good, or scenes of excessive violence, or containing advertisements for the sale of nude pictures, sex instruction books, knives, guns, or gambling equipment.

Sec. 4. The provisions of this Act shall not apply to any daily or weekly newspaper, trade journal, nor to any magazine actually engaged in the factual reporting of current events, nor to any reading matter regularly in use in any bona fide religious, educational, or scientific institution. Acts 1955, 54th Leg., p. 444, ch. 120.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 5 of the Act of 1955 provided  
that partial invalidity should not affect the  
remaining portions of the Act.

#### **Art. 535b. Enticing child for immoral purposes or for purpose of committing assault**

##### **Punishment**

Sec. 2. Any person violating the provisions of this Act shall be guilty of a felony, and upon conviction shall be punished by confinement in the county jail for a term not to exceed two (2) years, or by confinement in the penitentiary for any term not to exceed ten (10) years. As amended Acts 1955, 54th Leg., p. 391, ch. 110, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

#### **Art. 535c. Indecent exposure to child**

##### **Grade of offense and punishment**

Sec. 2. Any person violating this Act shall be guilty of a felony, and shall upon conviction be punished by confinement in the county jail for a period not to exceed two (2) years, or by confinement in the penitentiary for any term of years not to exceed fifteen (15) years. As amended Acts 1955, 54th Leg., p. 391, ch. 111, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

#### **Art. 535d. Handling or fondling child's sexual parts**

##### **Punishment**

Sec. 3. Any person violating the provisions of this Act shall be guilty of a felony, and shall, upon conviction, be punished by confinement in the county jail for not less than thirty (30) days or more than two (2) years, or by confinement in the penitentiary for any term of years not to exceed twenty-five (25) years. As amended Acts 1955, 54th Leg., p. 392, ch. 112, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

**TITLE 11—OFFENSES AGAINST PUBLIC POLICY AND  
ECONOMY**

**CHAPTER EIGHT—TEXAS LIQUOR CONTROL ACT**

**I. INTOXICATING LIQUORS**

<p>Art. 666—21¼. Maximum inspection fee on ex- ported liquors [New].</p>	<p>Art. 666—25b. Public school athletic events; bringing liquor into enclosure, stadium, etc. [New].</p>
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**I. INTOXICATING LIQUORS**

**Art. 666—15. Classification of permits**

(17). Wine and Beer Retailer's Permit. The Board or Administrator is authorized to issue Wine and Beer Retailer's Permits. The holders of such permits shall be authorized to sell for consumption on or off premises where sold, but not for resale, wine, beer and malt liquors containing alcohol in excess of one half of one per cent ( $\frac{1}{2}$  of 1%) by volume and not more than fourteen per cent (14%) of alcohol by volume. All such permits shall be applied for and issued, unless denied, and fees paid, upon the same procedure and in the same manner and upon the same facts and under the same circumstances, and for the same duration of time, and shall be renewable in the same manner, as required, and provided to govern application for an issuance of Retail Beer Dealer's Licenses under Article II, of this Act,<sup>1</sup> and shall be subject to cancellation or suspension for any of the reasons that a Retail Beer Dealer's License may be cancelled or suspended, and under the same procedure. The holders of Wine and Beer Retailer's Permits shall also be subject to all provisions of Section 22, Article II of this Act.<sup>2</sup> All alcoholic beverages which the holders of such permits are authorized to sell shall be sold under the same restrictions as provided in Article II governing the sale of beer, as to hours of sale and delivery, local restrictions, sales to minors and intoxicated persons, age of employees, installation or maintenance of barriers or blinds, prohibition of the use of the word 'saloon' in the signs or advertising, and subject to the same restrictions upon consumption of wine as provided for beer in the case of Retail Beer Dealers in Section 15 of Article II of this Act.<sup>3</sup> For the violation of any applicable provisions of Article II, the holders of such permits shall be liable for penalties provided in Article II; for the violation of any other provision of this Act the holders of such permits shall be subject to penalties provided in Article I of this Act.<sup>4</sup>

The Annual State Fee for a Wine and Beer Retailer's Permit shall be Thirty Dollars (\$30); provided, however, that a Wine and Beer Retailer's Permit may be issued for railway dining, buffet, or club cars, upon the payment of a fee of Five Dollars (\$5) for each car; provided, however, that the Wine and Beer Retailer's Permit may be issued for a regularly scheduled excursion boat which has been duly licensed by the United States Coast Guard to carry passengers upon the navigable waters of the State of Texas; provided, however, that the said excursion boat shall have a tonnage of not less than thirty-five (35) tons, with a length of not less than fifty-five (55) feet, and passenger capacity of not less than forty-

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

five (45) passengers, upon payment of a fee of Thirty-five Dollars (\$35); provided, however, that the railway and/or excursion boat application therefor and the payment of the fee shall be made direct to the Board; and provided, further, that any such permit for railway dining, buffet, or club car, and/or excursion boat shall be inoperative in any dry areas as the same is defined in this Act. As amended Acts 1955, 54th Leg., p. 1197, ch. 472, § 1.

1 Article 667—1 et seq.

2 Article 667—22.

3 Article 667—15.

4 Article 666—1 et seq.

Emergency. Effective June 15, 1955.

### Art. 666—17. Unlawful acts of permittees and others enumerated

(3)

(g) Notwithstanding the provisions of the above paragraphs (a) to (f), inclusive, it shall not be unlawful for a Distiller, Winery, Brewer, Rectifier, Wholesaler, Class B Wholesaler, Class A Winery, Class B Winery or Wine Bottler, to furnish without cost to a Retailer recipes, recipe books, book matches, cocktail napkins or other advertising items showing the name of the permittee furnishing such items or the brand name of the product advertised, the individual cost of which does not exceed Twenty-five Cents (25¢); provided, however, it shall be unlawful for any person who owns or has an interest in the business of a Distiller, Brewer, Rectifier, Wholesaler, Class B Wholesaler, Class A Winery, Class B Winery, Wine Bottler, Package Store, or Wine Only Package Store, or any agent, servant, or employee to allow any excessive discounts on liquor. Added Acts 1955, 54th Leg., p. 1149, ch. 433, § 2.

(14) (a). It shall be unlawful for any person under the age of twenty-one (21) years to purchase any alcoholic beverage, and upon conviction thereof shall be fined in a sum of not less than Ten Dollars (\$10) or more than One Hundred Dollars (\$100). It shall further be unlawful for any person under the age of twenty-one (21) years to possess, unless such person under the age of twenty-one (21) years be a bona fide employee, as permitted elsewhere in this Act,<sup>1</sup> on the licensed premises where such alcoholic beverage is possessed, or consume any alcoholic beverage in any public place unless at the time of such possession or consumption such person under the age of twenty-one (21) years is accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some Court, who is actually, visibly and personally present at the time such alcoholic beverage is possessed or consumed by such person under the age of twenty-one (21) years, and upon conviction thereof shall be fined in a sum of not less than Ten Dollars (\$10) or more than One Hundred Dollars (\$100). As amended Acts 1955, 54th Leg., p. 1149, ch. 433, § 1.

1 Articles 666—1 et seq., 667—1 et seq.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 3 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

Section 4 repealed all conflicting laws and parts of laws to the extent of such conflict.

### Art. 666—21¼. Maximum inspection fee on exported liquors

The inspection fee or charge provided in Section 21 of Article I of the Texas Liquor Control Act, on liquor (vinous, malt or spirituous) exported from this State, shall not exceed the sum of Five (\$5.00) Dollars on any

one shipment of liquor so exported. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 21¼, added Acts 1955, 54th Leg., p. 10, ch. 9, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 2 of the Act of 1955 repealed all  
conflicting laws and parts of laws to the  
extent of the conflict.

**Art. 666—25b. Public school athletic events; bringing liquor into enclosure, stadium, etc.**

Section 1. It shall be unlawful for any person or persons to bring or carry into any enclosure, field or stadium, where athletic events, sponsored or participated in by the public schools of this State, are being held, any intoxicating beverage or to have any intoxicating beverage in his possession while in or on said enclosure, field or stadium.

Sec. 2. Provided that if any officer of this State sees any person or persons violating the terms of Section 1 of this Act, he shall immediately seize such intoxicating beverage and shall within a reasonable time thereafter deliver same to the County or District Attorney who shall hold same as evidence until the trial of the accused party and shall thereafter dispose of same.

Sec. 3. Any person or persons violating the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined any sum not less than Twenty-five (\$25) Dollars and not more than Two Hundred (\$200) Dollars. Acts 1955, 54th Leg., p. 592, ch. 200.

Emergency. Effective May 12, 1955.

Title of Act:

An Act making it unlawful to bring or carry intoxicating beverages into any enclosure, stadium or field where athletic events sponsored or participated in by the

public schools of this State are being held; providing for the confiscation of such beverages and providing for a penalty for a violation hereof; and declaring an emergency. Acts 1955, 54th Leg., p. 592, ch. 200.

**Art. 666—32. Local option election**

The Commissioners Court of each county in the State, upon proper petition, shall order an election wherein the qualified voters of such county, or of any justice's precinct or incorporated city or town therein, may by the exercise of local option determine whether or not the sale of alcoholic beverages of one (1) or more of the various types and alcoholic content shall be prohibited or legalized within the prescribed limits of such county, justice's precinct or incorporated city or town.

Upon the written application of any ten (10) or more qualified voters of any county, justice's precinct, or incorporated city or town, the County Clerk of such county shall issue to the applicants a petition to be circulated among the qualified voters thereof for the signatures of those qualified voters in such area who desire that a local option election be called therein for the purpose of determining whether the sale of alcoholic beverages of one (1) or more of the various types and alcoholic content shall be prohibited or legalized within the prescribed limits of such county, justice's precinct, or incorporated city or town. The petition so issued shall clearly state the issue to be voted upon in such election, which shall be the same issue as that set out in the application; each such petition shall show the date of its issue by the County Clerk and shall be serially numbered, and each page of such petition shall bear the same date and serial number, and shall bear the seal of the County Clerk. The County Clerk shall deliver as many copies of said petition as may be required by the applicants, and each copy shall bear the date, number and seal on each page as required in the original. The County Clerk shall keep a copy of each such petition and a record of the applicants therefor. When any such petition so issued shall within thirty (30) days after the date of issue be filed with the Clerk

of the Commissioners Court bearing the actual signatures of as many as twenty-five per cent (25%) of the qualified voters of any such county, justice's precinct, or incorporated city or town, together with a notation showing the residence address of each of the said signers, together with the number that appears on his poll tax receipt or exemption certificate, or a sworn statement that the signer is entitled to vote without holding either a poll tax receipt or an exemption certificate, taking the votes for Governor at the last preceding General Election at which presidential electors were elected as the basis for determining the qualified voters in any such county, justice's precinct or incorporated city or town, it is hereby required that the Commissioners Court at its next regular session shall order a local option election to be held upon the issue set out in such petition. It shall be the duty of the County Clerk to check the names of the signers of any such petition, and the voting precincts in which they reside, to determine whether or not the signers of such petition are in fact qualified voters in such county, justice's precinct, or incorporated city or town at the time such petition is presented, and to certify to the Commissioners Court the number of qualified voters signing such petition. No signature shall be counted, either by the County Clerk or the Commissioners Court, where there is reason to believe it is not the actual signature of the purported signer or that it is a duplication either of name or of handwriting used in any other signature on the petition, and no signature shall be counted unless the residence address of the signer is shown, or unless it is signed exactly as the name of the voter appears on the official copy of the current poll list or an official copy of the current list of exempt voters, if the signer be the holder either of a poll tax receipt or an exemption certificate.

The minutes of the Commissioners Court shall record the date any such petition is presented, the names of the signers thereof, and the action taken with relation to the same. In any election ordered by the Commissioners Court the issue ordered to appear on the ballot shall be the same as that applied for and set out in the petition. No subsequent election upon the same issue shall be held within one (1) year from the date of the last preceding local option election in any county, justice's precinct, or incorporated city or town. As amended Acts 1953, 53rd Leg., p. 643, ch. 249, § 2; Acts 1955, 54th Leg., p. 484, ch. 138, § 1.

Effective 90 days after June 7, 1955,  
date of adjournment.

Section 2 of the amendment of 1955 was a severability clause. Section 3 repealed conflicting laws. Section 4 was an emergency clause.

## II. MALT LIQUORS

### Art. 667—23. Tax on beer

There is hereby levied and assessed a tax at the rate of Four Dollars and Thirty Cents (\$4.30) per barrel on the first sale of all beer manufactured in Texas and on the importation of all beer imported into this State. As amended Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, Art. IV, § 1; Acts 1955, 54th Leg., p. 1080, ch. 404, Art. III, § 1.

Section 2 of Art. III of the amendatory Act of 1955 provided that the provisions of this Article shall become effective September 1, 1955.



## TITLE 12—PUBLIC HEALTH

## CHAPTER ONE—ACTS INJURIOUS TO HEALTH

Art.

705d. Sanitary employees; physical examination and health certificate required of employees handling food or drink [New].

Art. 705c. Repealed. Acts 1955, 54th Leg., p. 596, ch. 204, § 9, eff. May 12, 1955.

Prior to repeal Section 3a was added by Acts 1951, 52nd Leg., p. 302, ch. 179.

Art. 705d. Sanitary employees; physical examination and health certificate required of employees handling food or drink

**Employment of infected persons forbidden**

Section 1. No person, firm, corporation, or organization operating or managing any public eating place or any place where food or drink is manufactured, processed, prepared, dispensed, or otherwise handled in such manner or under such circumstances as would permit probable transmission of disease from any handler thereof to the consumer, shall employ or work any person to handle such products, or utensils, dishes, or serving implements used in connection therewith, who is infected with any transmissible condition of any disease known to be normally communicable through the handling of food or drink.

**Employment of or handling of food or drink, dishes, serving implements, etc., by infected persons forbidden**

Sec. 2. No person infected with a disease, the condition of which is transmissible to another through the handling of food or drink or who resides in a household with a transmissible case of a communicable disease which may be food-borne, or who is known to be a carrier of the organisms causing such disease, and no person having a local infection transmissible through food or drink shall be employed at any place or vehicle in which food or drink is manufactured, processed, prepared, or dispensed; nor shall any such person at any time handle any food or drink or utensils, dishes, or serving implements used in connection therewith, which may be, directly or indirectly, for public sale or offered for the use or consumption of another.

**Physical examination; certificate of physician**

Sec. 3. All such persons and employees employed or seeking employment in any of the capacities herein above set forth shall, upon the request of any employer, or any legally appointed State or local Health Officer or of their duly authorized representative, secure an adequate examination of themselves by a licensed physician and secure in evidence thereof a certificate signed by such physician stating that such examination had been made and that to the best of his or her knowledge, the person examined was found, on that date, to be free of any transmissible condition of any disease or local infection commonly transmitted through the handling of food or drink. Such examinations shall be actual and thorough and conducted within the framework of practical scientific pro-

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cedures for the determination of the existence<sup>1</sup> of communicable disease which may be transmissible through the handling of foods.

<sup>1</sup> So in enrolled bill. Probably should be "existence".

#### **Personal cleanliness required of food or drink handlers; clothing; towels**

Sec. 4. Every person engaged in the handling of food, drink, or unsealed containers therefor, shall maintain personal cleanliness, shall wear clean outer garments, shall keep his hands clean at all times, and shall thoroughly wash the hands with soap and water after each visit to the toilet. The use (in, on, or about any place where food or drink for public consumption is handled or sold) by two (2) or more persons, of any towel before it is thoroughly laundered is hereby declared to be an unsanitary practice and shall constitute a violation of this Act.

#### **Food defined**

Sec. 5. The term "food" shall include all articles used by man for food, drink, flavoring, confectionery, and condiment, whether simple, mixed, or compounded.

#### **City ordinances**

Sec. 6. The provisions of this Act shall in no way affect the authority of any incorporated city (including home rule cities) to enact ordinances pertaining to the matters herein referred to, and shall in no way affect the authority to enact ordinances as granted to them under Article XI, Section V of the State Constitution, or Articles 1015, 1175 or 1176 of the Revised Civil Statutes of Texas of 1925.

#### **Penalty**

Sec. 7. Any person, firm, corporation, or organization who shall violate any of the provisions of this Act shall be fined not less than Ten Dollars (\$10) and not more than Two Hundred Dollars (\$200) and each day of such violation shall constitute a separate offense.

#### **Partial invalidity**

Sec. 8. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

#### **Repeal of conflicting laws**

Sec. 9. Chapter 356,<sup>1</sup> Acts of the Forty-sixth Legislature, Regular Session, 1939 (codified as Article 705c in Vernon's Texas Penal Code) and all amendments thereto are hereby repealed; and all other laws or parts of laws in conflict herewith are hereby repealed. But nothing in this Act shall be construed to preclude the prosecution of any person, firm, corporation, common carrier or association for acts or omissions in violation of any of the provisions repealed by this section where such acts or omissions take place prior to the time of repeal of such provision by this section. Acts 1955, 54th Leg., p. 598, ch. 204.

<sup>1</sup> So in enrolled bill.

Emergency. Effective May 12, 1955.

## CHAPTER TWO—UNWHOLESOME FOOD, DRINK OR MEDICINE

## Art. 712. 706 Milk

No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in a state of putrefaction, or other deleterious substances, or from sick or diseased cows, or from cows kept in connection with any family in which there are infectious diseases.

Provided, however, that milk may be sold, offered for sale or exchange from cows identified as brucellosis reactors, upon compliance with all of the following conditions:

(1) All such milk, and all such cows shall meet the requirements of all other provisions of this Article.

(2) All such cows shall be in herds certified by the Livestock Sanitary Commission of Texas. Such rules and regulations shall be consistent with the rules promulgated by the State Health Department under the provisions in Article 165-3 of the Revised Civil Statutes of Texas, 1925.

(3) All milk from herds in which such cows are present and which is sold for ultimate consumption by humans as milk or milk products as those terms are defined in the "Grade Specifications and Requirements for Milk" promulgated by the State Health Officer under authority of Section 2 of Senate Bill No. 83 of the 45th Legislature, Regular Session,<sup>1</sup> shall be pasteurized at milk plants where periodic inspections are carried out by State or municipal public health authorities under provisions of Article 165-3 of the Revised Civil Statutes of Texas, 1925. As amended Acts 1955, 54th Leg., p. 756, ch. 274, Art. I.

<sup>1</sup> Vernon's Ann.Civ.St. art. 165-3, § 2.

Emergency. Effective May 20, 1955.

Article II of the amendatory Act of 1955 was a severability clause, art. III repealed conflicting laws.

## CHAPTER THREE—DRUGS, NARCOTICS AND POISONS

## Art.

725d. Transportation or possession of contraband narcotics; seizure; forfeiture and sale of vessel, vehicle or aircraft [New].

## Art. 725b. Narcotic drug regulations

## Definitions

Section 1. The following words and phrases, as used in this Act, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership, or one or more individuals.

(2) "Licensed Physician." Licensed physicians for the purpose of this Act are defined as any person, duly licensed and whose license is current in all respects as issued by the Texas State Board of Medical Examiners or the State Board of Chiropractic Examiners.

(3) "Dentist" means a person authorized by law to practice dentistry in this State.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this State.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this State and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this Act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the Pharmacy Laws of this State.

(8) "Hospital" means any institution for the care and treatment of the sick and injured, duly registered under the Federal Narcotic Laws as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian as defined herein.

(9) "Laboratory" means a laboratory duly registered under the Federal Narcotic Laws or approved by the State Department of Public Health as proper to be entrusted with the custody of narcotic drugs.

(10) "Sale" includes barter, exchange, or gift, or offer therefor, and, each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(11) "Coca Leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codein, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine, or any of its salts.

(13) The term "Cannabis" as used in this Act shall include all parts of the plant Cannabis Sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the non-resinous oil obtained from such seed, nor the mature stalks of such plant, nor any product or manufacture of such stalks, except the resin extracted therefrom and any compound, manufacture, salt, derivative, mixture, or preparation of such resin. The term "Cannabis" shall include those varieties of Cannabis known as Marihuana, Hashish and Hashoesh.

(14) "Narcotic drugs" means coca leaves, opium, and cannabis, amide, and isonipecaine, every substance neither chemically nor physically distinguishable from them, and opiates which shall mean any drug found to be an addiction-forming or addiction-sustaining liability similar to opium or cocaine, which are now or may be added subsequently, as restricted preparations under the provisions of the Federal Narcotic Laws.

(15) "Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

(16) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics under any laws of the United States making provision therefor.

(17) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(18) "Registry number" means the number assigned to each person registered under the Federal Narcotic Laws.

(19) "Isonipecaine" shall mean any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated.

(20) "Amidone" shall mean any substance identified chemically as 4-4-Diphenyl-6-Dimethylamino-Heptanone-3, or any salt thereof, by whatever trade name designated. As amended Acts 1953, 53rd Leg., p. 812, ch. 328, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 103, ch. 50, § 1.

Emergency. Effective April 22, 1954.

#### Acts prohibited

Sec. 2(a) It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug.

(b) It shall be unlawful for any person to possess an opium pipe, instrument, or contrivance used in smoking a narcotic drug.

(c) It shall be unlawful for any person except a physician, dentist, veterinarian, nurse, pharmacist, dealer in surgical instruments, or an attendant or intern of a hospital, sanatorium, or institution in which persons are treated for disability or disease, at any time to have, or possess a hypodermic syringe or needle or any instrument adapted for the use of narcotic drugs by subcutaneous injections in a human being and which is possessed for that purpose, unless such possession is for the purpose of subcutaneous injection of a drug or drugs, or medicines, the use of which is authorized by the direction of a licensed physician.

(d) Nothing in this Act shall apply to any hypodermic syringe or needle, or other instrument or paraphernalia used for the purpose of vaccinating or otherwise treating livestock. As amended Acts 1955, 54th Leg., p. 1027, ch. 386, § 1.

Emergency. Effective June 1, 1955.

#### Authorized acts

Sec. 2A. It shall not be unlawful to manufacture, possess, have, control, sell, prescribe, administer, dispense, or compound any narcotic drug or any hypodermic syringe, needle, or other instrument adapted to the use of narcotic drugs where same is authorized under the terms of this Act. As amended Acts 1955, 54th Leg., p. 1027, ch. 386, § 1.

#### Sales by apothecaries

Sec. 6. (1) An apothecary in good faith may sell and dispense narcotic drugs to any person upon written prescription, or an oral prescription in pursuance to regulations promulgated by the U. S. Commissioner of Narcotics under Federal narcotic laws, of a physician, dentist, or veterinarian, dated and signed by the person prescribing, on the second day after the same is issued and bearing in full, name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the Federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of the animal for which the drug is prescribed. The person filling the prescription shall write the date of the filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two

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

years, so as to be readily accessible for inspection by any public official or employee engaged in the enforcement of this Act. The prescription shall not be refilled. As amended Acts 1955, 54th Leg., p. 1215, ch. 486, § 1.

Emergency. Effective June 22, 1955.

#### Penalties

Sec. 23. (1) Any person violating any provision of this Act shall, upon conviction be punished by confinement in the State penitentiary for not less than two (2) years nor more than life, and upon the second or any subsequent conviction therefor shall be punished by confinement in the penitentiary for life or for any term of years not less than ten (10), and the benefits of the suspended sentence law shall not be available to a defendant convicted for a violation of the provisions of this Act; provided that any person convicted of a first offense violation of this Act shall be entitled to the benefits of probation under the Adult Probation and Parole Law,<sup>1</sup> as provided therein.

(2) Any adult person who hires, employs, or uses a minor under nineteen (19) years of age in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any narcotic drug, or who unlawfully sells, gives, furnishes, administers, or offers to sell, furnish, give, administer any narcotic drug to a minor under nineteen (19) years of age shall, upon conviction, be punished by confinement in the penitentiary for not less than five (5) years nor more than life, and upon the second conviction therefor shall be punished by confinement in the penitentiary for life or for any term of years not less than ten (10), and the benefits of the suspended sentence law shall not be available to a defendant convicted for a violation of the provisions of this Act. As amended Acts 1953, 53rd Leg., p. 812, ch. 328, § 6; Acts 1955, 54th Leg., p. 903, ch. 354, § 1.

<sup>1</sup> Article 781b.

Effective 90 days after June 7, 1955, date of adjournment.

#### Art. 725c. Narcotic addicts

##### Penalties

Sec. 3. Any person violating any provision of this Act shall be guilty of a felony, and upon conviction shall be punished by confinement in the penitentiary for a period of not more than three (3) years. The benefits of the suspended sentence law shall not be available to a person convicted of violating any provision of this Act. As amended Acts 1955, 54th Leg., p. 1026, ch. 385, § 1.

##### Probation

Sec. 4. Sections 1 to 6, inclusive, of Chapter 452, Acts of the Fiftieth Legislature, 1947, (codified as Article 781b of Vernon's Texas Code of Criminal Procedure) relating to adult probation are applicable to cases where a defendant has been convicted or has entered a plea of guilty to a violation of this Act, except that in cases charging a violation of this Act, probation may be granted notwithstanding that the defendant may have previously been convicted of a felony. The court may include among the conditions of the probation that the probationer shall enter a hospital approved by the court and remain there until discharged by the medical authorities of such hospital as cured. As amended Acts 1955, 54th Leg., p. 1026, ch. 385, § 1.

Emergency. Effective June 1, 1955.

Section 4 of the amendatory Act of 1955 was a severability clause.

**Art. 725d. Transportation or possession of contraband narcotics; seizure, forfeiture and sale of vessel, vehicle or aircraft**

**Acts prohibited; definition**

Section 1. It shall be unlawful within this State:

- (a) To transport, carry or convey any contraband narcotic in, upon or by means of any vessel, vehicle or aircraft or any occupants thereof;
- (b) To conceal or possess any contraband narcotics in or upon any vessel, vehicle or aircraft or occupants thereof;
- (c) To use any vessel, vehicle or aircraft or occupants thereof to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange or gift of any contraband narcotic.

For purposes of this Act, "any contraband narcotic" shall mean any narcotic or drug, the use, manufacture, possession, control, sale, prescription, administering, dispensing or compounding of which is made illegal by the provisions of Acts of 1937, Chapter 169 as last amended by Acts of 1953, Chapter 328, compiled as Article 725b of the Penal Code; or of Acts of 1953, Chapter 237, compiled as Article 725c of the Penal Code; or of Acts of 1949, Chapter 490, compiled as Article 726b of the Penal Code; or of Acts of 1951, Chapter 413, compiled as Article 726c of the Penal Code; or of any subsequently enacted law defining or prescribing illegal activities with narcotics or drugs.

**Seizure and forfeiture**

Sec. 2. Any vessel, vehicle or aircraft which is being used in violation of Section 1 of this Act shall be seized and forfeited to the Texas Department of Public Safety, Narcotics Section, under the provisions of this Act; provided, no vessel, vehicle or aircraft used by a common carrier in such business shall be forfeited unless it be shown that the owner, master, pilot, conductor, driver, operator or other person in charge thereof was at the time of the alleged illegal act a consenting party or privity thereto; and provided further, no vessel, vehicle or aircraft shall be forfeited where it is shown that the illegal act has been committed by some person other than the owner thereof while such vessel, vehicle or aircraft was in the possession of any person who acquired or retained such possession in violation of any law of this State or of the United States.

**Enforcement**

Sec. 3. Any officer authorized by the provisions of the Acts enumerated in Section 1 of this Act to enforce such acts may seize any vessel, vehicle or aircraft violating the provisions of this Act.

**Notice**

Sec. 4. The seizing officer shall immediately file in the name of the State of Texas with the Clerk of the District Court of the county in which the seizure is made a notice of said seizure and intended forfeiture. Certified copies of such notice shall be served upon the following persons as provided for the serving of process by citation as in other civil cases:

- (a) The owner of said vessel, vehicle or aircraft, if address is known.
- (b) Upon any registered lienholder as provided by law.
- (c) If the subject matter sought to be forfeited in such suit is a motor vehicle susceptible of registration under the motor vehicle registration laws of this State and if there is any reasonable cause to believe that such motor vehicle has been registered under the laws of this State, the officer

in charge of filing suit for forfeiture thereof shall first make inquiry of the Highway Department of this State as to what the records of such Department show as to who is the record owner of such motor vehicle and who, if any, holds any lien or liens against such vehicle, such inquiry to be answered in writing by the Highway Department. In the event such answer states that the record owner of such motor vehicle is any person other than the person who was in possession of it when seized or states that any person or persons holds any lien or liens against such vehicle, the officer in charge of filing such suit shall cause such record owner and also any such record lien holders to be named as parties defendant in such suit and to be served with citation of the pendency thereof in accordance with Rule 108 or Rule 109, as the applicable rule may be, of the Texas Rules of Civil Procedure as same now read or as hereafter amended. If the automobile or motor vehicle shall not be registered in Texas, then said Attorney General, District Attorney and County Attorney, or any of them, shall ascertain the name and address of the person in whom said vehicle is licensed, and if said vehicle is licensed in a state which has in effect a certificate of title law, he shall also ascertain the registered owner and any lienholder of record who shall be made parties to the suit and shall be served with process as provided for in other civil suits.

(d) If a person was in possession of the subject matter sought to be forfeited at the time that it was seized, such person shall likewise be made a party defendant to such suit. If no person was in possession of the subject matter sought to be forfeited at the time that it was seized and if the owner thereof is unknown, the officer in charge of filing such suit shall file with the Clerk of the Court in which such suit is filed an affidavit to such effect, whereupon the Clerk of such Court shall issue a citation for service by publication addressed to "the Unknown Owner of . . . . . " filling in the indicated blank space with a reasonably detailed description of the subject matter sought to be forfeited and shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116 of the Texas Rules of Civil Procedure as same now provide or as same may be hereafter amended.

(e) No suit instituted pursuant to the provisions of this section of this Act shall proceed to trial unless the judge hearing said suit shall be satisfied that all of the foregoing provisions of subsections (c) and (d) of this section have been complied with, and the officer in charge of such suit shall first introduce into evidence at the trial thereof the answer received from the Highway Department in compliance with subsection (c) of this section or prove to the satisfaction of the judge hearing such suit that such subsection (c) is not applicable.

#### Answer

Sec. 5. An owner of a seized vessel, vehicle or aircraft may file a verified answer within twenty (20) days of the mailing or publication of notice of seizure. If no such answer is filed, the court shall hear evidence of violation of this Act and shall upon motion forfeit such vessel, vehicle or aircraft to the Texas Department of Public Safety, Narcotics Section. If such answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of the date of filing the answer and notice of such hearing shall be sent to all owners as prescribed in Section 4 of this Act.

#### Hearing

Sec. 6. If it shall appear that the owner of the vessel, vehicle or aircraft has filed a verified answer denying the use of such vessel, vehicle or aircraft in violation of this Act, then the burden shall rest upon the



State, represented by the District Attorney to prove as in other penal cases, the violation of the provisions of this Act. Provided, however, that in the event no answer has been filed by the owner of said vessel, vehicle or aircraft, the notice of seizure may be introduced into evidence and shall be prima facie evidence of said violation.

At the hearing, any claimant of any right, title or interest in the vessel, vehicle or aircraft may prove his lien, mortgage or conditional sales contract, to be bona fide and created without knowledge that the vessel, vehicle or aircraft was to be used in violation of this Act.

#### **Release or Forfeiture**

Sec. 7. If proof at the hearing shall disclose that the interest of any bona fide lien holder, mortgagee or conditional vendor is greater than the present value of the vessel, vehicle or aircraft, the court shall order such vessel, vehicle or aircraft released to him. If such interest is less than the present value, and upon proof of violation of this Act, the court shall order the vessel, vehicle or aircraft forfeited to the State.

#### **Sale**

Sec. 8. All forfeited vessels, vehicles or aircraft shall be sold at a public auction under the direction of the County Sheriff after notice of sale as provided by law for other sheriff's sales. The proceeds of such sale shall be delivered to the District Clerk and shall be disposed of as follows:

(1) To the bona fide lien holder, mortgagee or conditional vendor to the extent of his interest;

(2) The balance, if any, after deduction of all storage and court costs, shall be forwarded by the District Clerk to the State Treasury for deposit in the General Revenue Fund.

#### **Certificate of title issued to purchaser**

Sec. 9. The State Highway Department is hereby directed to issue a certificate of title to any person, purchasing a vessel, vehicle or aircraft under the provisions of this Act, when said certificate of title is required under the laws of this State.

#### **Severability**

Sec. 10. If a portion or provision of this Act be held unconstitutional, the validity of the remaining provision shall not be affected thereby and for this purpose the Legislature declares this Act to be severable. Acts 1955, 54th Leg., p. 810, ch. 300.

Emergency. Effective May 21, 1955.

#### **Art. 726b. Barbiturates, sale of**

Sec. 2. Any person, firm or corporation violating any of the provisions of this Act shall be fined any amount not exceeding Three Thousand Dollars (\$3,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or by both such fine and imprisonment. For any second or subsequent violation of this Act, any person so violating the same shall be confined in the penitentiary not less than two (2) years nor more than ten (10) years; provided that upon any second or subsequent conviction the benefits of the suspended sentence law shall not be available to a defendant convicted for a violation of the provisions of this Act; provided further that any person convicted of any second or subsequent violation of this Act shall be entitled to the benefits of probation under the Adult Probation and Parole Law, as provided therein.

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

Acts 1949, 51st Leg., p. 912, ch. 490, as amended Acts 1955, 54th Leg., p. 1026, ch. 385, § 3.

Emergency. Effective June 1, 1955.

## Art. 726c. Handling, sale and distribution of barbiturates

### Definitions

Sec. 2. For the purposes of this Act:

(g) The term "prescription" means a written order, and in cases of emergency, a telephonic order, by a practitioner to a pharmacist for a barbiturate for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such barbiturate is prescribed for an animal, the species of such animal), the name and quantity of the barbiturate prescribed, the directions for use of such drug. As amended Acts 1955, 54th Leg., p. 1215, ch. 486, § 2.

Emergency. Effective June 22, 1955.

### Prohibited Acts

Sec. 3.

(2)

(b) The refilling of any prescription for a barbiturate, unless and as designated on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling. As amended Acts 1955, 54th Leg., p. 1215, ch. 486, § 3.

Emergency. Effective June 22, 1955.

(d) Repealed. Acts 1955, 54th Leg., p. 1215, ch. 486, § 4.

### Records

Sec. 6. (a) Persons (other than carriers) to whom the provisions of Section 5 are applicable shall: (1) make a complete record of all stocks of barbiturates on hand on the effective date of this Act and retain such record for not less than two calendar years immediately following such date; and (2) retain each commercial or other record relating to barbiturates maintained by them in the usual course of their business or occupation, for not less than two calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of barbiturates. As amended Acts 1955, 54th Leg., p. 1215, ch. 486, § 5.

(b) Pharmacists shall, in addition to complying with the provisions of sub-section (a), retain each prescription for a barbiturate received by them for not less than two calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of barbiturates. As amended Acts 1955, 54th Leg., p. 1215, ch. 486, § 6.

Emergency. Effective June 22, 1955.

### Penalties

Sec. 13. Any person, firm or corporation violating any of the provisions of this Act shall be fined any amount not exceeding Three Thousand Dollars (\$3,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or by such fine and imprisonment. For any second or subsequent violation of this Act, any person so violating the same shall be confined in the penitentiary not less than two (2) years nor more than ten (10) years; provided that upon any second or subsequent conviction the benefits of the suspended sentence law shall not be available to a defendant convicted for a violation of the pro-

visions of this Act; provided further that any person convicted of any second or subsequent violation of this Act shall be entitled to the benefits of probation under the Adult Probation and Parole Law, as provided therein. As amended Acts 1955, 54th Leg., p. 1026, ch. 385, § 2.

Emergency. Effective June 1, 1955.

**Art. 754a. Persons regarded as practicing dentistry**

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth any dental appliance, structure, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth any dental appliance, structure or denture. Added Acts 1954, 53rd Leg., p. 97, ch. 46, § 2.

Effective 90 days after April 13, 1954, date of adjournment.

Section 1 of the amendatory act of 1954 added subsection (5) to Vernon's Ann.Civ.

St. art. 4551a. Section 3 provided that partial invalidity should not affect the remainder of the act.

## TITLE 13—OFFENSES AGAINST PUBLIC PROPERTY

### CHAPTER ONE—HIGHWAYS AND VEHICLES

Art.

802a—1. Driving while under influence of narcotic drug [New].

Art.

827a—3. Length of vehicles transporting poles, piling or unrefined timber [New].

#### 802a—1. Driving while under influence of narcotic drug

Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, or upon any street or alley or any other place within the limits of an incorporated city, town or village, while such person is under the influence of any narcotic drug, and while so driving or operating such automobile or other motor vehicle shall, through accident or mistake, do another act which, if voluntarily done would be a felony, shall receive the punishment affixed to such felony offense, unless such person can in defense prove that such narcotic drug was legally administered under the laws of the State of Texas. Acts 1955, 54th Leg., p. 1181, ch. 460, § 1.

Emergency. Effective June 15, 1955.

#### Title of Act:

An Act providing that if any person who shall drive or operate an automobile or other motor vehicle upon the public roads, highways, streets, or alleys in this State while under the influence of a narcotic drug

shall, through accident or mistake do an act which, if voluntarily done, would be a felony, shall receive punishment affixed to such felony offense, except under certain conditions; and declaring an emergency. Acts 1955, 54th Leg., p. 1181, ch. 460.

#### Art. 827a, sec. 3. Width, length and height

(a) No vehicle shall exceed a total outside width, including any load thereon, of ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, excepting further that the limitations as to size of vehicle stated in this Section shall not apply to implements of husbandry, machinery used solely for the purpose of drilling water wells regardless of whether it is a unit in itself or is a unit mounted on a conventional vehicle or chassis, and highway building and maintenance machinery temporarily propelled or moved upon the public highways, excepting further, that the limitations as to size of vehicles stated in this Section shall not apply to vehicles on which implements of husbandry are being carried or moved provided such vehicles are being moved by the owner thereof or his agent or employee for the purpose of carrying on agricultural operations, and provided further that such implements are being moved or carried a distance of not more than fifty (50) miles, and excepting further, that the width of a motor bus or trolley bus operated exclusively within the limits of an incorporated city in this State with inhabitants thereof in excess of four hundred and twenty-five thousand (425,000) according to the last preceding Federal census, and within cities, towns and suburbs contiguous thereto, shall not exceed one hundred and two (102) inches.

No vehicle, other than vehicles herein exempted from these provisions, which has a total outside width, including any load thereon, in excess of the applicable width herein stated shall be permitted to operate on the public highways except under a special permit issued for such movement as prescribed in Section 2 of this Act or in Chapter 41, General Laws of the Forty-first Legislature, Second Called Session, 1929, as amended (Article 6701a of Vernon's Texas Civil Statutes) or except as authorized in some

other Statute permitting or regulating such movement. As amended Acts 1953, 53rd Leg., p. 798, ch. 321, § 2; Acts 1955, 54th Leg., p. 522, ch. 158, § 1.

Emergency. Effective May 6, 1955.

Section 1 of the amendatory Act of 1953 amended Vernon's Ann.Civ.St. art. 6675a—2.

Section 2 of the amendatory Act of 1955 repealed Vernon's Ann.Civ.St. art. 6675a—8b.

Section 3 repealed conflicting laws and parts of laws to the extent of the conflict.

(c) No motor vehicle, commercial motor vehicle, truck-tractor, trailer or semi-trailer shall exceed a length of thirty-five (35) feet except when such vehicle is operated in combination and coupled to another such vehicle, and when operated in combination no such combination of vehicles coupled together shall exceed a total length of fifty (50) feet, unless such vehicle or combination of vehicles is operated exclusively within the limits of an incorporated city or town; and unless, in the case of any combination of such vehicles, same be operated by municipal corporations in adjoining suburbs wherein said municipal corporation has heretofore been using such or like equipment in connection with an established service to such suburbs of the municipality; provided, however, that the provisions of this subsection shall not apply to any disabled vehicle being towed by another vehicle to the nearest intake place for repairs; provided further, that motor buses as defined in Acts 41st Legislature, Second Called Session, 1929, Chapter 88, as amended,<sup>1</sup> exceeding thirty-five (35) feet in length, but not exceeding forty (40) feet in length, may be lawfully operated over the highways of this State if such motor buses are equipped with air brakes and have a minimum of four (4) tires on the rear axle; and provided further, that the above limitations shall not apply to any mobile home or to any combination of a mobile home and a motor vehicle, but no mobile home and motor vehicle combination shall exceed a total length of fifty-five (55) feet. "Mobile home" as used herein means a living quarters equipped and used for sleeping and eating and which may be moved from one location to another over a public highway by being pulled behind a motor vehicle. No mobile home, as the same is defined herein, shall be entitled to the exemption contained in this subsection unless the owner thereof shall have paid all taxes, including ad valorem taxes, and fees due and payable under the laws of this State, levied on said mobile home. As amended Acts 1949, 51st Leg., p. 870, ch. 469, § 1; Acts 1953, 53rd Leg., p. 438, ch. 126, § 1; Acts 1953, 53rd Leg., p. 501, ch. 179, § 1; Acts 1955, 54th Leg., p. 347, ch. 68, § 1.

<sup>1</sup> Vernon's Ann.Civ.St. art. 6675a—1 et seq.

Emergency. Effective April 21, 1955.

Section 2 of the amendatory Act of 1955 provided that all laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict; provided, however, that nothing herein shall be construed to

alter, amend or repeal the existing load limit of 58,420 pounds provided for commercial motor vehicles and combinations thereof under existing law.

Poles, piling or unrefined timber, length of vehicles transporting, see article 827a—3.

## Art. 827a, sec. 8. Rate and speed of vehicle

Sec. 8. Subsection 1. Speed restrictions. (a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing, having regard to the actual and potential hazards when approaching and crossing an intersection or a railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other

traffic or by reason of weather or highway conditions; and in every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection 1(a) of this Section, the speed of any vehicle not in excess of the limits specified in this subsection or established as hereinafter authorized shall be lawful, but any speed in excess of the limits specified in this subsection or established as hereinafter authorized shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(1) Thirty (30) miles per hour in any business or residence district for all vehicles;

(2) Sixty (60) miles per hour during the daytime and fifty-five (55) miles per hour during the nighttime in locations other than business or residence districts for all vehicles except commercial vehicles, truck-tractors, trailers, or semi-trailers as defined in this Act and all motor vehicles engaged in this State in the business of transporting passengers for compensation or hire;

(3) Sixty (60) miles per hour during the daytime and fifty-five (55) miles per hour during the nighttime in locations other than business or residence districts for light commercial vehicles;

(4) Forty-five (45) miles per hour at all hours in locations other than business or residence districts for commercial vehicles except commercial vehicles which are in authorized use as "Highway Post Office" vehicles, and for truck-tractors, trailers, or semi-trailers, as defined in this Act;

(5) Fifty-five (55) miles per hour at all hours in locations other than business or residence districts for any motor vehicle engaged in this State in the business of transporting passengers for compensation or hire or for any commercial vehicle which is in authorized use as a "Highway Post Office" vehicle for furnishing highway post office service in transportation of United States mail.

As used in this Section, "light commercial vehicle" means any motor vehicle other than a motorcycle designed for the transportation of property not to exceed fifteen hundred (1500) pounds, and "commercial vehicle" means any commercial motor vehicle as defined in Section 1 of this Act other than a light commercial vehicle. The term "light commercial vehicle" is intended to include those vehicles commonly known as pickup trucks, panel delivery trucks, carry-all trucks, and passenger vehicles used for delivery purposes.

"Daytime" as used in this Act shall mean from a half ( $\frac{1}{2}$ ) hour before sunrise to a half ( $\frac{1}{2}$ ) hour after sunset. "Nighttime" means at any other hour.

"Business District" means the territory contiguous to and including a roadway when within any six hundred (600) feet along such roadway there are buildings in use for business or industrial purposes which occupy three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the roadway.

"Residence District" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred (300) feet or more is in the main improved with residences or residences and buildings in use for business.

The prima facie speed limits set forth in this subsection may be altered as authorized in subsections 2 and 3. As amended Acts 1955, 54th Leg., p. 1221, ch. 488, § 1.

Emergency. Effective June 22, 1955.

**Art. 827a—2. Weight of vehicles transporting ready-mix concrete**

Vehicles used exclusively to transport ready-mix concrete may be operated upon the public highways of this state with a tandem axle load not to exceed thirty-six thousand (36,000) pounds, a single axle load not to exceed twelve thousand (12,000) pounds and a gross load not to exceed forty-eight thousand (48,000) pounds, provided that where the vehicle is to be operated with a tandem axle load in excess of thirty-two thousand (32,000) pounds, the owner of such vehicle shall first file with the State Highway Department a surety bond in the principal sum as fixed by the State Highway Department, which sum shall not be set at a greater amount than Ten Thousand Dollars (\$10,000.00) for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of thirty-two thousand (32,000) pounds; such bond shall be in an amount to be fixed by the State Highway Department and shall be subject to the approval of the State Highway Department. Acts 1953, 53rd Leg., p. 747, ch. 293, § 1 as amended Acts 1955, 54th Leg., p. 390, ch. 109, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

**Art. 827a—3. Length of vehicles transporting poles, piling or unrefined timber**

Section 1. Notwithstanding other provisions of the statutes governing the length of motor vehicles and combinations thereof which may be operated over the highways and roads, it shall be lawful to operate such vehicles and combinations not to exceed seventy-five (75) feet in length where such vehicles and combinations are used exclusively for transporting poles, piling or unrefined timber from the point of origin of such timber (the forest where such timber is felled) to a wood processing mill not more than fifty (50) miles distant from such point of origin.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset, as defined by law, and at a rate of speed not greater than thirty-five (35) miles per hour.

Sec. 3. The width, height and gross weight of each such vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas. Acts 1955, 54th Leg., p. 354, ch. 73.

Effective 90 days after June 7, 1955, date of adjournment.

**Title of Act:**

An Act to exempt from existing statutes regulating the length of motor vehicles which may be operated in this State such vehicles or combinations or vehicles used exclusively to transport poles, piling or

unrefined timber from the point of origin of such timber to a wood processing mill not more than fifty (50) miles distant; imposing conditions governing such vehicles; and declaring an emergency. Acts 1955, 54th Leg., p. 354, ch. 73.

**CHAPTER SIX—GAME, FISH AND OYSTERS**

<p>Art. 924a. Electricity producing apparatus to shock fish [New].</p>	<p>Art. 978f—5. Wildlife management areas; powers of Commission to manage; regulation of hunting and fishing [New].</p>
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**Art. 908. Hunting on game preserves for pay**

It is hereby declared unlawful for any person or persons, who may be acting as manager of any club, or the owner of any club, or shooting resort or shooting preserve, or lessor of premises leased for hunting purposes, to receive or accommodate as guest or member of such club, or shooting resort, or shooting preserve, or lessee of premises leased for hunting purposes, for pay, any person or persons engaged in hunting, before such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes, shall have applied for and received a license from the Game and Fish Commission, or one of its authorized agents, granting him the right for the year beginning September 1st and ending August 31st, following, to receive and accommodate any such person or persons at such club, shooting resort, shooting preserve, or premises leased for hunting purposes.

A "shooting preserve" is defined as any premises leased for hunting purposes which is a separate, unconnected, and distinct tract of land with a continuous and unbroken boundary.

A "shooting resort" shall be defined as an area of not less than six hundred (600) acres that are contiguous to each other on which pen-raised fowls and/or imported game birds, banded and marked in accordance with the provisions of this Act, are released to provide hunting for members or guests authorized by the hunting laws of this State.

A shooting resort shall be distinguished from any other club, shooting preserve, or leased premises for hunting purposes, by clearly marking the boundaries of said shooting resort with markers of a metal construction being at least eighteen (18) inches by twenty-four (24) inches in size and bearing the words "Shooting Resort Licensed by the Game and Fish Commission of Texas." "Hunting by Permit Only." The lettering on said markers to be of such size and proportions as will permit reading under ordinary conditions at two hundred (200) feet. These markers shall be placed around the perimeter of a shooting resort at a distance of not to exceed four hundred (400) feet from each other marker.

Anyone operating a shooting resort shall be required to release a minimum of five hundred (500) quail annually or a minimum of five hundred (500) pheasant or chukar annually on each six hundred (600) acres of land licensed as a shooting resort. Each of said game birds so released shall be banded with a band carrying the permit number of the owner of said shooting resort and the band shall remain on the bird after it is killed and processed. Any individual operating a shooting resort shall within thirty (30) days of the close of the game season as hereinafter outlined release at least five per cent (5%) of the total number of killed birds from said area for the purpose of restocking same with game.

There shall be issued one (1) license for each shooting preserve and/or shooting resort in the manner prescribed in this Act.

Before such license is issued, the person applying for a shooting preserve license shall pay to the Game and Fish Commission the sum of Five Dollars (\$5). If the license applied for is a shooting resort license, the person shall pay to the Game and Fish Commission the sum of Ten Dollars



(§10). In each event the licensee shall file with the Game and Fish Commission the name of said club, shooting preserve or shooting resort and shall file with the Game and Fish Commission an affidavit that he will not violate any of the provisions of this Article and will endeavor to prevent guests of said club, shooting preserve, shooting resort or premises leased for hunting purposes from doing so and that no guests will be accommodated who have not previously secured a hunting license.

All game birds that are released on said areas as above described shall be banded and in regard to quail, in addition to being banded, they shall also be marked by bleaching at least two (2) inches of the tip of the right wing.

On said shooting resort or hunting areas that have been stocked by the owners with game birds such as quail, chukar and pheasant, or any other pen-raised fowl, the season for said preserves shall be on quail from November 1st to February 10th and the extended season applicable to quail on such preserves or hunting areas shall be only in respect to those quail that are so marked with a bleached wing. The pheasant, chukar and other pen-raised fowls and/or imported game birds, season on said preserves and hunting areas shall be October 1st to April 1st.

All managers of clubs, shooting resorts, shooting preserves, and premises leased for hunting shall be required to keep a suitable record book and each guest or member shall be required to register, showing his name and place of residence, license number, and a record of each day's kill of different birds and game, and a complete record must be made to the Game and Fish Commission by such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes not later than May 1st of each year.

Whenever any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, fails or refuses to comply with any of the provisions of this Section, the Game and Fish Commission or its authorized agent is authorized and empowered to cancel his license without refund or return of the license fee, and no license shall be renewed or issued to such party, or parties, thereafter for a period of one (1) year.

Any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes who accommodates hunters for reward, without first having secured the necessary license as provided in this Section, or who shall fail to comply with any provisions of this Act or shall violate any provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined the sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Such fines shall be placed to the credit of the special game fund.

For the purpose of carrying out the provisions of this Section, it shall be the duty of the Game and Fish Commission or its authorized agent to have prepared and to furnish all persons authorized by law to issue hunting and fishing licenses blank license with stubs attached, numbered serially, such license to be clearly marked "shooting preserve license"—"shooting resort license." It shall be the duty of the Game and Fish Commission or its authorized agent issuing said license to indicate the type of license issued and to collect the fee as provided in this Act; such shooting license shall have printed across the face the year for which it is issued, shall bear the name and address of the licensee, name of the club, shooting preserve or shooting resort, character of game found on such area and the expiration date of such license; said license must bear the seal of the Game and Fish Commission and must be signed by one of its authorized

agents. On the reverse side of said license shall be printed the open seasons and bag limits as provided in this Chapter. As amended Acts 1953, 53rd Leg., p. 854, ch. 346, § 1; Acts 1955, 54th Leg., p. 1154, ch. 438, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and parts

of laws. Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

#### **Art. 924a. Electricity producing apparatus to shock fish**

It shall be unlawful for any person at any time of the year to catch or attempt to catch or obtain fish by the aid of what is commonly known as "telephoning" or by using any other electricity-producing apparatus designed for shocking fish. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in any sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). The possession of any such equipment in any boat or along any bank or shore of any of the rivers, creeks, lakes and bays of this State shall be prima-facie evidence that the person found in possession of such electrical equipment is violating the provisions of this Act. Acts 1955, 54th Leg., p. 530, ch. 163, § 1.

Emergency. Effective May 6, 1955.

##### **Title of Act:**

An Act prohibiting the use of electricity-producing apparatus in fishing; providing a penalty for violation; making possession of such apparatus in certain circumstances

prima-facie evidence of a violation of this Act; repealing conflicting laws; and declaring an emergency. Acts 1955, 54th Leg., p. 530, ch. 163.

#### **Art. 978f—5. Wildlife management areas; powers of Commission to manage; regulation of hunting and fishing**

##### **Management by Commission**

Section 1. The Game and Fish Commission is hereby authorized to manage, along sound biological lines, such wildlife and/or fish species as may be found on any lands which it has acquired or which it may hereafter acquire for use as a wildlife management area.

##### **Hunting and fishing; authority to prohibit or regulate**

Sec. 2. The Game and Fish Commission shall have authority to prohibit all hunting and fishing within or upon all lands named in Section 1 of this Act, for such period of time as may be necessary to safeguard any species of wildlife or fish found thereon; shall have authority from time to time, as sound biological management practices shall warrant, to prescribe open seasons for hunting and/or fishing therein, to prescribe the number, kind, sex and size of any wildlife and fish that may be taken therefrom or thereon, and to prescribe the means and methods for taking and the conditions under which any wildlife or fish species may be taken within such area.

##### **Special permit to hunt**

Sec. 3. Any special permit that may be issued for the hunting of wildlife species on any lands described in Section 1 of this Act shall be made available to applicants in such way as to give all applicants an impartial opportunity to obtain such a permit to the extent of the total number issued. The provisions of this Section shall not be construed to waive the hunting license requirements as provided by law, but shall be cumulative thereof.

**Prohibitions enumerated**

Sec. 4. It shall be unlawful for any person to take or attempt to take any wildlife or fish species from, or to possess any wildlife or fish species taken from, any area to which this Act applies at any time, or in any numbers, or by any means, or under any conditions except as permitted by the Game and Fish Commission under the provisions of this Act.

**Penalty**

Sec. 5. Any person violating any of the provisions of this Act or who shall hunt or fish at any time other than the times specified by the Game and Fish Commission, shall, upon conviction thereof, be fined in a sum of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100). Acts 1955, 54th Leg., p. 1184, ch. 463.

Effective 90 days after June 7, 1955, date of adjournment.

Section 6 of the Act of 1955 repealed all conflicting laws and parts of laws. Section 7 provided that partial invalidity should not affect the remaining portions of the Act.

**Title of Act:**

An Act authorizing the Game and Fish Commission to manage wildlife and/or fish on wildlife management areas along sound biological lines; prescribing the powers of

the Commission with regard to regulation of hunting and fishing in such areas; making provisions relative to special permits for hunting on these lands; making certain acts unlawful except as permitted by the Commission and prescribing the penalty for violation; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1955, 54th Leg., p. 1184, ch. 463.

**Art. 978h. Protection of buffalo**

Sec. 2. It shall be unlawful for any person in this State to kill any buffalo except male buffalo ten (10) years old or older, and existing stags or steers. Provided, however, that the owner of any land on which buffalo have been stocked at landowner's expense shall have the right to dispose of any surplus buffalo of any age or sex upon obtaining written permission from the Game and Fish Commission. Applicant for such permission shall state in writing under oath the amount of surplus and his reason for, and the manner in which he proposes to make, such disposition. If upon investigation said Commission shall find that surplus does exist in the buffalo herd to which such application refers, it shall issue its permit to said landowner to dispose of such surplus by sale; but if said Commission shall also find that it is not feasible to restock other land with such surplus, it shall issue its permit to such applicant to dispose of such surplus by slaughter of the number and within the time designated in such permit, under supervision of the Game and Fish Commission. If any person shall kill any buffalo except as permitted in this Section, or shall sell any buffalo in this State without the written consent of the Game and Fish Commission, or shall otherwise violate any provision of this Act, he shall be guilty of a misdemeanor and upon conviction therefor shall be fined in any sum not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1000), or be confined in the county jail for any period not less than thirty (30) days nor more than six (6) months, or both fined and imprisoned. As amended Acts 1955, 54th Leg., p. 374, ch. 94, § 1.

Emergency. Effective April 25, 1955.

Game, Fish and Oyster Commission abolished and powers, duties and functions transferred to Game and Fish Commission, see art. 978f—3.

**Art. 978j. Local game and fish laws**

For fish and game law applicable only to the named counties, see notes under Vernon's Ann.Pen.Code, art. 978j.

**TITLE 14—TRADE AND COMMERCE**

Chap. Art.  
 11B. Sales Limitation Act [New] ----- 1111M

**CHAPTER EIGHT—BLUE SKY LAW OF TEXAS**

**Art. 1083a.** Transferred to Civil Statutes, Art. 600a, § 30

This article was based on Acts 1935, 44th Leg., p. 255, ch. 100, § 30, as amended by Acts 1951, 52nd Leg., p. 624, ch. 370, § 4. It was enacted as a part of the Securities Act of 1935, constituting article 600a of the Revised Civil Statutes, and provided a penalty for enumerated violations of such Act.

**CHAPTER ELEVEN—GASOLINE AND PETROLEUM PRODUCTS**

**Art. 1106.** Inferior motor fuel; reconditioned motor oil; drip gasoline

(b) No person, firm, association of persons or corporation shall sell or offer for sale as lubricating oil, any oil that has been rerun, refiltered, reclaimed or refined from crank case draining or any other oil that has been theretofore used for purposes of lubrication, unless the said oil is sold as and labeled "Reconditioned Motor Oil". The words "Reconditioned Motor Oil" shall be plainly and legibly printed on each container, which said lettering shall be imprinted in two (2) places on the container or label in a manner that said lettering will appear both on the front and back surface of the container when displayed to the public in sale displays, and which said lettering shall be in letters of not less than three-sixteenths ( $\frac{3}{16}$ ) of an inch in height and not less than one-sixteenth ( $\frac{1}{16}$ ) of an inch in the width of each line used to form said letters. As amended Acts 1955, 54th Leg., p. 1038, ch. 393, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 repealed all conflicting laws and parts of laws. Section 3 of the Amendatory Act was a severability clause.

**CHAPTER ELEVEN—A—STORES AND MERCANTILE ESTABLISHMENTS**

Arts.  
 1111e—1111l. Reserved for future legislation

Arts. 1111e—1111l. Reserved for future legislation

**CHAPTER ELEVEN B—SALES LIMITATION ACT [NEW]**

Art.  
 1111m. Sales Limitation Act.

**Art. 1111m.** Sales Limitation Act

**Citation of Act**

Section 1. This Act shall be known and designated, and may be cited as the "Sales Limitation Act."

**Definitions; application of Act**

Sec. 2. (a) When used in this Act, the term "cost basis" shall mean the invoice cost of the merchandise or the replacement cost of the merchandise, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added (1) freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) cartage to the retail outlet, if done or paid for, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths ( $\frac{3}{4}$ ) of one per cent (1%) of the cost as herein defined after adding thereto freight charges and prior cartage, if any, and (3) all State and Federal taxes not heretofore added to the cost as such.

(b) When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more other items each and all of said items shall for the purposes of this Act be deemed to be advertised, offered for sale, or sold, and the cost basis of each item or combination of items so named shall be determined by the provisions of paragraph (a).

(c) When used in this Act the term "replacement costs" shall mean the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within thirty (30) days prior to the date of sale or the date upon which it is offered for sale by the seller if bought in the regular channels of trade in the same quantity or quantities as the seller's last purchase of said merchandise.

(d) When used in this Act the terms "sell at retail," "sales at retail," and "retail sale," shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the seller's business, of title to tangible personal property to the purchaser for consumption or use other than further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(e) When used in this Act the terms "sell at wholesale," "sales at wholesale," and "wholesale sales" shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(f) The term "retailer" shall mean and include every person, partnership, corporation or association engaged in the business of making sales at retail as herein defined within this State; provided that, in the case of a person, partnership, corporation, or association engaged in the business of making both sales at retail and sales at wholesale, such terms shall be applied only to the retail portion of such business.

(g) The term "wholesaler" shall mean and include every person, partnership, corporation, or association engaged in the business of making sales at wholesale within this State; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at wholesale and sales at retail, such term shall be applied only to the wholesale portion of such business.

(h) This Act shall apply only to grocery stores.

**Sale of limited quantities below cost; prohibited and restricted**

Sec. 3. No offer to sell any merchandise, however expressed or communicated, and no sale of any merchandise shall hereafter be made by any retailer or wholesaler at a price which is lower than the cost of same to the seller thereof as herein defined if the number of units of said merchandise that may be purchased by any customer is limited or curtailed to any quantity less than the entire supply of said article on hand or if the right to refuse to sell said merchandise to any willing purchaser thereof is retained or exercised by the prospective seller thereof. Any merchandise so offered for sale at a price below cost as herein defined shall be prominently displayed in the outlet offering same in sufficient quantities to meet any usual and reasonably expectable demand therefor.

**Punishment for violations**

Sec. 4. Any retailer or wholesaler who shall knowingly and willfully advertise, offer to sell or sell any item of merchandise at less than cost as defined in this Act, and in any manner fail or refuse to deliver said merchandise to any willing purchaser in any quantity not to exceed the entire supply on hand and for which payment in cash is tendered, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500).

**Injunctive relief; burden of proof**

Sec. 5. In addition to the penalties provided in this Act, any person, firm or corporation refused the right to purchase from existing stock any quantity of merchandise advertised or offered for sale below its cost basis in violation of this Act may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin further violation of this Act. If in such action a violation of this Act shall be established, the court shall enjoin and restrain or otherwise prohibit, any further violation of this Act and, in addition thereto, shall assess against the defendant the cost of suit. Any such plaintiff shall assume the burden of proof to prove violation of this Act, failing which it shall be liable for all costs in said case.

**Exceptions from Act**

Sec. 6. The provisions of this Act shall not apply to sales at retail or sales at wholesale:

(a) Where merchandise is sold for charitable purposes or to relief agencies;

(b) Where merchandise is sold on contract to departments of the government or governmental institutions;

(c) Where merchandise is sold by any officer acting under the order or direction of any court;

(d) Where a new product is offered for the first time in a national promotional campaign, provided the sale thereof shall be limited to and coincide with the period of time of the national campaign.

(e) Where perishable and seasonable merchandise must be sold promptly in order to forestall loss.

**Sale at price made in good faith to meet competition**

Sec. 7. Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at

cost or above to him as a wholesaler or retailer, and the provisions of this Act shall not apply to any such sales.

**Defendant or witness in injunction action, requiring testimony of**

Sec. 8. Any defendant, or any witness, in any injunctive action brought under the provisions of this Act may be required to testify, and any defendant, or any witness, may, upon proper process, be compelled to produce in court the books, records, invoices and all other documents of any such defendant or witness which would tend to establish the cost basis of any merchandise sold or offered or advertised for sale and the same may be introduced as evidence therein, but no defendant, or any witness in any such action shall be prosecuted. Acts 1955, 54th Leg., p. 1622, ch. 524.

Effective 90 days after June 7, 1955, date of adjournment.

Section 9 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

Section 10 provided that all laws and parts of laws in conflict herewith are

hereby repealed to the extent of such conflict, except that nothing in this Act contained shall alter, amend, modify, repeal, nullify, or in any manner impair the Antitrust laws of this State.

**CHAPTER TWELVE—MISCELLANEOUS OFFENSES**

Art.

1137m. Peddling by use of cards stating person is deaf prohibited; exceptions [New].

**Art. 1137m. Peddling by use of cards stating person is deaf prohibited; exceptions**

Section 1. It shall be unlawful for any person to use finger alphabet cards or printed matter stating that the person is deaf as a means of inducement in the sale of merchandise. Provided, however, the provisions of this Act shall not apply to any person who is a deaf mute who uses these means in the pursuit of his occupation or in the solicitation of contributions or donations of any kind.

Sec. 2. Any person violating any provision hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not more than sixty (60) days or by a fine of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50), or by both imprisonment and fine. Acts 1955, 54th Leg., p. 1159, ch. 442.

Emergency. Effective June 14, 1955.

Title of Act:

An Act prohibiting the peddling or use of finger alphabet cards or printed matter stating that the person is deaf, under certain circumstances; excepting certain per-

sons from the provisions of the Act; providing a penalty for violation; and declaring an emergency. Acts 1955, 54th Leg., p. 1159, ch. 442.

## TITLE 15—OFFENSES AGAINST THE PERSON

### CHAPTER TWO—AGGRAVATED ASSAULTS AND OTHER OFFENSES

**Art. 1147. 1022, 601 Definition**

An assault or battery becomes aggravated when committed under any of the following circumstances:

(1) When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty.

(2) When committed in a Court of Justice, or in any place of religious worship, or in any place where persons are assembled for the purpose of innocent amusement.

(3) When the person committing the offense goes into the house of a private family and is there guilty of an assault and battery.

(4) When committed by a person of robust health or strength upon one who is aged or decrepit.

(5) When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.

(6) When a serious bodily injury is inflicted upon the person assaulted.

(7) When committed with deadly weapons under circumstances not amounting to an intent to murder or maim.

(8) When committed with premeditated design, and by the use of means calculated to inflict great bodily injury.

(9) When committed by an adult male upon the person of a female or child or by an adult female upon the person of a child.

This subsection (9) of Section 1 shall not apply to the act of a person who fondles the sexual parts or places, or attempts to place his or her hand or hands upon or against the sexual parts of a male or female under the age of fourteen (14) years, or who fondles or attempts to fondle, or places or attempts to place his or her hand or hands, or any part of his or her hands upon the breast of a female under the age of fourteen (14) years, which acts are elsewhere made unlawful.

(10) When committed with a knife under circumstances not amounting to an intent to murder or maim. As amended Acts 1950, 51st Leg., 1st C.S., p. 51, ch. 11, § 1; Acts 1955, 54th Leg., p. 1143, ch. 430, § 1.

Emergency. Effective June 14, 1955.

Section 2 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.



## TITLE 17—OFFENSES AGAINST PROPERTY

## CHAPTER FIVE—BURGLARY

Art.

1402a. Coin-operated machine; breaking and entry into with intent to commit theft [New].

**Art. 1402a. Coin-operated machine; breaking and entry into with intent to commit theft**

Section 1. Any person who shall by fraud, or by force applied to a coin-operated machine, break a coin-operated machine, or enter a coin-operated machine, or work or manipulate the machinery of any coin-operated machine, with the purpose of committing the theft of any money or other personal property from said coin-operated machine or for the purpose of obtaining any service from or through the instrumentality of said coin-operated machine, shall be guilty of a felony and upon conviction therefor shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by confinement in county jail for not less than ten (10) days nor more than two (2) years, or by both such fine and imprisonment, or by confinement in the State penitentiary for a term of not more than five (5) years.

Sec. 1a. The provisions of this Act shall not apply to any coin-operated machine which may be used in any manner for the purpose of gambling, or any machine, the use of which has been declared illegal by the Legislature of this State, or any machine which may not be transported in Interstate Commerce under the laws of the United States of America.

Sec. 2. "Enter" as used herein includes every kind of entry except one made with the consent of the owner of such machine, or of one in lawful possession thereof, or of one authorized to give such consent.

The entry may consist of the entry of the hand, or a finger, or of any part of the human body, or the insertion or introduction into the coin-operated machine of any instrument of whatever material or materials it may be made or constructed, when such introduction or insertion is made for the purpose of taking from such machine any personal property whatever, or for the purpose of so manipulating the mechanism of such coin-operated machine as to obtain from said machine or from any person, firm or corporation any service whatever, through or by the instrumentality or use of such coin-operated machine. Acts 1955, 54th Leg., p. 747, ch. 768.

Effective 90 days after June 7, 1955, date of adjournment.

Title of Act:

An Act making it unlawful to break and enter into a coin-operated machine, or to work or manipulate the machinery of any coin-operated machine, with the intent to commit theft of any personal property from

said machine, or for the purpose of obtaining any service through the instrumentality of such machine; creating a felony offense, prescribing the punishment and defining certain terms; and declaring an emergency. Acts 1955, 54th Leg., p. 747, ch. 268.

## CHAPTER SIX—OFFENSES ON VESSELS, STEAMBOATS AND RAILROAD CARS

**Art. 1404b. Breaking into or entering vehicle**

Section 1. Any person who breaks into or enters a vehicle with the intent of committing a felony or the crime of theft shall be guilty of a

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

felony and upon conviction thereof shall be confined in the State penitentiary for a term of not more than three (3) years.

Sec. 2. A "vehicle" is a device in, upon or by which any person or property is or may be propelled, moved or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks.

Sec. 3. The breaking of any glass vent, glass window or windshield, or any other part of a vehicle, or the breaking or opening of any latch or locking device of a vehicle shall constitute "breaking into a vehicle"; and the insertion of hands or any part of the body or any foreign object through a vent wing, door, or other opening of a vehicle shall constitute "entering a vehicle." As amended Acts 1955, 54th Leg., p. 351, ch. 71, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

## CHAPTER EIGHT—THEFT IN GENERAL

### Art. 1436—1. Motor vehicles; Certificate of Title Act

#### Vehicles brought into state

##### Sec. 30.

(a) Before any motor vehicle which was last registered and titled, or registered in some other state or country may be registered and titled in Texas, the applicant shall furnish to the designated agent a certificate from a duly constituted peace officer in the form prescribed by the Department, certifying that such officer has made a physical examination of the motor number and serial number, or the permanent identification number of the motor vehicle. The said peace officer will certify that he has made a physical examination of the motor number and serial number, or permanent identification number, and note the correct numbers on said form. No designated agent shall accept any application for registration and a certificate of title until the provisions of this Section have been complied with; and further, no designated agent shall accept an application for registration and a certificate of title if the said numbers on the peace officer's certification do not agree with the motor number and serial number, or permanent identification number, shown on the evidence of ownership papers presented by the applicant for registration and a certificate of title. The certificate of examination of the said motor and serial numbers, or permanent identification numbers, issued by the duly constituted peace officer shall become a part of the evidence of ownership to accompany the owner's application for a certificate of title and the Department may not issue a certificate of title unless and until these provisions have been complied with. Added Acts 1955, 54th Leg., p. 1147, ch. 432, § 1.

Emergency. Effective June 14, 1955.

#### Fees; collection and disposition

Sec. 57. Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Seventy-five Cents (75¢), of which the first Twenty-five Cents (25¢) shall be accounted for by the County Tax Assessor-Collector and disposed of in one of the two methods hereinafter provided, depending upon whether the County Tax Assessor-Collector is compensated on a fee or a salary basis; and the remaining Fifty Cents (50¢) shall be forwarded to the State Highway Department for deposit in the State Highway Fund, to-

gether with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector, from which fees the State Highway Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein. There is hereby appropriated to the State Highway Department all of such fees for salaries, traveling expenses, stationery, postage, contingent expenses, and all other expenses necessary to administer this Act for a period of two years from the effective date of this Act; provided further, that in counties where the Tax Assessor-Collector is compensated on a fee basis, he shall be entitled to retain Five Cents (5¢) out of each Twenty-five Cents (25¢) that he collects for the county as supplemental compensation for administering the Certificate of Title Act so long as the amount retained does not exceed Two Hundred Forty Dollars (\$240) per year, and any sum collected in excess of this amount, together with the remaining Twenty Cents (20¢) collected for the county, shall be turned over to the County Treasurer for deposit in the county general fund.

In counties in which the County Tax Assessor-Collector is compensated on a salary basis, he shall turn the Twenty-five Cents (25¢) over to the County Treasurer for deposit in the Officers' Salary Fund; provided further, that in counties where the County Tax Assessor-Collector is compensated on a salary basis, the Commissioners Court shall fix and allow as additional or supplemental salary for the duties required of him under this Act not less than the minimum nor more than the maximum provided for in the scale which follows:

In counties of less than twenty thousand inhabitants, not less than Ten Dollars (\$10) nor more than Twenty Dollars (\$20) per month; in counties having a population of not less than twenty thousand nor more than forty thousand inhabitants, not less than Twenty Dollars (\$20) nor more than Thirty Dollars (\$30) per month; in counties having a population of not less than forty thousand and one, and not more than sixty thousand inhabitants, not less than Thirty Dollars (\$30) nor more than Fifty Dollars (\$50) per month; in counties having a population of not less than sixty thousand and one inhabitants nor more than one hundred thousand inhabitants, not less than Fifty Dollars (\$50) nor more than Seventy-five Dollars (\$75) per month; in counties having a population of not less than one hundred thousand and one inhabitants and not more than one hundred sixty-five thousand, not less than Seventy-five Dollars (\$75) nor more than One Hundred Dollars (\$100) per month; in counties having a population of not less than one hundred sixty-five thousand and one inhabitants and not more than two hundred thousand, not less than One Hundred Dollars (\$100) nor more than Two Hundred Dollars (\$200) per month; in counties having a population of two hundred thousand and one inhabitants or more, not less than Two Hundred Dollars (\$200) nor more than Two Hundred Fifty Dollars (\$250) per month.

The added or supplemental salaries for administering the Certificate of Title Act in counties where the County Tax Assessors-Collectors are compensated on a salary basis shall be paid out of the Officers' Salary Fund of the respective counties. The last preceding Federal Census shall govern as to population in all cases under the provisions of this Act. As amended Acts 1955, 54th Leg., p. 1172, ch. 452, § 1.

#### Legislative intent as to additional compensation

Sec. 57a. It is the intention of the Legislature that the compensation provided for Tax Assessors-Collectors by this Act shall be in addition to

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

their regular compensation regardless of whether they are compensated on a fee or salary basis. Acts 1955, 54th Leg., p. 1172, ch. 452, § 2.

Emergency. Effective June 15, 1955.

## CHAPTER ELEVEN—RELATING TO THE RECOVERY OF STOLEN ANIMALS AND THEFT THEREOF

Art.

1456a. Slaughterers to keep record of livestock purchased or slaughtered  
[New].

### Art. 1456a. Slaughterers to keep record of livestock purchased or slaughtered

Section 1. When used in this Act:

The term "person" includes individuals, partnerships, associations, private corporations, and municipal corporations and other public agencies.

The term "slaughterer" means a person engaged in the business of slaughtering livestock, and owning or operating a locker plant or plants and leasing, renting or furnishing space therein to others, for profit.

The term "livestock" means cattle.

Sec. 2. Every slaughterer who purchases or slaughters livestock in this State shall keep a record in a bound volume of all such livestock purchased or slaughtered by him, which shall contain the following information:

(a) A description of the livestock by kind, color, sex, probable age, and the marks and brands and their location if there are any marks or brands.

(b) The name and address of the person from whom the slaughterer purchased or acquired the livestock if acquired for slaughter for himself, and the name and address of the person for whom slaughtered, if not for himself.

(c) If the livestock is delivered to the slaughterer's pens or place of business by someone other than the slaughterer or his agent, the name and address of the individual delivering the livestock and the make and model and the highway registration number of the vehicle or vehicles in which delivered.

(d) The date of delivery to the slaughterer.

The record must be prepared and made available for public inspection within twenty-four (24) hours after the slaughterer receives the livestock. It must be preserved for at least one (1) year and must be open to public inspection at all reasonable hours. Both the slaughterer and the individual having management of the slaughtering operations shall be responsible for maintenance of the records required by this Act and shall be liable for a failure to keep such records.

Sec. 3. Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars (\$200).

Sec. 4. This Act is cumulative of all other laws and does not repeal any existing statute. Acts 1955, 54th Leg., p. 800, ch. 291.

Effective 90 days after June 7, 1955, date of adjournment.

Title of Act:

An Act requiring slaughterers of livestock to maintain records in a bound volume on livestock purchased or slaughtered

by them; defining certain terms; prescribing an offense and fixing the penalty therefor; declaring the effect of this Act on other laws; and declaring an emergency. Acts 1955, 54th Leg., p. 330, ch. 291.

## TITLE 18—LABOR

## CHAPTER SIX—WORKMEN AND FIREMEN

## Art. 1583. Work and vacation of firemen or policemen

6. Repealed. Acts 1955, 54th Leg., p. 309, ch. 65, § 2. Eff. April 15, 1955.

Section 2 of the Act of 1955, 54th Leg., p. 309, ch. 65, provided that subdivision 6 of Article 1583, Texas Penal Code of 1925, as added by Chapter 173, Acts of the 45th Legislature, Regular Session, and as amended by Chapter 201, Acts of the Forty-eighth Legislature, is repealed.

## Art. 1583—1. Hours of work of firemen and policemen; vacations

Sec. 6. It shall be unlawful for any city of more than ten thousand (10,000) inhabitants to require or permit any such fireman or policeman to work more than twenty-four (24) hours in any two consecutive calendar days, or more than seventy-two (72) hours in any one calendar week, and in no event more than one hundred and forty-four (144) hours in any two (2) consecutive calendar weeks in the discharge of his duties except in case of emergency which may arise where it may become necessary to work more than twenty-four (24) hours in any two consecutive calendar days, or more than seventy-two (72) hours in any one calendar week, or more than one hundred and forty-four (144) hours in any two (2) consecutive calendar weeks for the protection of property or human life. A fireman or policeman shall draw additional compensation for the number of hours worked in excess of twenty-four (24) hours in any two (2) consecutive calendar days, or more than the regular seventy-two (72) hours in any one calendar week, or more than the regular one hundred and forty-four (144) hours in any two (2) consecutive calendar weeks; or if required to work on any day which has been designated as the day of the week that such member of said department should not be required to be on duty, additional compensation at the rate of time and one-half overtime computed upon the basis of his monthly salary shall be paid to him for such additional time as he is required to work.

Notwithstanding the foregoing provisions, in any city having a population of more than ten thousand (10,000) inhabitants the maximum working hours of each member of the fire department may be decreased or increased to not more than the maximum number stated in a petition signed by qualified voters in the city, which petition must be signed by not less than twenty-five per cent (25%) of the total number voting in the last preceding regular municipal election. The petition shall state the proposed number of maximum hours per week and the proposed number of maximum hours per day which firemen engaged in fire fighting or subject to the hazards thereof may be required to work. When such a petition is filed with the governing body of the city, the governing body shall call an election within ninety (90) days after the date of filing to determine whether the proposed maximum hours shall be adopted. If at the election a majority of the votes cast favor the adoption of the proposed maximum hours, the governing body shall put such maximum hours into effect on or before the first day of the next fiscal year of the city. Thereafter it shall be unlawful for the city to require or permit firemen to work more than that number of hours except in case

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

of emergency, in which event they shall draw additional compensation as stated in the first paragraph of this section for such additional time as they are required to work. No other issue shall be joined on the same ballot with the proposition submitted at the election as herein provided; except that when any election called prior to the date that such petition is submitted to the governing board of the city, to occur within the ninety (90) day period as herein provided, then such issue may be joined on the same ballot. The question shall be submitted for the vote of the qualified electors, with the number of hours set forth in the petition inserted in lieu of the blank spaces, as follows:

For the proposed maximum hours of \_\_\_\_\_ per week and \_\_\_\_\_ per day for firemen.

Against the proposed maximum hours of \_\_\_\_\_ per week and \_\_\_\_\_ per day for firemen.

When an election has been held in a city pursuant to the provisions of this section, a petition for another election in that city shall not be filed for at least two (2) years subsequent to the election.

Nothing herein shall be construed to prevent a city from adopting the maximum hours set forth in a petition filed under the provisions of this Act without calling an election thereon. As amended Acts 1955, 54th Leg., p. 309, ch. 65, § 1.

Emergency. Effective April 15, 1955.

Section 2 of the amendatory Act of 1955 repealed subd. 6 of Article 1583, ante.

## TITLE 19—MISCELLANEOUS OFFENSES

CHAPTER THREE—TRUSTS AND CONSPIRACIES AGAINST  
TRADE

## Art. 1632. 1454 Defining trusts

Anti-trust laws of state not repealed or impaired by Sales Limitation Act, see P.C. art. 1111m, note.

## CHAPTER NINE—RAILROAD COMMISSION

## Art. 1690b. Motor carriers, violation of orders, penalties

(d) Any License and Weight Inspector or other peace officer of the Department of Public Safety, shall have the power and authority to make arrests without warrant for any violation of this Act except rate violations. Any authorized Rate Inspector of the Commission shall have power and authority to make arrests for any rate violation occurring under this Act, it being the intent herein to vest in the Department of Public Safety and its License and Weight Division the duty and responsibility for enforcement of the Act for all violations except rate violations, and vest in the Commission the duty and responsibility of enforcement of only rate violations. It shall be the duty of all judges and prosecuting attorneys of this State to assist in the enforcement of this Act. As amended Acts 1955, 54th Leg., p. 1042, ch. 396, § 1.

(j) It shall be unlawful for any officer, agent, servant or employee of any corporation, and every other person, to issue, display or use, or to enter into a conspiracy or agreement with any other person, officer, agent, servant and employee of any corporation, to issue, display or use a false or fictitious bill of sale, bill of lading, or manifest on the commodities being transported over the highways of this State. Every bill of lading or manifest shall show the true name and address of the consignor or shipper, the consignee or receiver, the origin, the destination, and an exact description of the commodities, goods, wares, or property transported or being transported for hire or compensation over the highways of this State. Every such bill of lading, manifest, or bill of sale or load of commodities being transported for hire over the highways of this State shall be made available for inspection at any time and place upon the request of any officer or agent authorized to enforce the provisions of this Act under Section (d) hereof. Any officer or agent authorized under Section (d) hereof, upon the failure of any person to permit inspection of the commodities being transported over the highways of this State under a bill of sale, bill of lading or manifest, shall be empowered to impound the load or commodities being transported and hold same until properly released without any liability whatever against such officer or agent of state or county. And every person who violates any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed Two Hundred (\$200.00) Dollars, and each such transaction shall constitute a separate offense.

No provision of this Act will apply to any person who is engaged in the bona fide business of buying, selling and transporting any product or com-

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

modity when such person has in good faith purchased such product or commodity and at the time of and during the transportation thereof such person has and owns title to such product or commodity. As amended Acts 1955, 54th Leg., p. 1042, ch. 396, § 2.

(k) Every corporation, association, partnership, firm or individual shall permit any officer, inspector or agent authorized under Section (d) of this Act, upon written authority of the Attorney General or any District Judge of a District Court properly having venue under the laws of this State, to inspect and examine any of its books, records, accounts, letters, memoranda, documents, checks, vouchers, or telegrams and make such copies thereof as may be necessary to show or tend to show that said corporation, its officers, agents or employees, association or partnership or individual has violated any provision of this Act. Every person who fails or refuses to permit such inspection by any duly authorized officer or agent under this Act shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed Two Hundred (\$200.00) Dollars, and each such transaction shall constitute a separate offense. As amended Acts 1955, 54th Leg., p. 1042, ch. 396, § 3.

Effective 90 days after June 7, 1955, date of adjournment.

Section 4 of the Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

## CHAPTER FOURTEEN—DANGEROUS PLACES AND ARTICLES

Art.

1721A. Refrigerators or air-tight containers [New].

### Art. 1721A. Refrigerators or air-tight containers

Section 1. It shall be unlawful for any person to place or permit to remain outside of any dwelling, building, or other structure, or within any warehouse or storage room or any unoccupied or abandoned dwelling, building, or other structure, under such circumstances as to be accessible to children, any ice box, refrigerator, or other airtight or semi-airtight container which has a capacity of one and one-half (1½) cubic feet or more and an opening of fifty (50) square inches or more and which has a door or lid equipped with a latch or other fastening device capable of securing such door or lid shut.

Sec. 2. Any person violating this Act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Five Dollars (\$5) nor more than Two Hundred Dollars (\$200), and each act done in violation hereof and each day that such violation continues shall constitute a separate offense and be punishable as such. Acts 1954, 53rd Leg., 1st C.S., p. 69, ch. 30.

Emergency. Effective April 22, 1954.  
Title of Act:

An Act making it unlawful to place or permit to remain in certain stated places, under such circumstances as to be accessible to children, any ice box, refrigerator, or other airtight or semi-airtight container having a capacity of one and one-half (1½) cubic feet or more and an opening of fifty (50) square inches or more and

which has a door or lid equipped with a latch or other fastening device capable of securing such door or lid shut; making a violation of this Act a misdemeanor and providing a penalty therefor; providing that each day that such violation continues shall be a separate offense; and declaring an emergency. Acts 1954, 53rd Leg., 1st C.S., p. 69, ch. 30.





THE  
CODE OF CRIMINAL  
PROCEDURE

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**TITLE 2—COURTS AND CRIMINAL JURISDICTION**

<p style="text-align:center">DALLAS COUNTY CRIMINAL DISTRICT COURTS</p> <p>Art. 52—24b. Special criminal district court of Dallas county [New].</p> <p>52—24c. Criminal District Court No. 3 of Dallas County [New].</p>	<p style="text-align:center">DALLAS COUNTY CRIMINAL COURT</p> <p>Art. 52—159b. County Criminal Court No. 3 of Dallas County [New].</p>
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PARTICULAR DISTRICTS AND SIMILAR COURTS

**Art. 52. Certain courts continued**

Temporary special criminal district court of Bexar county under Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 2, §§ 1-3, purporting to amend Rev.Civ.St. art. 199 and C.C.P. art. 52—161, see Vernon's Ann.Civ.St. art. 199, dist. 37.

DALLAS COUNTY CRIMINAL DISTRICT COURTS

**Art. 52—24b. Special criminal district court at Dallas County**

There is hereby created and established at the City of Dallas a Special Criminal District Court to be known as the "Special Criminal District Court of Dallas County," which court shall have and exercise concurrent jurisdiction with the Criminal District Court of Dallas County, Texas, and the Criminal District Court No. 2 of Dallas County, Texas, as is now given and exercised by the said Criminal District Court of Dallas County, Texas, and the Criminal District Court No. 2 of Dallas County, Texas, under the Constitution and laws of the State of Texas. Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 1, § 1.

Effective 90 days after April 13, 1954.  
date of adjournment.

*The Special Criminal District Court of Dallas County, a temporary court under Acts 1954, 53rd Leg., 1st C.S., p. 105, ch. 51, art. 3, § 1 which provided that such court shall cease to exist on Aug. 31, 1956, was established as permanent criminal District Court No. 3 of Dallas County by Acts 1955, 54th Leg., p. 711, ch. 256, § 1 (art. 52—24c, post). See, also Vernon's Ann.Civ.St. art. 199, Judicial District 14, etc.*

**Art. 52—24c. Criminal District Court No. 3 of Dallas County**

Section 1. The Special Criminal District Court of Dallas County, heretofore established as a temporary District Court under the terms and

provisions of Senate Bill No. 21, Acts of the 53rd Legislature, First Called Session, 1954, Chapter 51, page 105, is hereby established as a permanent Criminal District Court, the limits of which district shall be co-extensive with the limits of Dallas County, Texas, and shall be known as the Criminal District Court No. 3 of Dallas County.

Sec. 2. The present District Judge of the Special Criminal District Court of Dallas County, duly elected and acting as such, shall be the District Judge of the Criminal District Court No. 3 of Dallas County until the time for which he has been elected expires and until his successor is duly elected and qualified. Acts 1955, 54th Leg., p. 711, ch. 256.

Effective 90 days after June 7, 1955, Criminal Judicial District, Criminal Judicial District No. 2, and Criminal Judicial

For sections 3-10 of Acts 1955, 54th Leg., p. 711, ch. 256, relating to Dallas County,

District No. 3, etc., see Vernon's Ann. Civ.St. art. 199(14), and notes thereunder.

### DALLAS COUNTY CRIMINAL COURT

#### Art. 52—159b. County Criminal Court No. 3 of Dallas County

Section 1. There shall be created a court to be held in Dallas County, Texas, to be known and designated as "The County Criminal Court No. 3 of Dallas County, Texas."

Sec. 2. The County Criminal Court No. 3 of Dallas County, Texas, shall have and same is hereby vested with concurrent jurisdiction within the said county of all criminal matters and causes, original and appellate that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and Laws of Texas, except as provided in Section 3 of this Act.

Sec. 3. The County Court of Dallas County, Texas, shall retain as heretofore, its jurisdiction as a juvenile court, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and grant letters testamentary and of administration, settle accounts of administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlements, partition and distribution of the estates of deceased persons; and of apprenticing minors as provided by law. The County Judge of Dallas County shall be the Judge of the County Court of Dallas County, Texas, and all ex-officio duties of the county Judge shall be exercised by the said Judge of the said County Court, except as in so far as the same shall, by this Act, be committed to the Judge of the County Criminal Court No. 3 of Dallas County, Texas; and except such as have heretofore been conferred upon the Judges of the County Court at Law, Number One, and the County Court at Law, Number Two, of Dallas County, Texas.

Sec. 4. The County Criminal Court, Number Three, of Dallas County, Texas, or the Judge thereof shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws, in cases where the offense charged is within the jurisdiction of said court or any court or tribunal inferior to said court; and shall also have power to punish for contempt under such provisions as are now or may be provided by the General Law governing County Courts throughout the State.

Sec. 5. The terms of the County Criminal Court, Number Three, of Dallas County, Texas, and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms of said County Criminal Court, Number Three, shall be held not less than

four (4) times each year and the Commissioners Court of Dallas County, Texas, shall fix the time at which said court shall hold its terms, until the same may be changed according to law.

Sec. 6. As soon as may be after the passage of this Act, there shall be appointed by the Commissioners Court of Dallas County in accordance with the law, a Judge of the County Criminal Court, Number Three, hereby created, who shall be well informed in the laws of the State and who shall hold his office until the next succeeding General Election and until his successor shall have duly qualified. The Judge of said court elected at any General Election shall hold office for two (2) years and until his successor shall have duly qualified; provided, that no person shall be eligible for Judge of said court unless he shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this State or a Judge of a court in said State for four (4) years next preceding his appointment or election, and who shall have resided in the County of Dallas for two (2) years next preceding his appointment or election.

Sec. 7. The Judge of the County Criminal Court, Number Three, of Dallas County, Texas, shall execute a bond and take the oath of office as required by the law relating to county Judges.

Sec. 8. A special Judge of the County Criminal Court, Number Three, of Dallas County, Texas, may be appointed or elected as provided by the laws relating to county courts and the Judges thereof.

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court, Number Three, of Dallas County, Texas, the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Three, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof.

Sec. 10. The Judge of the County Criminal Court, Number Three, of Dallas County, Texas, shall collect the same fee provided by law for county Judges in similar cases, all of which shall be paid by him monthly into the County Treasury, and the Judge of said court shall receive a salary as fixed by the Commissioners Court of not less than Eight Thousand, Two Hundred Dollars (\$8,200) nor more than Ten Thousand, Six Hundred Dollars (\$10,600) per annum, to be paid monthly out of the County Treasury by the Commissioners Court; such Judge shall devote his entire time to the duties of his office, and shall not engage in the practice of the law while in office.

Sec. 11. The Judge of the County Criminal Court, Number Three, of Dallas County, Texas, may be removed from office in the same manner, and for the same causes as any other county Judge may be removed under the laws of this State.

Sec. 12. For the purpose of preserving a record in all cases for the information of the Court, jury, and parties, the Judge of the County Criminal Court, Number Three, of Dallas County, Texas, shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court and who shall hold his office at the pleasure of the court; the provisions of the General Laws of Texas relating to the appointment of stenographers for the District Courts shall, and is hereby made to apply in all its provisions, in so far as they are applicable to the official shorthand reporter herein authorized to be appointed and said reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are in said laws provided for the stenographers of District Courts of

this State, and also be governed by any other laws covering the stenographers of the District Courts of this State; provided, that the official shorthand reporter of said court shall not be required to take testimony in cases where neither party litigant nor the Judge demands it; but where the testimony is taken by said reporter a fee of Three Dollars (\$3) shall be taxed by the clerk as costs in the case, the said Three Dollars (\$3), when collected, to be paid into the County Treasury of Dallas County, Texas.

Sec. 13. As soon as may be after this Act takes effect the clerk of the County Criminal Court, Number One, of Dallas County, Texas, and the clerk of the County Criminal Court Number Two, of Dallas County, Texas, may transfer to the docket of the County Criminal Court, Number Three, of Dallas County, Texas, hereby created, any of the criminal cases then pending in the County Criminal Court Number One, of Dallas County, Texas, and the County Criminal Court, Number Two, of Dallas County, Texas, and thereafter the Judge of either of said courts may in his discretion transfer any cause or causes that may at any time be pending in his court to the other courts by an order or orders entered in the minutes of his court, and the Judge of the court to which such transfer or transfers are made shall dispose of said cause or causes in the same manner as if such cause or causes were originally instituted in said court. Acts 1954, 53rd Leg., 1st C.S., p. 100, ch. 49.

Emergency. Effective April 22, 1954.

Section 14 of the act of 1954 repealed conflicting laws or parts of laws. Section

15 provided that if any word, etc., should be held unconstitutional, the remainder of the act should nevertheless be in full force.

## JEFFERSON COUNTY CRIMINAL DISTRICT COURT

### Art. 52—160a. Jurisdiction increased

Sec. 5. During each term of said court the court may sit at any time in Port Arthur, Texas to try, hear and determine any civil non-jury cases over which it has jurisdiction as to the matters set out in Section 1, 3, and 4 hereof, and may hear and determine motions, arguments and such other non-jury civil matters over which said court may have jurisdiction; provided further, that nothing herein shall be construed to deprive the court of jurisdiction to try non-jury civil cases and hear and determine motions, arguments and such other non-jury civil matters at the county seat at Beaumont, Texas.

"The District Clerk of Jefferson County or his deputy shall wait upon the said court when sitting at Port Arthur, Texas and shall be permitted to transfer all necessary books, minutes and records to Port Arthur, Texas while the court is in session there, and likewise to transfer all necessary books, minutes, records and papers from Port Arthur, Texas to Beaumont, Texas at the end of each session in Port Arthur, Texas.

The Sheriff of Jefferson County or his deputy shall be in attendance upon the court while sitting at Port Arthur, Texas, and perform such duties as he may be directed to perform, either as required by law or under order of the court.

The official court reporter of said court shall be in attendance upon the court while sitting at Port Arthur, Texas and perform such duties as he may be directed to perform, either as required by law or under the order of the court.

The Commissioners Court of Jefferson County, Texas is hereby authorized to provide suitable quarters for said court while sitting at Port Arthur, Texas, which said quarters shall be located within the

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

sub-courthouse in Port Arthur, Jefferson County, Texas. Added Acts 1955, 54th Leg., p. 603, ch. 209, § 1.

Emergency. Effective May 13, 1955.

Section 2 of the Act of 1955 repealed all conflicting laws and parts of laws.

Section 3 read as follows: "It is hereby declared to be the legislative intent to enact a separate provision of Sub-section 160a, Article 52, Code of Criminal Procedure of Texas, 1925, independent of all other provisions; and the fact that any

phrase, sentence, clause or section of this Act shall be declared unconstitutional shall in nowise affect the validity of any of the other provisions hereof."

Application of provisions of this article to district court for 136th Judicial District, 58th Judicial District and 60th Judicial District, see Vernon's Ann.Civ.St., art. 199, subd. 136, § 10.

## BEXAR COUNTY CRIMINAL DISTRICT COURT

Art. 52—161. Criminal Judicial District of Bexar County; creation, jurisdiction, officers, etc.

*Acts 1955, 54th Leg., ch. 262, p. 730, § 4, in part, provides that "Article 52—161 of the Code of Criminal Procedure of the State of Texas, 1925, as amended, as the same now relates to and provides for the Criminal District Court of Bexar County," are hereby amended to read as set out under Vernon's Ann.Civ.St. art. 199 (37).*

## TITLE 7—AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

### CHAPTER ONE—ORGANIZATION OF THE GRAND JURY

Art.

367i. Bailiffs in counties of 190,000 to 200,000; appointment; compensation [New].

Art. 367i. Bailiffs in counties of 190,000 to 200,000; appointment; compensation

In all counties of this State having a population of not less than one hundred and ninety thousand (190,000) and not more than two hundred thousand (200,000) inhabitants, according to the last Federal Census, the Judge of a District Court impaneling a Grand Jury shall appoint grand jury bailiffs not to exceed six (6), each of whom shall receive Seven Dollars and Fifty Cents (\$7.50) per day compensation for his services; such payment to be made out of the general fund of such county. Acts 1955, 54th Leg., p. 516, ch. 152, § 1.

Emergency. Effective May 6, 1955.

Title of Act:

An Act fixing the compensation for grand jury bailiffs in counties of one hundred and ninety thousand (190,000) to two hundred thousand (200,000) population, the

number to be appointed, compensation to be paid, designating the funds from which such payments shall be made; and declaring an emergency. Acts 1955, 54th Leg., p. 516, ch. 152.

**TITLE 8—TRIAL AND ITS INCIDENTS****CHAPTER TWO—SPECIAL VENIRE IN CAPITAL CASES****Art. 591. 660, 647 Special venire in certain counties**

In all counties having a population of at least fifty-eight thousand (58,000), or having therein a city of twenty thousand (20,000), or more population, as shown by the preceding Federal Census, and in every county in this State, which comprises a part of two (2) Judicial Districts, each of which Districts consists of four (4) and the same four (4) counties, which four (4) counties have a combined population of not less than one hundred and thirty five thousand (135,000) according to the last preceding Federal Census, whenever a special venire is ordered, the District Clerk, in the presence of, and under the direction of, the Judge, shall draw from the wheel containing the names of the jurors, the number of names required for such special venire, and prepare a list of such names in the order in which drawn from the wheel, and attach said list to the writ and deliver same to the Sheriff. The cards bearing such names shall be sealed in an envelope and kept by the Clerk for distribution, as herein provided. If from the names so drawn, any of the men are impaneled on the jury and serve as many as four (4) days, the cards bearing their names shall be put by the Clerk in the box provided for that purpose, and the cards bearing the names of the men not impaneled shall again be put by the Clerk in the wheel containing the names of the eligible jurors. As amended Acts 1955, 54th Leg., p. 572, ch. 188, § 1.

Emergency. Effective May 9, 1955.

Section 2 of the amendatory Act of 1955 provided that partial invalidity should not affect the remaining portions of the Act.

**CHAPTER THREE—FORMATION OF JURY IN CAPITAL CASES****Art. 623. 699, 680 Jurors shall not separate**

The Court may adjourn veniremen to any day of the term. In felony cases when jurors have been sworn in a case, those so sworn shall be kept together and not permitted to separate until a verdict has been rendered or the jury finally discharged; provided, however, that when such jurors are kept overnight, facilities shall be provided for female jurors separate and apart from the facilities provided for male jurors, and such juries shall be permitted to separate to the extent of housing female jurors separate and apart from male jurors. As amended Acts 1955, 54th Leg., p. 795, ch. 288, § 3.

Emergency. Effective May 20, 1955.

**CHAPTER FIVE—THE TRIAL BEFORE THE JURY****Art. 670. 747, 727 To provide jury room**

The sheriff shall provide a suitable room for the deliberation of the jury and supply them with such necessary food and lodging as he can obtain. No intoxicating liquor shall be furnished them. In all cases wherein a jury consists partly of male jurors and partly of female jurors, the sheriff shall provide facilities for the female jurors separate and apart from the facilities provided for the male jurors. As amended Acts 1955, 54th Leg., p. 795, ch. 288, § 4.

Emergency. Effective May 20, 1955.

**TITLE 9—PROCEEDINGS AFTER VERDICT**

**CHAPTER ONE—NEW TRIALS**

**Art. 759a. Statement of facts and bills of exception**

**Form and contents of bill of exceptions; excluded testimony;  
formal exceptions unnecessary**

Sec. 2. (a) Where the Statement of Facts in question and answer form reflects the admission or rejection of testimony objected to or offered by the defendant, the defendant's objection thereto, the evidence rejected, the court's ruling thereon, or the said Statement of Facts shows any ruling or opinion or other action of the court, with the defendant's objection thereto, he may except thereto at the time the said ruling is made or announced or such action taken, and such Statement of Facts shall constitute a bill of exception to such ruling, opinion or other action of the court, and no formal bill of exception thereto shall be necessary. The defendant may, however, prepare and have filed a formal Bill of Exception if he so desires. Where the defendant offers testimony which is rejected by the court, the judge, if requested by defense counsel, shall immediately retire the jury and hear such testimony to allow defendant to perfect his Bill of Exception. Such rejected testimony may be carried in the Statement of Facts and may be considered a Bill of Exception.

(b) Formal exceptions to rulings on evidence, opinions or other action of the court, as provided in Subdivision (a) above, are unnecessary; but for all purposes for which an exception has heretofore been necessary, it is sufficient that a party, at the time the ruling, opinion, or action of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and if a party has no opportunity to object to the ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

(c) In like manner as hereinbefore provided in this Section, the defendant may reserve in the Statement of Facts, or by informal Bill of Exception, objection to argument of State's counsel, motion to withdraw testimony, or ruling of the trial court made during the trial of the case. As amended Acts 1953, 53rd Leg., p. 670, ch. 254, § 1B; Acts 1955, 54th Leg., p. 486, ch. 139, § 1.

Emergency. Effective April 30, 1955.

**Index**

Sec. 3. Repealed. Acts 1955, 54th Leg., p. 486, ch. 139, § 2, eff. April 30, 1955.

Section 3 of the amendment of 1955 was an emergency clause.



CHAPTER THREE—JUDGMENT AND SENTENCE

1. IN CASES OF FELONY

Art.

781b—1. Travis county; adult probation officer; secretary; appointment, compensation, etc. [New].

781b—2. Tarrant County; adult probation and parole officer [New].

1. IN CASES OF FELONY

Art. 781b—1. Travis county; adult probation officer; secretary; appointment, compensation, etc.

Section 1. The Judge of the 53rd Judicial District Court of Travis County, Texas; the Judge of the 98th Judicial District Court of Travis County, Texas; and the Judge of the 126th Judicial District Court of Travis County, Texas, for the purpose of effectively carrying out the adult probation laws of this State, shall be and are hereby authorized to appoint one Adult Probation Officer for Travis County where a probation and parole officer has not been assigned to any court and/or district in said county, in accordance with the provisions of Chapter 452, Acts of the Fiftieth Legislature, 1947, known as the Adult Probation and Parole Law and codified as Article 781b in Vernon's Texas Code of Criminal Procedure.

The Judges of the several Judicial District Courts of Travis County, Texas, shall be and are hereby further authorized to appoint one Secretary to serve in the Adult Probation Office.

The salaries of the above mentioned persons shall be set by the Commissioners Court in accordance with the laws governing the salaries permitted to be paid to deputies and assistants of elected county officers.

All such salaries are to be paid out of the General Fund of the county. All necessary and reasonable expenses, including an automobile allowance of Six Cents (6¢) per mile for use of personal automobile on official business, for the Adult Probation Officer shall be paid by the Commissioners Court out of the General Fund of the county whenever such expenses are incurred by the Adult Probation Officer in the performance of his duties and the conduct of his office.

The Adult Probation Officer should be of good moral character and acquainted with the Adult Probation and Parole Law. The authority and duties of such Officer shall be the same as those prescribed for probation and parole officers by the Adult Probation and Parole Law. Such Officer and Secretary shall be subject to removal at the will of the majority of the Judges of the several Judicial District Courts of Travis County, Texas.

Sec. 2. The Commissioners Court of Travis County is hereby authorized to amend the county budget for the fiscal year of 1955, from and at the effective date of this Act for the balance of the said fiscal year in order to provide for the salaries of the employees named in this Act and for all reasonable and necessary expenses of such office as herein provided.

Sec. 3. Nothing in this Act shall be construed as repealing Chapter 452, Acts of the Fiftieth Legislature, 1947,<sup>1</sup> except as to provide an alternate method of appointment of an Adult Probation Officer where such officer has not been assigned to any court and/or district in Travis County as provided in this Act. Acts 1955, 54th Leg., p. 531, ch. 164.

<sup>1</sup> Article 781b.

Emergency. Effective May 6, 1955.

**Art. 781b—2. Tarrant County; adult probation and parole officer**

Section 1. The Judges of the District Courts and Criminal District Courts in Tarrant County, for the purpose of effectively carrying out the adult probation and parole laws of this State, are hereby authorized to appoint an Adult Probation and Parole Officer for Tarrant County, where a probation and parole officer has not been assigned to a court and/or district in Tarrant County in accordance with the provisions of Chapter 452, Acts of the Fiftieth Legislature, 1947, known as the Adult Probation and Parole Law and codified as Article 781b in Vernon's Texas Code of Criminal Procedure. The salary of such Probation and Parole Officer shall be set by the Commissioners Court of Tarrant County and shall be paid out of the general fund of the county.

Upon approval of such expenditures by the Commissioners Court, the aforesaid Judges may appoint assistant probation and parole officers and such other employees as they deem necessary to serve in the Adult Probation Office. The salaries of all such employees shall be paid from the general fund of the county. All necessary and reasonable expenses, including an automobile allowance for use of personal automobiles on official business, of the Adult Probation and Parole Officer or other employees incurred in the performance of their duties and the conduct of the Adult Probation Office, may be paid out of the general fund, upon approval of the Commissioners Court.

The Adult Probation and Parole Officer and all assistant probation and parole officers shall be of good moral character and acquainted with the Adult Probation and Parole Law. The authority and duties of such officer shall be the same as those prescribed for probation and parole officers by the Adult Probation and Parole Law. Such officer and all other employees of the Adult Probation Office shall be subject to removal at the will of the majority of the Judges of the several District Courts and Criminal District Courts of Tarrant County.

The Commissioners Court is hereby authorized to provide office space and equipment for the Probation Office and to pay all other necessary office expenses out of the general fund of the county.

Sec. 2. The Commissioners Court of Tarrant County is hereby authorized to amend the county budget for the fiscal year of 1955, from and at the effective date of this Act for the balance of the said fiscal year, in order to provide for the salaries of the employees authorized in this Act and for all reasonable and necessary expenses of such office as herein provided.

Sec. 3. Nothing in this Act shall be construed as repealing Chapter 452, Acts of the Fiftieth Legislature, 1947,<sup>1</sup> except as to provide an alternate method of appointment of Chief and Assistant Probation and Parole Officers where such an Officer has not been assigned to any court and/or district in Tarrant County as provided in this Act. Acts 1955, 54th Leg., p. 1140, ch. 428.

<sup>1</sup> Article 781b.

Effective 90 days after June 7, 1955, date of adjournment.

**TITLE 13—INQUESTS**

**1. UPON DEAD BODIES**

Art.  
989a. Medical examiners; counties of 250,-  
000 or more [New].

**1. UPON DEAD BODIES**

Art. 989a. Medical examiners; counties of 250,000 or more

**Office Authorized**

Section 1. The Commissioners Court of any county having a population of two hundred and fifty thousand (250,000) or more, according to the last preceding Federal Census, may establish and provide for the maintenance of the office of Medical Examiner subject to the provisions of this Act.

**Appointment and Qualifications**

Sec. 2. The Commissioners Court shall appoint the Medical Examiner, who shall serve at the pleasure of the Commissioners Court. No person shall be appointed Medical Examiner unless he is a physician licensed by the State Board of Medical Examiners. To the greatest extent possible, the Medical Examiner shall be appointed from persons having training and experience in pathology, toxicology, histology and other medico-legal sciences. The Medical Examiner shall devote so much of his time and energies as is necessary in the performance of the duties conferred in this Act.

**Assistants**

Sec. 3. The Medical Examiner may, subject to the approval of the Commissioners Court, employ such deputy examiners, scientific experts, trained technicians, officers and employees as may be necessary to the proper performance of the duties imposed by this Act upon the Medical Examiner.

**Salaries**

Sec. 4. The Commissioners Court shall establish and pay the salaries and compensations of the Medical Examiner and his staff.

**Offices**

Sec. 5. The Commissioners Court shall provide the Medical Examiner and his staff with adequate office space and shall provide laboratory facilities or make arrangements for the use of existing laboratory facilities in the county.

**Death Investigations**

Sec. 6. Any Medical Examiner, or his duly authorized deputy, shall be authorized, and it shall be his duty, to hold inquests with or without a jury within his county, in the following cases:

1. When a person shall die within twenty-four (24) hours after admission to a hospital or institution or in prison or in jail.

2. When any person is killed; or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one (1) or more good witnesses.

3. When the body of a human being is found, and the circumstances of his death are unknown.

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means.

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

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide.

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, Forty-sixth Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the Medical Examiner of the county in which the death occurred and request an inquest.

7. When a person dies who has been attended immediately preceding his death by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, Fortieth Legislature, 1927, page 116. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the Medical Examiner of the county in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the Medical Examiner of the county in which the death occurred.

In making such investigations and holding such inquests, the Medical Examiner or an authorized deputy may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the Medical Examiner or authorized deputy shall take charge of the body and all property found with it.

#### Reports of Death

Sec. 7. Any police officer, superintendent of institution, physician, or private citizen who shall become aware of a death under any of the circumstances set out in Section 6 of this Act, shall immediately report such death to the office of the Medical Examiner or to the city or county police departments; any such report to a city or county police department shall be immediately transmitted to the office of Medical Examiner.

#### Removal of Bodies

Sec. 8. When any death under circumstances set out in Section 6 shall have occurred, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the Medical Examiner or authorized deputy, except for purpose of preserving such body from loss or destruction or maintaining the flow of traffic on a highway, railroad or airport.

#### Autopsy

Sec. 9. If the cause of death shall be determined beyond a reasonable doubt as a result of the investigation, the Medical Examiner shall file a report thereof setting forth specifically the cause of death with the District Attorney or Criminal District Attorney, or in a county in which there is no District Attorney or Criminal District Attorney with the County Attorney, of the county in which the death occurred. If in the opinion of the Medical Examiner an autopsy is necessary, or if such is requested by the District Attorney or Criminal District Attorney, or County Attorney where there is no District Attorney or Criminal District Attorney, the autopsy shall be immediately performed by the Medical Examiner or a duly authorized deputy. In performing an autopsy the Medical Examiner or authorized deputy may use the facilities of any city or county hospital within the

county or such other facilities as are made available. Upon completion of the autopsy, the Medical Examiner shall file a report setting forth the findings in detail with the office of the District Attorney or Criminal District Attorney of the county, or if there is no District Attorney or Criminal District Attorney, with the County Attorney of the county.

#### **Disinterments and Cremations**

**Sec. 10.** When a body upon which an inquest ought to have been held has been interred, the Medical Examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Act, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Act, or a certificate that no autopsy was necessary shall be furnished by the Medical Examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the Medical Examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the Medical Examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this Section. No autopsy shall be required by the Medical Examiner as a prerequisite to cremation in case death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished the owner or operator of a crematory by any Medical Examiner, under the terms of this Act, shall be preserved by such owner or operator of such crematory for a period of two (2) years from the date of the cremation of said body.

#### **Records**

**Sec. 11.** The Medical Examiner shall keep full and complete records, properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and all other relevant information concerning the death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper District, County, or Criminal District Attorney in any case where further investigation is advisable. Such records shall be public records.

#### **Transfer of Duties of Justice of Peace**

**Sec. 12.** When the Commissioners Court of any county having a population of two hundred and fifty thousand (250,000) or more, according to the last preceding Federal Census, shall establish the office of Medical Examiner, all powers and duties of Justices of the Peace in such county relating to the investigation of deaths and inquests shall vest in the office of Medical Examiner. Any subsequent general law pertaining to the duties of Justice of the Peace in death investigations and inquests shall apply to the Medical Examiner in such counties to the extent not inconsistent with this Act, and all laws or parts of laws otherwise in conflict herewith are hereby declared to be inapplicable to this Act.

#### **Penalty**

**Sec. 13.** Any person in violation of any provision of this Act, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than thirty (30) days, or both such fine and imprisonment. Acts 1955, 54th Leg., p. 524, ch. 159.

Emergency. Effective May 6, 1955.

## TITLE 15—COSTS IN CRIMINAL ACTIONS

### CHAPTER THREE—COSTS PAID BY COUNTIES

#### Art. 1056. 1158-60 Pay of jurors

Each juror in each District or Criminal District Court, County Court, or County Court at Law, except special veniremen and talesmen challenged on their voir dire whose pay is now fixed by law, shall receive not less than Four Dollars (\$4) and not more than Five Dollars (\$5) for each day and for each fraction of a day he attends court as such juror, to be paid out of the jury fund of the county. The amount of compensation shall be determined by the Commissioners Court of each county annually within the minimum and maximum prescribed herein. Jurors in Justice Courts who serve in the trial of criminal cases in such courts shall receive One Dollar (\$1) in each case in which they sit as jurors, provided that no juror in such court shall receive more than Two Dollars (\$2) for each day or fraction of a day he may so serve as such juror, to be paid out of the jury fund of the county. Grand jurors shall each receive not less than Four Dollars (\$4) and not more than Five Dollars (\$5) for each day or fraction of a day that they may serve as such, to be paid out of the jury fund of the county. The amount of compensation shall be determined by the Commissioners Court of each county annually within the minimum and maximum prescribed herein. The same per diem shall be paid to all persons responding to the process of the court but who are excused by the court from jury service for any cause, after being tested on their voir dire. As amended Acts 1953, 53rd Leg., p. 917, ch. 379, § 2; Acts 1955, 54th Leg., p. 593, ch. 201, § 1.

Emergency. Effective May 12, 1955.

Section 2 of the amendatory act of 1955 amended Vernon's Ann.Civ.St. art. 2428.

### CHAPTER FOUR—COSTS TO BE PAID BY DEFENDANT

#### Art. 1061. 1168, 1123 District and county attorneys

District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county court at law, to be taxed against the defendant:

For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, Fifteen Dollars (\$15.00);

"For every other conviction in cases of misdemeanor, where no appeal is taken, or when, on appeal the judgment is affirmed, Fifteen Dollars (\$15.00). Acts 1955, 54th Leg., p. 1112, ch. 410, § 1.

Effective 90 days after June 7, 1955, date of adjournment.

Section 2 of the amendatory Act of 1955 read as follows: "In all salary counties, none of the fees herein provided for shall be paid to any individual, but all of said fees shall be paid into the Officers' Salary

Fund of the county where collected, to be disbursed from said fund in accordance with the provisions of law."

Section 3 repealed all conflicting laws and parts of laws to the extent of such conflict.

#### Art. 1068. 1177, 1130 Fees of State's attorney

If the defendant pleads guilty to a charge before a Justice, the fee allowed the attorney representing the State shall be Ten Dollars (\$10.00).

**Art. 1068**      **CODE OF CRIMINAL PROCEDURE**

954

The attorney who represents the State in a criminal action in a Justice's Court shall receive, for each conviction on a plea of not guilty, where no appeal is taken, Fifteen Dollars (\$15.00). As amended Acts 1955, 54th Leg., p. 1112, ch. 410, § 1.

Effective 90 days after June 7, 1955, date of adjournment.      For sections 2-3 of the amendatory Act of 1955, see notes under art. 1061.

**Art. 1070. 1180, 1132 No fee allowed attorney**

No fee shall be allowed a district or county attorney in any case where he is not present and representing the State, upon the trial thereof, unless he has taken some action therein for the State, or is present and ready to represent the State at each regular term of the court in which such criminal action is pending; provided, that when pleas of guilty are accepted in any Justice Court, at any other time than the regular term thereof, the county attorney shall receive the sum of Ten Dollars (\$10.00). In no case shall the county attorney, in consideration of a plea of guilty, remit any part of his lawful fee. As amended Acts 1955, 54th Leg., p. 1112, ch. 410, § 1.

Effective 90 days after June 7, 1955, date of adjournment.      For Sections 2 and 3 of the amendatory Act of 1955, see notes under art. 1061.

# TABLE OF SESSION LAWS

References are to Civil Statutes unless otherwise indicated.

**1939 (46th Leg.) Regular Session**

Page	Sec.	Art.
193	5	C.C.P. 52-160a
376	14a	4476-3, § 14a

**1941 (47th Leg.) Regular Session**

Ch.	P.	Art.	Sec.	Art.
184	269	XVII	14a	7065b-14a

**1943 (48th Leg.) Regular Session**  
 Convened Jan. 12, 1943  
 Adjourned May 11, 1943

Ch.	P.	Subch.	Art.	Art.
97	137	III	13a	342-314
97	148	V	5a	342-505a

**1949 (51st Leg.) Regular Session**  
 Convened Jan. 11, 1949  
 Adjourned July 6, 1949

Ch.	P.	Sec.	Art.
99	181	8a	6228b

**1951 (52nd Leg.) Regular Session**  
 Convened Jan. 9, 1951  
 Adjourned June 8, 1951

Ch.	P.	Art.	Code
491	868	21.44	art. 21.44
491	868	21.45	art. 21.45

**1954 (53rd Leg.) First Called Session**  
 Convened March 15, 1954  
 Adjourned April 13, 1954

Ch.	P.	Art.	Art.
2	3	I (§ 1)	7047b, § 1(1)
2	3	I (§ 2)	7047b, § 1(3)
2	3	I (§ 3)	Effective date
2	3	II (§ 1)	7047 note
2	3	II (§ 2)	Effective date
2	3	III (§ 1)	7084
2	3	III (§ 2)	7084 note
2	3	IV (§ 1)	P.C. 667-23
2	3	IV (§ 2)	Effective date
2	3	V (§ 1)	7060a
2	3	V (§ 2)	7060a note
2	3	VI (§ 1)	7066b(aa)

**1954 (53rd Leg.) First Called Session—Cont'd**

Ch.	P.	Art.	Art.
2	3	VII (§§ 1-3)	7047b note
2	3	VII (§ 4)	Emergency
Ch.	P.	Sec.	Art.
3	9	1-9a	6889-3A
3	9	10	6889-3A note
3	9	11	Emergency
4	13	1	966c, § 4
4	13	2	Emergency
5	13	1	2922-14, § 1a
5	13	2	2922-16, § 2
5	13	3	2922-16, § 4
5	13	4	2922-16, § 5
5	13	5, 6	2922-14
5	13	7	Emergency
9	22	1-3	4386d note
9	22	4	Emergency
10	24	—	P.C. 978j note
11	28	1	2654-3a, § 1
11	28	2	2671
11	28	3	2673
11	28	4	Emergency
12	30	1-23	8280-158
12	30	24	Emergency
13	39	1-6	8280-159
13	39	7	Emergency
14	42	1-23	1970-339A
14	42	24	1970-339, § 5
14	42	25	1970-339, § 8
14	42	26	1970-339, § 15
14	42	27	1970-339A
14	42	28, 29	1970-339A note
14	42	30	Emergency
15	47	—	P.C. 978j note
17	49	1	2802e-1
17	49	2	Emergency
18	52	1	Ins.Code 3.50, § 1(3) (b)
18	52	2, 3	Ins.Code 3.50 note
18	52	4	Emergency
19	53	1-3	2815g-48
19	53	4	2815g-48 note
19	53	5	Emergency
20	56	—	P.C. 978j note
21	56	—	P.C. 978j note



1954 (53rd Leg.) First Called  
Session—Cont'd

Ch.	P.	Sec.	Art.
22	57	—	P.C. 978j note
24	59	1	8280—145, § 2
24	59	2	8280—145, § 5
24	59	3	8280—145, § 7(d)
24	59	4	8280—145, § 8
24	59	5	8280—145, § 9
24	59	6	8280—145, § 9a
24	59	7	8280—145, § 16(d), (e)
24	59	8	8280—145, § 17a
24	59	9, 9a	8280—145 note
24	59	10	Emergency
25	64	1, 2	3183e
25	64	3	Emergency
26	65	1	6954
26	65	2	Emergency
27	66	—	P.C. 978j note
28	67	1	4528c, § 9
28	67	2	4528c, § 13
28	67	3	Emergency
29	68	1-2a	1109f
29	68	3	Emergency
30	69	1, 2	P.C. 1721A
30	69	3	Emergency
31	70	1	6050, §§ 4, 4a
31	70	2	Emergency
33	72	—	P.C. 978j note
34	72	1	2750a—2
34	72	2	2750a—2 note
34	72	3	Emergency
35	73	1-24	8280—160
35	73	25	8280—160 note
35	73	26	Emergency
36	85	1	Elec.Code 13.04A
36	85	2	Emergency
37	85	—	P.C. 978j note
39	88	1	6701g, §§ 1, 3, 4
39	88	2	Emergency
40	89	1-3	2372m
40	89	4, 5	2372m note
40	89	6	Emergency
41	91	1-4	1109g
41	91	5	Emergency
42	92	1	3912c—4d, § 2
42	92	2	3912c—4d note
42	92	3	Emergency
43	93	1-4	1269j—5
43	93	5	Emergency
44	95	1-3	2372n
44	95	4	2372n note
44	95	5	Emergency
45	96	—	P.C. 978j note
46	97	1	4551a(5)
46	97	2	P.C. 754a(5)
46	97	3	4551a
46	97	4	Emergency
47	98	1-5	974d—4
47	98	6	974d—4 note
47	98	7	Emergency

1954 (53rd Leg.) First Called  
Session—Cont'd

Ch.	P.	Sec.	Art.
48	99	—	P.C. 978j note
49	100	1-13	C.C.P. 52—159b
49	100	14, 15	C.C.P. 52—159b note
49	100	16	Emergency
50	103	1	P.C. 725b, § 1
50	103	2, 3	P.C. 725b, § 1 note
50	103	4	Emergency
Ch.	P.	Art.	Art.
51	105	I (§ 1)	C.C.P. 52—24b
51	105	I (§ 2)	199(14), C.C.P. 52 note
51	105	I (§ 3)	199(14) note
51	105	II (§§ 1, 2)	199(37) note
51	105	II (§ 3)	199(37)
51	105	III (§§ 1-6)	199(14) note
51	105	IV	Emergency
52	105	1-17	199(2)
52	105	18-20	199(2) note
52	105	21	Emergency
53	117	1	199(9)
53	117	2	Emergency
54	118	1-7	199(25)
54	118	8-10	199(25) note
54	118	11	Emergency
55	120	1-10	199(70)
55	120	11-13	199(70) note
55	120	14	Emergency
56	122	1, 2	199(11) note
56	122	3	199(11)
56	122	4, 5	199(11) note
56	122	6	Emergency
57	125	I (§§ 1-7)	199(138)
57	125	II (§§ 1-6)	199(139)
57	125	III (§§ 1-6)	199(138) note
57	125	III (§ 7)	Emergency
Ch.	P.	Sec.	Art.
58	129	1	695g, § 1(c)
58	129	2	695g, § 4
58	129	3	Emergency

1955 (54th Leg.) Regular Session

Convened Jan. 11, 1955

Adjourned June 7, 1955

Ch.	P.	Sec.	Art.
2	2	1	199(25)
2	2	2	Emergency
4	4	1	703a
4	4	2	703a note
4	4	3	Emergency
5	5	1	1970—339, § 8
5	5	2	1970—339, § 17
5	5	3	1970—339A, § 8
5	5	4	1970—339A, § 18
5	5	5, 6	1970—339 note

**TABLE OF SESSION LAWS**

References are to Civil Statutes unless otherwise indicated

**1955 (54th Leg.) Regular Session**  
—Cont'd

Ch.	P.	Sec.	Art.
5	5	7	Emergency
8	9	1-3	1187a-2
8	9	4, 5	1187a-2 note
8	9	6	Emergency
9	10	1	P.C. 666-21¼
9	10	2	P.C. 666-21¼ note
9	10	3	Emergency
11	13	—	P.C. 978j note
12	15	—	P.C. 978j note
13	15	—	P.C. 978j note
14	17	1-3	2815g-49
14	17	4	Emergency
15	18	1-4	3238c
15	18	5	Emergency
16	19	1	4591d, §§ 1a-1c
16	19	2, 3	4591d note
16	19	4	Emergency
19	24	1-4a	2613c
19	24	5	Emergency
20	28	1-3	1174a-3
20	28	4	Emergency
21	29	—	P.C. 978j note
24	32	1	6701g, §§ 1, 3, 4
24	32	2	Emergency
25	34	1-11	2815r-1
25	34	12	Emergency
26	36	1	8306, § 15a
26	36	2	8306a
26	36	3	8306 note
26	36	4	Emergency
27	37	1	4591e
27	37	2	4591e note
29	39	1-8	Ins.Code 21.07-1
29	39	9	Emergency
30	41	1	912a-24
30	41	2	Emergency
32	43	1	1970-138
32	43	2	Emergency
33	44	1	6243h, § II subs. 12
33	44	2	6243h, § IV
33	44	3	Emergency
34	48	1	Elec.Code 6.01
34	48	2	Emergency
35	49	1	2643f-1
35	49	2	Emergency
36	50	1	2643d, § 1
36	50	2	Emergency
37	51	1	911b, § 1a(e)
37	51	2, 3	911b, § 1a note
37	51	4	Emergency
38	52	1	3174b-1
38	52	2	Emergency
39	53	1	3871a
39	53	2	Emergency
41	54	—	P.C. 978j note
42	55	1	2875
42	55	2	Emergency
45	62	1	6243g-1
45	62	2	Emergency

**1955 (54th Leg.) Regular Session**  
—Cont'd

Ch.	P.	Sec.	Art.
47	72	1-7	7472e
47	72	8	Emergency
48	74	1	7880-38a
48	74	2	Emergency
49	75	1-11	2338-6
49	75	12	2338-6 note
49	75	13	Emergency
50	78	1	1641
50	78	2	Emergency
51	80	1, 2	1334a
51	80	3	Emergency
52	81	1	2806e
52	81	2	2806e note
52	81	3	Emergency
53	82	1-14	1970-141.1
53	82	15, 16	1970-141.1 note
53	82	17	Emergency
54	86	1	3174b-2
54	86	2	Emergency
55	88	1-435	Probate Code §§ 1-435
56	219	1-23	1970-311a
56	219	24	1970-311a note
56	219	25	Emergency
57	223	1	1970-305, § 7
57	223	2	1970-305, § 11
57	223	3	Emergency
59	225	—	P.C. 978j note
60	227	1-12	8280-161
60	227	13	Emergency
62	236	1-4	8280-7
62	236	5	8280-7 note
62	236	6	Emergency
63	237	1-3	1269j-6
63	237	4	1269j-6 note
63	237	5	Emergency
64	238	1.01-11.01	Business Corporation Act 1.01-11.01

Ch.	P.	Art.	Art.
65	309	1	P.C. 1583-1, § 6
65	309	2	Repeal
65	309	3	Emergency
66	311	1-28	8280-162
66	311	29	Emergency
67	322	1	579-1
67	322	2	579-2
67	322	3	579-3
67	322	4	579-4
67	322	5	579-5
67	322	6	579-6
67	322	7	579-7
67	322	8	579-8
67	322	9	579-9
67	322	10	579-10
67	322	11	579-11
67	322	12	579-12
67	322	13	579-13
67	322	14	579-14

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
67	322	15	579—15
67	322	16	579—16
67	322	17	579—17
67	322	18	579—18
67	322	19	579—19
67	322	20	579—20
67	322	21	579—21
67	322	22	579—22
67	322	23	579—23
67	322	24	579—24
67	322	25	579—25
67	322	26	579—26
67	322	27	579—27
67	322	28	579—28
67	322	29	579—29
67	322	30	579—30
67	322	31	579—31
67	322	32	579—32
67	322	33	579—33
67	322	34	579—34
67	322	35	579—35
67	322	36	579—36
67	322	37	579—37
67	322	38	579—38
67	322	39	579—39
67	322	40	579—40
67	322	41	579—41
67	322	42	579—42
68	347	1	P.C. 827a, § 3(c)
68	347	2	P.C. 827a, § 3 note
68	347	3	Emergency
69	348	1	752a
69	348	2	Emergency
70	350	1	306
70	350	2	Emergency
71	351	1	P.C. 1404b
71	351	2	Emergency
73	354	1-3	P.C. 827a—3
73	354	4	Emergency
74	355	1	6228b, § 8
74	355	2	6228b, § 8a
74	355	3	Emergency
75	356	1-5	6228a—2
75	356	6	6228a—2 note
75	356	7	Emergency
76	359	1	Ins.Code 5.13
76	359	2	Ins.Code 5.13 note
76	359	3	Emergency
77	361	1	6142b
77	361	2	Emergency
79	362	1, 2	7652b
79	362	3	Emergency
80	363	—	P.C. 978j note
81	364	—	P.C. 978j note
82	365	—	P.C. 978j note
83	366	—	P.C. 978j note
84	366	—	P.C. 978j note
85	367	1, 2	326k—27
85	367	3	Emergency

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
86	368	—	P.C. 978j note
87	369	1	2790e, § 11
87	369	2	Emergency
88	369	1	6079b
88	369	2	Emergency
89	370	1, 2	2919e—1
89	370	3	Emergency
90	371	—	P.C. 978j note
91	372	—	P.C. 978j note
92	373	—	P.C. 978j note
93	373	1	8280—133, § 14
93	373	2	Emergency
94	374	1	P.C. 978h, § 2
94	374	2	Emergency
95	375	—	P.C. 978j note
96	376	—	P.C. 978j note
97	376	—	P.C. 978j note
98	377	—	P.C. 978j note
99	378	—	P.C. 978j note
100	378	1	6701d, § 106(d)
100	378	2	Emergency
101	379	1	8280—133, § 1(a)
101	379	2	8280—133, § 7
101	379	3	8280—133, § 18
101	379	4, 5	8280—133 note
101	379	6	Emergency
102	381	1	6675a—8a
102	381	2	Emergency
103	382	1, 2	6880 note
103	382	3	Emergency
104	383	1-3	2922l(7)
104	383	4	2922l(7) note
104	383	5	Emergency
105	384	—	1970—310 note
106	385	1-3	5139J
106	385	4, 5	5139J note
106	385	6	Emergency
107	386	1	P.C. 527
107	386	2	P.C. 527a
107	386	3, 4	P.C. 527 note
107	386	5	Emergency
108	388	1	6687b, § 15
108	388	2	6687b, § 19
108	388	3	6687b note
108	388	4	Emergency
109	390	1	P.C. 827a—2
109	390	2	Emergency
110	391	1	P.C. 535b, § 2
110	391	2	Emergency
111	391	1	P.C. 535c, § 2
111	391	2	Emergency
112	392	1	P.C. 535d, § 3
112	392	2	Emergency
113	393	1	752a
113	393	2	752a note
113	393	3	Emergency
114	394	1	7612
114	394	2	7612a
114	394	3	7612b

## TABLE OF SESSION LAWS

References are to Civil Statutes unless otherwise indicated

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
114	394	4	7612 note
114	394	5	Emergency
115	396	1-3	2815g-50
115	396	4	2815g-50 note
115	396	5	Emergency
116	399	1	5221b-1(d)
116	399	2	5221b-2
116	399	3	5221b-3(a-c)
116	399	4	5221b-4
116	399	5	5221b-5
116	399	6	5221b-6
116	399	7	5221b-8
116	399	8	5221b-9
116	399	9	5221b-9b
116	299	10	5221b-12
116	399	11	5221b-13
116	399	12	5221b-14
116	399	13	5221b-17
116	399	14	Repealer
116	399	15, 16	5221b-1 note
116	399	17	Emergency
117	413	1	Ins.Code 1.08
117	413	2	Ins.Code 1.10(5)
117	413	3	Ins.Code 1.14
117	413	4	Ins.Code 2.01
117	413	5	Ins.Code 2.02
117	413	6	Ins.Code 2.03
117	413	7	Ins.Code 2.04
117	413	8	Ins.Code 2.05
117	413	9	Ins.Code 2.08
117	413	10	Ins.Code 2.10
117	413	11	Ins.Code 2.20
117	413	12	Ins.Code 2.21
117	413	12a	Ins.Code 2.03-1
117	413	13	Ins.Code 5.50
117	413	14	Ins.Code 5.54
117	413	15	Ins.Code 5.76
117	413	16	Ins.Code 6.04
117	413	17	Ins.Code 6.05
117	413	18	Ins.Code 6.06
117	413	19	Ins.Code 6.07
117	413	20	Ins.Code 6.08
117	413	21	Ins.Code 8.05
117	413	22	Ins.Code 8.10
117	413	23	Ins.Code 8.18
117	413	24	Ins.Code 10.08
117	413	25	Ins.Code 15.04
117	413	26	Ins.Code 15.06
117	413	27	Ins.Code 15.08
117	413	28	Ins.Code 15.11
117	413	29	Ins.Code 16.01, § 2
117	413	30	Ins.Code 16.06
117	413	31	Ins.Code 17.02
117	413	32	Ins.Code 17.03
117	413	33	Ins.Code 17.06
117	413	34	Ins.Code 17.09
117	413	35	Ins.Code 17.11
117	413	36	Ins.Code 17.16
117	413	37	Ins.Code 17.22

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
117	413	37A	Ins.Code 17.25, § 1
117	413	38	Ins.Code 17.25, § 5
117	413	39	Repealer
117	413	40	Ins.Code 17.25, § 20
117	413	41	Ins.Code 18.04
117	413	42	Ins.Code 18.05
117	413	43	Ins.Code 18.07
117	413	44	Ins.Code 18.09
117	413	45	Ins.Code 18.11
117	413	46	Ins.Code 18.23
117	413	47	Ins.Code 19.03
117	413	48	Ins.Code 19.06
117	413	49	Ins.Code 19.10
117	413	50	Ins.Code 19.11
117	413	51	Ins.Code 19.12
117	413	52	Ins.Code 21.39
117	413	53	Ins.Code 21.44
117	413	54, 55	Ins.Code 1.08 note
117	413	56	Emergency
118	437	1, 2	6813 note
118	437	3	Emergency
119	438	1-24	3871b
119	439	25	Repealer
119	439	26	Emergency
120	444	1-4	P.C. 527b
120	444	5	P.C. 527b note
120	444	6	Emergency
121	445	1	5221c, § 3
121	445	2	Emergency
122	446	1-4	2675c-1
122	446	5	Emergency
123	447	1-20	8280-163
123	447	21	Emergency
124	454	1-8	326k-28
124	454	9, 10	326k-28 note
124	454	11	Emergency
126	460	1	4477-2, § 6A
126	460	2, 3	4477-2, § 6A note
126	460	4	Emergency
127	461	1	6243e, § 10a
127	461	2	6243e, § 12
127	461	3	6243e, § 21
127	461	4	Emergency
128	463	1	4632
128	463	2	4632 note
128	463	3	Emergency
129	464	1	2919f
129	464	2	Emergency
130	465	1-4	1200d
130	465	5, 6	1200d note
130	465	7	Emergency
131	466	1	8309e, § 3
131	466	2	8309e, § 10
131	466	3	8309e, § 17
131	466	4	Emergency
132	470	1-3	5221d
133	471	1-31	6132a
133	471	32	6132a note
133	471	33	Emergency

TABLE OF SESSION LAWS

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
134	479	1	6020a
134	479	2	6020a note
134	479	3	Emergency
135	481	1-3	8198 note
135	481	4	Emergency
137	484	—	P.C. 978j note
138	484	1	P.C. 666—32
138	484	2, 3	P.C. 666—32 note
138	484	4	Emergency
139	486	1	C.C.P. 759a, § 2
139	486	2	Repealer
139	486	3	Emergency
140	487	—	P.C. 978j note
141	488	1-20	8280—164
141	488	21, 22	8280—164 note
141	488	23	Emergency
142	497	—	P.C. 978j note
144	502	—	P.C. 978j note
145	502	1	Elec.Code 14.08(b, c)
145	502	2	Emergency
146	504	1	Ins.Code 3.50 par. (1) (d)
146	504	2	Emergency
147	505	1	199(102)
147	505	2	Emergency
148	507	1	5142a—1
148	507	2	Emergency
149	508	1-13	2891b
149	508	14-16	2891b note
149	508	17	Emergency
150	514	1, 2	7345b—2
150	514	3	7345b—2 note
150	514	4	Emergency
151	515	1	2372m, § 1
151	515	2	2372m, § 2(B)
151	515	3	Emergency
152	516	1	C.C.P. 367i
152	516	2	Emergency
153	517	1	Ins.Code 21.07, § 6
153	517	2	Ins.Code 17.25, § 9
153	517	3	Emergency
154	518	1, 2	3902h—2
154	518	3	Emergency
155	519	1	6701d, § 106(a)
155	519	2	Emergency
156	520	1-5	1969a—3
156	520	6	1969a—3 note
156	520	7	Emergency
157	521	1, 2	6889e
157	521	3	Emergency
158	522	1	P.C. 827a, § 3(a)
158	522	2	Repealer
158	522	3	Emergency
159	524	1-13	C.C.P. 989a
159	524	14	Emergency
160	527	—	P.C. 978j note
161	528	1-3	326k—29
161	528	4	Emergency
162	529	1-4	326k—30

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
162	529	5	Emergency
163	530	1	P.C. 924a
163	530	2	P.C. 924a note
163	530	3	Emergency
164	531	1-3	C.C.P. 781b—1
164	531	4	Emergency
165	532	1	8280—107, § 10
165	532	2	8280—107 note
165	532	3	Emergency
166	537	1	3266, § 3
166	537	2	Emergency
167	538	—	P.C. 978j note
168	539	1	4386c
168	539	2, 3	4386c note
168	539	4	Emergency
170	541	1-4	82a
170	541	5	82a note
170	541	6	Emergency
171	546	1	Ins.Code 11.19
171	546	2	Emergency
172	547	1	2766a
172	547	2	Emergency
173	548	1	5506c, § 2
173	548	2	5506c, § 7
173	548	3	5506c note
173	548	4	Emergency
174	549	1-6	7930—5
174	549	7	Emergency
175	551	1	1015g, § 1
175	551	2	1015g, § 5
175	551	2(a)	1015g, § 13
175	551	3	1015g, §§ 13(a)—13(c)
175	551	4	1015g note
175	551	5	Emergency
176	554	1-2a	8247f
176	554	3	8247f note
176	554	4	Emergency
177	556	1-12	1970—343
177	556	13	1970—343 note
177	556	14	Emergency
178	559	—	P.C. 978j note
179	560	1	2603a, § 8(b)
179	560	2, 3	2603a, § 8 note
179	560	4	Emergency
180	563	1-3	6203c—1
180	563	4	Emergency
181	564	1	6203d
181	564	2	Emergency
182	565	1	6166y
182	565	2	6166y note
182	565	3	Emergency
183	566	1	5561b—1
183	566	2	Emergency
184	567	1	118a, §§ 3, 12
184	567	2	Emergency
185	568	1	118c—2, §§ 2, 10
185	568	2	Emergency
186	570	—	P.C. 978j note
187	571	1	2460a, § 5

TABLE OF SESSION LAWS

References are to Civil Statutes unless otherwise indicated

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
187	571	2	2460a, § 5a
187	571	3	Emergency
188	572	1	C.C.P. 591
188	572	2	C.C.P. 591 note
188	572	3	Emergency
189	573	—	P.C. 978j note
190	574	1	912a—3, 912a—28 to 912a—33
190	574	2	912a—3 note
190	574	3	Emergency
191	577	1	2767
191	577	2	2767—1
191	577	3	Emergency
192	578	1	4476a, § 2
192	578	1-a	4476a, § 4(c)
192	578	2	4476a, § 7
192	578	3, 4	4476a note
192	578	5	Emergency
193	581	1	8280—157, § 3
193	581	2	8280—157, § 5(a)
193	581	3	8280—157, § 6(b)
193	581	4	8280—157, § 6(f)
193	581	5	8280—157, § 13(a)
193	581	6	8280—157, § 13(c)
193	581	7	8280—157, § 13(o)
193	581	8	8280—157, § 31
193	581	9	Repealer
193	581	10	Emergency
194	585	1, 2	1696a
194	585	3	Emergency
195	586	1-3	4418b—1
195	586	4	Emergency
196	587	1	8280—154, § 17(a)
196	587	2	8280—154, § 13(p)
196	587	3, 4	8280—154 note
196	587	5	Emergency
197	589	—	P.C. 978j note
198	589	1-5	326k—31
198	589	6	326k—31 note
198	589	7	Emergency
199	591	1	6636
199	591	2, 3	6636 note
199	591	4	Emergency
200	592	1-3	P.C. 666—25b
200	592	4	Emergency
201	593	1	C.C.P. 1056
201	593	2	2428
201	593	3	Emergency
202	594	1	4437a, § 6A(e)
202	594	2	Emergency
203	595	1-3	5159c
203	595	4	Emergency
204	596	1-9	P.C. 705d
204	596	10	Emergency
205	598	1	3912e, § 19(q)
205	598	2	Emergency
206	599	1	P.C. 105
206	599	2	Emergency
207	600	1-2	1118n—6

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
207	600	3	Emergency
208	601	1	199(58, 60, (a))
208	601	2, 3	199(58-60) note
208	601	4	Emergency
209	603	1	C.C.P. 52—160a, § 5
209	603	2, 3	C.C.P. 52—160a note
209	603	4	Emergency
210	604	1	Ins.Code 21.11
210	604	2	Emergency
211	606	1	8235a, § 3
211	606	2	8235a, § 4
211	606	3	8235a, § 5
211	606	4	Emergency
212	610	1-24	8280—165
212	610	25	8280—165 note
212	610	26	8280—165
212	610	27	Emergency
213	621	1-15	Ins.Code 21.07—1
213	621	16, 17	Ins.Code 21.07—1 note
213	621	18	Emergency
214	630	1-9	199(140)
214	630	10	199(140) note
214	630	11	Emergency
215	632	1, 2	199(142)
215	632	3	199(124)
215	632	4-6	199(124) note
215	632	7	Emergency
216	634	1-10	199(136)
216	634	11, 12	199(136) note
216	634	13	Emergency
217	636	1-9	199(153)
217	636	10	199(153) note
217	636	11	Emergency
218	638	1	199(138)
218	638	2	199(139)
218	638	3-5	199(138) note
218	638	6	Emergency
220	644	1	2643g, § 12a
220	644	2	Emergency
222	646	1-3	1302d—1
222	646	4	Emergency
223	647	1	2922(6)
223	647	2	Emergency
224	648	1	8274 note
224	648	2	Emergency
225	649	—	P.C. 978j note
226	650	1	7336f, § 2
226	650	2, 3	7336f note
226	650	4	Emergency
227	652	1	2919d, § 5a
227	652	2	2919d note
227	652	3	Emergency
228	653	1-5	2613a—7
228	653	6	2613a—7 note
228	653	7	Emergency
230	657	1	8120
230	657	2	8120 note

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.
230	657	3	Emergency
231	658	1	8280—139, § 3
231	658	2	8280—139, § 6
231	658	3	8280—139 note
231	658	4	Emergency
232	660	1-4	5414a—1
232	660	5	Emergency
233	662	1	8306, § 20
233	662	2	Emergency
234	663	1	342—314
234	663	2	Emergency
235	664	1-5	802g
235	664	6	Emergency
236	665	1	6935
236	665	2	6937
236	665	3	Emergency
237	666	1, 2	6079c—1
237	666	3	Emergency
238	668	1-7	8244a
238	668	8, 9	8244a note
238	668	10	Emergency
239	670	1	5382d, § 13a
239	670	2	Emergency
241	672	1	6602(4)
241	672	2	Emergency
242	673	1	6243f, § 17
242	673	2	Emergency
243	674	1-4	1970—333a
243	674	5	1970—333a note
243	674	6	Emergency
244	676	1	342—505a
244	676	2	342—505a note
244	676	3	Emergency
245	677	1-12	8280—166
245	677	13	Emergency
247	686	1	Ins.Code 3.50, § 1(4)
247	686	2	Emergency
249	689	1-8	199(25)
249	689	9, 10	199(25) note
249	689	11	Emergency
250	691	1-20	8280—167
250	691	21	8280—167 note
250	691	22	Emergency
251	699	1-9	5142c—2
251	699	10	Emergency
252	701	1-4	8227a
252	701	5	8227a note
252	701	6	Emergency
253	703	1-6	7880—147z2
253	703	7	7880—147z2 note
253	703	8	Emergency
255	706	1	1269m, § 14(D)
255	706	2	1269m, § 16
255	706	3	1269m, § 20
255	706	4	1269m, § 18
255	706	5	1269m, § 21
255	706	6	1269m, § 26
255	706	7	1269m, § 27(b)
255	706	8	Emergency

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Art.	Art.	
256	711	1, 2	C.C.P. 52—24c	
256	711	3	199(14)	
256	711	4-9	199(14) note	
256	711	10	Emergency	
257	715	1-15	4494n	
257	715	16	4494n note	
257	715	17	Emergency	
258	723	1-10	199(9)	
258	723	11, 12	199(9) note	
258	723	13	Emergency	
259	725	1	6228a, § 5(g)	
259	725	2	Emergency	
260	726	1, 2	7880—20a	
260	726	3	Emergency	
262	730	1-3	199(37) note	
262	730	4	199(37)	
262	730	5-9	199(37) note	
263	734	—	P.C. 978j note	
264	735	1-3	5139K	
264	735	4	Emergency	
265	736	—	P.C. 978j note	
266	736	1, 2	3912e—5a	
266	736	3	3912e—5a note	
266	736	4	Emergency	
267	737	1	21.28	
267	737	2, 3	21.28 note	
267	737	4	Emergency	
268	747	1-2	P.C. 1402a	
268	747	3	Emergency	
269	749	1	6675a—3	
269	749	2	6675a—3aa	
269	749	3	Emergency	
271	752	1	7150	
271	752	2	7150 note	
271	752	3	Emergency	
272	753	—	P.C. 978j note	
273	754	1	6701c—1,	
			§§ 2(a, c), 4, 5	
273	754	2	Emergency	
Ch.	P.	Art.	Sec.	Art.
274	756	I	1	P.C. 712
274	756	II, III	1	P.C. 712 note
274	756	IV	1	Emergency
Ch.	P.	Sec.	Art.	
275	757	1	6701d, § 104(a)	
275	757	2	Emergency	
276	758	1	6228a, § 5A	
276	758	2, 3	6228a note	
276	758	4	Emergency	
277	759	1	4590c, § 4	
277	759	2	4590c, § 5	
277	759	3	4590c, § 8	
277	759	4	4590c note	
277	759	5	Emergency	
279	763	1-26	8280—168	
279	763	27	Emergency	
280	773	1	5421o	

## TABLE OF SESSION LAWS

References are to Civil Statutes unless otherwise indicated

1955 (54th Leg.) Regular Session —Cont'd				1955 (54th Leg.) Regular Session —Cont'd			
Ch.	P.	Sec.	Art.	Ch.	P.	Sec.	Art.
280	773	2	Emergency	306	824	8, 9	326k—32 note
281	774	1-5	2815s—1	306	824	10	Emergency
281	774	6	2815s—1 note	307	826	1	Ins.Code 1.08
281	774	7	Emergency	307	826	2	Ins.Code 1.14
282	777	1-20	8280—160	307	826	3	Ins.Code 1.15
282	777	21	Emergency	307	826	4	Ins.Code 1.16
283	783	1-5	8280—170	307	826	5	Ins.Code 1.17
283	783	6	Emergency	307	826	6	Ins.Code 1.18
284	786	—	P.C. 978j note	307	826	7	Ins.Code 1.19
285	790	1-4	8280—171	307	826	8-11	Ins.Code 1.08 note
285	790	5	8280—171 note	307	826	12	Emergency
285	790	6	Emergency	308	832	1-24	8280—173
286	791	1-5	8280—172	308	832	25	Emergency
286	791	6	Emergency	309	842	1	118a, § 9
287	794	1	1118u	309	842	2	118a note
287	794	2	Emergency	309	842	3	Emergency
288	795	1	2133	310	843	1, 2	2802—1
288	795	2	2135	310	843	3	Emergency
288	795	3	C.C.P. 623	311	844	1, 2	5421b—1
288	795	4	C.C.P. 670	311	844	3, 4	5421b—1 note
288	795	5, 6	2133 note	311	844	5	Emergency
288	795	7	Emergency	312	845	—	P.C. 978j note
289	797	1	4032c	313	845	1	8280—131, § 1
289	797	2	4032c note	313	845	2	Emergency
289	797	3	Emergency	314	846	1	613, 649, 655
291	800	1-4	P.C. 1456a	314	846	2	Emergency
291	800	5	Emergency	315	847	1, 2	8176b
292	801	1	6070f	315	847	3	8176b note
292	801	2	Emergency	315	847	4	Emergency
293	802	1-3	717j	316	849	1	7065b—5
293	802	4	Emergency	316	849	2	7065b—5 note
295	804	1	2327d	316	849	3	Emergency
295	804	2, 3	2327d note	317	851	1	974a, § 3
295	804	4	Emergency	317	851	2	Emergency
296	805	1	6954	318	852	1	2779b
296	805	2	Emergency	318	852	2	Emergency
297	806	1	1919	319	853	1	7922
297	806	2-6	1919 note	319	853	2	Emergency
298	808	1-3	966d	320	854	1-14	1118n—7
298	808	4	Emergency	320	854	15	Emergency
299	809	1	Ins.Code 3.50, § 1(3)	321	858	—	P.C. 978j note
299	809	2	Emergency	322	859	1, 2	5139L
300	810	1-10	P.C. 752d	322	859	3, 4	5139L note
300	810	11	Emergency	322	859	5	Emergency
301	814	1	Ins.Code 11.11	323	860	1, 2	3737d—1
301	814	2	Emergency	323	860	3	Repealer
302	815	1, 2	1580 note	323	860	4	Emergency
302	815	3	Emergency	324	861	1	5248g, § 1
303	817	1	Repealer	324	861	2	Emergency
303	817	2	6701d, §§ 108A, 108B	325	862	—	P.C. 978j note
303	817	3	6701d, §§ 126, 127	326	863	—	P.C. 978j note
303	817	4, 5	6701d note	327	863	—	P.C. 978j note
303	817	6	Emergency	328	864	1-11	5282a
304	820	1-5	6839g	328	864	12	Emergency
304	820	6	6839g note	329	871	1	3886f, § 1
304	820	7	Emergency	329	871	2	3886f, § 3a
305	822	1	260—1, §§ 1, 2, 4	329	871	3	3886f note
305	822	2	Emergency	329	871	4	Emergency
306	824	1-7	326k—32	330	872	1	199(11) and note



TABLE OF SESSION LAWS

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.
330	872	2, 3	199(11) note
330	872	4	Emergency
331	876	1, 2	2615f
331	876	3	Emergency
332	877	1	8280—148, § 3
332	877	2	8280—148, § 24
332	877	3	Emergency
333	879	1	4594
333	879	2	Emergency
334	879	1	118b, §§ 24, 24A
334	879	2	Emergency
335	880	1	117, § 3
335	880	2	Emergency
336	881	—	P.C. 978j
337	882	1	199(38)
337	882	2	199(38) (2)
337	882	3	199(112)
337	882	4	199(33)
337	882	5-12	199(38) note
337	882	13	Emergency
338	885	—	P.C. 978j
340	889	1	Elec.Code 7.14
340	889	2	Elec.Code 7.14 note
340	889	3	Emergency
341	890	—	P.C. 978j note
342	891	—	P.C. 978j note
343	892	1, 2	2922I(S)
343	892	3	2922I(S) note
343	892	4	Emergency
345	894	—	P.C. 978j note
346	895	1	199(132) note
346	895	2	199(132)
346	895	3	Emergency
347	896	—	P.C. 978j note
348	897	1-3	5139M
348	897	4, 5	5139M note
348	897	6	Emergency
349	898	1	8280—162, § 28a
349	898	2	Emergency
350	898	1	P.C. 157a
350	898	2	Emergency
351	899	1	2352d
351	899	2-4	2352d note
351	899	5	Emergency
354	903	1	P.C. 725b, § 23
354	903	2	Emergency
355	904	1	6243e, § 23
355	904	2	Emergency
356	905	1	118c—1, §§ 2, 10
356	905	2	Emergency
357	907	1	Elec.Code 6.07
357	907	2	Elec.Code 6.07 note
357	907	3	Emergency
358	909	1	7105a
359	909	2	Emergency
359	910	1-4	8280—174
359	910	5	8280—174 note
359	910	6	Emergency
360	912	1, 2	2775a—1

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.
360	912	3	Emergency
361	913	1	6899d—1
361	913	2	6899d—1 note
361	913	3	Emergency
362	914	1, 2	2368a—4
362	914	3	Emergency
363	916	1	Ins.Code 2.07, § 6
363	916	2	Ins.Code 2.18
363	916	3	Ins.Code 3.02
363	916	4	Ins.Code 3.02a
363	916	5	Repealer
363	916	6	Ins.Code 3.04
363	916	7	Ins.Code 3.06
363	916	8	Ins.Code 3.11
363	916	9	Ins.Code 3.22
363	916	10	Ins.Code 3.30
363	916	11	Ins.Code 3.32
363	916	12	Ins.Code 3.39(9)
363	916	13	Ins.Code 3.40
363	916	14	Ins.Code 3.60
363	916	15	Ins.Code 3.69
363	916	16	Ins.Code 10.40, § 3
363	916	17	Ins.Code 11.01
363	916	18	Ins.Code 11.02
363	916	19	Ins.Code 11.10
363	916	20	Ins.Code 11.12
363	916	21	Ins.Code 11.17
363	916	22	Ins.Code 14.63
363	916	23, 24	Ins.Code 2.07 note
363	916	25	Emergency
364	933	1	21.44
364	933	2	Emergency
365	934	1-5	4639b
365	934	6	Emergency
366	935	1	135b—1, § 7
366	935	2	135b—1, § 8
366	935	3	135b—1, § 10
366	935	4	135b—1, § 15
366	935	5	135b—1 note
366	935	6	Emergency
367	938	1-4	2909b
367	938	5	2909b note
367	938	6	Emergency
368	940	1-11	2909c
368	940	12	Emergency
369	943	1-22	135c
369	943	23	135c note
369	943	24	Emergency
370	949	1	1015j
370	949	2	Emergency
371	949	1	4026b
371	949	2	Emergency
372	950	—	P.C. 978j note
373	951	1-20	8280—175
373	951	21	8280—175 note
373	951	22	Emergency
374	963	1, 2	5139H—1
374	963	3	5139H—1 note

## TABLE OF SESSION LAWS

References are to Civil Statutes unless otherwise indicated

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.
374	963	4	Emergency
375	964	1-8	326k-33
375	964	9, 10	326k-33 note
375	964	11	Emergency
376	966	1-17	8280-176
376	966	18	8280-176 note
376	966	19	Emergency
377	972	1	1118n-5, § 1a
377	972	2	Emergency
378	973	1, 2	1644a-1
378	973	3	1644a-1 note
378	973	4	Emergency
379	974	1-6	199(143) note
379	974	7	199(109)
379	974	8	199(143)
379	974	9-11	199(143) note
379	974	12	Emergency
381	980	1-9	326k-34
381	980	10, 11	326k-34 note
381	980	12	Emergency
383	986	1	6573a
383	986	2	6573a note
383	986	3	Emergency
384	1002	1	580-1
384	1002	2	580-2
384	1002	3	580-3
384	1002	4	580-4
384	1002	5	580-5
384	1002	6	580-6
384	1002	7	580-7
384	1002	8	580-8
384	1002	9	580-9
384	1002	10	580-10
384	1002	11	580-11
384	1002	12	580-12
384	1002	13	580-13
384	1002	14	580-14
384	1002	15	580-15
384	1002	16	580-16
384	1002	17	580-17
384	1002	18	580-18
384	1002	19	580-19
384	1002	20	580-20
384	1002	21	580-21
384	1002	22	580-22
384	1002	23	580-23
384	1002	24	580-24
384	1002	25	580-25
384	1002	26	580-26
384	1002	27	580-27
384	1002	28	580-28
384	1002	29	580-29
384	1002	30	580-30
384	1002	31	580-31
384	1002	32	580-32
384	1002	33	580-33
384	1002	34	580-34
384	1002	35	580-35
384	1002	36	580-36

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.
384	1002	37	580-37
384	1002	38	580-38
384	1002	39	580-39
384	1002	40, 41	580-1 note
384	1002	42	Emergency
385	1026	1	P.C. 725c, §§ 3, 4
385	1026	2	P.C. 726c, § 13
385	1026	3	P.C. 726b, § 2
385	1026	4	P.C. 725c note
385	1026	5	Emergency
386	1027	1	P.C. 725b, §§ 2, 2A
386	1027	2	Emergency
387	1029	1-6	5154g
387	1029	7	5154g note
387	1029	8	Emergency
388	1031	1	1995(17a)
388	1031	2	1995 note
388	1031	3	Emergency
389	1032	1	7122
389	1032	2, 3	7122 note
389	1032	4	Emergency
390	1033	1	2324
390	1033	2	Repealer
390	1033	3	2075
390	1033	4	Emergency
391	1035	1	Ins.Code 1.02
391	1035	2	Ins.Code 1.03
391	1035	3	Ins.Code 1.04
391	1035	4, 5	Ins.Code 1.02 note
391	1035	6	Emergency
392	1036	1	7083a(1, 2, 4)
392	1036	2	7083a note
392	1036	3	Emergency
393	1038	1	P.C. 1106(b)
393	1038	2, 3	P.C. 1106 note
393	1038	4	Emergency
395	1041	1	4494l
395	1041	2	Emergency
396	1042	1	P.C. 1690b(d)
396	1042	2	P.C. 1690b(j)
396	1042	3	P.C. 1690b(k)
396	1042	4	P.C. 1690b note
396	1042	5	Emergency
397	1044	1	Ins.Code 3.70-1
397	1044	2	Ins.Code 3.70-2
397	1044	3	Ins.Code 3.70-3
397	1044	4	Ins.Code 3.70-4
397	1044	5	Ins.Code 3.70-5
397	1044	6	Ins.Code 3.70-6
397	1044	7	Ins.Code 3.70-7
397	1044	8	Ins.Code 3.70-8
397	1044	9	Ins.Code 3.70-9
397	1044	10	Ins.Code 3.70-10
397	1044	11-13	Ins.Code 3.70-1 note
397	1044	14	Emergency
398	1055	1, 2	326k-35
398	1055	3	Emergency
399	1056	1, 2	199(75)

TABLE OF SESSION LAWS

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.	
399	1056	3, 4	199(88)	
399	1056	5	199(75)	
399	1056	6, 7	199(88)	
399	1056	8, 9	199(75)	
399	1056	10	199(88)	
399	1056	11	199(75)	
399	1056	12	199(88)	
399	1056	13, 14	199(75)	
399	1056	15-17	199(75) note	
399	1056	18	Emergency	
400	1060	1-21	8280-177	
400	1060	22	Emergency	
401	1067	1-8	8280-178	
401	1067	9	Emergency	
402	1071	1	7048b	
402	1071	2	7048b note	
402	1071	3	Emergency	
403	1072	1-23	6795c	
403	1072	24	Emergency	
Ch.	P.	Art.	Sec.	Art.
404	1080	I	1	7047c-1, § 2
404	1080	I	2	7047c-1, § 2½
404	1080	I	3	7047c-1, § 3
404	1080	II	1	7065b-2(a)
404	1080	II	2	7065b-14(a)
404	1080	II	3	7065b-14a
404	1080	II	4	7065b-5(a)
404	1080	III	1	P.C. 667-23
404	1080	III	2	P.C. 667-23 note
404	1080	IV	1	7084
404	1080	IV	2	7086(1)
404	1080	IV	3	7089
404	1080	IV	4	7091
404	1080	IV	5	7092
404	1080	IV	6	7094
404	1080	IV	7	7047c-1, § 2 note
404	1080	V	1	7083a(4-c)
404	1080	VI	1	7047c-1 note
404	1080	VI	2	Emergency
Ch.	P.	Sec.	Art.	
406	1097	1	6029a	
406	1097	2	Emergency	
407	1099	1	6820	
407	1099	2	6820 note	
407	1099	3	Emergency	
410	1112	1	C.C.P. 1061, 1068, 1070	
410	1112	2, 3	C.C.P. 1061 note	
410	1112	4	Emergency	
411	1113	1-3a	3193-1	
411	1113	4	3193-1 note	
411	1113	5	Emergency	
412	1115	1	5438d	
412	1115	2	5438d note	
412	1115	3	Emergency	
413	1116	1	4476-3, § 14a	
413	1116	2	4476-3 note	

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.
413	1116	3	Emergency
414	1117	1	1645
414	1117	2	1649
414	1117	3	1665
414	1117	4	1645 note
414	1117	5	Emergency
415	1119	1, 2	5382d-1
415	1119	3	Emergency
416	1120	1	3918
416	1120	2	Emergency
417	1123	—	P.C. 978j note
418	1124	1	6819a-10
418	1124	2	Repealer
418	1124	3	Emergency
421	1126	1	653
421	1126	2	Emergency
422	1127	—	P.C. 978j note
423	1128	1	6674n
423	1128	2, 3	6674n note
423	1128	4	Emergency
424	1131	1	Elec.Code 13.08
424	1131	2	Emergency
425	1132	1	2529
425	1132	2	Emergency
426	1134	1-8	3883h
426	1134	9	3883h note
426	1134	10	Emergency
427	1137	1-15	3883i
427	1137	16	3883i note
427	1137	17	Emergency
428	1140	1-3	C.C.P. 781b-2
428	1140	4	Emergency
429	1142	1-4	3201b-1
429	1142	5	Emergency
430	1143	1	P.C. 1147
430	1143	2	P.C. 1147 note
430	1143	3	Emergency
431	1144	1	93b, § 2
431	1144	2	93b, § 3
431	1144	3	93b, § 4
431	1144	4	93b note
431	1144	5	Emergency
432	1147	1	P.C. 1436-1, § 30(a)
432	1147	2	Emergency
433	1149	1	P.C. 666-17(14)
433	1149	2	P.C. 666-17(3) (g)
433	1149	3, 4	P.C. 666-17 note
433	1149	5	Emergency
434	1150	—	P.C. 978j note
435	1151	—	P.C. 978j note
436	1152	1	2922-14, § 1-b
436	1152	2	2922-14, § 1-c
436	1152	3	Emergency
437	1153	1	2350n, §§ 3a, 3b
437	1153	2	Emergency
438	1154	1	P.C. 908
438	1154	2, 3	P.C. 908 note
438	1154	4	Emergency
439	1156	—	P.C. 978j note

## TABLE OF SESSION LAWS

References are to Civil Statutes unless otherwise indicated

## 1955 (54th Leg.) Regular Session

—Cont'd

Ch.	P.	Sec.	Art.
440	1157	—	P.C. 978j note
441	1158	1	5142c, § 5
441	1158	2	Emergency
442	1159	1, 2	P.C. 1137m
442	1159	3	Emergency
443	1160	1	634
443	1160	2	Emergency
444	1161	1, 2	1334b
444	1161	3	Repealer
444	1161	4	Emergency
445	1162	1	5139G, § 1
445	1162	2	Emergency
446	1163	1	6795b—1, § 1
446	1163	2, 3	6795b—1 note
446	1163	4	Emergency
448	1167	1	7009
448	1167	2	Emergency
449	1168	1, 2	2663b—2
449	1168	3	Emergency
450	1169	1	2911
450	1169	2	Emergency
451	1170	1-7	118c—3
451	1170	8	Emergency
452	1172	1	P.C. 1436—1, § 57
452	1172	2	P.C. 1436—1, § 57a
452	1172	3	Emergency
453	1174	1	P.C. 527a
453	1174	2	P.C. 527a note
453	1174	3	Emergency
454	1175	1-4	974d—5
454	1175	5	Emergency
455	1176	1	1970—122
455	1176	2, 3	1970—122 note
455	1176	4	Emergency
456	1177	1, 2	5139H—2
456	1177	3	Emergency
458	1179	1-8	1015c—1
458	1179	9	1015c—1 note
458	1179	10	Emergency
460	1181	1	P.C. 802a—1
460	1181	2	Emergency
461	1182	1	5118a
461	1182	2	Emergency
462	1183	1	3174b—3
462	1183	2	Emergency
463	1184	1-5	P.C. 978f—5
463	1184	6, 7	P.C. 978f—5 note
463	1184	8	Emergency
464	1185	1-3	2351g
464	1185	4	Emergency
466	1187	1	Ins.Code 14.61, § 1(c)
466	1187	2	Emergency
467	1188	1-11	695h
467	1188	12	695h note
467	1188	13	Emergency
468	1192	1	Ins.Code 21.45
468	1192	2, 3	Ins.Code 21.45 note
468	1192	4	Emergency

## 1955 (54th Leg.) Regular Session

—Cont'd

Ch.	P.	Sec.	Art.
469	1194	1-4	7880—147c9
469	1194	5	7880—147c9 note
469	1194	6	Emergency
470	1195	—	P.C. 978j note
471	1196	1, 2	2628d
471	1196	3	Emergency
472	1197	1	P.C. 666—15(17)
472	1197	2, 3	P.C. 666—15(17) note
472	1197	4	Emergency
473	1198	1	199(62)
473	1198	2-4	199(62) note
473	1198	5	Emergency
474	1200	—	P.C. 978j note
475	1201	1, 2	331g—1
475	1201	3	Emergency
476	1202	—	P.C. 978j note
477	1202	—	P.C. 978j note
478	1203	1-3	5139N
478	1203	4, 5	5139N note
478	1203	6	Emergency
480	1206	1-3	5139O
480	1206	4, 5	5139O note
480	1206	6	Emergency
481	1207	—	P.C. 978j note
483	1209	1	1538h
483	1209	2	Emergency
484	1211	1	5221b—3(d)
484	1211	2	5221b—3 note
484	1211	3	Emergency
485	1213	1-8	326k—36
485	1213	9, 10	326k—36 note
485	1213	11	Emergency
486	1215	1	P.C. 725b, § 6(1)
486	1215	2	P.C. 725c, § 2(g)
486	1215	3	P.C. 726c, § 3(2) (b)
486	1215	4	Repealer
486	1215	5	P.C. 726c, § 6(a)
486	1215	6	P.C. 726c, § 6(b)
486	1215	7, 8	P.C. 726c
486	1215	9	Emergency
487	1217	1-17	2919e—2
487	1217	18	2919e—2 note
487	1217	19	Emergency
488	1221	1	P.C. 827a, § 8, subsec. 1(b)
488	1221	2	Emergency
489	1223	1	Ins.Code 9.01
489	1223	2	Ins.Code 9.02
489	1223	3	Ins.Code 9.03
489	1223	4	Ins.Code 9.06
489	1223	5	Ins.Code 9.07
489	1223	6	Ins.Code 9.11
489	1223	7	Ins.Code 9.25
489	1223	8, 9	Ins.Code 9.01 note
489	1223	10	Emergency
490	1228	1	5142b, § 1
490	1228	2	5142b, § 15
490	1228	3	Emergency

TABLE OF SESSION LAWS

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.
492	1230	1-17	199(145)
492	1230	18-20	199(145) note
492	1230	21	Emergency
493	1234	1	6819a-11
493	1234	2, 3	6819a-11 note
493	1234	4	Emergency
494	1235	1	7065b-8
494	1235	2	7065b-14(g)
494	1235	3	7065b-14b
494	1235	4, 5	7065b-8 note
494	1235	6	Emergency
495	1238	1, 2	3912c-5b
495	1238	3	3912c-5b note
495	1238	4	Emergency
496	1239	1	7880-3c, subs. A(5)
496	1239	2	7880-3c, subs. A(6)
496	1239	3	7880-3c, subs. A(9)
496	1239	4	7880-3c, subs. B(3)
496	1239	5	7880-3c, subs. B(4)
496	1239	6	7880-3c, subs. B(10)
496	1239	7	7880-3c, subs. D(4a)
496	1239	8	7880-3c, subs. D(5)
496	1239	9	7880-3c note
496	1239	10	Emergency
497	1243	1-6	5421c-7
497	1243	7, 8	5421c-7 note
497	1243	9	Emergency
498	1245	1-4a	8280-179
498	1245	5	8280-179 note
498	1245	6	Emergency
499	1248	—	P.C. 978j note
500	1250	1	5143c, § 4
500	1250	2	5143c, § 5
500	1250	3, 4	5143c note
500	1250	5	Emergency
501	1253	1	695g, § 1(h)
501	1253	2	695g, § 4
501	1253	3	Emergency
502	1254	1	695g, § 1(b)
502	1254	2	695g, § 1(h)
502	1254	3	695g, § 3
502	1254	4	695g, § 7
502	1254	5	Emergency
503	1256	1-9	717K
503	1256	10	717K
503	1256	11	Emergency
504	1259	1-6	8280-180
504	1259	7	Emergency
505	1263	1-10	8280-181
505	1263	11	8280-181 note
505	1263	12	Emergency
506	1267	1-26	8280-182
506	1267	27	Emergency
507	1277	1-14	8280-183
507	1277	15	8280-183 note
507	1277	16	Emergency
508	1282	1-4	8280-184

1955 (54th Leg.) Regular Session  
—Cont'd

Ch.	P.	Sec.	Art.
508	1282	5	8280-184 note
508	1282	6	Emergency
509	1284	1-10	8280-185
509	1284	11	8280-185 note
509	1284	12	Emergency
510	1286	1-7	8280-186
510	1286	8	Emergency
511	1290	1-7	8280-187
511	1290	8	Emergency
512	1292	1-12	548b
512	1292	13	Emergency
513	1295	1	Elec.Code 13.08
513	1295	2	Elec.Code 13.15
513	1295	3	Emergency
514	1298	1-24	678m
514	1298	25	678m note
514	1298	26	Emergency
515	1303	1	249a, §§ 3-16
515	1303	2	249a note
515	1303	3	Emergency
516	1309	1	2833
516	1309	2	Emergency
517	1310	1	5221b-1(b)
517	1310	2	5221b-2
517	1310	3	5221b-3(c, d)
517	1310	4, 5	5221b-1 note
517	1310	6	Emergency
518	1314	1-31	8280-188
518	1314	32	Emergency
520	1597	1	5421m, § 10(A)
520	1597	2	5421m, § 11
520	1597	3	5421m, § 15
520	1597	4	5421m, § 16
520	1597	5	5421m, § 16(A)
520	1597	6	5421m, § 17
520	1597	7	5421m, § 18
520	1597	8	5421m, § 19
520	1597	9	5421m, § 19(A)
520	1597	10	5421m, § 21
520	1597	11	5421m, § 21(A)
520	1597	12	5421m, § 24
520	1597	12A	5421m, § 25
520	1597	13	542im, § 32
520	1597	14, 15	5421m note
520	1597	16	Emergency
521	1606	1-5	7425d
521	1606	6	7425d note
521	1606	7	Emergency
522	1607	1-16	7047i-1
522	1607	17, 18	7047i-1 note
523	1618	1-5	8280-189
523	1618	6	8280-189 note
523	1618	7	Emergency
524	1622	1-8	P.C. 1111m
524	1622	9, 10	P.C. 1111m note
524	1622	11	Emergency
525	1625	1	6703a

## TABLE OF SESSION LAWS

References are to Civil Statutes unless otherwise indicated

1955 (54th Leg.) Regular Session —Cont'd				1955 (54th Leg.) Regular Session —Cont'd			
Ch.	P.	Sec.	Art.	Ch.	P.	Sec.	Art.
525	1625	2 - - -	Emergency	528	1635	3a - - -	2784e—1 note
526	1626	1 - - -	165a—10, § 1	528	1635	4 - - -	Emergency
526	1626	2 - - -	Emergency	Ch.	P.	Art.	Art.
527	1627	1-22 - - -	8280—190	530	1638	I - - -	2922—1
527	1627	23 - - -	Emergency	530	1638	II - - -	2922—1 note
528	1635	1-3 - - -	2784e—1	530	1638	III - - -	Emergency



# TABLE OF REPEALED LAWS

References are to articles of Civil Statutes, unless otherwise indicated.

<p><b>1925 (39th Leg.) Regular Session</b>                  26 135 1-28 - - - - - 6701c                  Ch. P. Sec. Art.</p> <p><b>1929 (41st Leg.) Regular Session</b>                  38 72 1 - - - - - 2880a</p> <p><b>1929 (41st Leg.) Second Called Session</b>                  88 172 8b - - - - - 6675a—8b</p> <p><b>1931 (42nd Leg.) Regular Session</b>                  277 480 1a - - - - - 911b, § 1a                  277 480 1b - - - - - 911b, § 1b</p> <p><b>1935 (44th Leg.) Regular Session</b>                  100 255 1-38 - - - - - 600a</p> <p><b>1935 (44th Leg.) Second Called Session</b>                  Ch. P. Art. Sec. Art.                  467 1795 1 21¼ - P.C. 666—                  21¼</p> <p><b>1936 (44th Leg.) Third Called Session</b>                  Ch. P. Sec. Art.                  482 1993 3a - - - - - 5221b—1a</p> <p><b>1937 (45th Leg.) Regular Session</b>                  173 358 1 - - - - - P.C. 1583(G)                  356 707 1-7 - - - - - P.C. 705c</p> <p><b>1939 (46th Leg.) Regular Session</b>                  Page Sec. Art.                  231 1 - - - - - P.C. 705c                  352 8 - - - - - 4507                  459 1 - - - - - 5221b—1a</p>	<p><b>1941 (47th Leg.) Regular Session</b>                  Ch. P. Sec. Art.                  110 144 9 - - - - - 6675a—8b</p> <p><b>1943 (48th Leg.) Regular Session</b>                  201 309 1 - - - - - P.C. 1583(G)</p> <p><b>1947 (50th Leg.) Regular Session</b>                  230 424 1a-1c - - - - - 4591d                  281 484 1 - - - - - 2880a                  282 485 1 - - - - - 2880a</p> <p><b>1949 (51st Leg.) Regular Session</b>                  28 49 1, 2 - - - - - 3737d                  200 376 2 - - - - - 6675a—8b                  278 505 - - - - - P.C. 978j note</p> <p><b>1951 (52nd Leg.) Regular Session</b>                  179 302 1 - - - - - P.C. 705c, § 3a                  413 758 3(d) - P.C. 726c, § 3(d)                  465 819 3 - - - C.C.P. 759a, § 3                  491 868 1 (art. 17.25, § 7) - - Ins.                  Code 17.25, § 7                  491 868 1(3.03) - - Ins.Code 3.03</p> <p style="text-align: center;"><b>1953, 53rd Leg.</b></p> <p>196 540 7 - - - - - Ins.Code 17.25, § 7                  196 540 9 - - - - - Ins.Code 17.25, § 22                  412 990 6(g) - - - - - 8280—157, § 6(g)</p> <p><b>1954 (53rd Leg.) First Called Session</b>                  Ch. P. Art. Sec. Art.                  57 125 3 3 - - - - - 199(138)</p> <p><b>1955 (54th Leg.) Regular Session</b>                  Ch. P. Sec. Art.                  51 80 1, 2 - - - - - 1334a</p>
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# GENERAL INDEX

References are to Civil Statute articles, unless otherwise indicated.  
Bus. Corp. indicates Business Corporation Act.  
Elec. Code indicates Election Code.  
Ins. Code indicates Insurance Code.  
PC indicates Penal Code.  
Prob. Code indicates Probate Code.  
CCP indicates Code of Criminal Procedure.  
RCP indicates Rules of Civil Procedure.

## ABANDONMENT

County roads, infrequent use, 6703a.  
Hole, well or cistern, plugging or covering required, PC 172L.

## ABILENE STATE HOSPITAL

Exception from law, 3193—1.

## ABSENCE

Attorney or opposing party, probate proceedings, notice, service, Prob.Code 22.  
County judge, hearings, setting by county clerk, Prob.Code 20.  
Executors and administrators, removal, ground, Prob.Code 222.

## ACCIDENT AND SICKNESS INSURANCE

See Life, Health and Accident Insurance, this index.

## ACCIDENT INSURANCE

Descent and distribution, simultaneous death of insured and beneficiary, Prob.Code 47.

## ACCOUNTS AND ACCOUNTING

Executors and Administrators, this index.  
Final account, receiver appointed to take charge of endangered estate of minor or incompetent without guardian, Prob.Code 136.  
Guardian and Ward, this index.  
Juvenile probation officers, counties of more than 500,000, 5142c—2.  
Minors, person handling money on withdrawal from county clerk as custodian for, etc., Prob. Code 144.  
Receiver, endangered estate of minor or incompetent without guardian, Prob.Code 136.  
Record book, probate minutes, contents, Prob. Code 15.

## ACCRUED RIGHTS

Probate Code, effect upon, Prob.Code 2.

## ACKNOWLEDGMENTS

Wills, Prob.Code 59.

## ACTUARIES

Insurance law, appointment, Ins. Code 1.17.

## ADMINISTRATION

Descent and Distribution, generally, this index.  
Executors and Administrators, generally, this index.

## ADMINISTRATION OF SMALL ESTATES

See Executors and Administrators, this index.

## ADMINISTRATORS

See Executors and Administrators, generally, this index.

## ADOPTION

Child, defined, Prob.Code 3.  
Children, inheritance from natural or adoptive parents, Prob.Code 40.  
Domestic relations court,  
Hutchinson county, 2338—6.  
Wills, after-adopted children, Prob.Code 67.

## ADULT PROBATION AND PAROLE LAW

Narcotics law violation, PC 726c.  
Tarrant county, officer appointed, CCP 781b—2.

## ADULT PROBATION OFFICER

Travis county, appointment, CCP 781b—1.

## ADVANCEMENTS

Descent and distribution, hotch-potch, bringing into, Prob.Code 44.

## ADVERTISEMENTS

See, also, Executors and Administrators, this index.  
Insurance securities, 580—23.  
Political subdivision land, bids received for lease, 5421p.  
Securities, securities law, 579—23.

## ADVISORY COMMITTEE

South Central Interstate Forest Fire Protection Compact, 2613c.

## AFFIDAVITS

Citations and notices, probate matters, publication, proof by, Prob.Code 33.  
Executors and Administrators, this index.  
Family history, action to determine heirship, effect, Prob.Code 52.  
Guardian and Ward, this index.  
Petition, action to determine heirship, supported by, Prob.Code 49.  
Small estates,  
Collection upon, Prob.Code 137.  
Distributees, contents, Prob.Code 137.  
Wills, this index.

## AGE

Guardian and ward, application for appointment, contents, minor's age, Prob.Code 111.  
Hunting and fishing license exemption, 4032c.  
Wills, this index.

## AGENTS

Action for commission, Securities Law, 579—35.  
Insurance, fees for special fund, Ins. Code 21.07.

**AGENTS—Cont'd**

Insurance Securities Act, this index.  
 Legal reserve life insurance companies, Ins. Code 21.07—1, § 1.  
 Nonresidents, legal reserve life insurance agents, Ins. Code 21.07—1, § 7.  
 Registration, Securities Law, 579—18.  
     Revocation, 579—26.  
 Sale of securities, 579—20.  
 Securities Act, this index.

**AGRICULTURAL AND MECHANICAL COLLEGE**

Board of directors,  
     Additions to buildings authorized, 2909c.  
 Bonds, additions to buildings, 2909c.  
 Buildings and grounds, additions authorized, 2909c.  
 Fees, students, 2615f.

**AGRICULTURE**

Commissioner,  
     Cooperative agreements, inspection of fruit, 118a, § 3.  
 Natural gas, availability for agricultural purposes, 6050(4), 6050(4a).  
 Noxious weeds, control and eradication, 135c.  
 Sweet potato inspection, grades and classifications, 118c—3.

**AIRPLANES**

Narcotics transportation, seizure and forfeiture, PC 725d.

**AIRPORTS**

Cities over 250,000 revenue bonds, 1269j—5.  
 Revenue bonds, cities over 250,000, 1269j—5.

**ALIENS**

Executor or administrator, disqualified to serve as, Prob.Code 78.  
 Guardians, disqualified to serve as, Prob.Code 110.  
 Inheritance, right to, Prob.Code 41.

**ALLOWANCES**

Executors and Administrators, this index.  
 Family allowance to widows and minors. Executors and Administrators, this index.

**AMENDMENTS**

Wills, self-proved, Prob.Code 59.

**ANDREWS COUNTY**

Game and fish, local and special acts, PC 978j note.

**ANGELINA COUNTY**

District court, 199(2).  
 Judicial district, 199(2).

**ANNEXATION**

Junior college district, 2815s—1.  
 Travis County Improvement District No. 1, 8280—168.

**ANNUITIES**

Guardians, purchase, Prob.Code 390.

**APPEALS AND WRITS OF ERROR**

Bonds, personal representatives, Prob.Code 29.  
 Courts of Civil Appeals, statement of facts received, duty of clerk, (RCP) Rule 389-a.  
 District Courts, this index.  
 Executors and Administrators, this index.  
 Heirship, judgment in action to determine, Prob.Code 55.  
 Probate matters, right to, Prob.Code 23.  
 Remand to state court, copy of order filed, (RCP) Rule 237-a.  
 Securities Law, rulings by Secretary of State, 579—8.

**APPLICATION**

Executors and Administrators, this index.  
 Guardian and Ward, this index.

**APPLICATION—Cont'd**

Probate Code, Prob.Code 2.  
 Probate matters,  
     County clerk, filing with, Prob.Code 11.  
     Costs, security for, Prob.Code 12.  
 Record book,  
     Judge's probate docket, contents, Prob.Code 13.  
     Probate minutes, contents, Prob.Code 15.  
 Wills, this index.

**APPOINTMENTS**

Assistant district attorneys, 109th judicial district, 326k—31.  
 Executors and Administrators, this index.  
 Guardian and Ward, this index.  
 Investigators, 109th judicial district, 326k—31.  
 Juvenile officers for certain counties,  
     Counties of more than 500,000, 5142c—2.  
 Receiver, endangered estate of minor or incompetent without guardian, Prob.Code 136.

**APPRAISAL AND APPRAISERS**

Executors and Administrators, this index.  
 Record book, probate minutes, contents, Prob. Code 15.

**APPROPRIATIONS**

Higher education, requests, 2919e—2.  
 State Building Commission, 678m.

**APPROVAL**

Probate minutes by judge, Prob.Code 23.

**ARMED FORCES**

Wills,  
     Holographic will, Prob.Code 60.  
     Right of member to execute, Prob.Code 57.

**ARTICLES OF INCORPORATION**

Insurance companies, Ins. Code 2.02.  
 Mutual insurance companies, Ins. Code 15.04.  
 Mutual life insurance companies, filed, Ins. Code 11.02.

**ASSESSMENTS**

Insurance, this index.

**ASSESSORS AND COLLECTORS OF TAXES**

Salaries, minimum and maximum, 3883i.

**ASSETS**

Defined, liquidation of insurance companies, Ins. Code 21.28.  
 Executors and administrators,  
     Deposit, agreement as to, Prob.Code 219.  
     Deposits in lieu of sureties on bonds, Prob. Code 194.

**ASSIGNMENTS**

Limited partnerships, 6132a, § 20.  
 Small estates, surviving spouse and minor children, Prob.Code 140.  
 Wages, this index.

**ASSIGNMENTS FOR BENEFIT OF CREDITORS**

Assignee, corporate stock, personal liability as holder or subscriber, Bus Corp 2.21.

**ASSOCIATIONS**

Voluntary non-profit poultry association, incorporation authorized, 1302d—1.

**ASSUMED NAMES**

Corporations, use, Bus Corp 2.05.

**ATASCOSA AND FRIO COUNTIES IMPROVEMENT DISTRICT NO. 1**

Creation, 8280—175.

**ATHLETIC CONTESTS**

Intoxicating liquor, possession, PC 666—25b.

**ATTACHMENT**

Executors and administrators, deposit in lieu of sureties on bond, Prob.Code 194.

**ATTACHMENT—Cont'd**

Probate matters,  
Complaint for issuance of writ, Prob.Code 26.  
Orders, enforcement by, Prob.Code 24.

**ATTESTATION**

Executions, probate matters, Prob.Code 25.  
Wills, this index.

**ATTORNEY GENERAL**

Bank or trust company electing day to close,  
enforcement of law, 4591d.  
Bond issue, duties, 717k.

**Corporations,**

Actions by, involuntary dissolution, Bus  
Corp 7.01-7.03.

Involuntary dissolution, duties, Bus Corp  
7.01-7.03.

Notice of failure to file annual reports, Bus  
Corp 7.02.

Easements by Texas agricultural and mechan-  
ical college system, approval of forms,  
2613a-7.

Enforcement of law, Securities Law, 579-36.

**Injunctions,**

Securities Law, 579-33.

Insurance Code, prosecution of violation, Ins.  
Code 1.19.

Insurance Securities Law, enforcement, 580-36.

Mutual life insurance companies, approval of  
conversion, Ins. Code 11.01.

State Building Commission, member, 678m.

**ATTORNEYS**

Absence in probate proceeding, notice, service,  
Prob.Code 22.

Collection of delinquent taxes for independent  
school districts, 2802-1.

Compensation, partition and distribution of es-  
tates, Prob.Code 376.

Executors and Administrators, this index.

Guardian and Ward, this index.

Law schools, approval of Supreme Court, 306.

Notices, service upon on entry of appearance  
by, in probate proceedings, Prob.Code 34.

Partition and distribution of estates,

Appointment to represent non-residents and  
unknown parties, Prob.Code 376.

Compensation, Prob.Code 376.

Waiver of notice of hearing probate proceeding,  
Prob.Code 35.

**AUCTIONS**

See Executors and Administrators, this index.

**AUSTIN STATE SCHOOL**

Continued as state facilities, 3871b, § 12.

**AUTHORIZED CORPORATE SURETY**

Defined, Prob.Code 3.

**AUTHORIZED SHARES**

Definition, Bus Corp 1.02.

**BAILEY COUNTY**

Game and fish, local and special acts, PC 978j  
note.

**BALLOTS**

Annexation of territory to drainage district,  
8176b.

Constitutional amendments, marking, Elec.  
Code 6.07.

Expenditure of county funds, investigating wa-  
ter needs, 1644a-1.

Official ballot, Elec. Code 6.01.

**BANKING COMMISSIONER**

Bank or trust company, electing day to close,  
resolution filed, 4591d.

Perpetual care cemeteries, examination, 912a-  
31.

**BANKING DEPARTMENT**

Prepaid funeral benefits, permit, 548b.

**BANKS AND BANKING**

Closing on Saturday or weekday, option, 4591d.  
Conversion, national bank into state bank,  
342-314.

Corporate fiduciary, defined, Prob.Code 3.

Executors and administrators, deposits with in  
lieu of sureties on bond, Prob.Code 194.

**Investments,**

Federal national mortgage association stock,  
342-505a.

San Augustine Water Authority bonds,  
8280-169.

Legal holidays, 4591d.

Limited banking service, option, 4591d.

Mortgages, sale to federal national mortgage  
association, 342-505a.

Navigation district revenue, deposit, 8244a.

Saturday, option to close, 4591d.

Stock of federal national mortgage association,  
investment, 342-505a.

Weekdays, option to close, 4591d.

Yorks creek improvement district funds, 8280-  
167.

**BARBITURATES**

Adult Probation and Parole Law, application,  
PC 726c.

**BELL COUNTY**

Water Control and Improvement District

No. 1, 8280-189.

No. 3, 8280-182.

No. 4, 8280-183.

**BENBROOK WATER AND SEWER AUTHOR-  
ITY**

Created, 8280-163.

**BENEFICIARIES**

Descent and distribution, simultaneous death,  
Prob.Code 47.

**BEQUESTS**

See Wills, generally, this index.

**BEXAR COUNTY**

District court,

Criminal District Court No. 2, 199-37.

Special 37th District Court, 199-37.

Judge,

Additional compensation as member of juve-  
nile board, 3912e-5a.

Special 37th District Court, 199-37.

**BIDS**

Executors and administrators, public sales of  
real property, failure to comply with, Prob.  
Code 349.

Lease, political subdivision land, 5421p.

**BILL OF REVIEW**

Probate proceedings, filing, Prob.Code 31.

**BILLS OF LADING**

Commodities transported, fictitious bill, PC  
1690b.

**BILLS OF SALE**

Commodities transported, fictitious bill, PC  
1690b.

**BLIND**

Maintenance, care and education, 2675c-1.

Manufactured products, preference in state de-  
partments, 634.

**BOARD**

Definitions,

Mentally Retarded Persons Law, 3871b.

**BOARD FOR STATE HOSPITALS AND SPE-  
CIAL SCHOOLS**

Admission to jurisdiction, mentally retarded  
persons, 3871b.

Austin state school,

Continued, 3871b, § 12.

**BOARD FOR STATE HOSPITALS AND SPECIAL SCHOOLS—Cont'd**

Cooperation with other agencies, 3871b, § 19.  
 Diagnostic centers, institutions, 3871b, § 13.  
 Mentally Retarded Persons, generally, this index.  
 Occupational therapy programs, sale of products, 3174b—3.  
 Research and study, 3871b, § 14.  
 Rules and regulations, 3871b, § 20.

**BOARD OF CONTROL**

Chairman, member of State Building Commission, 678m.  
 Supplies, compliance with specifications, 653.

**BOARD OF EQUALIZATION**

Jackson County Water Control and Improvement District No. 1, 8280—161.  
 Jefferson County Water Control and Improvement District No. 10, appointment, 8280—166.

**BOARD OF INSURANCE COMMISSIONERS**

Actuary, appointment, Ins.Code 1.17.  
 Administration and enforcement, Insurance Securities Law, 580—36.  
 Agents special fund, Ins.Code 21.07.  
 Applications for charter, examination, Ins.Code 2.04.  
 Approval, employers' insurance associations' dividends, 8308, § 16.  
 Assistants,  
   Appointment, Ins.Code 1.17.  
   Oath and bonds, Ins.Code 1.18.  
 Carriers, examination, Ins.Code 1.15.  
 Certificate of authority,  
   Issuance, Ins.Code 1.14, 2.21.  
   Reciprocal exchanges, Ins.Code 19.10.  
   Revocation or modification, Ins.Code 1.19.  
 Chairman appointed, Ins.Code 1.02.  
 Charter amendments, hearings, Ins.Code 2.03.  
 Chief clerk, appointment, Ins.Code 1.08.  
 Clerks, appointment, Ins.Code 1.08.  
 Companies failing to comply with minimum insurance requirements, Ins.Code 21.45.  
 Computation of reserve liability, foreign companies, Ins.Code 3.30.  
 County mutual insurance companies, uniform policies, Ins.Code 17.25.  
 Defined, Ins.Code 21.28.  
 Examination,  
   Applications for charter, Ins.Code 2.04.  
   Carrier, Ins.Code 1.15.  
   Expenses, Ins.Code 1.16.  
   General powers, Ins.Code 1.19.  
   Lloyd's plan insurance companies, Ins.Code 18.11.  
 Examiners,  
   Appointment, Ins.Code 1.17.  
   Oath and bond, Ins.Code 1.18.  
 Expenses of examinations, Ins.Code 1.16.  
 Fees, Insurance Securities Law, 580—37.  
 Findings, examination of carrier, Ins.Code 1.15.  
 Fraternal benefit societies, reserves, Ins.Code 10.08.  
 Hearings,  
   Application,  
     Incorporation, Ins.Code 2.01.  
     Mutual life insurance company, Ins.Code 11.02.  
   Charter amendments, Ins.Code 2.03.  
 Impairment of minimum surplus, notice to make good, Ins.Code 1.10.  
 Insurance Securities Act, generally, this index.  
 Judicial review of decisions, Ins.Code 21.44.  
 Life, health and accident insurance companies, Examination and certificate of authority, Ins.Code 3.06.  
 Impairment of capital stock, Ins.Code 3.60.  
 Papers filed, Ins.Code 3.04.

**BOARD OF INSURANCE COMMISSIONERS—Cont'd**

Lloyd's plan companies, examination, Ins.Code 18.11.  
 Members,  
   Powers and duties, Ins.Code 1.02, 1.04.  
   Terms of office, Ins.Code 1.03.  
 Mutual life insurance companies,  
   Conditions for charter, Ins.Code 11.02.  
   Contingency reserves, Ins.Code 11.11.  
   Report of apportionment, Ins.Code 11.12.  
 Oath, officers of company, correctness of articles, Ins.Code 2.05.  
 Powers, examination of carriers, Ins.Code 1.19.  
 Prosecutions, power of board, Ins.Code 1.19.  
 Rates, mutual insurance companies, Ins.Code 15.06.  
 Reciprocal exchanges,  
   Certificate of authority, Ins.Code 19.10.  
   Securities approved, Ins.Code 19.06.  
 Re-insurance, approval, Ins.Code 5.76.  
 Reserves,  
   Formula for establishing, Ins.Code 21.39.  
   Fraternal benefit societies, Ins.Code 10.08.  
 Review of decisions, Ins.Code 1.15.  
 Terms of office, Ins.Code 1.03.  
 Uniform policies, county mutual insurance companies, Ins.Code 17.25.  
 Workmen's Compensation assigned risk pool, powers and duties, Ins.Code 5.76.

**BOARDS**

Public surveyors registration, 5282a.  
 Texas state hospitals and special schools treatment of patients, 3174b—2.  
 Water engineers, recommendations of Federal project, 7472e.

**BOARDS FOR LEASE**

Bids, special sale fee, 5382d—1.  
 Easements on state land, 5382d, § 13a.

**BONA FIDE PURCHASERS**

Executors or administrators, rights of purchasers from, Prob.Code 188.

**BONDS**

Additional bonds, improvements to international toll bridge, 1187a—2.  
 Appeals, personal representatives, Prob.Code 29.  
 Atascosa and Frio Counties Improvement District No. 1, 8280—175.  
 Bell County Water Control and Improvement District,  
   No. 1, 8280—189.  
   No. 3, 8280—182.  
   No. 4, 8280—183.  
 Benbrook Water and Sewer Authority, 8280—163.  
 Breakwaters construction, 6839g.  
 Buildings and structures for colleges, additions, 2909c.  
 Cities,  
   Serial refunding bonds authorized, 802g.  
   Validation of proceedings, 1118n—6.  
 City of McAllen Water and Sewer Authority, 8280—177.  
 Construction bonds, annexation of school districts, 2815g—49.  
 Corporations, seal, 1334a.  
   Facsimile seal and signature, 1334b.  
 County libraries, authority to issue, 1696a.  
 Deposits to refund, 717k.  
 Directors, Reagan County Water Supply District, 8280—181.  
 Drilling wells, 6029a.  
 Election, West Central Texas Municipal Water District, 8280—162.  
 Executors and Administrators, this index.  
 Guardian and Ward, this index.  
 Haltom City Water Authority, 8280—173.

**BONDS—Cont'd**

Harris County Water Improvement District No. 1, 8280—190.  
 Haskell County Water Supply District, 8280—164.  
 Home Rule Cities or Towns, this index.  
 International toll bridge, home rule city, 1187a—2.  
 Issuer of bonds, general provisions, 717k.  
 Jackson County Water Control and Improvement District No. 1, 8280—161.  
 Jefferson County Water Control and Improvement District No. 10, 8280—166.  
 Judge, county court at law,  
   Lubbock county, 1970—340, § 13.  
   No. 2, El Paso county, 1970—141.1.  
   Potter county, 1970—311a.  
 Junior college districts,  
   Authorization, 2815r—1.  
 Legal investment, San Augustine Water Authority bonds, 8280—169.  
 Lower Colorado River Authority, 8280—107.  
 Municipal auditorium, proceedings validated, 1269—6.  
 Partition of community property, Prob.Code 385.  
 Payment, 717k.  
 Probate proceedings,  
   Attachment, complainant for writ. Prob. Code 26.  
   County judges, liability on, Prob.Code 36.  
   Examination of solvency by county judge, Prob.Code 36.  
 Public securities, facsimile signature, 717j.  
 Reagan County Water Supply District, 8280—181.  
 Receiver taking charge of estate of minor or incompetent, Prob.Code 136.  
 Receivership proceedings, recording, Prob.Code 136.  
 Record book, probate minutes, contents, Prob. Code 15.  
 Runnels County Water Improvement District, 8280—176.  
 Sabine River Authority, 8280—133.  
 San Augustine Water Authority, 8280—169.  
 Signature,  
   Facsimile authorized, 1334b.  
   Public securities, 717j.  
 Specific performance of decedent's bond to make title on sale of property, Prob.Code 27.  
 State park improvement bonds, validation, 6070f.  
 Sulphur River Municipal Water District, 8280—165.  
 Term bonds, refunding authorized, 802g.  
 Toll bridges, counties, 6795c.  
 Towns, validation of proceedings, 1118n—6.  
 Travis County Improvement District No. 1, 8280—168.  
 Travis-Williamson County Water Control and Improvement District No. 1, 8280—178.  
 Trinity River Authority, 8280—188.  
 Two Mile Creek Conservation and Reclamation District of Calhoun County, 8280—186.  
 Tyler County Water Control and Improvement District No. 1, 8280—185.  
 Unexpended portion of proceeds, cities, disposition, 703a.  
 Validation,  
   Municipal auditorium, 1269j—6.  
   State park improvement bonds, 6070f.  
 Villages, validation of proceedings, 1118n—6.  
 Water control and improvement districts, validation, 7880—147c.9.  
 Well-drilling, 6029a.  
 West Central Texas Municipal Water District, 8280—162.

Tex.St.Supp. '56—62

**BONDS—Cont'd**

Withdrawal of money from county clerk as custodian of minor, person of unsound mind, or habitual drunkard without guardians, Prob. Code 144.

**BONUSES**

Executors and administrators, oil and gas or mineral lease, treatment as income, Prob.Code 239.

Yorks Creek Improvement District, 8280—167.

**BOOKS AND PAPERS**

See Record Books, this index.

**BOUNDARIES**

Atascosa and Frio Counties Improvement District No. 1, 8280—175.

Bell County Water Control and Improvement District,

  No. 1, 8280—189.

  No. 3, 8280—182.

  No. 4, 8280—183.

Fort Bend County Water Supply District, 8280—187.

Harris County Water Improvement District No. 1, 8280—190.

Independent school districts, counties of more than 100,000, change, 2766a.

School districts, validation, 2815g—50.

Travis-Williamson County Water Control and Improvement District No. 1, 8280—178.

Trinity River Authority, 8280—188.

Two Mile Creek Conservation and Reclamation District of Calhoun County, 8280—186.

Water districts, order filed, 8280—7.

**BOWIE COUNTY**

County juvenile boards, 5139M.

Stock law elections, 6954.

**BRANDS AND MARKS**

Brazoria county, registration with county clerk, 6899d—1.

**BRAZORIA COUNTY**

Brands, registration with county clerk, 6899d—1.

Exclusion, Navigation District Revenue Deposit Law, 8244a.

**BRIDGES**

Improvements, international toll bridge, home rule city bonds, 1187a—2.

**BROKERS**

Defined, 579—2.

  Insurance Securities Law, 580—2.

**BRUCELLOSIS**

Milk, sale, PC 712.

**BUCK DEER**

Local and special acts applicable to enumerated counties, PC 978j note.

**BUDGET**

Higher education, appropriation requests, 2919e—2.

Jefferson County Water Control and Improvement District No. 10, 8280—166.

State employees social security, inclusion, 695h.

**BUFFALO**

Protection, PC 978h.

**BUILDING AND LOAN ASSOCIATIONS**

Shares or share accounts, guardians, investments in, Prob.Code 389.

**BUILDINGS**

Colleges, additions authorized, 2909c.

Executors and administrators, repairs, Prob. Code 230.

Hospital districts, 4494n.

Junior college districts, construction authorized, 2815r—1.

**BURIAL**

Prepaid funeral benefits, 548b.

**BURIAL ASSOCIATION**

Liquidation or rehabilitation, Ins.Code 21.28.  
Minimum insurance requirement, exemption, Ins.Code 21.45.

**BUSINESS**

See Executors and Administrators, this index.

**BY-LAWS**

County mutual insurance companies, Ins.Code 17.06.

Contingent liability, Ins.Code 17.25.

Liability for losses, Ins.Code 17.09.

**CALHOUN COUNTY**

Two Mile Creek Conservation and Reclamation District, 8280—186.

**CAMERON COUNTY**

District court, district court, 199(138).

**CANCEL**

Definition, Bus Corp 1.02.

**CANCELLATION**

Wills, Prob.Code 63.

**CANDIDATES**

Assessment for primary expenses, Elec.Code 13.08.

Filing fees, Elec.Code 13.15.

Gifts and loans received, statement filed, Elec.Code 14.08.

Primary election expenses,

Apportionment, Elec.Code 13.08.

Payment before placing name on ballot, Elec.Code 13.15.

**CAPITAL STOCK**

Insurance, this index.

**CAPITAL SURPLUS**

Definition, Bus Corp 1.02.

**CARBONATED WATERS**

Trade-marks, PC 1058.

**CARRIERS**

Defined, Insurance Law, Ins.Code 1.14.

Exclusions, transporting fresh iced fish or shellfish, 911b, § 1a.

Taxation, intangible assets and property, 7105a.

Transporting fresh iced fish or shellfish, exclusion, 911b, § 1a.

**CASH**

Executors and administrators, deposit in lieu of sureties on bond, Prob.Code 194.

**CASS COUNTY**

Juvenile board, 5139N.

**CASUALTY INSURANCE**

Capital and deposits, Ins.Code 8.05.

Certificates of authority, renewal, Ins.Code 2.20.

Deposits, capital, Ins.Code 8.05.

Examination, Ins.Code 8.10.

Real estate, purchasing and holding, Ins.Code 8.18.

Renewal, certificates of authority, Ins.Code 2.20.

Securities, deposit with state treasurer, Ins.Code 8.05.

Surplus, loaning, Ins.Code 8.05.

**CEMETERIES**

Distance from city, 912a—24.

Location, city limits, 912a—24.

**CERTIFICATES**

Authority, certificate of,

Board of Insurance Commissioners, this index.

Insurance, this index.

**CERTIFICATES—Cont'd**

Authority, certificate of—Cont'd

Life, health and accident insurance companies, Ins.Code 3.06.

Lloyd's plan insurance companies, Ins.Code 18.04.

Executors and Administrators, this index.

Guardian and Ward, this index.

Mutual insurance companies, incorporation, Ins.Code 15.04.

Reciprocal exchanges, authority, Ins.Code 19.10.

Securities Act, this index.

Shares of stock, representing, 1334a.

Wills, this index.

**CERTIFIED COPIES**

Insurance Securities Law, papers filed, 580—31.

Judgment, action to determine heirship, filing, Prob.Code 56.

Papers filed with Secretary of State, Securities Law, 579—31.

Record books, evidence, Prob.Code 18.

Wills,

Oral will, Prob.Code 91.

Recording, Prob.Code 89.

**CERTIORARI**

County courts, revision and correction of probate proceedings, Prob.Code 30.

**CHAMBERS COUNTY**

Exclusion, Navigation District Revenue Deposit Law, 8244a.

75th Judicial District, 199(75).

**CHARGES**

County parks composed of islands, 6079c, §§ 14—16.

Jefferson County Water Control and Improvement District No. 10, 8280—166.

**CHARITABLE AND BENEVOLENT INSTITUTIONS**

Securities, exempt from law, 579—4.

**CHARITABLE INSTITUTIONS**

Guardian and ward, contributions, procedure, Prob.Code 398.

**CHARTERS**

Amendments,

Insurance companies, Ins.Code 2.03.

Validation of election, home rule cities, 1174a—3.

Farm mutual insurance, conditions, Ins.Code 16.06.

Insurance, this index.

**CHEROKEE COUNTY**

District court, 199(2).

Judicial district, 199(2).

145th Judicial District Court, 199(145).

**CHILD SUPPORT FUND**

Maintained, counties of more than 350,000, 5142a—1.

**CHILDREN**

Defined, Prob.Code 3, 67.

Infants, generally, this index.

**CHOSSES IN ACTION**

Wills, passage of interest under, Prob.Code 58.

**CHRISTMAS DAY**

Legal holiday, 4591d.

**CISTERNS**

Plugging or covering required, PC 1721.

**CITATION AND NOTICES**

Attorneys,

Absence in probate proceeding, service, method, Prob.Code 22.

Service of notices upon on entry of appearance by in probate proceedings, Prob.Code 34.

**CITATION AND NOTICES—Cont'd****Attorneys—Cont'd**

- Waiver of notice of hearing in probate proceedings, Prob.Code 35.
- Constructive notice, filed and recorded certified copy of judgment in action to determine heirship, Prob.Code 56.
- Contents, probate matters, Prob.Code 33.
- County Clerks, this index.
- Executors and Administrators, this index.
- Guardian and Ward, this index.
- Hearings, absence of judge, probate proceedings, effect, Prob.Code 20.
- Heirship, actions to determine, Prob.Code 50.
- Method of service, probate matters, Prob.Code 33.
- Necessity, probate matters, Prob.Code 33.
- Payment of estates into state treasury, Prob.Code 428.
- Personal service, probate matters, Prob.Code 33.
- Posting, probate matters, Prob.Code 33.
  - Return, sufficiency, Prob.Code 33.
  - Service by, Prob.Code 33.
- Probate Code, Prob.Code 1.
  - Effect of Probate Code upon, Prob.Code 2.
- Probate matters, Prob.Code 33.
- Probate proceedings,
  - Generally, Prob.Code 33.
- Publication, probate matters,
  - Heirship, actions to determine, nonresident defendants, Prob.Code 50.
  - Newspapers, citations and notices, Prob.Code 33.
    - Return, Prob.Code 33.
    - Service by, Prob.Code 33.
- Receiver, appointed to take charge of estates of minor or incompetent, contest, report of, Prob.Code 136.
- Receivership proceedings, recording of notices, Prob.Code 136.
- Record book, probate minutes, contents, Prob.Code 15.
- Returns, probate matters, Prob.Code 33.
  - Validation, Prob.Code 129.
- Service, methods, probate matters, Prob.Code 33.
- Sheriffs and Constables, this index.
- Specific form not prescribed, procedure, probate matters, Prob.Code 33.
- Specific performance of decedent's contract to sell property, Prob.Code 27.
- Waiver of notice, probate proceedings, Prob.Code 35.
- Wills, this index.

**CITIES, TOWNS AND VILLAGES**

- Advertising and promoting growth and development, 1015j.
- Annexation of territory.
  - Validation, cities and towns of 5,000 or less, 974d—4.
- Ballots, validation, 1118n—6.
- Bonds,
  - Airport revenue bonds, cities over 250,000, 1269j—5.
  - Guardians, investments in, Prob.Code 389.
  - Municipal auditorium, proceedings validated, 1269J—6.
  - Toll bridges, acquisition and repair, 1015g, § 13.
  - Unexpended portion, disposition, 703a.
- Commerce, Sulphur River Municipal Water District, 8280—165.
- Contracts,
  - Water supply, 1109g.
- Cooper, Sulphur River Municipal Water District, 8280—165.
- Definitions, recreational program, 1015c—1.
- Discontinuance of territory, 973, 973a, 975, 976, 1266.
- Eligible city, 1118n—7.

**CITIES, TOWNS AND VILLAGES—Cont'd**

- Employees,
  - Group life insurance, Ins.Code 3.50.
- Extension,
  - Boundaries,
    - Validation, cities and towns of 5,000 or less, 974d—4.
- Group life insurance, employees, Ins.Code 3.50.
- Growth and development, advertising to promote, 1015j.
- Incorporation,
  - Validation of proceedings, 966d.
- Municipal auditoriums, bond proceedings validated, 1269j—6.
- Population less than 15,000, validation of incorporation, 974d—5.
- Promoting growth and development, 1015j.
- Recreational facilities and programs, 1015c—1.
- Serial refunding bonds authorized, 802g.
- Sulphur Springs, Sulphur River Municipal Water District, 8280—165.
- Term bonds, refunding authorized, 802g.
- Unexpended portion of bond proceeds, disposition, 703a.
- Validation,
  - Acts of cities and towns of 5,000 or less, 966c.
  - Incorporation,
    - Cities and towns of 5,000 or less, 974d—4.
    - Population less than 15,000, 974d—5.

**CITRUS**

- Branding or marking, out state grapefruit, 118b, §§ 24, 24a.
- Grapefruit from out state, branding or marking, 118b, §§ 24, 24A.

**CLAIM DOCKET**

- Executors and Administrators, this index.

**CLAIMS**

- Accident and sickness insurance,
  - Forms, Ins.Code 3.70—3.
  - Notice, Ins.Code 3.70—3.
- Defined, Prob.Code 3.
- Estates of decedents. Executors and Administrators, this index.
- Executors and Administrators, this index.
- Guardian and Ward, this index.
- Insurance companies, reserves, Ins.Code 21.39.
- Record book, probate minutes, lists, contents, Prob.Code 15.

**CLAUSES**

- Wills, revocation, Prob.Code 63.

**CLERKS**

- Board of insurance commissioners, appointment, Ins.Code 1.08.

**CLERKS OF COURTS**

- Executors and Administrators, this index.
- Guardian and Ward, this index.
- Receiver appointed for estate of minor or incompetent, duties, Prob.Code 136.
- Wills, this index.

**CLOTHING**

- Minors or incompetents, receivers, expenditures for, Prob.Code 136.

**COCHRAN COUNTY**

- Game and fish, local and special acts, PC 978j note.

**CODICILS**

- See Wills, this index.

**CO-EXECUTORS AND ADMINISTRATORS**

- See Executors and Administrators, this index.

**COLLARED PECCARY OR JAVELINA**

- Local and special acts applicable to enumerated counties, PC 978j note.



## COLLATERAL ATTACK

Determination of venue in probate proceeding, Prob.Code 8.

## COLLATERAL KINDRED

Inheritance, right to, Prob.Code 41.

## COLLECTION

Executors and Administrators, this index.  
Small estates upon affidavit, Prob.Code 137.

## COLLECTOR OF TAXES

Rural high school districts, 29227(8).

## COLLEGE OF ARTS AND INDUSTRIES

Bonds, additions to buildings, 2909c.  
Buildings, additions authorized, 2909c.  
Student fees authorized, 2628d.

## COLLEGES AND UNIVERSITIES

Degree, history required, 2663b-2.

## COLORADO COUNTY

District court, creation of additional court, 199(25).

Jurors, selection, 199(25).

Second 25th judicial district court, permanent, 199(25).

Water Control and Improvement District No. 1, 8280-170.

## COMAL COUNTY

Yorks Creek Improvement District, powers, 8280-167.

## COMIC BOOKS

Defined, PC 527b.  
Offenses and penalties, PC 527b.

## COMMISSION ON HIGHER EDUCATION

Creation, members, powers, duties, compensation, 2919e-2.

## COMMISSIONER OF AGRICULTURE

Additional powers, Pink Bollworm Law, 92a.  
Sweet potato inspection, grades and classifications, 118c-3.

## COMMISSIONER OF EDUCATION

District treasurers, financial reports, 2833.  
Subject taught in public schools, 2911.

## COMMISSIONER OF GENERAL LAND OFFICE

Bids for mineral lease, accompanied by special sale fee, 5382d-1.

## COMMISSIONER OF HEALTH

Office established, 4418b-1.

## COMMISSIONERS

Descent and Distribution, this index.  
Eminent domain proceedings, compensation, 3266.

Salary, counties over 30,000, 8120.

## COMMISSIONERS' COURTS

Breakwaters, construction, 6839g.

Construction of breakwaters, 6839g.

Counties of.

More than 47,000, traveling expenses and automobile depreciation, 2350n.

Domestic relations court in Hutchinson county, election, 2338-6.

Dumping grounds, acquisition, 2351g.

Election, domestic relations court in Hutchinson county, 2338-6.

Eminent domain, authority, 6674n.

Garbage disposal grounds, acquisition, 2351g.

Judge of Potter county court at law, vacancy in office, 1970-311a.

Jurisdiction, eminent domain, 6674n.

Libraries, power and duties, 1696a.

Maximum expenditure for investigating water needs of county, 1644a-1.

Medical Examiners, generally, this index.

## COMMISSIONERS' COURTS—Cont'd

Mosquito control districts, merging separate districts authorized, 4477-2.

Scrip or interest-bearing time warrants, validation, 2368a-4.

Surplus in road sinking fund, disposition, 752a.

Two-way radios for constables, discretion, 6889e.

## COMMISSIONS

Executors and administrators, amount, Prob.Code 241.

Guardian and ward, Prob.Code 241.

## COMMITTEES

Guardian and ward, non-residents, transcript evidencing appointment, Prob.Code 124.

## COMMON DRUNKARDS

See Habitual Drunkards, generally, this index.

## COMMON LAW

Probate matters, application, Prob.Code 32.

## COMMON SCHOOL DISTRICTS

Ad valorem tax, maximum, 2784e-1.

Bond issue authorized, 2784e-1.

## COMMUNIST PARTY

Outlawing of, 6889-3A.

## COMMUNITY PROPERTY

Administration. Executors and Administrators, this index.

Descent and Distribution, this index.

Executors and Administrators, this index.

Partition, Prob.Code 385.

Wills, management and control, provision for, Prob.Code 70.

## COMPACT

South Central Interstate Forest Fire Protection Compact, 2613c.

## COMPANY

Defined,  
Insurance Securities Law, 580-2.

## COMPENSATION AND SALARIES

Executors and administrators, Prob.Code 241.

Guardian ad litem, partition and distribution of estates, Prob.Code 376.

Guardian and ward, Prob.Code 241.

Receiver of endangered estate of minor or incompetent without guardian, Prob.Code 136.

## COMPLAINTS

Executors and Administrators, this index.

Guardian and Ward, this index.

Partition and distribution of estate, damages for neglect to deliver property, Prob.Code 384.

Probate proceedings,

Attachment for property, Prob.Code 26.

County clerk, filing with, Prob.Code 11.

Costs, security for, Prob.Code 12.

Specific performance of decedent's contract to sell property, Prob.Code 27.

Wills, delivery on death of testator, Prob.Code 75.

## COMPROMISE OR SETTLEMENT

Executors or administrators, powers, Prob.Code 234.

## COMPTROLLER OF PUBLIC ACCOUNTS

Bonds,

Issue, duties, 717k.

Constitutional amendment election, duties, Elec.Code 6.07.

Excise tax, radios and television sets, 70477-1.

Inheritance tax not due, approval of instrument indicating, Prob.Code 410.

State employees social security, powers and duties, 695h.

**CONSERVATION**

Receiver, estate of minor or incompetent, duties, Prob.Code 136.

**CONSERVATION AND RECLAMATION DISTRICTS**

Atascosa and Frio Counties Improvement District No. 1, 8280—175.

**CONSERVATORS**

Corporate stock,  
Personal liability, Bus Corp 2.21.  
Voting, Bus Corp 2.29.  
Securities Law, exempt sales, 579—3.

**CONSPIRACY**

Communist Party, finding of, 6889—3A.  
Overthrow of government, organizations advocating, 6889—3A.

**CONSTITUTIONAL AMENDMENTS**

Election, form and number of questions, Elec. Code 6.07.

**CONSTITUTIONAL PERMANENT IMPROVEMENT FUND**

County libraries, payment, 1696a.

**CONSUL**

Waiver of notice of hearing at probate proceeding, Prob.Code 35.

**CONSUMING ASSETS CORPORATION**

Definition, Bus Corp 1.02.

**CONTAINERS**

Gas, 6053.

**CONTESTS**

Executors and Administrators, this index.  
Guardian and Ward, this index.  
Opposition to probate proceedings, persons entitled to file, Prob.Code 10.  
Receiver appointed to take charge of endangered estate of minor or incompetent without guardian, Prob.Code 136.  
Wills, this index.

**CONTINUANCE**

Executors and Administrators, this index.  
Guardian and Ward, this index.  
Probate matters, hearings, absence of judge, Prob.Code 20.

**CONTRACTS**

Benbrook Water and Sewer Authority, 8280—163.  
Claims include liabilities arising in, Prob.Code 3.  
Construction contract, Yorks Creek Improvement District, 8280—167.  
Corporations, power to make, Bus Corp 2.02.  
Guardians,  
Investments in real property, approval, Prob.Code 393.  
Life insurance or annuities, purchase for ward, Prob.Code 390.  
Joint owners of property, descent and distribution, effect, Prob.Code 46.  
Simultaneous death, providing for disposition of property upon, effect, Prob.Code 47.  
Specific performance of decedent's contract to sell, Prob.Code 27.  
Water supply districts, eligible cities and eligible districts, 1109f.

**CONTRIBUTIONS**

Guardian and ward, charitable, procedure, Prob. Code 398.  
Limited partner, 6132a, § 5.  
Receivers of endangered estates of minor or incompetent without guardian, Prob.Code 136.  
State employees, social security benefits, 695h.  
Wills, devisees and legatees, Prob.Code 66, 67.  
Posthumous child, Prob.Code 66.

**CONVEYANCES**

Ancient documents, copies, evidence, 3725.  
Corporations, authority to make, Bus Corp 5.08.  
Evidence, ancient documents, copies, 3725.  
Guardian and ward, non-resident, validation, Prob.Code 125.  
Record, ancient documents, copies, evidence, 3725.  
Simultaneous death, providing for disposition of property upon, effect, Prob.Code 47.  
Specific performance of decedent's contract to sell property, Prob.Code 27.  
Wills, foreign will, effective as deed of conveyance, Prob.Code 98.

**CONVICTION**

Descent and distribution, effect upon, Prob.Code 41.  
Felony, executor or administrator, disqualified to serve as, Prob.Code 78.

**COPIES**

See Wills, this index.

**CORPORATE FIDUCIARY**

Defined, Prob.Code 3.

**CORPORATE SURETY**

Bond, community administrator, Prob.Code 165.

**CORPORATION COURTS**

Cities of 130,000 to 285,000, 1200d.

**CORPORATIONS**

Act of corporation dissolving, Bus Corp 6.03.  
Actions, power to sue and be sued, Bus Corp 2.02.  
Administrators and executors, voting shares, Bus Corp 2.29.  
Adoption, Business Corporation Act, procedure, Bus Corp 9.14.  
Amendment of articles of incorporation, Bus Corp 4.01.  
Anti-trust laws, effect of Business Corporation Act, Bus Corp 5.14.  
Application,  
Business Corporation Act, Bus Corp 9.14.  
Existing laws, Bus Corp 9.15.  
Appointment,  
Receiver for specific assets, involuntary dissolution, Bus Corp 7.04.  
Receiver to rehabilitate corporation, involuntary dissolution, Bus Corp 7.05.  
Articles of amendment,  
Articles of incorporation, Bus Corp 4.04.  
Filing, Bus Corp 4.05.  
Filing fees, Bus Corp 10.01.  
Articles of dissolution, voluntary dissolution, Bus Corp 6.11, 6.12.  
Articles of incorporation,  
Amendment, Bus Corp 4.01.  
Class voting, Bus Corp 4.03.  
Dissenting stockholders, Bus Corp 5.11—5.13.  
Fraud, ground for involuntary dissolution, Bus Corp 7.01.  
Merger of domestic corporations, Bus Corp 5.06.  
Procedure, Bus Corp 4.02.  
Right of shareholder to dissent, Bus Corp 5.11.  
Statement of cancellation of shares, Bus Corp 4.10.  
Articles of amendment, Bus Corp 4.04.  
Filing, Bus Corp 4.05.  
Reduction of state capital without, Bus Corp 4.12.  
Bylaws not to be inconsistent with, Bus Corp 2.23.  
Certificate of amendment,  
Delivery, Bus Corp 4.05.  
Effect, Bus Corp 4.06.  
Class voting on amendments, Bus Corp 4.03.

## CORPORATIONS—Cont'd

## Articles of incorporation—Cont'd

Contents, Bus Corp 3.02.

Definition, Bus Corp 1.02.

## Directors;

Executive committee, Bus Corp 2.36.

Qualifications, Bus Corp 2.31.

Quorum, Bus Corp 2.35.

Dividends, Bus Corp 2.38.

Consuming assets corporation, Bus Corp 2.39.

Failure of Secretary of State to approve, appeal, Bus Corp 9.04.

Filing, Bus Corp 3.03.

Fees, Bus Corp 10.01.

Secretary of State, Bus Corp 2.14.

Fraud in procuring, ground for involuntary dissolution, Bus Corp 7.01.

Preferred shares, provision for, Bus Corp 2.13.

Procedure to amend, Bus Corp 4.02.

Purposes stated in, Bus Corp 2.01.

Redemption of stock, provisions as to procedure, Bus Corp 4.07.

Restated articles, Bus Corp 4.07.

Filing fee, Bus Corp 10.01.

Restriction on transfer of stock, Bus Corp 2.22.

Special meeting of shareholders, Bus Corp 2.24.

Statement of cancellation of shares, Bus Corp 4.10.

Voting requirements, greater than requirement of act, Bus Corp 9.08.

## Articles of merger or consolidation,

Domestic corporations, Bus Corp 5.04.

Filing fees, Bus Corp 10.01.

## Assets,

Involuntary dissolution, appointment of receiver for specific assets, Bus Corp 7.04.

Jurisdiction of court to liquidate, involuntary dissolution, Bus Corp 7.06.

Sale or mortgage,

Authorized by directors, Bus Corp 5.09.

Dissenting stockholders, Bus Corp 5.11-5.13.

Special authorization of shareholders, Bus Corp 5.10.

Assumed names, use, Bus Corp 2.05.

Authorized corporate surety, defined, Prob.Code 3.

Authorized shares, Bus Corp 2.12.

Definition, Bus Corp 1.02.

Bonds, seals, 1334a.

Books and records, Bus Corp 2.44.

Business, requirement before commencing, Bus Corp 3.05.

## Bylaws,

Adoption, Bus Corp 2.23.

Annual meeting of shareholders, Bus Corp 2.24.

Authority of officers and agents, Bus Corp 2.42.

Classification of directors, Bus Corp 2.33.

## Directors,

Classification, Bus Corp 2.33.

Executive committee, Bus Corp 2.36.

Meetings, Bus Corp 2.37.

Number and election, Bus Corp 2.32.

Qualifications, Bus Corp 2.31.

Quorum, Bus Corp 2.35.

Meetings of board of directors, Bus Corp 2.37.

Number of directors, Bus Corp 2.32.

Officers and agents, authority, Bus Corp 2.42.

Power to make and alter, Bus Corp 2.02.

Special meetings of shareholders, calling, Bus Corp 2.24.

Cancel, definition, Bus Corp 1.02.

Cancellation, treasury shares, Bus Corp 4.11.

## CORPORATIONS—Cont'd

## Capital stock,

Distribution, exempt from Securities Law, 579-3.

Capital surplus, definition, Bus Corp 1.02.

Certificate of amendment, filing fees, Bus Corp 10.01.

Certificate of authority, failure of Secretary of State to approve application, appeal, Bus Corp 9.04.

Certificate of incorporation,

Effect of issuance, Bus Corp 3.04.

Filing fees, Bus Corp 10.01.

Issuance, Bus Corp 3.03.

Organization meeting of directors, Bus Corp 3.06.

Certificates representing shares, 1334a.

Change of registered office or agent, Bus Corp 2.10.

Class voting on amendments of articles of incorporation, Bus Corp 4.03.

Combination of certain businesses, organization prohibited, Bus Corp 2.01.

Condition precedent to incorporation,

Failure to comply with,

Ground for involuntary dissolution, Bus Corp 7.01.

Involuntary dissolution, Bus Corp 7.01.

Conservators, voting stock, Bus Corp 2.29.

Consolidation or merger,

Domestic and foreign corporations, procedure, Bus Corp 5.07.

Domestic corporations, Bus Corp 5.01-5.06.

Approval by shareholders, Bus Corp 5.03.

Articles, Bus Corp 5.04.

Dissenting stockholders, Bus Corp 5.11-5.13.

Effect, Bus Corp 5.06.

Effective date, Bus Corp 5.05.

Execution of articles, Bus Corp 5.04.

Liabilities, surviving or new corporation, Bus Corp 5.06.

New corporation, rights and privileges, etc., Bus Corp 5.06.

Right of shareholder to dissent, Bus Corp 5.11.

Surviving corporation, rights and privileges, etc., Bus Corp 5.06.

Plan, Bus Corp 5.01, 5.02.

Procedure, Bus Corp 5.01, 5.02.

Consuming assets corporation, definition, Bus Corp 1.02.

Contracts, power to make, Bus Corp 2.02.

Conveyances, authority, Bus Corp 5.08.

Decree of involuntary dissolution, Bus Corp 7.09.

Filing, Bus Corp 7.10.

Defense of ultra vires, Bus Corp 2.04.

Definitions, Bus Corp 1.02.

Directors, Bus Corp 2.31-2.41.

Acceptance of subscription for shares, Bus Corp 2.14.

Adoption of bylaws, Bus Corp 2.23.

Agents, election, Bus Corp 2.42.

Amendment, articles of incorporation, Bus Corp 4.02.

Articles of incorporation,

Amendment affecting authority, Bus Corp 4.01.

Number and names, Bus Corp 3.02.

Resolution to amend, Bus Corp 4.02.

Assets, sale or mortgage authorized, Bus Corp 5.09.

Cancellation of treasury shares, Bus Corp 4.11.

Classification, Bus Corp 2.33.

Consideration for shares, determination of value, Bus Corp 2.16.

Consolidation or merger,

Approval of plan, Bus Corp 5.03.

Procedure, Bus Corp 5.01, 5.02.

## CORPORATIONS—Cont'd

## Directors—Cont'd

- Conveyances authorized by resolution, Bus Corp 5.08.
- Distributions in partial liquidation, Bus Corp 2.40.
- Dividends, Bus Corp 2.38.
  - Consuming assets corporation, Bus Corp 2.39.
- Contribution from shareholder for wrongful payment, Bus Corp 2.41.
  - Liability, Bus Corp 2.41.
- Election, Bus Corp 2.32.
  - Vote by shareholders, Bus Corp 2.29.
- Executive committee, Bus Corp 2.36.
  - Removal of member, Bus Corp 2.43.
- Failure to call annual meeting, Bus Corp 2.24.
- Increase of stated capital, Bus Corp 2.17.
- Liability, Bus Corp 2.41.
  - Directors and shareholders, Bus Corp 2.41.
- Meetings, Bus Corp 2.37.
  - Organization meeting, Bus Corp 3.06.
- Notice,
  - Meetings, Bus Corp 2.37.
  - Waiver, Bus Corp 9.09.
- Number, Bus Corp 2.32.
- Officers,
  - Election, Bus Corp 2.42.
  - Removal, Bus Corp 2.43.
- Organization meeting, Bus Corp 3.06.
- Place of meetings, Bus Corp 2.37.
- Preferred shares, authority, Bus Corp 2.13.
- Qualifications, Bus Corp 2.31.
- Quorum, Bus Corp 2.35.
  - Filling vacancy, Bus Corp 2.34.
- Record date, fixing to determine stockholders, Bus Corp 2.26.
- Redemption of stock, procedure, Bus Corp 4.08.
- Reduction of stated capital, Bus Corp 4.12.
- Removal, Bus Corp 2.32.
- Resolution adopting Business Corporation Act, Bus Corp 9.14.
- Resolution amending articles of incorporation, Bus Corp 4.02.
- Revocation of voluntary dissolution proceedings, Bus Corp 6.08.
- Scrip, issuance, Bus Corp 2.20.
- Shares without par value, issuance, Bus Corp 2.15.
- Special meeting of shareholders called by, Bus Corp 2.24.
- Surplus and reserves, special provisions relating to, Bus Corp 4.13.
- Treasury shares,
  - Cancellation, Bus Corp 4.11.
  - Disposal, Bus Corp 2.15.
- Vacancies, Bus Corp 2.34.
- Voluntary dissolution, resolution recommending, Bus Corp 6.03.
- Waiver of notice, Bus Corp 9.09.

## Dissolution,

- Articles of dissolution, filing fee, Bus Corp 10.01.
- Distribution of assets, shareholder's address unknown, Bus Corp 7.11.
- Involuntary dissolution, Bus Corp 7.01-7.12.
  - Amount due certain shareholders and creditors, deposit, Bus Corp 7.11.
- Attorney General, duties, Bus Corp 7.01-7.03.
  - Certification by Secretary of State, corporations in default, Bus Corp 7.02.
  - Condition precedent to incorporation, failure to comply with, Bus Corp 7.01.
  - Decree, Bus Corp 7.09.
    - Filing, Bus Corp 7.10.
  - Distribution of assets, shareholder's address unknown, Bus Corp 7.11.

## CORPORATIONS—Cont'd

## Dissolution—Cont'd

## Attorney General, duties—Cont'd

- Fees, failure to pay as ground, Bus Corp 7.01.
- Franchise taxes or penalties, failure to pay, Bus Corp 7.01.
- Grounds for action by Attorney General, Bus Corp 7.01.
- Jurisdiction of court to liquidate assets, Bus Corp 7.06.
- Liquidation of assets, jurisdiction of court, Bus Corp 7.06.
- Notice of default, Bus Corp 7.02.
- Notification of defaulting corporations to Attorney General, Bus Corp 7.02.
- Opportunity to cure default, Bus Corp 7.02.
- Process and venue, Bus Corp 7.03.
- Receivers, Bus Corp 7.01-7.08.
  - Appointment, Bus Corp 7.04.
  - Appointment, rehabilitation of corporation, Bus Corp 7.05.
  - Appointment to liquidate assets, Bus Corp 7.06.
  - Qualifications, powers and duties, Bus Corp 7.07.
  - Shareholders not parties defendant, Bus Corp 7.08.
- Shareholders not necessary parties defendant to receivership, Bus Corp 7.08.
- Specific corporate assets, appointment of receiver, Bus Corp 7.04.
- State Treasurer, deposit, amount due certain shareholders, Bus Corp 7.11.
- Survival of remedy, Bus Corp 7.12.
- Venue and process, Bus Corp 7.03.
- Statement of intent to dissolve, filing fee, Bus Corp 10.01.
- Survival of remedy after dissolution, Bus Corp 7.12.
- Voluntary dissolution, Bus Corp 6.01-6.12.
  - Act of corporation, Bus Corp 6.03.
    - Revocation of proceedings, Bus Corp 6.08.
  - Amount due certain shareholders, deposit, Bus Corp 7.11.
  - Articles of dissolution, Bus Corp 6.11, 6.12.
    - Contents, Bus Corp 6.01.
  - Certificate of dissolution, Bus Corp 6.01, 6.12.
  - Consent of shareholders, Bus Corp 6.02.
    - Revocation of proceedings, Bus Corp 6.07.
  - Deposit, amount due certain shareholders, Bus Corp 7.11.
  - Distribution of assets, shareholder's address unknown, Bus Corp 7.11.
  - Filing articles of dissolution, Bus Corp 6.12.
  - Filing fee, Bus Corp 10.01.
  - Power to terminate existence, Bus Corp 2.02.
  - Secretary of State, filing articles of dissolution, Bus Corp 6.01.
  - State Treasurer, deposit, amount due certain shareholders, Bus Corp 7.11.
  - Statement of intent to dissolve, Bus Corp 6.02, 6.06.
    - Contents, Bus Corp 6.03.
    - Effect, Bus Corp 6.05.
    - Execution, Bus Corp 6.03.
    - Filing, Bus Corp 6.04.
    - Procedure after filing, Bus Corp 6.06.
  - Statement of revocation,
    - Execution, Bus Corp 6.07.
    - Filing fee, Bus Corp 10.01.

## CORPORATIONS—Cont'd

- Dissolution—Cont'd
  - Voluntary dissolution—Cont'd
    - Statement of revocation of proceedings, Effect, Bus Corp 6.10.
    - Filing, Bus Corp 6.09.
    - Survival of remedy, Bus Corp 7.12.
- Distributions in partial liquidation, Bus Corp 2.40.
  - Directors, contribution for wrongful payment, Bus Corp 2.41.
  - Liability, directors and shareholders, Bus Corp 2.41.
- District courts, receiver, appointment to rehabilitate corporation, involuntary dissolution, Bus Corp 7.05.
- Dividends, Bus Corp 2.38.
  - Consuming assets corporation, Bus Corp 2.39.
  - Dissenting stockholders, Bus Corp 5.13.
- Domestic corporation, definition, Bus Corp 1.02.
- Duration,
  - Change by amending articles of incorporation, Bus Corp 4.01.
  - Set forth in articles of incorporation, Bus Corp 3.02.
- Earned surplus,
  - Definition, Bus Corp 1.02.
  - Payment of dividends, Bus Corp 2.38.
- Emergency clause, Business Corporation Act, Bus Corp 11.01.
- Evidence,
  - Certificate of incorporation, Bus Corp 3.04.
  - Certificates and certified copies, Bus Corp 9.05.
  - Prima facie evidence,
    - Certificates and certified copies, Bus Corp 9.05.
    - Recorded deed, Bus Corp 5.08.
    - Stock transfer books, Bus Corp 2.27.
- Executors and administrators,
  - Claims against estates, authentication, Prob.Code 304.
  - Disqualified to serve as, Prob.Code 78.
- Exemption from franchise tax, non-profit poultry associations, 1302d—1.
- Existing laws,
  - Application, Bus Corp 9.15.
  - Repeal, extent and effect, Bus Corp 9.16.
- Fees, failure to pay, ground for involuntary dissolution, Bus Corp 7.01.
- Filing fees, Bus Corp 10.01.
  - Non-profit poultry associations, 1302d—1.
- Financing, expenses, Bus Corp 2.18.
- Foreign commerce, application of Business Corporation Act, Bus Corp 9.11.
- Foreign corporations,
  - Generally, Bus Corp 8.01—8.18.
- Actions, maintaining or defending, not transacting business in state, Bus Corp 8.01.
- Admission to transact business, Bus Corp 8.01.
- Annual report, failure to file, revocation of certificate, Bus Corp 8.16.
- Application for certificate of authority,
  - Contents, Bus Corp 8.05.
  - Filing, Bus Corp 8.06.
- Application for withdrawal, Bus Corp 8.14.
  - Filing, Bus Corp 8.15.
- Articles of incorporation,
  - Amendment, Bus Corp 8.11.
  - Failure of Secretary of State to approve, appeal, Bus Corp 9.04.
  - Failure to file, revocation of certificate, Bus Corp 8.16.
  - Filing fee, amendment or supplement, Bus Corp 10.01.
  - Restated articles, filing fee, Bus Corp 10.01.

## CORPORATIONS—Cont'd

- Foreign corporations—Cont'd
    - Attorney General, actions by,
      - Penalties, transacting business without certificate, Bus Corp 8.18.
    - Revocation of certificate of authority, Bus Corp 8.16.
  - Bank accounts, maintaining, not transacting business in state, Bus Corp 8.01.
  - Certificate of authority, Bus Corp 8.01.
    - Amended, Bus Corp 8.13.
  - Application,
    - Contents, Bus Corp 8.05.
    - Execution, Bus Corp 8.05.
    - Filing, Bus Corp 8.06.
  - Duration, Bus Corp 8.02.
  - Effect, Bus Corp 8.07.
  - Failure of Secretary of State to approve application, appeal, Bus Corp 9.04.
  - Failure to comply with condition precedent, revocation by court decree, Bus Corp 8.16.
  - Fee for issuing, Bus Corp 10.01.
  - Filing fee, Bus Corp 10.01.
  - Issuance, Bus Corp 8.06.
    - Restrictions as to name, Bus Corp 8.03.
  - Merger with other foreign corporation, Bus Corp 8.12.
  - Necessity, Bus Corp 8.01.
  - Procurement through fraud, revocation of certificate, Bus Corp 8.16.
  - Renewal,
    - Application, contents, Bus Corp 8.05.
    - Effect and term, Bus Corp 8.07.
    - Filing application, Bus Corp 8.06.
    - Term, Bus Corp 8.07.
  - Revocation, Bus Corp 8.16.
    - Filing decree, Bus Corp 8.17.
  - Term, Bus Corp 8.07.
  - Transacting business without, Bus Corp 8.18.
- Certificate of withdrawal, Bus Corp 8.14.
- Change of name, Bus Corp 8.04.
- Debts, collecting, not transacting business in state, Bus Corp 8.01.
- Directors,
  - Meetings, not transacting business in state, Bus Corp 8.01.
  - Restrictions, Bus Corp 8.02.
  - Resolution adopting Business Corporation Act, Bus Corp 9.14.
- District court, revocation of certificate of authority, Bus Corp 8.16.
- Evidence of debt, creating, not transacting business in state, Bus Corp 8.01.
- Executors and administrators, exercising powers of, not transacting business in state, Bus Corp 8.01.
- Fees,
  - Failure to pay, revocation of certificate, Bus Corp 8.16.
  - Liability, transacting business without certificate of authority, Bus Corp 8.18.
- Forms, documents filed with Secretary of State, Bus Corp 9.06.
- Franchise taxes,
  - Failure to pay, revocation of certificate, Bus Corp 8.16.
  - Liability for while transacting business without certificate of authority, Bus Corp 8.18.
- Interrogatories by Secretary of State, answering, Bus Corp 9.01.
- Interstate commerce, transacting business, not transacting business in state, Bus Corp 8.01.
- Liens, real or personal property, creating, not transacting business in state, Bus Corp 8.01.

## CORPORATIONS—Cont'd

## Foreign corporations—Cont'd

- Merger, with other foreign corporation, Bus Corp 8.12.
- Misrepresentation of material matter in applications, reports, etc., revocation of certificate, Bus Corp 8.16.
- Mortgages, creating, not transacting business in state, Bus Corp 8.01.
- Name,
  - Certificate of authority, included in application for, Bus Corp 8.05.
  - Change, Bus Corp 8.04.
  - Failure to file, revocation of certificate, Bus Corp 8.16.
  - Restrictions, Bus Corp 8.03.
- Penalties,
  - Failure to pay, revocation of certificate, Bus Corp 8.16.
  - Transacting business without certificate of authority, Bus Corp 8.18.
- Personal property, creating liens on, not transacting business in state, Bus Corp 8.01.
- Powers, Bus Corp 8.02.
- President, agent for service of process, Bus Corp 8.10.
- Real property, creating liens, not transacting business in state, Bus Corp 8.01.
- Registered agent,
  - Change, Bus Corp 8.09.
  - Failure to maintain, revocation of certificate, Bus Corp 8.16.
  - Necessity, Bus Corp 8.08.
  - Service of process, Bus Corp 8.10.
- Registered office,
  - Address included in application for certificate of authority, Bus Corp 8.05.
  - Change, Bus Corp 8.09.
  - Necessity, Bus Corp 8.08.
- Renewal,
  - Certificate of authority, application for, Bus Corp 8.05, 8.06.
  - Filing application, Bus Corp 8.06.
- Revocation, certificate of authority, Bus Corp 8.16.
- Rights and privileges, Bus Corp 8.02.
- Sales, independent contractors, not transacting business in state, Bus Corp 8.01.
- Securities, maintaining offices for transfer, etc., not transacting business in state, Bus Corp 8.01.
- Service of process, Bus Corp 8.10.
- Stock, voting, not transacting business in state, Bus Corp 8.01.
- Stockholders, meetings, not transacting business in state, Bus Corp 8.01.
- Time, filing documents with Secretary of State, Bus Corp 9.07.
- Transacting business beyond scope of purpose, revocation of certificate, Bus Corp 8.16.
- Transacting business in state, activities not considered as, Bus Corp 8.01.
- Transacting business without certificate of authority, Bus Corp 8.18.
- Withdrawal, Bus Corp 8.14.
  - Filing application, Bus Corp 8.15.
- Withdrawal from state, application, filing fee, Bus Corp 10.01.
- Forms, documents filed with Secretary of State, Bus Corp 9.06.
- Franchise taxes, failure to pay, ground for involuntary dissolution, Bus Corp 7.01.
- General powers, Bus Corp 2.02.
- Guardians, voting stock, Bus Corp 2.29.
- Illegal purposes, organization prohibited, Bus Corp 2.01.

## CORPORATIONS—Cont'd

- Incorporators,
  - Certificate of incorporation, Bus Corp 3.03.
  - Name and address in articles of incorporation, Bus Corp 3.02.
  - Organization meeting of directors, calling, Bus Corp 3.06.
  - Qualifications, Bus Corp 3.01.
  - Voluntary dissolution, Bus Corp 6.01-6.12.
- Indebtedness, requirements before incurring, Bus Corp 3.05.
- Insolvency,
  - Definition, Bus Corp 1.02.
  - Distributions in partial liquidation, Bus Corp 2.40.
  - Director's liability, Bus Corp 2.41.
  - Dividends, Bus Corp 2.38, 2.39.
  - Director's liability, Bus Corp 2.41.
- Insurance companies, laws governing, Ins.Code 2.18.
- Interstate commerce, application of Business Corporation Act, Bus Corp 9.11.
- Interrogatories by Secretary of State,
  - Answering, Bus Corp 9.01.
- Information disclosed not public, Bus Corp 9.02.
- Involuntary dissolution, deposit, amount due certain shareholders, Bus Corp 7.11.
- Lease of assets,
  - Authorized by directors, Bus Corp 5.09.
  - Dissenting stockholders, Bus Corp 5.11-5.13.
  - Special authorization of shareholders, Bus Corp 5.10.
- Legislature, reservation of power, Bus Corp 9.12.
- Liquidation, distributions in partial liquidation, Bus Corp 2.40.
- Meetings,
  - Directors, Bus Corp 2.37.
  - Organization meeting of directors, Bus Corp 3.06.
  - Stockholders, Bus Corp 2.24-2.29.
- Misrepresentation of material matter, ground for involuntary dissolution, Bus Corp 7.01.
- Mortgage of assets,
  - Authorized by directors, Bus Corp 5.09.
  - Dissenting stockholders, Bus Corp 5.11-5.13.
  - Special authorization of shareholders, Bus Corp 5.10.
- Name, Bus Corp 2.05-2.08.
  - Amendment of articles to change, Bus Corp 4.01.
  - Application for reservation, filing fee, Bus Corp 10.01.
- Net assets, definition, Bus Corp 1.02.
- Non-profit institutions, organization under Business Corporation Act prohibited, Bus Corp 2.01.
- Notice,
  - Calling organization meeting of directors, Bus Corp 3.06.
  - Certification of defaulting corporation, Bus Corp 7.02.
  - Certification to Attorney General, cause for dissolution, Bus Corp 7.02.
  - Consolidation or merger of domestic corporations, Bus Corp 5.03.
  - Meeting, considering sale or mortgage of asset, Bus Corp 5.10.
  - Redemption of stock, Bus Corp 4.08.
  - Shareholders' meetings, Bus Corp 2.25.
    - Voluntary dissolution of corporation, Bus Corp 6.03.
  - Stockholders' meetings, revocation of voluntary dissolution proceedings, Bus Corp 6.08.
  - Waiver, Bus Corp 9.09.
- Officers, agents and employees,
  - Appointment by board of directors, Bus Corp 2.42.
  - Authority, Bus Corp 2.42.

## CORPORATIONS—Cont'd

## Officers, agents and employees—Cont'd

Election of officers, Bus Corp 2.42.

Removal, Bus Corp 2.43.

## Officers or agents,

Failure to prepare voting list, Bus Corp 2.27.

Power to appoint, Bus Corp 2.02.

Registered agent, Bus Corp 2.09-2.11.

Failure to maintain, ground for involuntary dissolution, Bus Corp 7.01.

Statement of change, filing fee, Bus Corp 10.01.

## Organization,

Expenses, Bus Corp 2.18.

Meeting of directors, Bus Corp 3.06.

Partial invalidity, Business Corporation Act, Bus Corp 9.13.

Partial liquidation, distributions, Bus Corp 2.40.

Penalties, failure to pay, ground for involuntary dissolution, Bus Corp 7.01.

Pensions, powers, Bus Corp 2.02.

Perpetual succession, power, Bus Corp 2.02.

## Personal property,

Disposition authorized by directors, Bus Corp 5.09.

Powers, Bus Corp 2.02.

Sale or mortgage, special authorization of shareholders, Bus Corp 5.10.

Plan of consolidation, Bus Corp 5.02.

Plan of merger, domestic corporations, Bus Corp 5.01.

## Pledge of assets,

Authorized by directors, Bus Corp 5.09.

Dissenting stockholders, Bus Corp 5.11-5.13.

Special authorization of shareholders, Bus Corp 5.10.

Poultry associations, authorization, 1302d-1.

Powers, Bus Corp 2.02.

## President,

Agent for service of process, Bus Corp 2.11.

Articles of amendment, Bus Corp 4.04.

Certificates of shares signed by, Bus Corp 2.19.

Conveyances signed by, Bus Corp 5.08.

Election, Bus Corp 2.42.

Interrogatories by Secretary of State, answer, Bus Corp 9.01.

Revocation of voluntary dissolution proceedings, duties, Bus Corp 6.07, 6.08.

Special meeting of shareholders called by, Bus Corp 2.24.

Statement of cancellation of shares, execution, Bus Corp 4.10.

Treasury shares, Bus Corp 4.11.

Statement of intent to dissolve, execution, Bus Corp 6.02.

Statement of revocation of voluntary dissolution proceedings,

Execution, Bus Corp, 6.07, 6.08.

Prior laws, application, Bus Corp 9.15.

Procedure for adoption of Business Corporation Act, Bus Corp 9.14.

Procedure to amend articles of incorporation, Bus Corp 4.02.

Process, involuntary dissolution, Bus Corp 7.03.

Purchase of own shares, right, Bus Corp 2.02, 2.03.

Purchase of redeemable shares,

Reduction of stated capital, Bus Corp 4.10.

Restrictions, Bus Corp 4.09.

Purposes, Bus Corp 2.01.

Quorum, shareholders' meetings, Bus Corp 2.28.

## Real property,

Disposition authorized by board of directors, Bus Corp 5.09.

Powers, Bus Corp 2.02.

Sale or mortgage, special authorization of shareholders, Bus Corp 5.10.

## CORPORATIONS—Cont'd

## Receivers,

Appointment for specific assets, involuntary dissolution, Bus Corp 7.04.

Appointment to rehabilitate corporation, involuntary dissolution, Bus Corp 7.05.

Involuntary dissolution, Bus Corp 7.04-7.08.

Qualifications, powers and duties, Bus Corp 7.07.

Shareholders not necessary parties defendant, Bus Corp 7.08.

Records and books, Bus Corp 2.44.

Redemption of stocks, Bus Corp 4.08-4.10.

Procedure, Bus Corp 4.08.

Reduction of stated capital, execution, Bus Corp 4.12.

Reduction surplus, definition, Bus Corp 1.02.

## Registered office,

Address in articles of incorporation, Bus Corp 3.02.

Books and records, Bus Corp 2.44.

Meetings held at, Bus Corp 2.24.

Statement of change, filing fee, Bus Corp 10.01.

Registered office and agent, Bus Corp 2.09, 2.10.

Remedies of dissenting stockholders, Bus Corp 5.13.

Reorganization, expenses, Bus Corp 2.18.

Repeal of existing laws, extent and effect, Bus Corp 9.16.

Reports, annual report, failure to file,

Ground for involuntary dissolution, Bus Corp 7.01.

Involuntary dissolution, Bus Corp 7.01.

Requirement before commencing business, Bus Corp 3.05.

Reservation of power, legislature, Bus Corp 9.12.

Reserved name, Bus Corp 2.06.

Reserves, special provisions, Bus Corp 4.13.

Restated articles of incorporation, Bus Corp 4.07.

Revocation of voluntary dissolution proceedings, Act of corporation, Bus Corp 6.08.

Consent of stockholders, Bus Corp 6.07.

## Sale of assets,

Authorized by directors, Bus Corp 5.09.

Dissenting stockholders, Bus Corp 5.11-5.13.

Special authorization to shareholders, Bus Corp 5.10.

## Seal,

Certificate of shares, Bus Corp 2.19.

Power to have and use, Bus Corp 2.02.

## Secretary,

Articles of amendment, Bus Corp 4.04.

Certificate of shares, signature, Bus Corp 2.19.

Election, Bus Corp 2.42.

Interrogatories by Secretary of State, answering, Bus Corp 9.01.

## Statement of,

Cancellation of shares, execution, Bus Corp 4.10.

Treasury shares, Bus Corp 4.11.

Intent to dissolve, execution, Bus Corp 6.03.

Revocation of voluntary dissolution proceedings, execution, Bus Corp 6.08.

Service of process, Bus Corp 2.11.

## Shareholders,

Consolidation or merger, approval, Bus Corp 5.03.

## Meetings,

Actions by shareholders without, Bus Corp 9.10.

Quorum, Bus Corp 2.28.

Vote, consolidation or merger of domestic corporation, Bus Corp 5.03.

Resolution adopting Business Corporation Act, Bus Corp 9.14.

## CORPORATIONS—Cont'd

## Shareholders—Cont'd

Sale or mortgage of assets, special authorization, Bus Corp 5.10.

Statement of intent to dissolve, Bus Corp 6.02.

Shares, definition, Bus Corp 1.02.

Short title, Texas Business Corporation Act, Bus Corp 1.01.

## Stated capital,

Definition, Bus Corp 1.02.

Determination of amount, Bus Corp 2.17.

## Reduction,

Procedure, Bus Corp 4.12.

Redemption or purchase of redeemable shares, Bus Corp 4.10.

Surplus, Bus Corp 4.13.

Statement of reduction, filing fee, Bus Corp 10.01.

Statement of intent to dissolve, execution, Bus Corp 6.02, 6.03.

Statement of revocation of voluntary dissolution proceedings, Bus Corp 6.09, 6.10.

Execution, Bus Corp 6.07.

## Stockholders,

## Additional shares,

Articles of incorporation, amendment affecting, Bus Corp 4.01.

Provision in articles of incorporation, Bus Corp 3.02.

Amendment of articles of incorporation, Bus Corp 4.02.

## Articles of incorporation,

Class voting on amendments, Bus Corp 4.03.

Procedure to amend, Bus Corp 4.02.

Books and records, examination, Bus Corp 2.44.

Bylaws, powers, Bus Corp 2.23.

Conveyances authorized, Bus Corp 5.08.

Dissenting stockholders, Bus Corp 5.11-5.14.

Anti-trust laws, effect of Business Corporation Act, Bus Corp 5.14.

Procedure for dissent, Bus Corp 5.12.

Remedies, Bus Corp 5.13.

Rights, Bus Corp 5.11.

Waiver of dissent, Bus Corp 5.13.

Distributions in partial liquidation, Bus Corp 2.40.

Dividends, liability, Bus Corp 2.41.

Liability, Bus Corp 2.21, 2.41.

Meetings, Bus Corp 2.24-2.29.

Closing transfer book, Bus Corp 2.26.

Election of directors, Bus Corp 2.32.

Classified directors, Bus Corp 2.33.

Increase in number, Bus Corp 2.34.

Failure of board of directors to call, Bus Corp 2.24.

Mortgage or sale of property, Bus Corp 5.10.

Notice, Bus Corp 2.25.

Procedure for dissent, Bus Corp 5.12.

Revocation of voluntary dissolution proceedings, Bus Corp 6.08.

Voluntary dissolution of corporation, Bus Corp 6.03.

Voting list, Bus Corp 2.27.

Voting of shares, Bus Corp 2.29.

Notice, waiver, Bus Corp 9.09.

Proxy, voting by, Bus Corp 2.29.

Receivership or liquidation proceedings, parties defendant, Bus Corp 7.08.

Record date, fixing, Bus Corp 2.26.

Shares without par value, right to fix consideration, Bus Corp 2.15.

Voluntary dissolution by consent, Bus Corp 6.02.

Vote, determination of stockholders entitled to, Bus Corp 2.26.

Voting list, Bus Corp 2.27.

## CORPORATIONS—Cont'd

## Stockholders—Cont'd

Voting requirements, articles of incorporation controlling, Bus Corp 9.08.

Voting shares, Bus Corp 2.29.

Voting trust, Bus Corp 2.30.

Waiver of notice, Bus Corp 9.09.

## Stocks,

Amendment of articles of incorporation to increase or decrease, Bus Corp 4.01.

Authorized shares, Bus Corp 2.12.

Cancellation of shares, reduction of stated capital without, Bus Corp 4.12.

## Certificate,

Collateral security holder, personal liability, Bus Corp 2.21.

Pledgee, personal liability as shareholder, Bus Corp 2.21.

Restriction on transfer on back, Bus Corp 2.22.

Certificate of shares, Bus Corp 2.19-2.21.

Assignee, liability for consideration, Bus Corp 2.21.

Conservator, personal liability, Bus Corp 2.21.

Executors and administrators, personal liability, Bus Corp 2.21.

Facsimile signature, Bus Corp 2.19.

Fractional shares, Bus Corp 2.20.

Guardians, personal liability, Bus Corp 2.21.

Receiver, personal liability, Bus Corp 2.21.

Scrip, Bus Corp 2.20.

Statements on, requirements, Bus Corp 2.19.

Transferee, liability for consideration, Bus Corp 2.21.

Trustee, personal liability, Bus Corp 2.21.

Certificate of stock, assignee for benefit of creditors, personal liability, Bus Corp 2.21.

Classification, designation in articles of incorporation, Bus Corp 3.02.

Consideration for shares, Bus Corp 2.15-2.17.

Issuance of certificate, Bus Corp 2.19.

Liability of subscribers and shareholders, Bus Corp 2.21.

Payment, Bus Corp 2.16.

Consolidation or merger of domestic corporations, Bus Corp 5.06.

Conversion of shares, consideration, Bus Corp 2.15.

Distributions in partial liquidation, Bus Corp 2.40.

Dividends, dissenting stockholders, Bus Corp 5.13.

Fractional shares, issuance, Bus Corp 2.20.

Liability, subscribers and shareholders, Bus Corp 2.21.

Number of shares authorized, articles of incorporation, Bus Corp 3.02.

Par value, Bus Corp 2.15.

Consideration, Bus Corp 2.17.

Preferred shares, authority to issue, Bus Corp 2.13.

Procedure for redemption, Bus Corp 4.08.

Purchase of redeemable shares, restrictions, Bus Corp 4.09.

Redeemable shares, statement of cancellation, filing fee, Bus Corp 10.01.

Redemption, Bus Corp 4.08-4.10.

Procedure, Bus Corp 4.08.

Restrictions, Bus Corp 4.09.

Redemption of shares, reduction of stated capital, Bus Corp 4.10.

Restrictions on redemption or purchase of redeemable shares, Bus Corp 4.09.

Right to acquire and dispose of own shares, Bus Corp 2.02, 2.03.



## CORPORATIONS—Cont'd

## Stocks—Cont'd

- Scrip, issuance, Bus Corp 2.20.
- Statement of resolution establishing series of shares, filing fee, Bus Corp 10.01.
- Subscription, Bus Corp 2.14.
  - Acceptance, Bus Corp 2.14.
- Transfer, restrictions, Bus Corp 2.22.
- Transfer book,
  - Closing to determine shareholders, Bus Corp 2.26.
  - Prima facie evidence as to shareholders, Bus Corp 2.27.
- Treasury shares,
  - Cancellation, Bus Corp 4.11.
  - Disposition, Bus Corp 2.15.
  - Payment of dividends, Bus Corp 2.38.
  - Voting, Bus Corp 2.29.
- Voting, Bus Corp 2.29.
  - Foreign corporation holding stock, Bus Corp 2.29.
  - Shares, Bus Corp 2.29.
- Subscriber, definition, Bus Corp 1.02.
- Subscription, definition, Bus Corp 1.02.
- Surplus,
  - Definition, Bus Corp 1.02.
  - Special provisions, Bus Corp 4.13.
  - Transfer to stated capital, consideration for share issue, Bus Corp 2.15.
- Time for filing documents with Secretary of State, Bus Corp 9.07.
- Treasurer, election, Bus Corp 2.42.
- Treasury shares,
  - Cancellation, Bus Corp 4.11.
  - Definition, Bus Corp 1.02.
- Trust fund, deposit to redeem shares, Bus Corp 4.08.
- Trustees,
  - Voting stock, Bus Corp 2.29.
  - Voting trust, Bus Corp 2.30.
- Ultra vires, defense, Bus Corp 2.04.
- Venue, involuntary dissolution, Bus Corp 7.03.
- Verified, definition, Bus Corp 1.02.
- Vice president,
  - Agent for service of process, Bus Corp 2.11.
  - Articles of amendment, Bus Corp 4.04.
  - Certificate of shares, signature, Bus Corp 2.19.
  - Conveyances signed by, Bus Corp 5.08.
  - Election, Bus Corp 2.42.
  - Interrogatories by Secretary of State, answering, Bus Corp 9.01.
  - Statement of cancellation of shares, execution, Bus Corp 4.10.
    - Treasury shares, Bus Corp 4.11.
  - Statement of intent to dissolve, execution, Bus Corp 6.03.
  - Statement of revocation of voluntary dissolution proceedings, execution, Bus Corp 6.07, 6.08.
- Voluntary non-profit poultry associations, authorized, 1302d—1.
- Voting list, shareholders entitled to vote, Bus Corp 2.27.
- Voting of shares, Bus Corp 2.29.
- Waiver, notice, Bus Corp 9.09.

## CORRUPTION OF BLOOD

Inheritance, right to, Prob.Code 41.

## COST BASIS

Defined, Sales Limitation Law, PC 1111m.

## COSTS

- Bond for payment by complainant for writ of attachment, Prob.Code 26.
- Executors and Administrators, this index.
- Guardian and Ward, this index.
- Probate proceedings, application of law regulating, Prob.Code 12.
- Publishing notices, delinquent tax cases, 7345b—2.

## COSTS—Cont'd

Record book, probate fee book, contents, Prob. Code 16.

## COUNTIES

- Bona fide residents, defined, 4437a, § 6A.
- Bonds,
  - Acquisition of toll bridges, 6795c.
  - Guardians, investments in, Prob.Code, 389.
- Border counties, acquisition of toll bridges, 6795c.
- Creational projects, Gulf coast, 6079c—1.
- Definitions,
  - Recreational programs, 1015c—1.
- Dumping grounds, acquisition, 2351g.
- Employees and clerks,
  - Group life insurance, Ins.Code 3.50.
- Expenses, commissioners court, 2350n.
- Feeble-minded or mentally retarded persons, return to home county, 3871a.
- Fees collected, counties of 600,000 or more, report, PC 105.
- Funds, expenditure for investigation of water needs, 1644a—1.
- Garbage disposal grounds, acquisition, 2351g.
- Ground Water Conservation District No. 2, 8280—179.
- Gulf coast, islands for recreational purposes, 6079c—1.
- Gulf of Mexico, bordering on,
  - Islands for recreational purposes, 6079c—1.
- Habitual drunkards,
  - Expenses of confinement, Prob.Code 424.
  - Recovery of sums paid for, Prob.Code 425.
  - Liability for maintenance, Prob.Code 423.
  - Recovery of sums paid for, Prob.Code 425.
- Incompetents,
  - Expenses of confinement,
    - Payment, Prob.Code 424.
  - Recovery of sums paid for, Prob.Code 425.
  - Liability for maintenance, Prob.Code 423.
  - Recovery of sums paid for, Prob.Code 425.
- Insane persons,
  - Expenses of confinement, Prob.Code 424.
  - Recovery of sums paid for, Prob.Code 425.
  - Liability for maintenance, Prob.Code 423.
  - Recovery of sums paid for, Prob.Code 425.
- Interest-bearing time warrants, payment of indebtedness, validation, 2368a—4.
- Medical Examiners, this index.
- Mental patient, return to home county, 5561b—1.
- Navigation districts, exclusion from Revenue Deposit Law, 8244a.
- Officials, fee basis, maximum compensation, 3883h.
- Population,
  - Less than 20,000, compensation of officials, 3883h.
  - More than 37,000, investigators, 331g—1.
- Primary election expenses, apportionment, Elec. Code 13.08.
- Public platform tonnage scales, purchase authorized, 2372n.
- Rabies epidemic, regulations in counties, 2372m.
- Recreational facilities and programs, 1015c—1.
- Rivers, investigation of water needs, 1644a—1.
- Scrip,
  - Payment of indebtedness, validation, 2368a—4.
- Toll bridges, acquisition, 6795c.
- Voting machines, certificate of convenience to transport, Elec.Code 7.14.
- Water needs, investigations, 1644a—1.

**COUNTIES OF MORE THAN 100,000**

Independent school districts, change of boundaries, 2766a.

**COUNTIES OF MORE THAN 150,000**

Tax assessor and collector, deputies authorized, 3902h—2.

**COUNTIES OF MORE THAN 250,000**

Child support fund, costs in divorce cases, 5142a—1.

Medical Examiners, this index.

**COUNTIES OF MORE THAN 300,000**

Annexation of school districts, elections, 2815g—49.

**COUNTIES OF MORE THAN 500,000**

Juvenile probation officers, appointment, compensation and duties, 5142c—2.

**COUNTIES OF MORE THAN 600,000**

Constables, two-way radios authorized, 6889e. Report of fees collected, PC 105.

**COUNTIES OF MORE THAN 800,000**

Fresh water supply district, division of district, 7930—5.

**COUNTY ATTORNEYS**

Cameron county, 138th District Court, 199 (138). Cass county, office abolished, 326k—32.

**Compensation,**

Minimum and maximum salaries, 3883i.

Harrison county, office abolished, 326k—33.

Payment of estates into state treasury, duties, Prob.Code 432, 433.

Randall county, office abolished, 326k—36.

Willacy county, 138th District court, 199 (138).

**COUNTY CLERKS****Application,**

Grant of powers to administrator with will annexed, filing with, Prob.Code 154.

Subject property to mineral leases, etc., duties, Prob.Code 371.

Bond, filing with to defeat application for letters of administration by creditor, Prob.Code 80.

Certified copy, judgment, action to determine heirship, filing with, Prob.Code 56.

**Citations and notices,**

Application by administrator with will annexed for grant of powers, Prob.Code 154.

Issuance, Prob.Code 33.

Mailing copy by registered mail, Prob.Code 33.

Claim docket, claims against estates of wards, entry in, Prob.Code 311.

**Compensation,****Counties of,**

500,000 to 600,000, 3912e—4d.

Less than 20,000, maximum compensation, 3883h.

Minimum and maximum, 3883i.

Costs, security for, requiring, probate matters, Prob.Code 12.

Counties less than 20,000, maximum compensation, 3883h.

Custodian of money of minor, incompetent, or habitual drunkard without guardian, Prob. Code 144.

Accounting by person handling money, report, filing with, Prob.Code 144.

Application for withdrawal, Prob.Code 144.

Debtor, payment of money to, Prob.Code 144.

Deposit of money in trust account, Prob. Code 144.

Discharge of person receiving money on filing report of accounting, Prob.Code 144.

Fees, etc., to person for handling or expending money prohibited, Prob.Code 144.

**COUNTY CLERKS—Cont'd**

Custodian of money of minor, incompetent, or habitual drunkard without guardian—Cont'd

Non-residents, Prob.Code 144.

Payment of person executing bond approved by county judge, Prob.Code 144.

Priority on withdrawal, Prob.Code 144.

Receipt of money paid by debtor, effect, Prob.Code 144.

Report of accounting by person handling money, filing with, Prob.Code 144.

Resident, Prob.Code 144.

Withdrawal of money by custodian for use of minor, Prob.Code 144.

El Paso county, county court at law No. 2, 1970—141.1.

Executions, probate matters, attesting and signing, Prob.Code 25.

Executors and Administrators, this index.

**Fees,**

Deposit of will, Prob.Code 71.

Guardian and Ward, this index.

Habitual Drunkards, this index.

Hearings, probate matters, setting, Prob.Code 20.

Indexes, wills deposited with, Prob.Code 71.

Infants, this index.

Insane Persons, this index.

**Mineral leases,**

Duties, etc., Prob.Code 367.

Pooling or unitization, duties, etc., Prob. Code 369.

Minors. Infants, this index.

Notice of intention to take depositions, probate matters, filing with, Prob.Code 22.

Oath of temporary administrator or guardian filed with, Prob.Code 131.

Partition of ward's estate in real property, duties, Prob.Code 388.

Maximum compensation, counties less than 20,000, 3883h.

Potter county, county court at law, 1970—311a.

Power of attorney waiving right to letters testamentary or of administration, filing with, Prob.Code 79.

Premarital examination for syphilis, certificate filed, 4604d.

Probate proceedings, filing, applications, etc., with, Prob.Code 11.

Process, issuance in probate matters, Prob. Code 33.

**Record books,**

Certified copies as evidence, Prob.Code 18.

Claim docket, Prob.Code 14.

Call by judge, Prob.Code 19.

Custody, Prob.Code 17.

Evidence, use as, Prob.Code 18.

Index, Prob.Code 17.

Inspection, Prob.Code 17.

Judge's probate docket, Prob.Code 13.

Call by judge, Prob.Code 19.

Probate fee book, Prob.Code 16.

Probate minutes,

Approval and signing by judge, Prob. Code 23.

Contents, Prob.Code 15.

Small estates, Prob.Code 137.

Recording, decree admitting will to probate or granting administration, effect, Prob.Code 8.

Signature, citations and notices, necessity, Prob. Code 33.

Statement of description of real property of personal surety on bond, recording, Prob.Code 202.

Time and place of hearings, probate matters, designation by, Prob.Code 20.

Transfer of action to determine heirship duties, Prob.Code 51.

Wills, this index.

## COUNTY CLERKS—Cont'd

Writs, issuance in probate matters, Prob.Code 33.

## COUNTY COMMISSIONERS

Salaries, minimum and maximum, 3883i.

## COUNTY COURTS

### At law,

County judge to sit, 1969a—3.  
El Paso county, additional court, 1970—141.1.

Judge's salaries, minimum and maximum, 3883i.

Potter county, creation and jurisdiction, 1970—311a.

Taylor county, created, 1970—343.

Crockett county, jurisdiction, 1970—310.

Dallas county,

Additional county criminal court, CCP 52—159b.

Defined, Prob.Code 3.

Probate courts, Prob.Code 3.

El Paso county, additional court, 1970—141.1.

Executors and Administrators, generally, this index.

Guardian and ward,

Jurisdiction, Prob.Code 4.

Minors and incompetents, appointment of guardian, Prob.Code 4.

Non-resident, validation of acts, supporting orders, Prob.Code 125.

Persons receiving funds from governmental sources, appointment, Prob.Code 4.

Heirship, actions to determine. Executors and Administrators, generally, this index.

Hill county, original jurisdiction in eminent domain, 1970—333a.

Judges. County Judges, generally, this index. Jurisdiction,

Court at law of Potter county, concurrent jurisdiction, 1970—311a.

Crockett county, 1970—310.

El Paso county, additional court, 1970—141.1.

Eminent domain, Hill county, 1970—333a.

Hill county, eminent domain, 1970—333a.

Potter county, concurrent jurisdiction, 1970—311a.

Probate proceedings, Prob.Code 4.

Taylor county court at law, 1970—343.

Jury trial on probate matters, Prob.Code 21.

Letters testamentary and of administration and guardianship, grant, Prob.Code 4.

Mentally retarded persons, jurisdiction, 3871b.

Motion for new trial, time, (RCP) Rule 329-a.

New trial, motion, time, (RCP) Rule 329-a.

Nueces county, creation of county court at law No. II, 1970—339A.

Potter county,

Court at law, 1970—311a.

Probate proceedings,

Appeals, Prob.Code 28.

Certiorari, revision and correction, Prob. Code 30.

Citation and notices, powers, Prob.Code 33. Code to govern, Prob.Code 2.

Correction, Prob.Code 30.

Costs, security for, rules governing, Prob. Code 12.

Judgments and decrees, rendition in open court, Prob.Code 23.

Jurisdiction, Prob.Code 4.

Orders, rendition in open court, Prob.Code 23.

Revision, Prob.Code 30.

Trial by jury of probate matters, Prob.Code 21.

Remand of case, copy of order filed, (RCP) Rule 237-a.

## COUNTY COURTS—Cont'd

Reporters,

Salaries, 2327d.

Taylor county, court at law, created, 1970—343.

Terms,

El Paso county, 1970—141.1.

Wills,

Admission to probate, order for, Prob.Code 89.

Probate, Prob.Code 4.

## COUNTY CRIMINAL COURTS

Judges,

Minimum and maximum salaries, 3838i.

## COUNTY FINANCES

Bonds,

Coastal counties, recreational purposes, 6079c—1.

Road building, authorization, 752a.

Roads, islands for recreational purposes, 6079c—1.

## COUNTY JUDGES

Absence, hearings, probate matters, setting by county clerk, Prob.Code 20.

Application to subject property to mineral lease, etc., powers and duties, Prob.Code 371.

Attachment,

Enforcement of orders by, Prob.Code 24.

Property, issuance of writ, Prob.Code 26.

Bexar county, additional compensation, member of juvenile board, 3912e—5a.

Bonds,

Approval, partition of community property, Prob.Code 385.

Approval on withdrawal of money from county clerk as custodian of minor, etc. without guardian, Prob.Code 144.

Liability on, Prob.Code 36.

Call of dockets, probate proceedings, Prob.Code 19.

Cass county, juvenile board, 5139N.

Claim docket, call, probate proceedings, Prob. Code 19.

Compensation, 5139 note.

Juvenile board member,

Second 38th Judicial District, 5139H—2.

Lubbock county, additional compensation, 3912e—5b.

Cross-interrogatories, probate proceedings, filing, Prob.Code 22.

Counties of 500,000 or more, judge of county court at law, 1969a—3.

Damages, liability on official bond for, Prob. Code 36.

Defined, Prob.Code 3.

Discharge, persons receiving money from county clerk as custodian of minor, etc., without guardian, Prob.Code 144.

Duties and responsibilities, probate proceedings, Prob.Code 36.

El Paso county, additional court at law, 1970—141.1.

Estates of minors or incompetents, powers regarding, Prob.Code 136.

Executors and Administrators, this index.

Guardian and ward,

Annual accounts, powers and duties, Prob. Code 401.

Application for,

Appointment, causing commencement of proceedings for, Prob.Code 112.

Authority to make contributions, powers and duties, Prob.Code 398.

Investments in real property, powers and duties, Prob.Code 393.

Duties relating to guardians, Prob.Code 36.

Temporary guardian, appointment, Prob. Code 131.

Imprisonment, enforcement of orders by, Prob. Code 24.

**COUNTY JUDGES—Cont'd**

Juvenile board,  
 Cass county, 5139N.  
 Second 38th Judicial District, 5139H—2.  
 Titus county, 5139o.  
 Waller county, 5139k.  
 Lubbock County Court,  
 Additional compensation, 3912e—5b.  
 Mineral leases, powers and duties, etc., Prob.  
 Code 367.  
 Officers of court, duties relating to, Prob.Code  
 36.  
 Orders, enforcement, Prob.Code 24.  
 Partition of ward's estate in real property,  
 powers and duties, etc., Prob.Code 388.  
 Pooling or unitization of mineral leases, pow-  
 ers and duties, etc., Prob.Code 369.  
 Potter county, county court at law, 1970—311a.  
 Probate docket,  
 Call, Prob.Code 19.  
 Contents, Prob.Code 13.  
 Probate minutes, approval and signing, Prob.  
 Code 23.  
 Receiver, endangered estate of minor or in-  
 competent, appointment for, Prob.Code 136.  
 Record book, probate docket, Prob.Code 13.  
 Salaries,  
 See, also, Compensation, ante this head.  
 Minimum and maximum, 3883i.  
 Taylor county court at law, jurisdiction, 1970—  
 343.  
 Temporary administrator or guardian, appoint-  
 ment, Prob.Code 131.  
 Waller county, juvenile board, 5139k.  
 Warrant, issuance on information that person  
 of unsound mind or habitual drunkard is  
 without guardian, Prob.Code 416.  
 Wills, complaint for delivery, duties, Prob.  
 Code 75.

**COUNTY JUVENILE BOARDS**

Bexar county, additional compensation, county  
 judge, 3912e—5a.  
 Bowie county, 5139M.  
 Fannin county, 5139L.  
 Harrison county, established, 5139J.  
 Particular districts,  
 38th Judicial District, 5139H—1.  
 63rd Judicial District, 5139H—1.  
 Rusk county, established, 5139J.  
 Waller county, 5139k.

**COUNTY LIBRARIES**

Bonds, authority to issue, 1696a.  
 Commissioners court, authority, 1696a.  
 Constitutional permanent improvement fund,  
 payment, 1696a.  
 Power of commissioners court, 1696a.

**COUNTY MUTUAL INSURANCE**

Adjoining counties, authority to do business,  
 Ins.Code 17.16.  
 Applicant, money collected, Ins.Code 17.03.  
 Assessment, by-laws provisions, Ins.Code 17.06.  
 Automobile insurance, Ins.Code 17.25.  
 By-laws,  
 Contingent liability of policyholders, Ins.  
 Code 17.25.  
 Conservation, Ins.Code 21.28.  
 Contingent liability, policyholders, Ins.Code  
 17.25.  
 Exceptions from law, Ins.Code 5.54, 17.02.  
 Exemption from insurance laws, Ins.Code 17.22.  
 Fire insurance, Ins.Code 17.25.  
 Formation of company, Ins.Code 17.02.  
 Former companies, effect of law, Ins.Code 17.02.  
 Free surplus investments, Ins.Code 17.11.  
 Hazards insured against, Ins.Code 17.25.  
 Liquidation, Ins.Code 21.28.  
 Location of business, Ins.Code 17.16.  
 Losses, policyholders' liability, Ins.Code 17.09.

**COUNTY MUTUAL INSURANCE—Cont'd**

Minimum insurance requirement, exemption,  
 Ins.Code 21.45.  
 Policy forms, Ins.Code 17.25.  
 Policyholders' liabilities, Ins.Code 17.09.  
 Contingent liability, Ins.Code 17.25.  
 Premiums, provisions in by-laws, Ins.Code 17.06.  
 Prior permits, effect of law, Ins.Code 17.03.  
 Rehabilitation or reorganization, Ins.Code 21.28.  
 Surplus,  
 Insurance written governed by, Ins.Code  
 17.16.  
 Uniform policy forms, Ins.Code 17.25.  
 Windstorm insurance, Ins.Code 17.25.

**COUNTY OFFICERS**

Compensation,  
 Minimum and maximum salaries, 3883i.

**COUNTY SURVEYORS**

Exemption from registration law, 5282a.

**COUNTY TREASURER**

Compensations,  
 Minimum and maximum salaries, 3883i.  
 Costs of proceeding against estates of incom-  
 petents, payment from, Prob.Code 247.

**COURT**

Defined, Prob.Code 3.

**COURT OFFICERS**

County judges, duties relating to, Prob.Code 36.

**COURTHOUSES**

Citation and notices, posting at, Prob.Code 33.

**COURTS**

Defined, liquidation of insurance companies, Ins.  
 Code 21.28.

**COURTS OF CIVIL APPEALS**

Clerks, statement of facts received, duty, (RCP)  
 Rule 389-a.  
 Justices,

Filing fee for election, Elec.Code 13.15.  
 Potter county, county court at law, 1970—311a.  
 Statement of facts, duty of clerk, (RCP) Rule  
 389-a.

**COURTS OF CRIMINAL APPEALS**

Commissioners, salary, 6819a—10.

**CREDIT INSURANCE**

Application for insurance, Ins.Code 3.53.

**CRIMES AND OFFENSES**

Below cost sales, groceries, PC 1111m.  
 Break and enter, coin-operated machines, PC  
 1402a.  
 Coin-operated machines, breaking and entering,  
 PC 1402a.  
 Deaf persons, finger alphabet cards inducing  
 sales, PC 1137m.  
 Dogs running at large, 2372m.  
 Excise tax on radios and television sets, mis-  
 handling, 70477—1.  
 Fictitious bill of lading or bill of sale, PC 1690b.  
 Finger alphabet cards inducing sales, deaf per-  
 sons, PC 1137m.  
 Fishing with electricity producing apparatus,  
 PC 924a.  
 Hypodermic syringe, possession, PC 725b.  
 Ice boxes or refrigerators, abandonment in  
 places accessible to children, PC 1721A.  
 Insurance Securities Law, fraud, 580—30.  
 Intoxicating liquors, possession near athletic  
 events, PC 666—25b.  
 Lewd publications, tie-in sales, PC 527a.  
 Life insurance counselor, violation of License  
 Law, Ins.Code 21.07—2.  
 Motor vehicles, operating while under influence  
 of narcotics, PC 802a—1.  
 Narcotics, operating motor vehicle while under  
 influence, PC 802a—1.

**CRIMES AND OFFENSES—Cont'd**

Opium pipe, possession, PC 725h.  
 Securities law, penalties, 579—30.  
 Sexual handling of infant, application of law, PC 1147.  
 Sweet potato inspection, interference, 118c—3.  
 Tie-in sales, lewd publications, PC 527a.  
 Transporting goods under fictitious bill of lading or bill of sale, PC 1690b.

**CRIMINAL DISTRICT ATTORNEYS**

Assistants,  
 Harrison county, 326k—33.  
 Randall county, 326k—36.  
 Cass county, 326k—32.  
 Compensation,  
 Cass county, 326k—32.  
 Galveston county, 326k—28.  
 Minimum and maximum salaries, 3883l.  
 Randall county, 326k—36.  
 Galveston county, powers and duties, 326K—28.  
 Harrison county, 326k—33.  
 Hidalgo county, 139th District Court, 199 (139).  
 Polk county, office created, 326k—34.  
 Randall county, 326k—36.  
 Secretary, Cass county, 326k—32.  
 Term of office,  
 Galveston county, 326K—28.

**CRIMINAL DISTRICT COURTS**

Bexar county, 199—37.  
 Jefferson county,  
 Sit at Port Arthur, CCP 52—160a.  
 Judges,  
 Bexar county, 199—37.  
 Salaries,  
 Bexar county, 199—37.

**CROCKETT COUNTY**

County court, jurisdiction, 1970—310.  
 District court, jurisdiction, 1970—310.

**CROPS**

Executors and administrators, sales, Prob. Code 334.

**CURATORS**

Guardian and ward, non-residence, transcript evidencing appointment, Prob.Code 124.

**CUSTODY**

Wills probated, county clerk, Prob.Code 90.

**DALLAS COUNTY**

County Courts,  
 Additional county criminal court, CCP 52—159b.  
 Criminal District Court No. 3, CCP 52—24c.  
 District court, special criminal district court, CCP 52—24b.  
 Water supply and control district, directors, 8280—148.

**DAMAGES**

Bond for payment by complainant for writ of attachment, Prob.Code 26.  
 County judges, liability on official bond for, Prob.Code 36.  
 Executors and Administrators, this index.  
 Wills, refusal to deliver on death of testator, Prob.Code 75.

**DAMS**

Sabine River, authority, 8280—133.  
 West Central Texas Municipal Water District, 8280—162.  
 Yorks Creek Improvement District, 8280—167.

**DAUGHTERS OF THE CONFEDERACY**

Admission fees, state property, 5438d.

**DAUGHTERS OF THE REPUBLIC OF TEXAS**

Admission fees, state property, 5438d.

**DEAD BODIES**

Removal, counties of 250,000 or more, CCP 989a, § 8.

**DEAF AND DUMB**

Finger alphabet cards, inducing sales, PC 1137m.  
 Maintenance, care and education, 2675c—1.

**DEALERS**

Action for commission, securities law, 579—35.  
 Defined, 579—2.  
 Insurance Securities Law, 580—2.  
 Insurance Securities Act, this index.  
 Securities Act, this index.

**DEATH**

Devisee or legatee prior to testator, Prob.Code 68.  
 Executors and Administrators, this index.  
 Guardian and Ward, this index.  
 Investigations by medical examiner, counties of 250,000 or more, CCP 989a, § 6.  
 Joint owner of property, descent and distribution, effect, Prob.Code 46.  
 Life insurance beneficiary bringing about death of insured, effect on descent and distribution, Prob.Code 41.  
 Limited partnership,  
 General partner, 6132a, § 21.  
 Limited partner, 6132a, § 22.  
 Reports, counties of 250,000 or more, CCP 989a, § 7.  
 Simultaneous, passage of title on descent and distribution, Prob.Code 47.  
 Wills, this index.

**DEBTOR AND CREDITOR**

Group life insurance, debtors, Ins.Code 3.50.

**DEBTORS**

Executors and Administrators, this index.  
 Guardian, disqualification to serve as, Prob.Code 110.  
 Small estates, affidavit, furnishing copy to, Prob.Code 137.

**DEBTS**

Descent and distribution,  
 Community estate, chargeable against, Prob.Code 45.  
 Payment, Prob.Code 37.  
 Executors and Administrators, this index.  
 Guardian and Ward, this index.

**DECEDENTS' ESTATES**

Descent and Distribution, generally, this index.  
 Executors and Administrators, generally, this index.  
 Wills, generally, this index.

**DECISIONS**

See Judgments and Decrees, generally, this index.

**DECREES**

See Judgments and Decrees, generally, this index.

**DEED RECORDS**

Wills, foreign wills, filing and recording in, Prob.Code 96.

**DEEDS AND CONVEYANCES**

See Executors and Administrators, this index.

**DEEDS OF ACQUITTANCE**

Lands lying across water courses or navigable streams, validation, 5414a—1.

**DEFECTS**

Pleading, effect, Prob.Code 9.

**DEFINITIONS**

Generally, Prob.Code 3.  
 Authorized corporate surety, Prob.Code 3.  
 Child, Prob.Code 3.

**DEFINITIONS—Cont'd**

Children, Prob.Code 67.  
 Claims, Prob.Code 3.  
 Common drunkard, Prob.Code 3.  
 Corporate fiduciary, Prob.Code 3.  
 County court, Prob.Code 3.  
 County judge, Prob.Code 3.  
 Court, Prob.Code 3.  
 Devise, Prob.Code 3.  
 Devisee, Prob.Code 3.  
 Distributee, Prob.Code 3.  
 Docket, Prob.Code 3.  
 Estate, Prob.Code 3.  
 Exempt property, Prob.Code 3.  
 Habitual drunkard, Prob.Code 3.  
 Heirs, Prob.Code 3.  
 Idiots, Prob.Code 3.  
 Incompetents, Prob.Code 3.  
 Independent executor, Prob.Code 3.  
 Insane persons, Prob.Code 3.  
 Interest in land, Prob.Code 367.  
 Interested persons, Prob.Code 3.  
 Judge, Prob.Code 3.  
 Land, Prob.Code 367.  
 Legacy, Prob.Code 3.  
 Legatee, Prob.Code 3.  
 Lien, Prob.Code 3.  
 Life insurance company, Prob.Code 390.  
 Lunatics, Prob.Code 3.  
 Mineral development, Prob.Code 367.  
 Minors, Prob.Code 3.  
 Minutes, Prob.Code 3.  
 Mortgage, Prob.Code 3.  
 Net estate, Prob.Code 3.  
 Non compos mentis, Prob.Code 3.  
 Person, Prob.Code 3.  
 Personal property, Prob.Code 3.  
 Personal representative, Prob.Code 3.  
 Persons interested, Prob.Code 3.  
 Persons of unsound mind, Prob.Code 3.  
 Probate Court, Prob.Code 3.  
 Probate judge, Prob.Code 3.  
 Probate matter, Prob.Code 3.  
 Probate proceedings, Prob.Code 3.  
 Proceeding in probate, Prob.Code 3.  
 Proceedings for probate, Prob.Code 3.  
 Property, Prob.Code 3, 367.  
 Real property, Prob.Code 3.  
 Representative, Prob.Code 3.  
 Will, Prob.Code 3.

**DELINQUENT CHILDREN**

Jurisdiction, domestic relations court for Hutchinson county, 2338—6.

**DELINQUENT TAXES**

Cost of publishing notice, collection, 7345b—2.  
 Independent school districts, collection by attorney, 2802—1.

**DELIVERY**

Citations and notices, personal service, Prob. Code 33.  
 Wills, this index.

**DEPARTMENT**

Defined, Mentally Retarded Persons Law, 3871b.

**DEPARTMENT OF AGRICULTURE**

Special Department of Agriculture Fund, 4386c.  
 Deposits with state treasury, 135b—1, § 10.

**DEPARTMENT OF PUBLIC SAFETY**

Approval of lighting devices, 6701d, § 108B.  
 License and weight division, arrest, motor carrier violation, PC 1690b.  
 Motor vehicle lighting equipment, approval, 6701d, § 108A.  
 Peace officers, power of arrest, motor carriers violation, PC 1690b.  
 Public Safety Director, generally, this index.  
 Regulations, lighting devices, 6701d, § 108B.

Tex.St.Supp. '56—63

**DEPARTMENT OF PUBLIC SAFETY—Cont'd**

Review, disapproval of lighting devices, 6701d, § 108B.  
 Sales, motor vehicle lighting equipment, approval, 6701d, § 108A.

**DEPARTMENT OF PUBLIC WELFARE**

Mentally Retarded Persons, generally, this index.  
 Social security benefits for state employees, administration, 695h.

**DEPENDENT CHILDREN**

Jurisdiction, domestic relations court for Hutchinson county, 2338—6.

**DEPOSITIONS**

Parties, notice to examine and sign, (RCP) Rule 209.  
 Probate proceedings, notice of intention to take, service by posting, Prob.Code 22.  
 Wills, proof of written will produced in court by, Prob.Code 84.  
 Witnesses, party to action, notice to examine and sign, (RCP) Rule 209.

**DEPOSITORIES**

Navigation district revenue, 8244a.  
 Pink Bollworm Law, deposits by cotton growers, 82a.  
 Yorks Creek improvement district funds, 8280—167.

**DEPOSITS**

Executors and Administrators, this index.  
 Wills,  
     During testator's lifetime, Prob.Code 71.  
     Probated wills with county clerk, Prob.Code 90.

**DEPOSITS IN BANKS**

Navigation district revenue, 8244a.  
 Securities Law, required by Secretary of State, 579—7.  
 Yorks Creek improvement district funds, 8280—167.

**DESCENT AND DISTRIBUTION**

Generally, Prob.Code 37—47.  
 Accident insurance, simultaneous death of insured and beneficiary, effect, Prob.Code 47.  
 Account, value of property brought into hotch-potch at time of advancement, Prob.Code 44.  
 Administrators. Executors and Administrators, generally, this index.  
 Adopted child, inheritance from natural or adoptive parents, Prob.Code 40.  
 Advancement, bringing into hotch-potch, Prob. Code 44.  
 After-adopted children, Prob.Code 67.  
 After-born children, Prob.Code 67.  
 Agreements, joint owners of property, effect, Prob.Code 46.  
 Aliens, effect, Prob.Code 41.  
 Beneficiaries, simultaneous death, effect, Prob. Code 47.  
 Brothers, intestate leaving or not leaving husband or wife, Prob.Code 38.  
 Care of property of estates, Prob.Code 230.  
 Certiorari, revise or correct county court probate proceedings, Prob.Code 30.  
 Children,  
     After-born or after-adopted, Prob.Code 67.  
     Defined, Prob.Code 67.  
     Posthumous, Prob.Code 66.  
     Pretermitted by will, Prob.Code 66, 67.  
 Children and their descendants, intestate leaving or not leaving husband or wife, Prob. Code 38.  
 Claims, defined, Prob.Code 3.  
 Collateral kindred, whole and half blood, Prob. Code 41.  
 Commissioners. Partition and distribution of estate, post.

## DESCENT AND DISTRIBUTION—Cont'd

Community property, Prob.Code 45, 155.  
 Application for community administration, contents, Prob.Code 162.  
 Debts chargeable against, Prob.Code, 45.  
 Partition and distribution of estate, post.  
 Simultaneous death, disposal, Prob.Code 47.  
 Surviving spouse as community administrator, Prob.Code 161.  
 Contracts of insurance, simultaneous death, providing for disposition of property on, effect, Prob.Code 47.  
 Contribution between devisees and legatees, Prob.Code 66, 67.  
 Conveyances, simultaneous death, providing for disposition of property on, Prob.Code 47.  
 Convicted persons, rights, Prob.Code 41.  
 Correction of county court probate proceedings, Prob.Code 30.  
 Corruption of blood, Prob.Code 41.  
 Course of, intestate leaving no husband or wife, Prob.Code 38.  
 Death,  
   Joint owner of property, effect, Prob.Code 46.  
   Simultaneous, passage of title, Prob.Code 47.  
 Debts,  
   Community estate, chargeable against, Prob.Code 45.  
   Payment, Prob.Code 37.  
 Determination of intestacy, Prob.Code 83.  
 Devise, property obtained by, Prob.Code 39.  
 Distinction because of source of property, Prob.Code 39.  
 Distributees, small estates, Prob.Code 137.  
 Executors and Administrators, generally, this index.  
 Forfeiture of estate, Prob.Code 41.  
 Gifts,  
   Gratuitous inter vivos transfer as, Prob.Code 44.  
   Property derived by, Prob.Code 39.  
 Guardianships, application of law to, Prob.Code 108.  
 Half blood, heirs of, Prob.Code 41.  
 Hearing, Partition and distribution of estate, post.  
 Heirship, actions to determine. Executors and Administrators, this index.  
 Hotch-potch, advancements, bringing or placing into, Prob.Code 44, 377.  
 Illegitimate children, Prob.Code 41, 42.  
 Inheritance by and from adopted child, Prob.Code 40.  
 Instruments, simultaneous death, providing for disposition of property on, effect, Prob.Code 47.  
 Intestacy,  
   Passage and vesting of title on, Prob.Code 37.  
   Persons who take on, Prob.Code 38.  
 Joint owners, simultaneous death, effect, Prob.Code 47.  
 Joint ownership of property, Prob.Code 46.  
 Joint tenancies abolished, Prob.Code 46.  
 Life insurance, simultaneous death of insured and beneficiary, effect, Prob.Code 47.  
 Natural parent of adopted child, inheritance from and through prohibited, Prob.Code 40.  
 Ownership of property, joint, Prob.Code 46.  
   Simultaneous death, effect, Prob.Code 47.  
 Parents,  
   Inheritance from adopted child, Prob.Code 40.  
   Intestate leaving or not leaving husband or wife, Prob.Code 38.  
 Partition and distribution of estate,  
   Generally, Prob.Code 373-387.  
   Action by court,  
     Commissioner's return of report, Prob.Code 380.

## DESCENT AND DISTRIBUTION—Cont'd

Partition and distribution of estate—Cont'd  
 Action by court—Cont'd  
   Community property, Prob.Code 385.  
   Determination, Prob.Code 377.  
 Advancements,  
   Bringing into hotch-potch, Prob.Code 44.  
 Application for,  
   Community property, Prob.Code 385.  
   Contents, Prob.Code 373.  
   Persons entitled to file, Prob.Code 373.  
   Time for filing, Prob.Code 373.  
 Application of provisions relating to sales of real estate, Prob.Code 381.  
 Attorneys,  
   Appointment to represent non-residents, Prob.Code 376.  
   Compensation, Prob.Code 376.  
 Bond,  
   Community property, Prob.Code 385.  
   Foreign guardian of minor distributee, Prob.Code 383.  
 Citation and notices,  
   Damages for neglect to deliver property, Prob.Code 384.  
   Executor or administrator, Prob.Code 375.  
   Interested persons, Prob.Code 374.  
   Service, Prob.Code 374.  
 Commissioners,  
   Appointment, Prob.Code 380, 382.  
   Fees, Prob.Code 380.  
   Procedure, Prob.Code 380.  
   Report, Prob.Code 380.  
   Writ, duties, Prob.Code 380.  
 Community property, Prob.Code 175, 385.  
   Action by court, Prob.Code 385.  
   Application for, Prob.Code 385.  
   Bond, Prob.Code 385.  
   Lien on property delivered, Prob.Code 385.  
 Complaint, damages for neglect to deliver property, Prob.Code 384.  
 Contents of application for, Prob.Code 373.  
 Costs, fees taxed as, Prob.Code 380.  
 County court, jurisdiction, Prob.Code 4.  
 Decree,  
   Requisites, Prob.Code 378.  
   Vesting title, Prob.Code 380.  
 Descendants of persons taking per capita, Prob.Code 43.  
 Distributee, purchase of property at sale, Prob.Code 381.  
 Estate consisting only of money or debts, Prob.Code 379.  
 Exceptions to report of commissioners, hearing, Prob.Code 380.  
 Exhibits and accounts by executor or administrator, filing, Prob.Code 375.  
 Expenses, Prob.Code 387.  
 Facts, ascertainment upon hearing application, Prob.Code 377.  
 Final settlement of account, Prob.Code 408.  
 Findings by court, Prob.Code 381.  
 Foreign guardian,  
   Appointment, proof, Prob.Code 383.  
   Minor distributee, delivery of property to, Prob.Code 383.  
 Guardian ad litem,  
   Appointment, compensation, Prob.Code 376.  
   Delivery of property for minor distributee to, Prob.Code 383.  
 Hearing,  
   Application, facts to be ascertained, Prob.Code 377.  
   Complaint for damage for neglect to deliver property, Prob.Code 384.  
   Exceptions and objections to report of commissioners, Prob.Code 380.

**DESCENT AND DISTRIBUTION—Cont'd****Partition and distribution of estate—Cont'd**

- Hotch-potch, advancements, bringing into, Prob.Code 44, 377.
  - Independent administration under will, Prob.Code 150.
  - Insane persons, guardian ad litem, appointment, Prob.Code 376.
  - Jointly owned property, Prob.Code 386.
  - Jurisdiction of county court, Prob.Code 4.
  - Lien, community property delivered, Prob.Code 385.
  - Minor,
    - Distributee, delivery of property to guardian, Prob.Code 383.
    - Guardian ad litem, appointment, Prob.Code 376.
  - Money or debts, Prob.Code 379.
  - Non-residents,
    - Appointment of attorney to represent, Prob.Code 376.
    - Minor distributee, delivery of property, method, Prob.Code 383.
  - Objections to report of commissioners, hearing, Prob.Code 380.
  - Order for, effect upon claims, Prob.Code 318.
  - Order of sale,
    - Property incapable of division, Prob.Code 381.
    - Property located in another county, Prob.Code 382.
  - Orders, liability for damages for neglect to deliver property, Prob.Code 384.
  - Payment of estates into state treasury. Executors and Administrators, this index.
  - Personal service, citation, Prob.Code 374.
  - Persons entitled to, determination, Prob.Code 377.
  - Persons who may apply for, Prob.Code 373.
  - Property,
    - Damages for neglect to deliver, Prob.Code 384.
    - Delivery, Prob.Code 383.
    - Community property, lien, Prob.Code 385.
  - Property capable of division, delivery, order of, Prob.Code 380.
  - Property incapable of division, Prob.Code 381.
    - Application of provisions relating to sale, Prob.Code 381.
    - Commissioners, appointment, Prob.Code 382.
    - Finding by court, Prob.Code 381.
    - Order of sale, Prob.Code 381.
    - Purchase by distributee at sale, Prob.Code 381.
    - Sale, Prob.Code 382.
  - Publication, citation, Prob.Code 374.
  - Purchase by distributee at sale, Prob.Code 381.
  - Return of report of commissioners, action of court on, Prob.Code 380.
  - Sale of property,
    - Application of provisions, Prob.Code 381.
    - Order for, Prob.Code 381.
    - Property located in another county, Prob.Code 382.
  - Suits, creditor on bond, community property, Prob.Code 385.
  - Unknown parties, appointment of attorney to represent, Prob.Code 396.
  - Withdrawn from administration, Prob.Code 267.
  - Writ, requisites, issuance, service, etc., Prob.Code 380.
- Passage of title on,
- Intestacy, Prob.Code 37.
  - Simultaneous death, Prob.Code 47.
- Paternal kindred, intestate leaving no husband or wife, Prob.Code 38.

**DESCENT AND DISTRIBUTION—Cont'd**

- Per capita and per stirpes, determination, Prob.Code 43.
- Persons not in being, effect, Prob.Code 41.
- Persons who take upon intestacy, Prob.Code 38.
- Posthumous children,
  - Pretermitted by will, Prob.Code 66, 67.
  - Rights under will, Prob.Code 66, 67.
- Pretermitted children, Prob.Code 66, 67.
- Property obtained by devise, Prob.Code 39.
- Property of estates, care of, Prob.Code 230.
- Revision of county court probate proceedings, Prob.Code 30.
- Simultaneous death, passage of title on, Prob.Code 47.
- Sisters, intestate leaving or not leaving husband or wife, Prob.Code 38.
- Small estates, Prob.Code 137-144.
  - Final distribution, Prob.Code 143.
- Source of property, distinction because of, Prob.Code 39.
- Subscribing witness to will, right to share of estate apart from will, validity of devise or bequest to, Prob.Code 61.
- Suicide, effect, Prob.Code 41.
- Surviving husband or wife, Prob.Code 38.
- Title, passage on,
  - Intestacy, Prob.Code 37.
  - Simultaneous death, Prob.Code 47.
- Transfer, gratuitous inter vivos transfer as gift, Prob.Code 44.
- Trusts, simultaneous death, providing for disposition of property on, effect, Prob.Code 47.
- Unborn children, Prob.Code 66, 67.
- Value of property brought into hotch-potch at time of advancement, Prob.Code 44.
- Whole blood, heirs of, Prob.Code 41.
- Wills, generally, this index.

**DESTRUCTION**

- Wills, Prob.Code 63.

**DEVISEES**

- See, also, Wills, generally, this index.
- Defined, Prob.Code 3.

**DEVISES**

- See, also, Wills, generally, this index.
- Defined, Prob.Code 3.

**DIRECTORS**

- Atascosa and Frio Counties Improvement District No. 1, 8280-175.
- Bell County Water Control and Improvement District,
  - No. 3, 8280-182.
  - No. 4, 8280-183.
- Bembrook Water and Sewer Authority, 8280-163.
- Boling Municipal Water District, 8280-172.
- City of McAllen Water and Sewer Authority, 8280-177.
- Colorado County Water Control and Improvement District No. 1, 8280-170.
- Dallas County Water Supply and Control District, 8280-148.
- Fort Bend County Water Supply District, 8280-187.
- Haltom City Water Authority, 8280-173.
- Harris County Water Improvement District No. 1, 8280-190.
- Haskell County Water Supply District, 8280-164.
- Jackson County Flood Control District, 8280-131.
- Jackson county water control and improvement district No. 1, 8280-161.
- Jefferson county water control and improvement district No. 10, 8280-166.
- Newton County Water Supply District, 8280-174.



## DIRECTORS—Cont'd

Reagan County Water Supply District, 8280—181.  
 Runnels County Water Improvement District, 8280—176.  
 Sabine River Authority, 8280—133.  
 San Augustine Water Authority, 8280—169.  
 Shelby County Water Supply District, 8280—171.  
 South Main Street Municipal Water District, 8280—180.  
 Sulphur river municipal water district, 8280—165, § 3.  
 Texas agricultural and mechanical college system, leases and easements, 2613a—7.  
 Texas southern university, reserve commission award, agreements authorized, 2643f—1.  
 Travis County Improvement District No. 1, 8280—168.  
 Travis-Williamson County Water Control and Improvement District No. 1, 8280—178.  
 Trinity River Authority, 8280—188.  
 Two Mile Creek Conservation and Reclamation District of Calhoun County, 8280—186.  
 Tyler County Water Control and Improvement District No. 1, 8280—185.  
 Upper Jasper County Water Authority, 8280—184.  
 Water control and improvement district comprising more than 80,000 acres, 7880—38a.  
 Water districts, list of names filed, 8280—7.  
 West Central Texas Municipal Water District, 8280—162.  
 Yorks Creek Improvement District, 8280—167.

## DISABILITIES

Bill of review after removal, minors and insane persons, time for, Prob.Code 31.  
 Minors and insane persons, limitation of actions to cancel will for fraud or forgery after removal, Prob.Code 93.  
 Revision or correction of probate proceedings after removal, minors and insane persons, time for, Prob.Code 30.

## DISABILITY COMPENSATION

Navigation districts, officers and employees, 8227a.

## DISCHARGE

See Executors and Administrators, this index.

## DISCONTINUANCE

Cities and towns of territory within corporate limits, 973, 973a, 975, 976, 1266.

## DISEASES

Handling of food, persons infected, PC 705d.

## DISTRIBUTE

Defined, Prob.Code 3.

## DISTRIBUTION

See Descent and Distribution, generally, this index.

## DISTRIBUTORS

Defined, radios and television sets, 7047—1.

## DISTRICT ATTORNEYS

Assistants,  
 109th judicial district, appointment, 326k—31.  
 Domestic relations court, Hutchinson county, 2338—6.  
 Howard County, investigator authorized, 326k—27.  
 Investigators,  
 Appointment,  
 Midland County, 326k—30.  
 109th judicial district, 326k—31.  
 118th Judicial District, 326k—27.  
 Howard county, 326k—27.  
 Midland county, appointment of investigator, 326k—30.

## DISTRICT ATTORNEYS—Cont'd

Particular districts,  
 72nd judicial district, 140th judicial district, 199 (140).  
 75th Judicial District, 199(75).  
 88th Judicial District, 199(88).  
 140th judicial district, 199(140).  
 142nd Judicial District, 199(142).  
 Payment of estates into state treasury, duties, Prob.Code 432, 433.  
 Salaries,  
 70th Judicial District, 326k—35.  
 105th Judicial District, 326k—29.  
 Second 9th judicial district, 199(9).

## DISTRICT CLERKS

Counties less than 20,000, maximum compensation, 3883h.  
 Domestic relations court, Hutchinson county, 2338—6.  
 Fee basis, maximum compensation, 3883h.  
 Hutchinson county, domestic relations court, 2338—6.  
 Jefferson county, 136th judicial district, 199 (136).  
 Judicial districts,  
 75th Judicial District, 199(75).  
 88th Judicial District, 199(88).  
 112th Judicial District, 199(112).  
 136th judicial district, 199(136).  
 145th Judicial District, 199(145).  
 153rd judicial district, 199(153).  
 Lubbock county, 140th judicial district court, 199(140).  
 Salaries,  
 Counties less than 20,000, maximum compensation, 3883h.  
 Minimum and maximum, 3883i.  
 Second 25th judicial district court, 199(25).  
 Tarrant county, 153rd judicial district, 199(153).

## DISTRICT COURTS

Administration of community property,  
 Creditor, action on bond against survivor and sureties, Prob.Code 172.  
 Proceedings, Prob.Code 175.  
 Angelina county, 199(2).  
 145th Judicial District, 199(145).  
 Appeals,  
 Jury trial of probate matters, Prob.Code 21.  
 Probate matters, Prob.Code 5.  
 Appeals, probate matters,  
 Right of appeal to, Prob.Code 28.  
 Bexar county, 199(37).  
 Special criminal district court, CCP 52—24b.  
 Special district court, CCP 52—24b.  
 Bowie county, term of court, 199(102).  
 Cameron County, 138th District Court, 199 (138).  
 Chambers county, 75th Judicial District, 199 (75).  
 Cherokee county, 199(2).  
 145th Judicial District, 199(145).  
 Colorado county,  
 Additional district court, 199(25).  
 Second 25th judicial district court, 199(25).  
 Corporations,  
 Action for involuntary dissolution, BusCorp 7.01.  
 Appeal, disapproval by Secretary of State, BusCorp 9.04.  
 Involuntary dissolution, appointment of receiver to rehabilitate corporation, Bus Corp 7.05.  
 Counties composing,  
 105th Judicial District, 199(105), § 1.  
 138th District, 199(138).  
 143rd Judicial District, 199(143).  
 Crockett county, jurisdiction, 1970—310.

**DISTRICT COURTS—Cont'd**

Dallas county,  
 Criminal District Court No. 3, CCP 52—24c.  
 Special criminal district court, CCP 52—24b.  
 Executions, laws regulating, Prob.Code 25.  
 Executors and Administrators, this index.  
 Expiration of term, continuance of trial, (RCP) Rule 330, subd. j.  
 Foreign corporations,  
 Decree of revocation, filing, BusCorp 8.17.  
 Revocation of certificate of authority, Bus Corp 8.16.  
 Gonzales county,  
 Creation of additional district court, 199(25).  
 Second 25th judicial district court, 199(25).  
 Guadalupe county,  
 Additional district court, 199(25).  
 Second 25th judicial district court, 199(25).  
 Interpreters in counties bordering on International Boundaries,  
 Appointment and salary, 3737d—1.  
 Jefferson county, 136th judicial district, 199(136).  
 Judges,  
 Appointment, 140th judicial district, 199(140).  
 Compensation. Salaries, generally, post.  
 Dallas county, 199(14).  
 Criminal District Court No. 3, CCP 52—24c.  
 Midland county, 142nd District Court, 199(142).  
 Particular districts,  
 105th judicial district, 199(105), §§ 2, 3, 5b.  
 136th district court, 199(136).  
 145th Judicial District, 199(145).  
 Salaries,  
 Counties comprising part of judicial district, 6819a—11.  
 Counties of 600,000 or more, 3912e—4c.  
 County juvenile board member, 5139b.  
 Second 9th judicial district, 199(9).  
 Second 25th judicial district, 199(25).  
 Second 38th Judicial District, juvenile board, 5139H—2.  
 Transfer of cases,  
 Lubbock county, 199(140).  
 Jurisdiction,  
 Corporations, liquidation of assets, Bus Corp 7.06.  
 Crockett county, 1970—310.  
 Probate proceedings, Prob.Code 5.  
 102nd Judicial District, 199(102).  
 105th judicial district,  
 Nueces county court, 199(105), § 1.  
 117th judicial district in Nueces county, 199(105), § 1.  
 136th judicial district, 199(136).  
 140th judicial district, 199(140).  
 142nd Judicial District of Midland County, 199(142).  
 153rd judicial district, 199(153).  
 Second 25th judicial district court, 199(25).  
 Lavaca county,  
 Additional district court, 199(25).  
 Second 25th judicial district court, 199(25).  
 Liberty County, 75th Judicial District, 199(75).  
 Loving County, 143rd District, 199(143).  
 Midland county,  
 Special district court, 199(70).  
 142nd District Court, 199(142).  
 Montgomery county, second 9th judicial district, 199(9).  
 Motions, new trial, (RCP) Rule 329—b.  
 Nacogdoches county, 199(2).  
 145th Judicial District, 199(145).  
 New trial, motion, (RCP) Rule 329—b.

**DISTRICT COURTS—Cont'd**

Particular districts,  
 75th Judicial District, 199(75).  
 88th Judicial District, 199(88).  
 136th judicial district, 199(136).  
 139th District Court, 199(139).  
 142nd District Court, 199(142).  
 145th Judicial District, 199(145).  
 Polk county, second 9th judicial district, 199(9).  
 Port Arthur,  
 58th judicial district, convene at, 199(58, 60).  
 60th judicial district, convene at, 199(58, 60).  
 Red River county, 199(102).  
 Reeves county, 143rd District, 199(143).  
 Remand from federal court, copy of order filed, (RCP) Rule 237—a.  
 Reporters,  
 138th District, 199(138).  
 140th judicial district, 199(140).  
 142nd District Court, 199(142).  
 Review, department of public safety, disapproval of lighting devices, 6701d, § 108B.  
 San Jacinto county, second 9th judicial district, 199(9).  
 Seal,  
 138th District, 199(138).  
 143rd Judicial District, 199(143).  
 Second 9th judicial district, permanent court, 199(9).  
 Second 38th Judicial District, judge, juvenile board, 5139H—2.  
 Special 37th District Court of Bexar County, 199(37).  
 Terms of court,  
 Bowie County, 199(102).  
 Loving County, 199(143).  
 Red River County, 199(102).  
 Reeves County, 199(143).  
 70th District Court, 199(142).  
 102nd Judicial District, 199(102).  
 118th Judicial district, 199(118).  
 136th judicial district, 199(136).  
 138th District, 199(138).  
 139th District, 199(139).  
 140th judicial district, 199(140).  
 142nd District Court, 199(142).  
 143rd Judicial District, 199(143).  
 145th Judicial District, 199(145).  
 153rd judicial district, 199(153).  
 Second 9th judicial district, 199(9).  
 Second 25th judicial district, 199(25).  
 Transfer of causes,  
 Lubbock county, 199(140).  
 138th District, 199(138).  
 139th District, 199(139).  
 Travis county,  
 Appeal from decision of Secretary of State, Securities Law, 579—28.  
 Corporations, appeal from Secretary of State, disapproval, Bus Corp 9.04.  
 Trinity county, second 9th judicial district, 199(9).  
 Tyler County, 88th Judicial District, 199(88).  
 Ward County, 143rd District, 199(143).  
 Willacy County, 138th District Court, 199(138).  
**DISTRICT OFFICERS**  
 Compensation,  
 Minimum and maximum salaries, 3883i.  
**DISTRICTS**  
 Atascosa and Frio Counties Improvement District No. 1, 8280—175.  
 Bonds, guardians, investments in, Prob.Code 389.  
 Defined, noxious weed control district, 135c.  
 Ground Water Conservation District No. 2, 8280—179.  
 Noxious weeds, control and eradication, 135c.

## DISTRICTS—Cont'd

Runnels County Water Improvement District, 8280—176.  
 Water districts,  
     Certified copy of Legislative Act creating, filing, 8280—7.  
     List of directors filed, 8280—7.  
 Yorks Creek Improvement District, 8280—167.

## DIVIDENDS

Exempt from Securities Law, 579—3.  
 Life, health and accident insurance companies, Ins.Code 3.11.  
 Mutual life insurance companies, Ins.Code 11.11, 11.12.

## DIVORCE

Child support fund, cost to maintain, 5142a—1.  
 Decree, mailing to party waiving service, (RCP) Rule 119-a.  
 Jurisdiction, mutual relations court for Hutchinson county, 2338—6.  
 Order of dismissal, mailing to party waiving service, (RCP) Rule 119-a.  
 Service of process, waiver, (RCP) Rule 119.  
 Waiver of service,  
     Mailing copy of decree or order of dismissal, (RCP) Rule 119-a.  
     Memorandum, (RCP) Rule 119.  
 Wills, effect on, Prob.Code 69.

## DOCKETS

Call on, Prob.Code 19.  
 Claim docket, call on, Prob.Code 19.  
 Defined, Prob.Code 3.  
 Judge's probate docket, Prob.Code 13.  
     Call on, Prob.Code 19.  
 Transcript of entries on transfer of action to determine heirship, Prob.Code 51.

## DOCUMENTS

Ancient documents, evidence, certified copies, 3725.

## DOGS

Rabies epidemic, counties, 2372m.

## DOMESTIC RELATIONS COURTS

Hutchinson county, creation and jurisdiction, 2338—6.  
 Judges, minimum and maximum salaries, 3883i.

## DRAINAGE DISTRICTS

Addition of territory, 8176b.  
 Certified copy of Legislative Act, filing, 8280—7.  
 Commissioner's salary, counties over 30,000, 8120.  
 Counties over 30,000, commissioner's salary, 8120.

## DRUNKARDS

See Habitual Drunkards, generally, this index.

## DUMPING GROUNDS

Acquisition by counties, 2351g.

## EARNED SURPLUS

Definition, BusCorp 1.02.

## EASEMENTS

Board for lease, easements on state lands, 5382d, § 13a.  
 Executors and administrators, sales, Prob.Code 351.  
 Prison board, authority to grant, 6203d.  
 State lands, power of board for lease, 5382d, § 13a.  
 Texas agricultural and mechanical college system, power, 2613a—7.  
 Yorks Creek Improvement District, 8280—167.

## EDUCATION

Deaf and blind persons, 2675c—1.  
 Guardian and Ward, this index.

## EDUCATION—Cont'd

Minor or incompetent, receivers, expenditures for, Prob.Code 136.

## EDUCATIONAL ORGANIZATIONS

Contributions, guardian and ward, procedure, Prob.Code 398.

## EFFECTIVE DATE

Probate Code, Prob.Code 2.

## ELECTIONS

See, also, Index in:  
     Volume 9, Elec.Code.  
 Abolition of independent school district, frequency of election, 2767—1.  
 Annexation of territory to,  
     Drainage districts, 8176b.  
     Junior college district, 2815s—1.  
 Bond issues,  
     Unexpended portion of proceeds, disposition, 703a.  
 Cities, towns and villages,  
     Bond issues,  
         Unexpended portion of proceeds, disposition, 703a.  
         Water supply contracts, 1109g.  
     Congressman at large, filing fee, Elec.Code 13.15.  
     Constitutional amendments, form and number of questions, Elec.Code 6.07.  
     Cotton growers, Pink Bollworm Law, 82a.  
     County committee, estimate of primary expenses, Elec.Code 13.08.  
     Criminal district attorney,  
         Randall county, 326k—36.  
     Expenditures for investigating water needs in counties, approval, 1644a—1.  
     Filing fee, Elec.Code 13.15.  
     Fresh water supply district, division of district, 7930—5.  
     Haskell County Water Supply District, 8280—164.  
     Independent school districts, trustees, 2775a—1.  
     Jefferson County Water Control and Improvement District No. 10, taxation, 8280—166.  
     Justice, court of civil appeals, filing fee, Elec.Code 13.15.  
     Lieutenant governor, filing fee, Elec.Code 13.15.  
     Official ballot, Elec.Code 6.01.  
     Polling places, primary elections in counties over 800,000, Elec.Code 13.04a.  
     Randall county, criminal district attorney, 326k—36.  
     Recreational programs, counties, cities, and towns, 1015c—1.  
     Tax levy by,  
         Jefferson County Water Control and Improvement District No. 10, 8280—166.  
     Trustees, independent school districts, 2775a—1.  
     United States senator, filing fee, Elec.Code 13.15.

## ELIGIBLE CITY

Outstanding water revenue bonds, payment, 1118n—7.

## EL PASO COUNTY

Additional county court at law, 1970—141.1.

## EMBEZZLEMENT

Executors and administrators, ground for removal, Prob.Code 222.

## EMINENT DOMAIN

Commissioners, compensation, 3266.  
 Hill county court, original jurisdiction, 1970—333a.  
 Jefferson County Water Control and Improvement District No. 10, 8280—166.  
 Jurisdiction,  
     County court, Hill county, 1970—333a.

**EMINENT DOMAIN—Cont'd**

Nueces county, jurisdiction of county court, 1970—339A.  
 State Building Commission, power, 678m.  
 Yorks Creek Improvement District, 8280—167.

**EMPLOYEES**

Assignment of wages, action against employer, 5159c.  
 Payment under retirement plan, discharge of employer, 5221d.  
 Right to work legislation, 5154g.  
 State employees, social security benefits, 695h.

**EMPLOYEES' RETIREMENT SYSTEM OF TEXAS**

Prior service credit, 6228a—2.  
 Teacher,  
 Prior service credit, 6228a—2.

**EMPLOYMENT AND LABOR AGENTS**

Right to work legislation, 5154g.

**ENDORSEMENT**

Probate matters, county clerk, applications, etc., filed with, Prob.Code 11.

**ENGINEERING REPORT**

Defined, 7472e.

**ENGINEERS**

Registered professional engineer, exempt from Surveyors Registration Law, 5282a.

**ENGLISH LANGUAGE**

Guardian, disqualification to serve as for inability to read or write, Prob.Code 110.

**ESTATE TAXES**

Claims include liabilities for, Prob.Code 3.  
 Executors and administrators, mortgage or pledge of property to borrow for payment, Prob.Code 329.

**ESTATES**

Defined, Prob.Code 3.  
 Descent and Distribution, generally, this index.  
 Executors and Administrators, generally, this index.  
 Guardian and Ward, generally, this index.

**ESTATES OF DECEDENTS**

Administration of small estates. Executors and Administrators, this index.  
 Descent and Distribution, generally, this index.  
 Executors and Administrators, generally, this index.  
 Wills, generally, this index.

**EVIDENCE**

Certified copies of papers filed, Insurance Securities Law, 580—31.  
 Conveyances, ancient documents, certified copies, 3725.  
 Executors and Administrators, this index.  
 Guardian and ward,  
 Borrowing money for payment, Prob.Code 329.  
 Certificate constituting letters, Prob.Code 185.  
 Insurance Securities Law, certified copies of papers filed, 580—31.  
 Papers filed with Secretary of State, certified copies, 579—31.  
 Prima facie evidence,  
 Conveyance, specific performance of decedent's contract to sell property, Prob.Code 27.  
 Judgment, action to determine heirship, Prob.Code 55.  
 Transfer of action to determine heirship, recorded instruments as, Prob.Code 52.  
 Probate proceedings, rules applicable, Prob.Code 22.  
 Record books, use as, Prob.Code 18.

**EVIDENCE—Cont'd**

Small estates, appraisal, Prob.Code 142.  
 Specific performance of decedent's contract to sell property, Prob.Code 27.  
 Wills, this index.

**EXAMINATIONS**

Application to qualify securities, 580—8.  
 Board of Insurance Commissioners, this index.  
 Life, health and accident insurance companies, Ins.Code 3.06.  
 Probate proceedings, county judge, duties relating to, Prob.Code 36.

**EXAMINERS**

Insurance carrier examinations, Ins.Code 1.17.  
 Insurance law, oath and bond, Ins.Code 1.18.

**EXCHANGE OF PROPERTY**

Executors and administrators, Prob.Code 234.

**EXECUTION**

Executors and Administrators, this index.  
 Probate matters, direction, method, Prob.Code 25.  
 Wills, proof, Prob.Code 88.

**EXECUTORS AND ADMINISTRATORS**

See, also Guardian and Ward, generally, this index.  
 Absence from state, removal, ground for, Prob.Code 222.  
 Accounts and accounting,  
 Allowance or disallowance, small estates, Prob.Code 143.  
 Annual accounts, Prob.Code 399—403.  
 Approval, requisites, Prob.Code 401.  
 Citation for failure to return, Prob.Code 400.  
 Correction, Prob.Code 401.  
 Depository, bank or trust company, certificate, annexation to, Prob.Code 399.  
 Failure to return, Prob.Code 400.  
 Filing, Prob.Code 401.  
 Penalty for failure to file, Prob.Code 400.  
 Rules governing, Prob.Code 401.  
 Vouchers for items of credit claimed, Prob.Code 401.  
 Approval, orders, hearing on application for resignation, Prob.Code 221.  
 Certificate of depository annexed to, Prob.Code 399.  
 Debts due estate, Prob.Code 316.  
 Expenses, Prob.Code 244.  
 Failure to return, removal, ground for, Prob.Code 222.  
 Final settlement, Prob.Code 404—414.  
 Action of court, Prob.Code 408.  
 Appointment of successor representative prior to filing, Prob.Code 220.  
 Citation to present, Prob.Code 406, 407.  
 Discharge, Prob.Code 408.  
 Filing, neglect or failure to file, procedure, Prob.Code 406.  
 Inheritance taxes, payment, requisite to approval, Prob.Code 410.  
 Money becoming due pending final discharge, Prob.Code 409.  
 Neglect or failure to deliver estate, procedure, Prob.Code 414.  
 Offsets, credits and bad debts, Prob.Code 412.  
 Order of judgment, resignation, effect, Prob.Code 221.  
 Partition and distribution, Prob.Code 408.  
 Exhibits and accounts, filing, Prob.Code 375.  
 Report of hiring or renting, Prob.Code 365.  
 Requisites, Prob.Code 405.

**EXECUTORS AND ADMINISTRATORS—C't'd**

- Accounts and accounting—Cont'd
  - Final settlement—Cont'd
    - Resignation, accompanying application for, Prob.Code 221.
    - Verified account, contents, Prob.Code 405.
  - Partition and distribution, filing, Prob.Code 375.
  - Representative of deceased executor or administrator, Prob.Code 220.
  - Settlement,
    - Final settlement, Prob.Code 404-414.
    - Jurisdiction,
      - County court, Prob.Code 4.
      - District Court, Prob.Code 5.
    - Small estates, Prob.Code 143.
    - Small estates, Prob.Code 138, 143.
    - Successors, Prob.Code 224.
    - Temporary administrator, Prob.Code 134.
  - Actions,
    - Heirship, actions to determine, post.
    - Suits, generally, post.
  - Additional powers of successor appointee, Prob.Code 225.
  - Adjustment of accounts, small estates, Prob.Code 143.
  - Administration,
    - Applications, record book, probate minutes contents, Prob.Code 15.
    - Closing, Prob.Code 404.
    - Community property, generally, post.
    - Concurrent venue, effect, Prob.Code 8.
    - Death, proceedings before, void, Prob.Code 72.
    - Estate of decedent or ward, nature of proceeding, Prob.Code 2.
    - Estate of living person, void, Prob.Code 72.
    - Expenses, post.
    - Independent administration, post.
    - Proceedings before death, void, Prob.Code 72.
    - Proof, necessity, Prob.Code 88.
    - Venue, Prob.Code 6.
  - Administration of small estates,
    - Accounting, Prob.Code 138.
    - Accounts, settlement, Prob.Code 143.
    - Action to recover property, Prob.Code 138.
    - Adjustment of account, Prob.Code 143.
    - Affidavit,
      - Collection upon, Prob.Code 137.
      - Distributees, contents, Prob.Code 137.
      - Effect, Prob.Code 138.
      - Liability of person executing, Prob.Code 138.
    - Allowance or disallowance of account, Prob.Code 143.
    - Application for order of no administration, Prob.Code 139.
      - Citation and notices, necessity, Prob.Code 140.
      - Hearing, Prob.Code 140.
      - Order, Prob.Code 140.
        - Effect, Prob.Code 141.
        - Revocation, proceedings for, Prob.Code 142.
    - Appraisal of value, Prob.Code 142, 143.
    - Assets, valuation, limitation, Prob.Code 137.
    - Clerks of court, affidavit, filing with, Prob.Code 137.
    - Closing, Prob.Code 143.
    - Collection of account, Prob.Code 143.
    - Collection upon affidavit, Prob.Code 137.
    - County clerk, record book, Prob.Code 137.
    - Debtors, affidavit, furnishing copy to, Prob.Code 137.
    - Distributees, Prob.Code 137.
    - Expenses, payment, Prob.Code 140.
    - Fees, recording, Prob.Code 137.
    - Final distribution, Prob.Code 143.
    - Funeral expenses, Prob.Code 140.

**EXECUTORS AND ADMINISTRATORS—C't'd**

- Administration of small estates—Cont'd
  - Index, record book, Prob.Code 137.
  - Inventories, Prob.Code 142, 143.
  - Jurisdiction, Prob.Code 137.
  - Last sickness expenses, Prob.Code 140.
  - Orders, payment of claims, Prob.Code 143.
  - Payment of small claims without guardianship, Prob.Code 144.
  - Possession of property, affidavit, furnishing to person having, Prob.Code 137.
  - Records, affidavit, Prob.Code 137.
  - Settlement of account, Prob.Code 143.
  - Summary proceedings after appointment of personal representative, Prob.Code 143.
  - Value of assets, limitation, Prob.Code 137.
  - Venue, Prob.Code 137.
- Administration under wills. Independent administration, generally, post.
- Administrator with will annexed,
  - Application for grant of powers, Prob.Code 154.
    - Citation on, Prob.Code 154.
    - Hearing, Prob.Code 154.
  - Appointment, Prob.Code 154.
  - Borrowing money, power, Prob.Code 154.
  - Court, powers conferred by, Prob.Code 154.
  - Discovery of will, Prob.Code 83, 220.
  - Expenses for defense of will, allowance, Prob.Code 243.
  - Further administration, Prob.Code 223.
  - Limitation on powers, Prob.Code 154.
  - Mortgages, powers, Prob.Code 154.
  - Oath, Prob.Code 190.
  - Order, granting powers, Prob.Code 154.
  - Pledge of property, Prob.Code 154.
  - Posting citation on application, Prob.Code 154.
  - Powers, Prob.Code 154.
  - Revocation of letters, Prob.Code 220.
  - Succeeding independent executor, powers, Prob.Code 154.
  - Time for granting, Prob.Code 178.
- Ad valorem taxes, mortgage or pledge of property to borrow money for payment, Prob.Code 329.
- Advancements, final account, contents, Prob.Code 405.
- Advertisements,
  - Mineral leases, application to lease at private sale, necessity, Prob.Code 368.
  - Private sale of real property, necessity, Prob.Code 350.
  - Public sales of real property, notice, Prob.Code 349.
- Affidavits,
  - Attachment to inventory and list of claims, Prob.Code 252.
  - Claims against estates, post.
  - Collection of small estates upon, Prob.Code 137.
  - Expense accounts, verification by, Prob.Code 244.
  - Notice to present claims, publication, proof by, Prob.Code 294.
  - Personal surety on bonds, Prob.Code 201.
  - Possession of securities necessary for approval of annual accounts, proof by, Prob.Code 401.
  - Service of notice to holders of recorded claims of issuance of letters, proof by, Prob.Code 295.
  - Small estates, liability of persons executing, Prob.Code 138.
- Agreements,
  - Deposit of assets, Prob.Code 219.
  - Pooling or unitization of minerals, etc., Contents, Prob.Code 369.
  - Validation, Prob.Code 372.

## EXECUTORS AND ADMINISTRATORS—C't'd

- Allowances,
  - Claims against estates, post.
  - Family allowance to widows and minors, post.
  - Minors. Family allowance to widows and minors, post.
  - Setting apart homestead and other exempt property, post.
  - Widows. Family allowance to widows and minors, post.
- Annual accounts. Accounts and accounting, ante.
- Annulment of acts, effect on rights of third persons, Prob.Code 188.
- Appeals,
  - Bonds, necessity, Prob.Code 29.
  - Order setting aside sale, Prob.Code 355.
  - Right to, Prob.Code 28.
- Applications,
  - Administrator with will annexed, grant of powers, Prob.Code 154.
- Appointment,
  - Combining with applications for probate of will, Prob.Code 76.
  - Successor, Prob.Code 220.
  - Temporary administrator, Prob.Code 131.
- Authority to,
  - Borrow money, Prob.Code 329.
  - Subject property to mineral lease, etc., Prob.Code 371.
- Borrowing, authority to borrow money, Prob.Code 329.
- Further administration, Prob.Code 223.
- Income, payment or credit during administration, Prob.Code 239.
- Letters testamentary or of administration, post.
- Mineral leases,
  - Authority to make, contents, Prob.Code 367.
  - Private sale, Prob.Code 368.
- Obligations, renewal or extension, Prob.Code 234.
- Partition and distribution of estates, Prob.Code 373.
- Withdrawn from administration, Prob.Code 267.
- Pooling or unitization of mineral leases, contents, Prob.Code 369.
- Redemption of property acquired by foreclosure, etc., Prob.Code 348.
- Sales, post.
- Small estates, no administration, Prob.Code 139.
- Appointment,
  - Administrator with will annexed, Prob.Code 154.
- Appeals, Prob.Code 28.
- Applications, persons who may make, Prob.Code 76.
- Appraisers, Prob.Code 248, 249.
  - Community property, Prob.Code 163.
  - Newly discovered property, Prob.Code 256.
  - Small estates, Prob.Code 142.
  - Waiver, Prob.Code 254.
- Evidence, Prob.Code 186.
- Further administration, Prob.Code 223.
- Notice, Prob.Code 294.
- Small estates,
  - Necessity, Prob.Code 137.
  - Summary proceedings after, Prob.Code 143.
  - Successors, Prob.Code 220, 221.
  - Temporary administrators, post.
- Appraisalment,
  - Action by court, Prob.Code 254, 255.
  - Approval of reappraisalment by court, Prob.Code 259.
  - Approval or disapproval, Prob.Code 166, 255.

EXECUTORS AND ADMINISTRATORS—C't'd  
Appraisalment—Cont'd

- Bond on withdrawing estate from administration, amount, Prob.Code 263.
- Community property, post.
- Conclusiveness, Prob.Code 261.
- Correction, Prob.Code 258.
- Citation to make, Prob.Code 258.
- Order, Prob.Code 258.
- Evidence, use as, Prob.Code 261.
- Independent administration, Prob.Code 145.
- Inheritance tax appraisalment, use, Prob.Code 254.
- Joint executors or administrators, failure to return, effect, Prob.Code 260.
- New appraisalment, Prob.Code 258, 259.
- Newly discovered property, Prob.Code 256.
- Objection to reappraisalment, Prob.Code 259.
- Order granting letters, contents, Prob.Code 181.
- Order of approval or disapproval, Prob.Code 255.
- Reappraisalment, effect, Prob.Code 259.
- Report, filing by court, Prob.Code 254.
- Requisites, Prob.Code 250.
- Return, Prob.Code 255, 256.
- Reappraisalment, effect, Prob.Code 259.
- Successor representatives, Prob.Code 227.
- Small estates, Prob.Code 143.
- Subscription to, Prob.Code 250.
- Subsequent representatives, Prob.Code 227.
- Time for making, Prob.Code 250.
- Use as evidence, Prob.Code 261.
- Value of property, Prob.Code 250.
- Waiver, Prob.Code 254.
- Appraisers,
  - Appointment, Prob.Code 248, 249.
  - Community property, Prob.Code 163.
  - Failure or refusal to act, Prob.Code 249.
  - Newly discovered property, Prob.Code 256.
  - Small estates, Prob.Code 142.
  - Waiver, Prob.Code 254.
- Fees, Prob.Code 253.
- Assets,
  - Deposit, agreement as to, Prob.Code 219.
  - Deposit in lieu of sureties on bond, Prob.Code 194.
- Assignment, small estate to surviving spouse and minor children, Prob.Code 140.
- Attachment,
  - Complaint for, Prob.Code 26.
  - Deposit in lieu of sureties on bond, Prob.Code 194.
- Attorneys,
  - Conveyance of contingent interest to for services, powers, Prob.Code 233.
- Fees,
  - Allowable expense, Prob.Code 242.
  - Instrument supporting claim providing for Prob.Code 307.
  - Will, allowance for defense of, Prob.Code 243.
- Auctions. Sales, generally, post.
- Authorized corporate surety, defined, Prob.Code 3.
- Bad debts, final settlement, Prob.Code 412.
- Banks,
  - Deposits of cash in, commission on prohibited, Prob.Code 241.
  - Deposits with in lieu of sureties on bond, Prob.Code 194.
- Bids, compliance with on public sales of real property, failure to, Prob.Code 349.
- Bona fide purchasers, rights, Prob.Code 188.
- Bonds,
  - Additional on creation of lien upon property, Prob.Code 329.
  - Administrator with will annexed, Prob.Code 154.

EXECUTORS AND ADMINISTRATORS—C't'd  
Bonds—Cont'd

Amount,  
Decrease, Prob.Code 208.  
Penalty, Prob.Code 194.  
Appeal, Prob.Code 29.  
Approval, Prob.Code 189, 194, 202.  
Borrowing money for payment of expenses,  
Prob.Code 329.  
Community administrator, Prob.Code 165.  
Community property, post.  
Corporate fiduciary, exemption, Prob.Code  
195.  
Corporate sureties on, Prob.Code 194.  
Costs, payment out of estate, Prob.Code 194.  
Decrease in amount, Prob.Code 208.  
Deposit of assets, agreement as to, effect  
upon terms, Prob.Code 219.  
Discharge of sureties upon execution of new  
bond, Prob.Code 209.  
Examination by county judge, Prob.Code 36.  
Executor under will, Prob.Code 214-217.  
Amount of bond, Prob.Code 216.  
Failure to give, effect, Prob.Code 217.  
Foreign will, Prob.Code 106.  
Order requiring, Prob.Code 215.  
Exemption from requirements by will, Prob.  
Code 195.  
Failure to give, effect, Prob.Code 213.  
Filing, Prob.Code 189, 197.  
Administration by creditor, defeat by,  
Prob.Code 80.  
Administrator with will annexed, Prob.  
Code 154.  
Affidavit of personal surety on, Prob.  
Code 201.  
Application for new bond, Prob.Code 204.  
Form, Prob.Code 196.  
Husband and wife, Prob.Code 200.  
Increase on creation of new lien upon prop-  
erty, Prob.Code 329.  
Independent administration, post.  
Independent executor, Prob.Code 149.  
Joint bond, Prob.Code 198.  
Letters testamentary or of administration,  
post.  
Liability, neglect on collection of claims and  
recovery of property, Prob.Code 233.  
Lien on property of personal surety, release  
before estate fully administered, Prob.  
Code 211.  
Married person under 21 years of age,  
Prob.Code 200.  
Married women, Prob.Code 199.  
Mineral leases, Prob.Code 368.  
Pooling or unitization, Prob.Code 369.  
Requisites, Prob.Code 367.  
Necessity, Prob.Code 194.  
New bonds, Prob.Code 36, 208.  
Amount insufficient, Prob.Code 203.  
Application for, Prob.Code 204.  
Circumstances requiring, Prob.Code 203.  
Citation, Prob.Code 204, 210.  
Hearing on return, Prob.Code 206.  
Judge, requiring by, Prob.Code 205.  
Death of sureties, Prob.Code 203.  
Decrease in amount, Prob.Code 208.  
Defective bond, Prob.Code 203.  
Demand for by interested person, Prob.  
Code 204.  
Discharge of sureties upon execution,  
Prob.Code 209.  
Failure to give, effect, Prob.Code 213.  
Grounds for, Prob.Code 203.  
Hearing, Prob.Code 206.  
Insolvency of sureties, Prob.Code 203.  
Insufficiency of sureties, Prob.Code 203.  
Judge, requiring by, Prob.Code 205.  
Loss or destruction, Prob.Code 203.  
Order requiring, Prob.Code 206, 207.

EXECUTORS AND ADMINISTRATORS—C't'd  
Bonds—Cont'd

New bonds—Cont'd  
Persons interested may demand, Prob.  
Code 204.  
Petition for discharge by sureties, Prob.  
Code 203, 210.  
Release of lien on property of personal  
surety before estate fully adminis-  
tered, Prob.Code 211.  
Removal on,  
Failure to provide, Prob.Code 222.  
Sureties, Prob.Code 203.  
When required, Prob.Code 203.  
Orders,  
Discharge of sureties upon execution of  
new bonds, Prob.Code 209.  
Granting letter, contents, Prob.Code 181.  
Release of recorded lien on personal  
surety's property, Prob.Code 211, 212.  
Requiring upon hearing complaint to  
file, Prob.Code 215.  
Penalty, amount, Prob.Code 194.  
Personal sureties on, Prob.Code 194.  
Affidavit, Prob.Code 201.  
Lien on real property of, Prob.Code 202.  
Release of lien before estate fully ad-  
ministered, Prob.Code 211.  
Qualification of making, Prob.Code 189.  
Recording, personal surety's bond, Prob.  
Code 202.  
Recoveries upon, Prob.Code 218.  
Release of lien on property of person or  
surety before estate fully administered,  
Prob.Code 211.  
Revocation of letters for failure to give,  
Prob.Code 213.  
Rules governing, Prob.Code 194.  
Sale of real property, Prob.Code 348, 354.  
Contents of order, Prob.Code 346.  
Sales, exemption from, Prob.Code 333.  
Separate bond of joint representatives,  
Prob.Code 198.  
Signature, Prob.Code 194.  
Successor appointee, powers, Prob.Code 225.  
Sureties on, Prob.Code 194.  
Citation after failure to pay claim,  
Prob.Code 328.  
Costs adjudged against, Prob.Code 245.  
Discharge, Prob.Code 209, 210.  
Discharge on execution of new bond,  
Prob.Code 209.  
Liability for neglect of representative  
on sales of property, Prob.Code 358.  
Notice, decrease in amount, Prob.Code  
208.  
Penalty for failure to give notice, Prob.  
Code 297.  
Petition for release before estate fully  
administered, Prob.Code 210.  
Resignation, effect, Prob.Code 221.  
Temporary administrator, Prob.Code 131-  
133, 194.  
Time for giving, Prob.Code 192.  
Void, not void upon first recovery, Prob.  
Code 218.  
Void proceedings, recovery on, Prob.Code  
72.  
Wills,  
Executor under, Prob.Code 214-217.  
Exemption from requirements by, Prob.  
Code 195.  
Withdrawing estate from administration,  
post.  
Bonuses, oil and gas or mineral lease, treatment  
as income, Prob.Code 239.  
Borrowing money, Prob.Code 329.  
Administrator with will annexed, powers,  
Prob.Code 154.  
Buildings, repairs, Prob.Code 230.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
**Business,**

Borrowing money for payment of expenses of operation, Prob.Code 329.  
Continuance of operation, Prob.Code 238.  
Management, compensation, Prob.Code 241.

Care of property of estates, Prob.Code 230.  
**Cash,**

Deposits in bank, commission on prohibited, Prob.Code 241.  
Deposit in lieu of sureties on bonds, Prob. Code 194.

**Certificates,**

Certified copy of order for payment of estates into state treasury, Prob.Code 428.  
Evidence of appointment and qualification, Prob.Code 186.

Payment of estates into state treasury, post.

**Certification, county court, inventories, appraisements and lists of claims, Prob.Code 261.**

**Certified copies, order releasing recorded lien on personal surety's property, Prob.Code 212.**

**Child, defined, Prob.Code 3.**

**Circumstances authorizing borrowing of money, Prob.Code 329.**

**Citations and notices,**

Annual account, return, Prob.Code 400.

**Applications,**

Authority to borrow money, Prob.Code 329.

Authority to make mineral leases, contents, Prob.Code 367, 368.

Bonds, reduction, Prob.Code 208.

Grant of powers by administrator with will annexed, Prob.Code 154.

Pooling or unitization of mineral leases, necessity, Prob.Code 369.

**Sales,**

Livestock, Prob.Code 335.

Mortgaged property, Prob.Code 338.

Real property, Prob.Code 344.

Small estates, no administration, Prob. Code 140.

Subject property to mineral leases, etc., Prob.Code 371.

Temporary administrator, Prob.Code 131.

**Appointment, Prob.Code 294.**

**Successor, necessity, Prob.Code 220.**

**Temporary administrator, Prob.Code 131.**

**Bonds, petition for release of sureties, Prob. Code 210.**

**Claims against estates, post.**

**Community property, post.**

**Contents and issuance, Prob.Code 128.**

**Correction of inventory, appraisalment or list of claims, Prob.Code 258.**

**Death of testator, Prob.Code 71.**

**Decrease in amount of bond, Prob.Code 208.**

**Deposit of claims with clerk, notice of, Prob.Code 308.**

**Exhibits, condition of estate, Prob.Code 262, 402.**

**Exhibits or reports, failure to file, Prob. Code 403.**

**Extension of liens, necessity, Prob.Code 329.**

**Failure to pay claim after demand, Prob. Code 328.**

**Final account, Prob.Code 407.**

**Neglect or failure to file, Prob.Code 406.**

**Final settlement, neglect or failure to deliver estate, Prob.Code 414.**

**Further administration, Prob.Code 223.**

**Hiring and renting, Prob.Code 361.**

**Holderz of recorded claims, issuance of letters, Prob.Code 295.**

**Penalty for failure to give, Prob.Code 297.**

**EXECUTORS AND ADMINISTRATORS—C't'd**  
**Citations and notices—Cont'd**

Inventory or list of claims, additional, Prob. Code 257.

Letters testamentary or of administration, post.

**Mineral leases,**

Authority to make, Prob.Code 367.

Private sale, necessity, Prob.Code 368.

Neglect to hire or rent, procedure, Prob. Code 362.

New bonds, demand for, Prob.Code 204.

Order for payment of creditors, Prob.Code 326.

Partition and distribution of estate, Prob. Code 375.

Payment of estates into state treasury, post.

Payment or credit of income, Prob.Code 239.

Personal service, removal for failure to endorse or annex memorandum to claim, Prob.Code 310.

**Present claims,**

Number required, Prob.Code 296.

Penalty for failure to give, Prob.Code 297.

Publication, Prob.Code 294.

Private sales of real property, necessity, Prob.Code 350.

Public sales of real property, Prob.Code 349.

**Purchase of,**

Claim by executor or administrator, Prob.Code 324.

Property by executor or administrator, Prob.Code 352.

Recovery of funds paid to state treasurer, Prob.Code 433.

Resignation, Prob.Code 221.

**Sales,**

Neglect or failure to apply for order, Prob.Code 347.

Personal property at auction, Prob. Code 336.

**Service,**

Inability to serve, removal, ground for, Prob.Code 222.

Method, Prob.Code 33.

Proof to holders of recorded claims of issuance of letters, Prob.Code 295.

**Small estates, Prob.Code 143.**

Application for no administration, necessity, Prob.Code 140.

**Temporary administrator, application for appointment, Prob.Code 131.**

**Withdrawal of assets on deposit, necessity, Prob.Code 219.**

**Claim docket,**

Action by court, Prob.Code 312.

Call, Prob.Code 19.

Contents, Prob.Code 14.

Entry of claims, Prob.Code 311, 313.

Executor's or administrator's claim, Prob.Code 317.

Expense accounts, entries, Prob.Code 244.

Record books, Prob.Code 14.

**Claims,**

Application for no administration of small estates, contents, Prob.Code 139.

Community administrator, payment, Prob. Code 169.

Defined, Prob.Code 3.

Small estates, payment, Prob.Code 143.

Temporary administrator, powers relative to, Prob.Code 132.

**Claims against estates,**

Action by court, Prob.Code 312.

Executor's or administrator's claim, Prob.Code 317.

Administration expenses, Prob.Code 322.



EXECUTORS AND ADMINISTRATORS—C't'd  
Claims against estates—Cont'd

- Affidavits,
  - Authentication, Prob.Code 304.
  - Demand on failure to pay, Prob.Code 328.
  - Deposit with clerk, Prob.Code 308.
  - Lost or destroyed claim, contents, Prob. Code 303.
  - Supported by, Prob.Code 301.
  - Verification of executor's or administrator's claim by, Prob.Code 317.
- Allowance,
  - After order for partition and distribution prohibited, Prob.Code 318.
  - Barred by limitation, effect, Prob.Code 298.
  - Classification, Prob.Code 312.
  - Costs of suit, Prob.Code 315.
  - Endorsement or annexation of memorandum, Prob.Code 309.
  - Failure to, effect, Prob.Code 310.
  - Entry on claim docket, Prob.Code 311.
  - Exhibit, Prob.Code 399.
  - Filing with county clerk, Prob.Code 311.
  - Lost or destroyed claim without affidavit, void, Prob.Code 303.
  - Memorandum, Prob.Code 309.
  - Endorsement or annexation to claim, Prob.Code 312.
  - Failure to, effect, Prob.Code 310.
  - Postponement if not presented within time, Prob.Code 311.
  - Sale of real property for payment, application for, Prob.Code 341.
  - Unsecured claims presented after twelve months, Prob.Code 327.
- Appeals, Prob.Code 312.
  - Executor's or administrator's claim, Prob.Code 317.
- Application, sale of real property for payment, Prob.Code 341.
- Approval,
  - Action by court, Prob.Code 312.
  - Necessity for payment, Prob.Code 319.
  - Secured claim, preferred lien against property, Prob.Code 306.
  - Temporary administrator, Prob.Code 132.
  - Unsecured claims presented after twelve months, Prob.Code 327.
- Assets, deficiency, effect, Prob.Code 321.
- Attorney's fees, providing for, Prob.Code 307.
- Authentication, Prob.Code 301.
  - Individual owners, others than, Prob. Code 304.
- Borrowing money for payment, Prob.Code 329.
- Cancellation on purchase by executor or administrator, Prob.Code 324.
- Citation and notices,
  - Deposit with clerk, Prob.Code 308.
  - Failure to pay after demand, Prob.Code 328.
  - Holders of recorded claims, Prob.Code 295.
  - Number required, Prob.Code 296.
  - Penalty for failure to give, Prob.Code 297.
- Present,
  - Contents, Prob.Code, 294.
  - Publication and proof, Prob.Code 294.
- Classification, Prob.Code 322.
  - Action by court, Prob.Code 312.
  - Administration expenses, priority of payment, Prob.Code 322.
  - Funeral expenses, limitation on amount, Prob.Code 322.

EXECUTORS AND ADMINISTRATORS—C't'd  
Claims against estates—Cont'd

- Classification—Cont'd
  - Independent executors, duties, Prob. Code 146.
  - Last sickness expenses, limitation on amount, Prob.Code 322.
  - Rejected claim, Prob.Code 313.
  - Secured claims, priority of payment, Prob.Code 322.
- Complaint,
  - File bond, Prob.Code 214.
  - Purchase of claims by representatives, Prob.Code 324.
- Compromise or settlement, Prob.Code 234.
- Contests, Prob.Code 312.
- Corporate officers, authentication, Prob. Code 304.
- Costs, liability for after demand and failure to pay, Prob.Code 328.
- Deficiency of assets, effect, Prob.Code 321.
- Deposit with clerk, Prob.Code 308.
- Deposits in lieu of sureties on bonds, effect upon, Prob.Code 194.
- Disapproval,
  - Barred by limitation, Prob.Code 298.
  - Temporary administrator, Prob.Code 132.
- District court, appeal, action of court, Prob. Code 312.
- Docket,
  - Action by court, Prob.Code 312.
  - Entries in, Prob.Code 311.
  - Executor's or administrator's claim, Prob.Code 317.
  - Rejected claim, Prob.Code 313.
- Endorsement or annexation of memorandum as to time of presentation or filing, Prob.Code 309.
  - Failure, effect, Prob.Code 310.
- Evidence, lost or destroyed claim, Prob. Code 303.
- Execution,
  - Issuance after demand on failure to pay, Prob.Code 328.
  - Rejected claim, Prob.Code 313.
- Executor's and administrator's claims, method of presenting, Prob.Code 317.
- Exemption from sales of personal property for payment, Prob.Code 334.
- Exhibits, Prob.Code 399.
  - Defects of form, waiver, Prob.Code 302.
  - Deposit with clerk, Prob.Code 308.
  - Photostatic copy to prove, Prob.Code 301.
- Expense accounts, Prob.Code 244.
- Extension of obligation, Prob.Code 234.
- Filing, Prob.Code 311.
  - Deposit with clerk, Prob.Code 308.
  - Endorsement or annexation of memorandum as to time, Prob.Code 309.
  - Executor's and administrator's claim, Prob.Code 317.
  - Judgment on rejection, Prob.Code 313.
  - Notice to present, Prob.Code 294.
  - Tolling statute of limitation by, Prob. Code 299.
- Funeral expenses,
  - Limitation on amount, Prob.Code 322.
  - Order of payment, Prob.Code 320.
  - Preference over family allowance, Prob. Code 290.
  - Time for presentation, Prob.Code 300.
- Handling secured claims, method, Prob. Code 306.
- Hearing, Prob.Code 312.
- Heirs, devisees or legatees, application of provisions, Prob.Code 317.
- Homestead, liability for, Prob.Code 270.
- Independent executor, suit against to enforce payment, Prob.Code 147.

## EXECUTORS AND ADMINISTRATORS—C't'd

Claims against estates—Cont'd  
 Interest, liability for after demand on failure to pay, Prob.Code 328.  
 Joint obligations, Prob.Code 323.  
 Judgments,  
   Appeal from, Prob.Code 312.  
   Executor's or administrator's claim, Prob.Code 317.  
   Failure to pay claim after demand, Prob.Code 328.  
   Necessity for payment, Prob.Code 319.  
   Presentment as prerequisites, Prob.Code 314.  
   Rejected claim, Prob.Code 313.  
   Unsecured claims, Prob.Code 327.  
 Last sickness expenses,  
   Limitation on amount, Prob.Code 322.  
   Order of payment, Prob.Code 320.  
   Preference over family allowance, Prob.Code 290.  
   Time for presentation, Prob.Code 300.  
 Liability for nonpayment, Prob.Code 328.  
 Liens,  
   Proceeds of sale of mortgaged property, payment, Prob.Code 325.  
   Securing, priority of payment, Prob.Code 322.  
 Limitation of action on, Prob.Code 298.  
   Barred by, not to be allowed, Prob.Code 298.  
   Tolling statute of limitation, Prob.Code 299.  
 Lists of claims, post.  
 Lost or destroyed, evidence, Prob.Code 303.  
 Mail, notice of deposit, Prob.Code 308.  
 Memorandum, Prob.Code 309, 310.  
   Endorsement or annexation to, Prob.Code 312.  
 Method of handling secured claims, Prob.Code 306.  
 Mortgages,  
   Proceeds of sale of mortgaged property, payment, Prob.Code 325.  
   Securing, priority of payment, Prob.Code 322.  
 Objection to defects of form of exhibits or vouchers, Prob.Code 302.  
 Order of payment, Prob.Code 320.  
 Orders,  
   Partition and distribution, effect, Prob.Code 318.  
   Payment, Prob.Code 320.  
     Creditor, Prob.Code 326.  
     Full, Prob.Code 399.  
     Pro rata, Prob.Code 321, 399.  
     Sale of property for, Prob.Code 325, 326.  
     Unsecured claims presented after twelve months, Prob.Code 327.  
 Partition and distribution, order, effect, Prob.Code 318.  
 Payment,  
   Administration expenses, Prob.Code 322.  
   Approval or judgment, necessity, Prob.Code 319.  
   Assets, deficiency, effect, Prob.Code 321.  
   Borrowing money for payment, Prob.Code 329.  
   Closing administration after, Prob.Code 404.  
   Exemption from sales of personal property for, Prob.Code 334.  
   Final account, contents, Prob.Code 405.  
   Funeral expenses, priority, Prob.Code 322.  
   Independent executors, duties, Prob.Code 146.  
   Last sickness expenses, priority, Prob.Code 322.  
   Liability for nonpayment, Prob.Code 328.

## EXECUTORS AND ADMINISTRATORS—C't'd

Claims against estates—Cont'd  
 Payment—Cont'd  
   Liens, release upon, Prob.Code 235.  
   Maturities on secured claims, Prob.Code 306.  
   Mortgages or liens securing, Prob.Code 322.  
   Order of, Prob.Code 320.  
 Orders,  
   Creditor, obtaining, Prob.Code 326.  
   Full payment, Prob.Code 399.  
   Pro rata, Prob.Code 321, 399.  
   Sale of property for, Prob.Code 326.  
     Proceeds of sale, Prob.Code, 325.  
   Unsecured claims presented after twelve months, Prob.Code 327.  
 Postponement,  
   Failure to present in time, Prob.Code 311.  
   Failure to present within one year, Prob.Code 298.  
   Preferred claims, Prob.Code 399.  
   Presented after twelve months, Prob.Code 327.  
   Priority, classified claims, Prob.Code 322.  
   Pro rata, Prob.Code 321.  
     Independent executors, duties, Prob.Code 146.  
   Procedure to force payment, Prob.Code 328.  
   Proceeds of sale of mortgaged property, Prob.Code 325.  
   Sale of real property, application, Prob.Code 341.  
   Secured claims, Prob.Code 234.  
     Priority, Prob.Code 322.  
   Selection of real property to be sold for, Prob.Code 340.  
   Temporary administrator, Prob.Code 132.  
   Unsecured claims presented after twelve months, Prob.Code 327.  
 Penalties, failure to pay after demand, Prob.Code 328.  
 Presentment,  
   After twelve months, payment, Prob.Code 327.  
   Application of provisions, Prob.Code 317.  
   Deposit with clerk, Prob.Code 308.  
   Endorsement or annexation of memorandum as to time, Prob.Code 309.  
   Executor's or administrator's claims, Prob.Code 317.  
   Exhibits, Prob.Code 399.  
     Defects of form, waiver, Prob.Code 302.  
   Judgment, prerequisites, Prob.Code 314.  
   Limitation on time for, Prob.Code 298.  
   Newspapers, publication of notice, Prob.Code 294.  
   Notice to present,  
     Contents, Prob.Code 294.  
     Number required, Prob.Code 296.  
     Penalty for failure to give, Prob.Code 297.  
     Posting, Prob.Code 294.  
     Publication and proof, Prob.Code 294.  
     Return, Prob.Code 294.  
   Postponement of payment for failure to present in time, Prob.Code 311.  
   Secured claims, Prob.Code 298.  
     Method of handling, Prob.Code 306.  
     Specifications, Prob.Code 306.  
   Time for, Prob.Code 298.  
     Endorsement or annexation of memorandum, Prob.Code 309, 310.  
     Executor's and administrator's claims, Prob.Code 317.

**EXECUTORS AND ADMINISTRATORS—C't'd**

- Claims against estates—Cont'd
  - Presentment—Cont'd
    - Time for—Cont'd
      - Funeral expenses, Prob.Code 300.
      - Last illness expenses, Prob.Code 300.
      - Secured claims, Prob.Code 306.
    - Unsecured claims, after twelve months, Prob.Code 327.
    - Vouchers, defects of form, waiver, Prob. Code 302.
  - Presumption of rejection, Prob.Code 308.
  - Priorities, independent executors, duties, Prob.Code 146.
  - Pro rata payments, Prob.Code 321.
  - Procedure to force payment, Prob.Code 328.
  - Proof, lost or destroyed claim, Prob.Code 303.
  - Purchase by representatives prohibited, Prob.Code 324.
  - Recorded claims, notice to holders of issuance of letters, Prob.Code 295.
  - Rejected,
    - Action by court, Prob.Code 312.
    - Classification, Prob.Code 313.
    - Costs of suit, Prob.Code 315.
    - Endorsement or annexation of memorandum, Prob.Code 309.
    - Failure to, effect, Prob.Code 310.
    - Execution, Prob.Code 313.
    - Exhibit, Prob.Code 399.
    - Judgment, Prob.Code 313.
    - Memorandum, endorsement or annexation to claim, Prob.Code 312.
    - Presumption, Prob.Code 308.
    - Suit on, Prob.Code 313.
    - Tolling statute of limitation, Prob. Code 299.
  - Renewal of obligation, Prob.Code 234.
  - Sales, property, order for payment of claims, Prob.Code 326.
  - Secured claims,
    - Method of handling, Prob.Code 306.
    - Sale of mortgaged property to satisfy, Prob.Code 338.
  - Statute of limitation,
    - Barred by, Prob.Code 298.
    - Tolling, Prob.Code 299.
  - Suits on,
    - Borrowing money for payment of claims established by, Prob.Code 329.
    - Costs, taxing, Prob.Code 315.
    - Exhibit, Prob.Code 399.
    - Rejected claims, Prob.Code 313.
      - Costs, Prob.Code 315.
      - Establishment by, Prob.Code 310.
      - Tolling statute of limitation, Prob. Code 299.
    - Time for, Prob.Code 313.
  - Taxing costs of suits, Prob.Code 315.
  - Temporary administrator, powers, Prob. Code 132.
  - Verification, executor's or administrator's claim, Prob.Code 317.
  - Vouchers,
    - Defects of form, waiver, Prob.Code 302.
    - Deposit with clerk, Prob.Code 308.
    - Photostatic copy to prove, Prob.Code 301.
  - Waiver, defects of form of exhibits or vouchers, Prob.Code 302.
- Claims due estate,
  - Collection, Prob.Code 233.
  - Compounding, Prob.Code 234.
  - Compromise and settlement, Prob.Code 234.
  - Executors or administrators, Prob.Code 316.
  - Expenses, Prob.Code 242.
  - Final account, contents, Prob.Code 405.
  - List of claims,
    - Affidavit, Prob.Code 252.
    - Attachment to inventory, Prob.Code 251.

**EXECUTORS AND ADMINISTRATORS—C't'd**

- Claims due estate—Cont'd
  - Newly discovered, Prob.Code 256.
  - Payment, taking claims of property for, Prob.Code 234.
  - Renewal or extension of obligations, Prob. Code 234.
  - Taking claims of property for use and benefit of as payment, Prob.Code 234.
- Classification. Claims against estates, ante.
- Clerks of court,
  - Application to resign, filing with, Prob.Code 221.
- Bonds,
  - Filing with, Prob.Code 197.
  - Lien on real property of personal surety, duties, Prob.Code 202.
- Expense accounts, filing with, Prob.Code 244.
- Oaths, filing with, Prob.Code 190.
- Payment of estates into state treasury, duties, Prob.Code 428, 433.
  - Penalty for neglect to notify state treasurer, Prob.Code 429.
  - Receipt, filing with, Prob.Code 430.
- Payment or tender of money due estate during vacancy to, Prob.Code 220.
- Temporary administrator, filing list of property with, Prob.Code 134.
- Closing of estates, Prob.Code 404.
- Final settlement, Prob.Code 408.
- Temporary administration, Prob.Code 135.
- Co-executors and administrators,
  - Appraisalment, inventory and list of claims, failure to return, effect, Prob.Code 260.
  - Real estate, conveyance, joinder, necessity, Prob.Code 240.
  - Validity of acts of one, Prob.Code 240.
- Collection,
  - Accounts, small estates, Prob.Code 143.
  - Claims and debts due estate, Prob.Code 233.
  - Expenses, Prob.Code 242.
  - Small estates upon affidavit, Prob.Code 137.
- Commission, amount, Prob.Code 241.
- Common law, rights, powers and duties governed by, Prob.Code 32.
- Common ownership, possession of property held in, Prob.Code 235.
- Community administrator. Community property, generally, post.
- Community property,
  - Accounts of survivor, Prob.Code 156, 168.
  - Action for recovery, surviving spouse, powers, Prob.Code 160.
  - Administration unnecessary, Prob.Code 155.
  - Spouse incompetent, Prob.Code 157.
- Application,
  - Administration, Prob.Code 162.
  - Exhibits by creditor, Prob.Code 171.
- Appointment, appraisers, Prob.Code 157, 163.
- Appraisalment,
  - Competent spouse, Prob.Code 157.
  - New, Prob.Code 170.
  - Surviving spouse and appraisers, Prob. Code 164.
- Appraisers,
  - Application, contents, Prob.Code 162.
  - Appointment, Prob.Code 157, 163.
- Bond,
  - Community administrator, Prob.Code 165.
  - Approval or disapproval, Prob.Code 166.
  - Competent spouse, Prob.Code 157.
  - New, Prob.Code 170.
- Citations and notices,
  - Appraisers, appointment, Prob.Code 163.
  - Exhibits, requiring, Prob.Code 171.
  - Sureties upon bond of survivor, Prob. Code 172.

EXECUTORS AND ADMINISTRATORS—C't'd  
Community property—Cont'd

- Claims,
  - Payment pro rata, Prob.Code 169.
- Community administrator, Prob.Code 161.
- Surviving spouse, collection by, Prob. Code 160.
- Bond, Prob.Code 165.
  - Approval or disapproval, Prob.Code 166.
- Discharge, Prob.Code 175.
- Distribution of powers among personal representatives and surviving spouse, Prob.Code 177.
- Powers, Prob.Code 167.
- Surviving spouse as, Prob.Code 161.
- Contents of application for administration, Prob.Code 162.
- Creditors, exhibits, requiring, procedure, Prob.Code 171.
- Death of spouse, application, contents, Prob. Code 162.
- Debts,
  - Account and statement of, Prob.Code 168.
  - Liability for, Prob.Code 156.
  - Lists, Prob.Code 164.
  - Payment by community administrator, Prob.Code 167, 169.
  - Separate accounts, Prob.Code 156.
  - Surviving spouse, powers for purpose of payment, Prob.Code 160.
- Distribution of powers among personal representatives and surviving spouse, Prob. Code 177.
- District court,
  - Action by creditor against survivor and sureties, Prob.Code 172.
  - Proceedings in, Prob.Code 175.
- Exhibits,
  - Action of court upon, Prob.Code 172.
  - Approval, Prob.Code 173.
  - Creditor, requiring, procedure, Prob. Code 171.
  - Failure to file, effect, Prob.Code 174.
- Expenses, account and statement of, Prob. Code 168.
- Filing,
  - Application for administration, Prob. Code 162.
  - Exhibits, Prob.Code 172.
  - Failure to file, effect, Prob.Code 174.
- Insane spouse,
  - Guardian, duty, Prob.Code 158.
  - Recovery, effect, Prob.Code 159.
- Inventories, Prob.Code 250.
  - Approval or disapproval, Prob.Code 166.
  - Competent spouse, return by, Prob.Code 157.
  - Surviving spouse and appraisers, Prob. Code 164.
  - Sworn to by surviving spouse, Prob. Code 164.
- Investments, community administrator, Prob.Code 167.
- Lease, surviving spouse, powers, Prob.Code 160.
- Liability for debts, Prob.Code 156.
- List of claims,
  - Approval or disapproval, Prob.Code 166.
  - Competent spouse, Prob.Code 157.
  - Surviving spouse and appraisers, Prob. Code 164.
  - Sworn to by surviving spouse, Prob.Code 164.
- Lists, indebtedness of community, Prob. Code 164.
- Losses, liability, Prob.Code 168.

EXECUTORS AND ADMINISTRATORS—C't'd  
Community property—Cont'd

- Mortgages,
  - Community administrator prohibited, Prob.Code 167.
  - Surviving spouse, powers, Prob.Code 160.
- Negligence, liability for, Prob.Code 168.
- Orders,
  - Approval of exhibit and closing administration, Prob.Code 173.
  - Approval or disapproval of bond, etc., Prob.Code 166.
  - Certified copies, evidence of qualification of survivor, Prob.Code 167.
- Partition and distribution, Prob.Code 175, 385.
  - Application for, Prob.Code 385.
  - Action by court on, Prob.Code 385.
  - Bond, Prob.Code 385.
  - Lien, Prob.Code 385.
- Payment,
  - Debts,
    - Community administrator, Prob. Code 169.
    - Surviving spouse, powers for, Prob. Code 160.
  - Estates into state treasury, Prob.Code 427.
- Personal service of citation to sureties upon survivor's bond, Prob.Code 172.
- Powers,
  - Community administrator, Prob.Code 167.
  - Distribution among personal representatives and surviving spouse, Prob.Code 177.
  - Procedure on exhibits, Prob.Code 172.
- Property under management of deceased spouse during continuance of marriage, Prob.Code 177.
- Remarriage of surviving wife, effect, Prob. Code 176.
- Return,
  - Competent spouse, inventory, appraisal and list of claims, Prob.Code 157.
  - List of claims, inventory, appraisal and indebtedness, Prob.Code 164.
- Sale, surviving spouse, powers, Prob.Code 160.
- Separate and distinct accounts by survivor, Prob.Code 156.
- Suits, survivor, powers, Prob.Code 167.
- Suits for recovery, surviving spouse, powers, Prob.Code 160.
- Sureties on bonds, Prob.Code 165.
  - Community administrator, Prob.Code 165.
- Surviving wife, remarriage, Prob.Code 176.
- Survivor,
  - Accounts, Prob.Code 156, 168.
  - Action for recovery, powers, Prob.Code 160.
  - Application for administration, Prob. Code 162.
  - Bond, new, Prob.Code 170.
  - Community administrator, Prob.Code 161.
  - Control, management and disposition, Prob.Code 157, 166, 167.
  - Negligence, liability for, Prob.Code 168.
  - Powers, Prob.Code 188.
    - Control, management and disposition, powers, Prob.Code 167.
    - Distribution with personal representative, Prob.Code 177.
    - When no administration pending, Prob.Code 160.
  - Rights in absence of children, Prob. Code 155.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
 Community property—Cont'd  
 Termination of administration, Prob.Code 175.  
 Time, filing application for administration, Prob.Code 162.  
 Trustee, statutory, community administrator as, Prob.Code 167.  
 Venue, application, contents, Prob.Code 162.  
 Compensation, Prob.Code 241.  
 Complaint,  
     Additional inventory or list of claims, Prob.Code 257.  
     Annual account, failure to file, Prob.Code 400.  
     Correction of inventory, appraisalment or list of claims, Prob.Code 258.  
     Exhibit condition of estate, Prob.Code 262, 402.  
     Exhibits or reports, failure to file, Prob.Code 403.  
     Failure to rent property, Prob.Code 362.  
     File bond, Prob.Code 214.  
         Order requiring, Prob.Code 215.  
     Final account, neglect or failure to file, Prob.Code 406.  
     Final settlement, neglect or failure to deliver estate, Prob.Code 414.  
     Hiring or renting without order of court, Prob.Code 360.  
     Order for payment of creditors, Prob.Code 326.  
 Purchase,  
     Claim by representatives, Prob.Code 324.  
     Property by executor or administrator, Prob.Code 352.  
 Removal, Prob.Code 222.  
     Failure to endorse or annex memorandum of allowance or rejection of claim, Prob.Code 310.  
 Compounding bad or doubtful debts, Prob.Code 234.  
 Compromise or settlement, powers, Prob.Code 234.  
 Condition of estate, report, Prob.Code 262.  
 Consideration, mineral leases, order contents, Prob.Code 367.  
 Contents,  
     Application for no administration of small estates, Prob.Code 139.  
     Citation, Prob.Code 128.  
 Contests,  
     Probate proceedings, persons entitled to, Prob.Code 10.  
     Small estates, value of property, Prob.Code 142.  
     Temporary administrators, appointment, Prob.Code 131.  
 Contingent interest, power to convey, Prob.Code 233.  
 Continuance,  
     Hearing,  
         Annual account, Prob.Code 401.  
         Application for authority to make mineral leases, Prob.Code 367.  
         Sales at public auction, Prob.Code 349.  
 Contracts to convey, powers, Prob.Code 233.  
 Conveyances. Deeds and conveyances, post.  
 Copies, inventories, appraisements and lists of claims as evidence, Prob.Code 261.  
 Corporate fiduciary,  
     Defined, Prob.Code 3.  
     Exemption from bond, Prob.Code 195.  
 Corporate shares, liability of shareholder or subscriber, BusCorp 2.21.  
 Corporate stock, voting, BusCorp 2.29.  
 Corporate sureties on bonds, Prob.Code 194.  
     Signature on bonds, Prob.Code 194.  
 Corpus of estate, payment from during administration prohibited, Prob.Code 239.  
 Correction of annual accounts, Prob.Code 401.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
 Costs,  
     Adjudged against representative, Prob.Code 245.  
     Bond, payment out of estate, Prob.Code 194.  
 Liability,  
     After demand on failure to pay claim, Prob.Code 328.  
     Purchase of property by executor or administrator, Prob.Code 352.  
     Security for, Prob.Code 12.  
 Suits,  
     Claims, Prob.Code 315.  
         Establish rejected claim, Prob.Code 310.  
     Recovery of funds paid to state treasurer, Prob.Code 433.  
 County clerks,  
     Citations and notices, presentation of account for final settlement, Prob.Code 407.  
 Filing with,  
     Allowance of claims against estates, Prob.Code 311.  
     Application,  
         Authority to make mineral leases, Prob.Code 367.  
         New bond, Prob.Code 204.  
         Pooling or unitization of minerals, Prob.Code 369.  
         Subject property to mineral lease, etc., Prob.Code 371.  
     Court's order releasing lien on surety's property, Prob.Code 212.  
     Oath of temporary administrator, Prob.Code 131.  
     Objection as to defects of form of exhibits or vouchers supporting claims, Prob.Code 302.  
 County judges,  
     Appraisalment, approval or disapproval, Prob.Code 255.  
     Appraisers, appointment, newly discovered property, Prob.Code 256.  
 Bonds,  
     Approval, Prob.Code 189, 194.  
     Decrease in amount, Prob.Code 208.  
     Examination, Prob.Code 36.  
     New bonds, Prob.Code 203, 205.  
 Defined, Prob.Code 3.  
 Duties, Prob.Code 36.  
 Inventory, approval or disapproval, Prob.Code 255.  
 List of claims, approval or disapproval, Prob.Code 255.  
 Temporary administrator, appointment, Prob.Code 131.  
 Court, defined, Prob.Code 3.  
 Creditors,  
     Application for no administration of small estates, contents, Prob.Code 139.  
     Bond on withdrawal of estate from administration, suit on, Prob.Code 268.  
     Deposits in lieu of sureties on bonds, rights regarding, Prob.Code 194.  
     Distributees, suit against on withdrawal of estate from administration, Prob.Code 269.  
     Letters testamentary or of administration, post.  
     Suit for order for payment of claims, Prob.Code 326.  
 Credits,  
     Final settlement, Prob.Code 412.  
     Income of estate to persons entitled to during administration, Prob.Code 239.  
 Damages,  
     Failure to pay claim after demand, Prob.Code 328.  
     Liability for failure to give notice, Prob.Code 297.  
     Sales, neglect, Prob.Code 358.

**EXECUTORS AND ADMINISTRATORS—C't'd**

**Death,**  
 Appointment of successor, Prob.Code 220.  
 Co-executor or administrator, Prob.Code 240.  
 Further administration, Prob.Code 223.  
 Independent executor, effect, Prob.Code 154.

**Debtors and creditors,**  
 Creditors, generally, ante.  
 Small estates, affidavit, furnishing copy to, Prob.Code 137.

**Debts,**  
 Administrator with will annexed, powers, Prob.Code 154.  
 Against estate. Claims against estate, ante.  
 Application for appointment, Prob.Code 76.  
 Bond for on withdrawing estate from administration, Prob.Code 263.  
 Community property, ante.  
 Due estate. Claims due estate, ante.  
 Independent administration, post.  
 Independent executor, suit against, Prob.Code 147.  
 Payment, Prob.Code 37.

**Deeds and conveyances,**  
 Powers, Prob.Code 233.  
 Real estate, co-executor and administrator, joinder necessity, Prob.Code 240.  
 Reconveyance upon redemption of real property, Prob.Code 348.  
 Sales of real property, post.

**Delivery,**  
 Property on partition and distribution, Prob.Code 380.  
 Will to, Prob.Code 71.

**Deposits,**  
 Assets, agreement as to, Prob.Code 219.  
 Cash in bank, commission on prohibited, Prob.Code 241.  
 Cash or securities in lieu of sureties on bonds, Prob.Code 194.

**Descent and Distribution, generally, this index.**  
 Determination of heirship, Prob.Code 48-56.

**Development of minerals,**  
 Application for authority to lease property for, contents, Prob.Code 367.  
 Pooling or unitization, Prob.Code 369.

**Devise, defined, Prob.Code 3.**  
**Devisee, defined, Prob.Code 3.**

**Discharge,**  
 Final discharge on application for resignation, Prob.Code 221.  
 Final settlement, Prob.Code 408.  
 Order for, Prob.Code 408, 409.  
 Resignation, effect, Prob.Code 221.  
 Small estates, Prob.Code 143.  
 Sureties upon bonds, Prob.Code 209, 210.

**Discovery of additional property, Prob.Code 256.**

**Disqualification, application for appointment, Prob.Code 76.**

**Distributee,**  
 Defined, Prob.Code 3.  
 Small estates, Prob.Code 137.  
 Waiver of appraisal, Prob.Code 254.

**Distribution. Descent and Distribution, generally, this index.**

**District courts,**  
 Appeal, action by court on claim, Prob.Code 312.  
 Jurisdiction over, Prob.Code 5.  
 Review of order setting aside sale, Prob.Code 355.

**Docket, defined, Prob.Code 3.**

**Duties, subsequent executors, succession to prior duties, Prob.Code 224, 226.**

**Easements, sales, Prob.Code 351.**

**Embezzlement, ground for removal, Prob.Code 222.**

**Encumbrances. Liens, generally, post.**

**EXECUTORS AND ADMINISTRATORS—C't'd**

**Enforcement of orders against by attachment and imprisonment, Prob.Code 24.**

**Estate, defined, Prob.Code 3.**

**Estate taxes, mortgage or pledge of real or personal property to borrow for payment, Prob.Code 329.**

**Evidence,**  
 Appointment and qualification, Prob.Code 186.  
 Appraisal of small estates, Prob.Code 142.  
 Inventories, appraisements and list of claims, use as, Prob.Code 261.  
 Livestock sale, Prob.Code 335.  
 Notice to treasurer for payment of estates into treasury, Prob.Code 428.  
 Prima facie, deeds and conveyances of real property, Prob.Code 356.

**Examination of estates by county judge, Prob.Code 36.**

**Exchange of property, Prob.Code 234.**

**Execution,**  
 Affidavit, personal surety on bond, ownership of property subject to, Prob.Code 201.  
 Direction, method, Prob.Code 25.  
 Independent executor, running against estate of testator in hands of, Prob.Code 147.

**Exempt property, defined, Prob.Code 3.**

**Exhibits, Prob.Code 399-403.**  
 Claims against estates, ante.  
 Community property, ante.  
 Condition of estate, Prob.Code 262, 402.  
 Failure to file, penalty, Prob.Code 403.  
 Mineral leases, orders, contents, Prob.Code 367.  
 Partition and distribution, filing, Prob.Code 375.  
 Resignation, accompanying application, Prob.Code 221.  
 Sureties to prove possession necessary for approval of annual account, Prob.Code 401.

**Expenses, Prob.Code 242.**  
 Accounts, Prob.Code 244.

**Administration,**  
 Borrowing money for payment, Prob.Code 329.  
 Claims include liabilities of, Prob.Code 3.  
 Exemption from sales or personal property for, Prob.Code 334.  
 Order of payment of claims for, Prob.Code 320.  
 Priority of payment, Prob.Code 322.  
 Sale of real property for payment, application for, Prob.Code 341.

**Final account, contents, Prob.Code 405.**

**Funeral,**  
 Claims for, time for presentment, Prob.Code 300.  
 Exemption, from sales of personal property for, Prob.Code 334.  
 Liability of exempt property for, Prob.Code 281.  
 Limitation on amount, Prob.Code 322.  
 Order of payment of claims for, Prob.Code 320.  
 Preference in payment over family allowance for widow and minors, Prob.Code 290.  
 Sale of real property for payment, application for, Prob.Code 341.

**Last sickness,**  
 Claim for, time for presentment, Prob.Code 300.  
 Exemption from sales of personal property for payment, Prob.Code 334.  
 Liability of exempt property for, Prob.Code 281.  
 Limitation on amount, Prob.Code 322.

- EXECUTORS AND ADMINISTRATORS—C't'd**  
**Expenses—Cont'd**  
 Last sickness—Cont'd  
 Order of payment of claims for, Prob. Code 320.  
 Preference in payment over family allowance for widows and minors, Prob. Code 290.  
 Sale of real property for payment, application for, Prob. Code 341.  
 Selection of real property to be sold for payment, Prob. Code 340.  
 Small estates, payment, Prob. Code 140.  
 Will, allowance for defense, Prob. Code 243.
- Exploration for minerals,**  
 Application for authority to lease property for, contents, Prob. Code 367.  
 Pooling or unitization, Prob. Code 369.
- Extension of liens, borrowing of money for,** Prob. Code 329.  
**Extension of obligations owing to estate,** Prob. Code 234.
- Factory,**  
 Carrying on operation, Prob. Code 238.  
 Management, compensation, Prob. Code 241.  
 Sale of property necessary to carry on, exemption from, Prob. Code 333.
- Failure to qualify,**  
 Appointment of successor, Prob. Code 220.  
 Independent executor, effect, Prob. Code 154.
- Family allowance to widows and minors,** Prob. Code 286-293.  
 Amount, Prob. Code 287.  
 Order, Prob. Code 289.  
 Apportionment, Prob. Code 291.  
 Fixing by court, Prob. Code 286.  
 Funeral expenses, effect upon payment, Prob. Code 290.  
 Last sickness expenses, effect on payment, Prob. Code 290.
- Order,**  
 Fixing, Prob. Code 289.  
 Payment, Prob. Code 287, 320.
- Payment,**  
 Installment or lump sum, Prob. Code 287.  
 Order, Prob. Code 289.  
 Personal property, taking for, Prob. Code 292.  
 Persons entitled to, Prob. Code 291.  
 Preference, Prob. Code 290.  
 Personal property, taking in payment, Prob. Code 292.  
 Preference, Prob. Code 290.  
 Property sufficient for maintenance of minor, effect, Prob. Code 288.  
 Sale of estate to raise funds for, Prob. Code 292, 293.  
 Separate property, adequacy for maintenance of widow, effect, Prob. Code 288.  
 Setting apart homestead and other exempt property, generally, post.  
 Small estates, Prob. Code 140.  
 Surviving spouse and married children, small estates, Prob. Code 139.  
 Time for making, Prob. Code 286.  
 When allowance not to be made, Prob. Code 288.
- Farms,**  
 Carrying on operation, Prob. Code 238.  
 Sale of property, exemption from, Prob. Code 333.  
 Management, compensation, Prob. Code 241.
- Fees,**  
 Appraisers, Prob. Code 253.  
 Attorneys, Prob. Code 242, 243.  
 Instruments supporting claim providing for, Prob. Code 307.  
 Probate fee book, Prob. Code 16.
- Filing,**  
 Affidavit, personal surety on bond, Prob. Code 201.
- EXECUTORS AND ADMINISTRATORS—C't'd**  
**Filing—Cont'd**  
 Annual account, failure to, penalty, Prob. Code 400.  
 Applications,  
 Authority to make mineral leases, Prob. Code 367.  
 Bond, decrease in amount, Prob. Code 208.  
 Grant of powers by administrator with will annexed, Prob. Code 154.  
 Pooling or unitization of mineral leases, Prob. Code 369.  
 Resignation, Prob. Code 221.  
 Bond, Prob. Code 189, 197.  
 Administration by creditor, defeat by, Prob. Code 80.  
 Administrator with will annexed, Prob. Code 154.  
 Affidavit of personal surety on, Prob. Code 201.  
 Application for new bond, Prob. Code 204.  
 Complaint to file, Prob. Code 214.  
 Claims against estates, ante.  
 Community property, ante.  
 Complaint,  
 Additional inventory or list of claims, Prob. Code 257.  
 Bonds, file, Prob. Code 214.  
 Correction of inventory, appraisalment or list of claims, Prob. Code 258.  
 Exhibit of condition of estate, Prob. Code 262, 402.  
 Failure or neglect to deliver estate on final settlement, Prob. Code 414.  
 Failure to rent property, Prob. Code 362.  
 Purchase of property by executor or administrator, Prob. Code 352.  
 Court's order releasing recorded lien on surety's property, Prob. Code 212.  
 Excuse for failure to return inventory, appraisalment and list of claims, Prob. Code 260.  
 Exhibits or reports, penalty for failure, Prob. Code 403.  
 Expense accounts, Prob. Code 244.  
 Final account, neglect or failure, procedure, Prob. Code 406.  
 Letters, foreign wills, Prob. Code 105.  
 Mineral leases, authority to subject property to, neglect to apply for, Prob. Code 371.  
 Notices,  
 Holders of recorded claims of issuance of letters, Prob. Code 295.  
 Present claims, copy, Prob. Code 294.  
 Oaths, Prob. Code 189, 190.  
 Temporary administrator, Prob. Code 131.  
 Petition,  
 Recovery funds paid to state treasurer, Prob. Code 433.  
 Release of sureties on bond, Prob. Code 210.  
 Receipt on payment of estates into state treasury, Prob. Code 430.  
 Reports,  
 Appraisalment by court, Prob. Code 254.  
 Hiring or renting, Prob. Code 365.  
 Sales of real property, Prob. Code 353.  
 Return of notice to present claims, Prob. Code 294.  
 Small estates,  
 Application for no administration, Prob. Code 140.  
 Claims, Prob. Code 143.  
 Statement of condition of estate, failure to, effect, Prob. Code 194.  
 Temporary administrator, list of property, Prob. Code 134.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
**Final settlement, Prob.Code 404-414.**  
 Action by court upon, Prob.Code 408.  
 Appointment of successor representative prior to filing, Prob.Code 220.  
 Citation upon presentation, Prob.Code 406, 407.  
 Discharge, Prob.Code 408.  
 Filing, neglect or failure to file, procedure, Prob.Code 406.  
 Inheritance taxes, payment, requisites to approval, Prob.Code 410.  
 Money becoming due pending final discharge, Prob.Code 409.  
 Neglect or failure to deliver estate, procedure; Prob.Code 414.  
 Offsets, credits and bad debts, Prob.Code 412.  
 Order of judgment, resignation, effect, Prob.Code 221.  
 Partition and distribution, Prob.Code 408.  
 Exhibits and account, filing, Prob.Code 375.  
**Fines and penalties,**  
 Annual account, failure to file, Prob.Code 400.  
 Failure to file exhibits or reports, Prob.Code 403.  
 Payments of estates into state treasury, failure to make, Prob.Code 431.  
 Neglect of clerk, Prob.Code 429.  
**Foreclosures, redemption of property acquired by, Prob.Code 348.**  
**Foreign executors and administrators,**  
 Bond, Prob.Code 106.  
 Letters, Prob.Code 105.  
 Sales, powers, Prob.Code 107.  
**Funeral expenses,**  
 Claims for, time for presentment, Prob.Code 300.  
 Exemption from sales of personal property for payment, Prob.Code 334.  
 Liability of exempt property for, Prob.Code 281.  
 Limitation on amount, Prob.Code 322.  
 Order of payment of claims for, Prob.Code 320.  
 Preference over family allowance for widows and minors, Prob.Code 290.  
 Sale of real property for payment, application for, Prob.Code 341.  
 Small estates, Prob.Code 140.  
**Garnishment, deposit in lieu of sureties on bond, Prob.Code 194.**  
**Gift taxes, mortgage or pledge of real or personal property to borrow for payment, Prob.Code 329.**  
**Guardian and ward,**  
 Delivery of property to nonresident guardian, Prob.Code 127.  
 Executors, etc., of guardian not to dispute ward's title, Prob.Code 237.  
**Guardianships, application of law to, Prob.Code 108.**  
**Hearing,**  
 Annual account, Prob.Code 401.  
**Applications,**  
 Authority to borrow money, Prob.Code 329.  
 Authority to subject property to mineral leases, etc., Prob.Code 367, 371.  
 Private sale, Prob.Code 368.  
 Bond, decrease in amount of bond, Prob.Code 208.  
 Grant of powers to administrator with will annexed, Prob.Code 154.  
 Payment or credit of income during administration, Prob.Code 239.  
 Pooling or unitization of mineral leases, Prob.Code 369.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
**Hearing—Cont'd**  
**Applications—Cont'd**  
 Resignation, Prob.Code 221.  
 Sale of livestock, Prob.Code 335.  
 Small estates, no administration, Prob.Code 140.  
**Complaints,**  
 Additional inventory or list of claims, Prob.Code 257.  
 Correction of inventory, appraisement or list of claims, Prob.Code 258.  
 Failure to hire or rent property, Prob.Code 362.  
 File bond, order requiring, Prob.Code 215.  
 Final settlement, neglect or failure to deliver estate, Prob.Code 414.  
 Removal on failure to endorse or annex memorandum to claim, Prob.Code 310.  
 Exhibits or reports, failure to file, Prob.Code 403.  
 Further administration, Prob.Code 223.  
 Purchase of claim by executor or administrator, Prob.Code 324.  
 Time and place, designation by county clerk, Prob.Code 20.  
**Heirs, defined, Prob.Code 3.**  
**Heirship, actions to determine, Prob.Code 48-56.**  
**Affidavit, support of petition by, Prob.Code 49.**  
**Appeals, Prob.Code 55.**  
 Citation and notice, Prob.Code 50.  
 Contents of petition, Prob.Code 49.  
 Evidence, Prob.Code 52, 53.  
 Family history, recorded instruments as prima facie evidence, Prob.Code 52.  
 Grounds of action, Prob.Code 48.  
**Judgment,**  
 Certified copy, filing, Prob.Code 56.  
 Conclusiveness, Prob.Code 55.  
 Jurisdiction, Prob.Code 48.  
 Nature of action, Prob.Code 48.  
 Parties, Prob.Code 49.  
 Persons who may institute, Prob.Code 49.  
 Petition, Prob.Code 49.  
 Recorded instruments as prima facie evidence, Prob.Code 52.  
 Requisites, Prob.Code 54.  
 Subscription and swearing to evidence, Prob.Code 53.  
 Transfer of cause to county of administration, Prob.Code 51.  
 Venue, Prob.Code 48.  
 Writing, reduction of evidence to, Prob.Code 53.  
**Hiring and renting,**  
 Generally, Prob.Code 359-366.  
 Application, Prob.Code 361.  
 Authority, Prob.Code 359.  
 Business, etc., carrying on operation, Prob.Code 238.  
 Credit, Prob.Code 363.  
 Installment payments, effect, Prob.Code 363.  
 Leases, generally, post.  
 Neglect, procedure in case of, Prob.Code 362.  
 Note with personal security for amount, necessity, Prob.Code 363.  
 Notice, publication or posting, Prob.Code 361.  
 Order of court, Prob.Code 361.  
 Liability for hiring or renting without, Prob.Code 360.  
 Necessity, Prob.Code 359.  
 Record book, probate minutes, contents, Prob.Code 15.  
 Report, Prob.Code 364, 365.  
 Action of court on, Prob.Code 366.  
 Loss, damage or destruction of property, Prob.Code 364.



## EXECUTORS AND ADMINISTRATORS—C't'd

Hiring and renting—Cont'd  
 Return of property in good condition, Prob. Code 364.  
 Homestead. Setting apart homestead and other exempt property, post.  
 Husband and wife,  
 Bonds,  
   Married women, Prob.Code 199.  
   Minor, Prob.Code 200.  
 Improvements, construction, homestead, liability for, Prob.Code 270.  
 Income of estate, payment or credit to persons entitled to during administration, Prob.Code 239.  
 Income taxes, mortgage or pledge of real or personal property to borrow money for payment, Prob.Code 329.  
 Incompetency, ground for removal, Prob.Code 222.  
 Incompetents, defined, Prob.Code 3.  
 Independent administration, Prob.Code 145.  
 Accounts, final, filing, Prob.Code 151.  
 Affidavit, closing by, Prob.Code 151.  
 Application for closing by distributees, Prob. Code 152.  
 Appraisement, Prob.Code 145.  
 Bonds,  
   Approval, Prob.Code 148.  
   Creditors, suit on, Prob.Code 148.  
   Executor, Prob.Code 149.  
   Heirs, Prob.Code 148.  
 Citation, Prob.Code 148.  
   Closing administration, Prob.Code 152.  
 Claims,  
   Classification, duties of executor, Prob. Code 146.  
   Enforcement by suit against executor, Prob.Code 147.  
   List, Prob.Code 145.  
 Closing,  
   Affidavit, Prob.Code 151.  
   Distributees, application by, Prob.Code 152.  
 Creditors, suit on bonds, Prob.Code 148.  
 Debts against estate,  
   Complaint, filing, Prob.Code 148.  
 Payment,  
   Closing for final account after, Prob. Code 151.  
   Enforcement by suit, Prob.Code 147.  
 Distributees, application for closing, Prob. Code 152.  
 Execution, Prob.Code 147.  
 Executors,  
   Application for compensation, Prob.Code 241.  
   Application of law, Prob.Code 146.  
   Bonds, Prob.Code 149.  
   Defined, Prob.Code 3.  
   Letters, issuance, Prob.Code 153.  
   Liability, Prob.Code 151.  
   Order, termination of power, Prob.Code 152.  
   Power and authority, termination, Prob. Code 151.  
   Powers of administrator succeeding, Prob.Code 154.  
   Provision for, Prob.Code 154.  
   Settle account, verification by affidavit, Prob.Code 151.  
   Suit against, Prob.Code 147.  
   Wills, provision for, Prob.Code 154.  
 False statements in affidavit, effect, Prob. Code 151.  
 Filing,  
   Distributees, application for closing, Prob.Code 152.  
   Final account, verification by affidavit, Prob.Code 151.

## EXECUTORS AND ADMINISTRATORS—C't'd

Independent administration—Cont'd  
 Hearing, application for closing, Prob.Code 152.  
 Heirs, bonds, Prob.Code 148.  
 Inventory, return, Prob.Code 145.  
 Issuance of letters, Prob.Code 153.  
 Judgment, Prob.Code 147.  
   Bond, Prob.Code 148.  
 Letters, issuance, Prob.Code 153.  
 Liability for mismanagement, Prob.Code 151.  
 Mismanagement, liability for, Prob.Code 151.  
 Order, closing, Prob.Code 152.  
 Partition and distribution, Prob.Code 150.  
 Payment,  
   Claims, pro rata, duties of executor, Prob.Code 146.  
   Debts, final account after, Prob.Code 151.  
   Debts or claims against estate, Prob. Code 147.  
   Powers of successor administrator, Prob. Code 154.  
   Priorities of claims, duties of executor, Prob.Code, 146.  
   Provision for, Prob.Code 145.  
   Successor to executor, powers, Prob. Code 154.  
   Suits, claims, enforcement by, Prob. Code 147.  
   Termination, Prob.Code 151.  
   Wills, provision for, Prob.Code 145.  
 Independent executors. Independent administration, generally, ante.  
 Infants. Minors, post.  
 Inheritance tax,  
   Appraisement, use, Prob.Code 254.  
   Mortgage or pledge of real or personal property to borrow for payment, Prob.Code 329.  
   Payment, requisite to approval of final account, Prob.Code 410.  
 Insolvent estates. Setting apart homestead and other exempt property, post.  
 Interest, liability for after demand and failure to pay claim, Prob.Code 328.  
 Interest in land, defined, Prob.Code 367.  
 Interested persons, defined, Prob.Code 3.  
 Invalidity of acts of, declaration, effect on rights of third persons, Prob.Code 188.  
 Inventories,  
   Action by court, Prob.Code 255.  
   Additional, Prob.Code 257.  
   Citation to make, Prob.Code 257.  
   Order, Prob.Code 257.  
   Affidavit, attachment to, Prob.Code 252.  
   Approval or disapproval by court, Prob.Code 255.  
   Community property, ante.  
   Conclusiveness, Prob.Code 261.  
   Correction, Prob.Code 258.  
   Citation to make, Prob.Code 258.  
   Order, Prob.Code 258.  
   Evidence, use as, Prob.Code 261.  
   Failure to return, removal, ground for, Prob.Code 222.  
   Interest in property, showing, Prob.Code 250.  
   Joint executors and administrators, failure to return, effect, Prob.Code 260.  
   List of claims, attachment, Prob.Code 251, 252.  
   Newly discovered property, Prob.Code 256.  
   Order of approval or disapproval, Prob.Code 255.  
   Requisites, Prob.Code 250.  
   Return, Prob.Code 255, 256.  
   Additional, Prob.Code 257.  
   Independent administration, Prob.Code 145.  
   Successor representatives, Prob.Code 227.

EXECUTORS AND ADMINISTRATORS—C't'd  
Inventories—Cont'd

Separate property, Prob.Code 250.  
 Small estates, Prob.Code 142, 143.  
 Subscription to, Prob.Code 252.  
 Subsequent representatives, Prob.Code 227.  
 Time for making, Prob.Code 250.  
 Use as evidence, Prob.Code 261.  
 Value of property, Prob.Code 250.

Investments, community administrator, Prob. Code 167.

Joint executors and administrators, Prob.Code 240.  
 Return of inventory, appraisalment and list of claims, failure to, effect, Prob.Code 260.  
 Validity of acts of one, Prob.Code 240.

Joint ownership, possession of property, Prob. Code 235.

Judge, defined, Prob.Code 3.

Judgments and decrees,  
 Claims against estates, ante.  
 Independent executors, recovery against, Prob.Code 147.  
 Order of court setting aside sale, effect, Prob.Code 355.  
 Recovery of funds paid to state treasurer, Prob.Code 433.  
 Sale of personal property, Prob.Code 339.

Judicial sales, redemption of property acquired by, Prob.Code 348.

Jurisdiction,  
 Concurrent, Prob.Code 8.  
 County courts, Prob.Code 4.  
 Application of independent executors for compensation, Prob.Code 241.  
 District courts, Prob.Code 5.  
 Estate, proof, Prob.Code 88.

Land, defined, Prob.Code 367.

Last sickness expenses,  
 Claims for, time for presentment, Prob. Code 300.  
 Exemption from sale of personal property for payment, Prob.Code 334.  
 Liability of exempt property for, Prob.Code 281.  
 Limitation on amount, Prob.Code 322.  
 Order of payment of claims for Prob.Code 320.  
 Preference for payment over family allowance to widows and minors, Prob.Code 290.  
 Sale of real property for payment, application for, Prob.Code 341.  
 Small estates, Prob.Code 140.

Leases,  
 Community property, surviving spouse, powers, Prob.Code 160.  
 Hiring and renting, generally, ante.  
 Mineral leases, Prob.Code 367-372.  
 Oil, gas, or mineral, bonuses, etc., from, treatment as income, Prob.Code 239.

Legacy, defined, Prob.Code 3.

Letters testamentary or of administration, Prob.Code 186.  
 Alien, disqualification, Prob.Code 78.  
 Applicant, record book, judge's probate docket, contents, Prob.Code 13.

Application,  
 Citation, contents, Prob.Code 128.  
 Contents, Prob.Code 81, 82.  
 Creditors, Prob.Code 80.  
 Defeat of, Prob.Code 80.  
 Discovery of will, Prob.Code 83.  
 Foreign wills, Prob.Code 105.  
 Hearing, Prob.Code 83.  
 Persons entitled to make, Prob.Code 80.  
 Second application, procedure pertaining to, Prob.Code 83.  
 Time for filing, Prob.Code 74.  
 Written will not produced, contents, Prob.Code 81.

EXECUTORS AND ADMINISTRATORS—C't'd  
Letters testamentary or of administration—C't'd

Bond,  
 Amount of creditor's debt, defeat of application by, Prob.Code 80.  
 Foreign will, Prob.Code 106.  
 Issuance of letters without, Prob.Code 195.  
 Lien on estate, Prob.Code 80.  
 Order granting, contents, Prob.Code 181.  
 Rules for, Prob.Code 194.

Certificate,  
 Clerk of court as constituting, Prob. Code 183.  
 Evidence of appointment and qualification, Prob.Code 186.

Citations and notices, Prob.Code 128.  
 Contents and issuance, Prob.Code 128.  
 Necessity on revocation, Prob.Code 220.  
 Opposition, necessity, Prob.Code 179.  
 Posting, Prob.Code 128.  
 Publication, Prob.Code 128.

Service,  
 Personal, Prob.Code 128.  
 Revocation of letters, foreign wills, Prob.Code 105.  
 Posting, Prob.Code 128.  
 Proof, Prob.Code 88.  
 Validation, prior modes of, Prob. Code 129.

Contents of order granting, Prob.Code 181.  
 Contest, temporary administrator, appointment pending, Prob.Code 132.  
 Conviction for felony, disqualification, Prob. Code 78.  
 Corporation, disqualified, Prob.Code 78.  
 County court,  
 Grant by, Prob.Code 4.  
 Jurisdiction, Prob.Code 4.

Creditors, Prob.Code 77, 80.  
 Bond, filing to defeat administration by, Prob.Code 80.

Death of person, proof, Prob.Code 88.  
 Debts, necessity for issuance, Prob.Code 178.  
 Delivery by clerk of court, Prob.Code 182.  
 Devisee or legatee of testator, Prob.Code 77.

Discovery of will, Prob.Code 83.  
 After grant, Prob.Code 220.

Disqualification,  
 Proof of non-disqualification, Prob.Code 88.  
 Proof where prior letters granted, Prob. Code 88.

Disqualified persons, Prob.Code 78.  
 Effect of finding that no necessity for administration exists, Prob.Code 180.

Evidence, Prob.Code 186.

Executors,  
 Person named in will as, Prob.Code 77.  
 Proof of being named in will, Prob.Code 88.  
 Will probated in another jurisdiction, Prob.Code 105.

Failure to issue within prescribed time, effect, Prob.Code 178.

Filing, opposition to, Prob.Code 179.

Finding that no necessity for administration exists, effect, Prob.Code 180.

Foreign wills, Prob.Code 105.

Heirs, waiver of right to serve, Prob.Code 79.

Husband or wife surviving, Prob.Code 77.  
 Waiver of right to serve, Prob.Code 79.

Incompetent, disqualified, Prob.Code 78.

Independent executor, Prob.Code 153.

Issuance,  
 Clerk, Prob.Code 182.  
 Independent executor, Prob.Code 153.  
 Proof required for, Prob.Code 88.

EXECUTORS AND ADMINISTRATORS—C't'd  
Letters testamentary or of administration—C't'd

Jurisdiction,  
 County court, Prob.Code 4.  
 District court, Prob.Code 5.  
 Evidence, Prob.Code 88.  
 Proof, Prob.Code 88.  
 Limitation on time,  
 Filing applications for, Prob.Code 74.  
 Issuance, Prob.Code 73.  
 Lost or destroyed, reissuance, Prob.Code 187.  
 Minors,  
 Attaining legal capacity, grant to, Prob. Code 220.  
 Disqualified, Prob.Code 78.  
 Names, order granting, contents, Prob.Code 181.  
 Necessity, Prob.Code 178.  
 Administration, proof, Prob.Code 88.  
 Finding that no necessity exists, effect, Prob.Code 180.  
 Next of kin of deceased, Prob.Code 77.  
 Nonresident, disqualified, Prob.Code 78.  
 Notice of issuance, Prob.Code 294, 295.  
 Number required, Prob.Code 296.  
 Penalty for failure to give, Prob.Code 297.  
 Oaths, Prob.Code 190.  
 Opposition to, Prob.Code 179.  
 Order of persons qualified to serve, Prob. Code 77.  
 Orders,  
 Foreign wills, Prob.Code 105.  
 Revocation, Prob.Code 106.  
 Granting,  
 Appointment of appraisers, Prob. Code 248.  
 Contents, Prob.Code 181.  
 Refusal, contents, Prob.Code 180.  
 Payment of creditor's claim, defeat of application by, Prob.Code 80.  
 Persons,  
 Disqualified to serve, Prob.Code 78.  
 Qualified to serve,  
 Issuance to, Prob.Code 182.  
 Order of, Prob.Code 77.  
 Possession of estate upon issuance, right to, Prob.Code 37.  
 Power of attorney, waiver by, Prob.Code 79.  
 Prerequisites to granting, Prob.Code 88.  
 Prevention,  
 Bond, Prob.Code 80.  
 Method, Prob.Code 80.  
 Principal devisee or legatee of testator, Prob.Code 77.  
 Proof,  
 Creditor's claim is fictitious, etc., defeat of application by, Prob.Code 80.  
 Discovery of will, Prob.Code 83.  
 Required for issuance, Prob.Code 88.  
 Qualified to serve, order of persons, Prob. Code 77.  
 Reissuance on loss or destruction, Prob.Code 187.  
 Renunciation of right to serve, Prob.Code 79.  
 Revocation,  
 Absence or sickness, Prob.Code 220.  
 Annual account, failure to file, Prob. Code 400.  
 Application, necessity, Prob.Code 220.  
 Bond, failure to give, Prob.Code 213.  
 Citation, personal service, necessity, Prob.Code 220.  
 Discovery of will, Prob.Code 220.  
 Executor obtaining legal age, Prob.Code 220.  
 Exhibits or reports, failure to file, Prob. Code 403.  
 Foreign will, Prob.Code 105, 106.

EXECUTORS AND ADMINISTRATORS—C't'd  
 Letters testamentary or of administration—C't'd  
 Revocation—Cont'd  
 Grant to person having prior right, Prob.Code 220.  
 Order on failure to return inventory, appraisal and list of claims, Prob.Code 260.  
 Requisites, Prob.Code 183.  
 Settlement of estate, period for probate not to affect, Prob.Code 92.  
 Temporary administrator, issuance, Prob. Code 131.  
 Time,  
 Failure to issue within prescribed time, effect, Prob.Code 178.  
 Issuance or granting, Prob.Code 73, 178.  
 Two or more executors or administrators, Prob.Code 182.  
 Validation, Prob.Code 129.  
 Venue, Prob.Code 6.  
 Concurrent, Prob.Code 8.  
 Proof, Prob.Code 88.  
 Waiver of right to serve, Prob.Code 79.  
 What constitutes, Prob.Code 183.  
 Will annexed, Prob.Code 178.  
 Oath, Prob.Code 190.  
 Revocation, Prob.Code 220.  
 Will discovered, Prob.Code 83.  
 Written will, filing with, Prob.Code 81.  
 Liability, neglect in collection of claims and recovery of property, Prob.Code 233.  
 Liens,  
 Affidavit of personal surety on bonds, contents, Prob.Code 201.  
 Approval of secured claim as preferred lien against property, Prob.Code 306.  
 Borrowing of money to renew and extend, Prob.Code 329.  
 Defined, Prob.Code 3.  
 Extension,  
 Limitation on period, Prob.Code 329.  
 Order authorizing, Prob.Code 329.  
 Personal surety,  
 Bond as lien on real property of, Prob. Code 202.  
 Release before estate fully administered, Prob.Code 211.  
 Proceeds of sale, Prob.Code 325.  
 Property of estate withdrawn from administration, Prob.Code 266.  
 Release upon payment of debt, Prob.Code 234.  
 Setting apart homestead and other exempt property, preference, Prob.Code 277.  
 Small estates, application for no administration, contents, Prob.Code 139.  
 Surety's property, release, Prob.Code 212.  
 Vendors,  
 Foreclosure, redemption of property acquired by, Prob.Code 348.  
 Sale of real property, Prob.Code 357.  
 Limitation of actions. Claims against estate, ante.  
 Limitations,  
 Period of loans, Prob.Code 329.  
 Settlement of estate after grant of orders, Prob.Code 92.  
 Lists of claims,  
 Action by court, Prob.Code 255.  
 Additional, Prob.Code 257.  
 Citation to make, Prob.Code 257.  
 Affidavit, attachment to, Prob.Code 252.  
 Approval or disapproval by court, Prob. Code 255.  
 Attachment to inventory, Prob.Code 251.  
 Bond on withdrawing estate from administration, amount, Prob.Code 263.  
 Community property, ante.  
 Conclusiveness, Prob.Code 261.

## EXECUTORS AND ADMINISTRATORS—C't'd

Lists of claims—Cont'd  
 Correction, Prob.Code 258.  
 Citation to make, Prob.Code 258.  
 Order, Prob.Code 258.  
 Evidence, use as, Prob.Code 261.  
 Independent administration, Prob.Code 145.  
 Joint executors and administrators, failure to return, effect, Prob.Code 260.  
 Newly discovered, Prob.Code 256.  
 Order of approval or disapproval, Prob.Code 255.  
 Order requiring, Prob.Code 257.  
 Return, Prob.Code 255, 256.  
 Additional, Prob.Code 257.  
 Successor representatives, Prob.Code 227.  
 Subsequent representatives, Prob.Code 227.  
 Use as evidence, Prob.Code 261.  
 Loans or authority to borrow money, Prob.Code 329.  
 Mail,  
 Notice to holders of recorded claims of issuance of letters, Prob.Code 295.  
 Registered mail, notice, death of testator, Prob.Code 71.  
 Management of estate, expenses, Prob.Code 242.  
 Order of payment, Prob.Code 320.  
 Priority of payment, Prob.Code 322.  
 Market value of property, affidavit of personal surety on bond, contents, Prob.Code 201.  
 Mineral development, defined, Prob.Code 367.  
 Mineral leases, Prob.Code 367-372.  
 Applications, rules, Prob.Code 367.  
 Authority to subject property to, neglect to apply for, procedure, Prob.Code 371.  
 Bonds, ante.  
 Bonuses, etc., from, treatment as income, Prob.Code 239.  
 Conditional validity, Prob.Code 367.  
 Interest in land, defined, Prob.Code 367.  
 Land, defined, Prob.Code 367.  
 Mandatory requirements, Prob.Code 367.  
 Mineral development, defined, Prob.Code 367.  
 Notices, rules, Prob.Code 367.  
 Orders, rules, Prob.Code 367.  
 Pooling or unitization,  
 Action of court, Prob.Code 369.  
 Agreements, validation, Prob.Code 372.  
 Ancillary instruments, execution without court order, Prob.Code 370.  
 Application for, contents, Prob.Code 369.  
 Authority to subject property to, neglect to apply for, procedure, Prob.Code 371.  
 Citations or notices, necessity, Prob.Code 369.  
 Clauses, execution with or without, Prob.Code 367.  
 Hearing of application, Prob.Code 369.  
 Order, contents, Prob.Code 369.  
 Royalty on minerals, Prob.Code 369.  
 Private sale, Prob.Code 368.  
 Property, defined, Prob.Code 367.  
 Rules concerning applications, orders, notices, etc., Prob.Code 367.  
 Validation, Prob.Code 372.  
 Minors,  
 Attaining legal capacity, grant of letter to, Prob.Code 220.  
 Defined, Prob.Code 3.  
 Disqualified to serve as, Prob.Code 78.  
 Family allowance to widows and minors, ante.  
 Setting apart homestead and other exempt property, generally, post.  
 Minutes, defined, Prob.Code 3.  
 Misapplication of property, removal, Prob.Code 222.  
 Misconduct, ground for removal, Prob.Code 222.

## EXECUTORS AND ADMINISTRATORS—C't'd

Mismanagement, ground for removal, Prob.Code 222.  
 Mortgages,  
 Administrator with will annexed, powers, Prob.Code 154.  
 Community administrator, prohibited, Prob.Code 167.  
 Community property, surviving spouse, powers, Prob.Code 160.  
 Defined, Prob.Code 3.  
 Filing and recording on sale of real property, Prob.Code 357.  
 Foreclosure, redemption of property acquired by, Prob.Code 348.  
 Proceeds of sale of mortgaged property, disposition, Prob.Code 325.  
 Real or personal property, authority, Prob.Code 329.  
 Names of heirs or devisees, application for no administration of small estates, contents, Prob.Code 139.  
 National bank,  
 Deposit of assets with, agreement as to, Prob.Code 219.  
 Deposits with in lieu of sureties on bond, Prob.Code 194.  
 Natural persons, sureties on bonds, Prob.Code 194.  
 Neglect of duties, adjudging costs against, Prob.Code 245.  
 Negotiable securities, deposit in lieu of sureties on bond, Prob.Code 194.  
 Net estate, defined, Prob.Code 3.  
 Newspapers, publication of notice,  
 Appointment, Prob.Code 294.  
 Present claims, Prob.Code 294.  
 Notices. Citations and notices, generally, ante.  
 Oaths, Prob.Code 189.  
 Executor or administrator with will annexed, Prob.Code 190.  
 Form, Prob.Code 190.  
 Exhibit of condition of estate, Prob.Code 262, 402.  
 Filing with clerk of court, Prob.Code 190.  
 Form, Prob.Code 190.  
 Recording, Prob.Code 190.  
 Requisite for qualification, Prob.Code 189.  
 Temporary administrator, Prob.Code 131.  
 Time for taking, Prob.Code 192.  
 Objections, reappraisal, Prob.Code 259.  
 Obligations, administrator with will annexed, power to incur, Prob.Code 154.  
 Offsets, final settlement, Prob.Code 412.  
 Oil and gas,  
 Bonuses, etc., from, treatment as income, Prob.Code 239.  
 Leases, Prob.Code 367.  
 Private sale, Prob.Code 368.  
 Validation, Prob.Code 372.  
 Pooling or unitization of royalty on minerals, Prob.Code 369.  
 Orders,  
 Additional inventory or list of claims, Prob.Code 257.  
 Administration of estate under court orders, Prob.Code 239.  
 Appraisal, approval or disapproval, Prob.Code 255.  
 Appraisers, appointment, community property, Prob.Code 163.  
 Bonds, ante.  
 Borrowing money, authorizing, Prob.Code 329.  
 Business, etc., carrying on operation, Prob.Code 238.  
 Community property, ante.  
 Correction of inventory, appraisal or list of claims, Prob.Code 258.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
Orders—Cont'd

Designating time and place for hearing application for authority to make mineral leases, Prob.Code 367.  
Deposits in lieu of sureties on bond, Prob.Code 194.  
Enforcement against, Prob.Code 24.  
Exhibits or reports, filing, Prob.Code 403.  
Failure to obey, ground for removal, Prob.Code 222.  
Final settlement,  
Neglect or failure to deliver estate, Prob.Code 414.  
Partition and distribution, Prob.Code 408.  
Grant of powers to administrator with will annexed, Prob.Code 154.  
Granting letters, appointment of appraisers, Prob.Code 248, 249.  
Inventory, approval or disapproval, Prob.Code 255.  
Letters testamentary or of administration, post.  
Liens, extension, authorizing, Prob.Code 329.  
List of claims, approval or disapproval, Prob.Code 255.  
Mineral leases,  
Authorizing at private sale, Prob.Code 368.  
Pooling or unitization, Prob.Code 369.  
Mortgage of real or personal property, Prob.Code 329.  
New bonds, requiring, Prob.Code 206, 207.  
Partition and distribution of estates, effect upon claims, Prob.Code 318.  
Payment,  
Claims against estates, ante.  
Estates into state treasury, post.  
Payment or credit of income to persons entitled to during administration, Prob.Code 239.  
Pledge of real or personal property, Prob.Code 329.  
Removal,  
Contents, Prob.Code 222.  
Failure to return inventory, appraisalment and list of claims, Prob.Code 260.  
Report of hiring or renting, confirmation by, Prob.Code 366.  
Revocation of letters, failure to return inventory, appraisalment and list of claims, Prob.Code 260.  
Sales, post.  
Setting apart homestead and other exempt property, Prob.Code 271.  
Small estates, no administration, Prob.Code 139.  
Effect, Prob.Code 141.  
Payment of claims, Prob.Code 143.  
Revocation, proceedings, Prob.Code 142.  
Subjecting property to mineral development, etc., Prob.Code 371.  
Successor representatives, appointment, requirements, Prob.Code 227.  
Temporary administrator,  
Appointment, Prob.Code 131.  
Extension of rights and powers, Prob.Code 133.  
Withdrawal,  
Assets on deposit, necessity, Prob.Code 219.  
Deposits in lieu of sureties on bonds, Prob.Code 194.  
Withdrawing estate from administration, post.  
Parties, obligations, renewal and extension, Prob.Code 234.

**EXECUTORS AND ADMINISTRATORS—C't'd**

Partition and distribution of estate,  
Community property, ante.  
Descent and Distribution, this index.  
Setting apart homestead and other exempt property, post.  
Payment,  
Administration expenses, borrowing money for, Prob.Code 329.  
Claims against estates, ante.  
Community property, ante.  
Expenses, application for sale of real property for payment, Prob.Code 341.  
Family allowance to widows and minors, ante.  
Income of estate to persons entitled to during administration, Prob.Code 239.  
Independent administration, ante.  
Money due during vacancy, Prob.Code 220.  
Taxes, mortgage or pledge of real or personal property to borrow for, Prob.Code 329.  
Payment of estates into state treasury, Prob.Code 427-433.  
Certificate, mailing certified copy,  
Penalties regarding, Prob.Code 429.  
Treasurer, Prob.Code 428.  
Citation,  
Failure to make payments, Prob.Code 431.  
Neglect to notify state treasurer, Prob.Code 429.  
Clerk of court, duties, Prob.Code 428, 433.  
Penalty for neglect, Prob.Code 429.  
County attorney, duties, Prob.Code 432, 433.  
Damages, authority of treasurer to collect, Prob.Code 432.  
District attorneys, duties, Prob.Code 432, 433.  
Evidence of notice, Prob.Code 428.  
Notice to treasurer, Prob.Code 428.  
Penalty for neglect to make, Prob.Code 429.  
Order of court, Prob.Code 427.  
Certified copy, mailing to treasurer, Prob.Code 428.  
Certificate of postmaster, Prob.Code 428.  
Penalty for neglect of clerk to transmit, Prob.Code 429.  
Penalty,  
Failure to make, Prob.Code 431.  
Neglect to notify treasurer, Prob.Code 429.  
Receipt of state treasurer, Prob.Code 430.  
Record,  
Certificate of certified copy of order of court, Prob.Code 429.  
Certificate of mailing of certified copy to treasurer, Prob.Code 428.  
Receipt of treasurer, Prob.Code 430.  
Recovery,  
Persons entitled to, Prob.Code 433.  
Petition, Prob.Code 433.  
Suit for, Prob.Code 433.  
Citation, Prob.Code 433.  
Costs, Prob.Code 433.  
Judgment, Prob.Code 433.  
Procedure, Prob.Code 433.  
Time required, Prob.Code 427.  
Treasurer,  
Enforcing payment by, Prob.Code 432.  
Powers, Prob.Code 432.  
Penalties. Fines and penalties, ante.  
Person, defined, Prob.Code 3.  
Personal property,  
Appraisalment and inventory, Prob.Code 250.  
Defined, Prob.Code 3.  
Family allowance for widows and minors, taking in payment, Prob.Code 292.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
 Personal property—Cont'd  
 Mortgage or pledge, authority, Prob.Code 329.  
 Possession, Prob.Code 232.  
 Sales, post.  
 Personal representative, defined, Prob.Code 3.  
 Personal service, citation, revocation of letters, necessity, Prob.Code 220.  
 Personal sureties on bonds. Sureties on bonds, post.  
 Persons of unsound mind, defined, Prob.Code 3.  
 Petition,  
 Recovery of funds paid to state treasurer, Prob.Code 433.  
 Release of sureties upon bond, Prob.Code 210.  
 Pleadings, defects, effect, Prob.Code 9.  
 Pledge,  
 Administrator with will annexed, powers, Prob.Code 154.  
 Real or personal property, authority, Prob.Code 329.  
 Pooling agreements, minerals,  
 Ancillary instruments, execution without court order, Prob.Code 370.  
 Execution with or without pooling clauses, Prob.Code 367.  
 Neglect to apply for authority to subject property to, procedure, Prob.Code 371.  
 Royalties, Prob.Code 369.  
 Validation, Prob.Code 372.  
 Possession,  
 Property,  
 Common ownership, Prob.Code 235.  
 Personal property, etc., Prob.Code 232.  
 Recovery, Prob.Code 233.  
 Small estates, affidavit, furnishing to person having, Prob.Code 137.  
 Record books, Prob.Code 232.  
 Posting citations and notices,  
 Applications,  
 Authority to make mineral leases, Prob.Code 367.  
 Grant of powers to administrator with will annexed, Prob.Code 154.  
 Resignation, Prob.Code 221.  
 Sale of real property, Prob.Code 344.  
 Auction sale of personal property, Prob.Code 336.  
 Hiring or renting, Prob.Code 361.  
 Payment or credit of income, Prob.Code 239.  
 Present claims, Prob.Code 294.  
 Service by, Prob.Code 128.  
 Temporary administrator, perpetuation of appointment, Prob.Code 131.  
 Validation, Prob.Code 129.  
 Powers, subsequent representatives, succession to prior powers, Prob.Code 224.  
 Presentment. Claims against estates, ante.  
 Preservation of estate, expenses, Prob.Code 242.  
 Order of payment, Prob.Code 320.  
 Priority of payment, Prob.Code 322.  
 Principal of estate, payment from during administration prohibited, Prob.Code 239.  
 Probate. Wills, this index.  
 Probate Court, defined, Prob.Code 3.  
 Probate docket,  
 Call, Prob.Code 19.  
 Contents, Prob.Code 13.  
 Defined, Prob.Code 3.  
 Record book, Prob.Code 13.  
 Reports of sales of real property, voting on, Prob.Code 353.  
 Probate matter, etc., defined, Prob.Code 3.  
 Probate minutes,  
 Approval and signing by judge, Prob.Code 23.  
 Contents, Prob.Code 15.  
 Defined, Prob.Code 3.

## EXECUTORS AND ADMIN.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
 Procedure,  
 Borrowing money, Prob.Code 329.  
 Temporary administration, Prob.Code 131.  
 Process,  
 Contest of claims, Prob.Code 312.  
 Contest of proceedings, persons entitled to, Prob.Code 10.  
 Service, inability to serve, removal, ground for, Prob.Code 222.  
 Production of minerals, pooling or unitization, Prob.Code 369.  
 Property,  
 Appraisalment, generally, ante.  
 Care of, Prob.Code 230.  
 Common ownership, possession, Prob.Code 235.  
 Defined, Prob.Code 3, 367.  
 Expenses for recovery, Prob.Code 242.  
 Final accounts, requisites, Prob.Code 405.  
 Hiring and renting, Prob.Code 359-366.  
 Inventories, generally, ante.  
 Newly discovered, Prob.Code 256.  
 Personal property, generally, ante.  
 Purchase or exchange, Prob.Code 234.  
 Real property, generally, post.  
 Sales, generally, post.  
 Publication, citations and notices,  
 Account, final settlement, presentation, Prob.Code 407.  
 Mineral leases, application for authority to make, Prob.Code 367.  
 Present claims, Prob.Code 294.  
 Public sales of real property, Prob.Code 349.  
 Resignation, application for, Prob.Code 221.  
 Purchase by, prohibited, Prob.Code 324.  
 Purchase money, homestead, liability for, Prob.Code 270.  
 Purchase of property, Prob.Code 234.  
 Qualification, Prob.Code 189.  
 Failure, appointment of successor, Prob.Code 220.  
 Neglect to qualify in manner and time required, removal, ground for, Prob.Code 222.  
 Ranches,  
 Carrying on operation, Prob.Code 238.  
 Borrowing money for payment of expenses, Prob.Code 329.  
 Management, compensation, Prob.Code 241.  
 Sale of personal property necessary to carry on, exemption from, Prob.Code 333.  
 Real property,  
 Affidavit, personal surety on bond, contents, Prob.Code 201.  
 Conveyance,  
 Co-executors or administrators, joinder, necessity, Prob.Code 240.  
 Payment of secured claim, Prob.Code 234.  
 Defined, Prob.Code 3.  
 Inventory and appraisalment, Prob.Code 250.  
 Mortgage or pledge, authority, Prob.Code 329.  
 Personal surety,  
 Bond as lien on, Prob.Code 202.  
 Lien, release before estate fully administered, Prob.Code 211.  
 Sales, post.  
 Receipts,  
 Acceptance of payment or tender of money due during vacancy by clerk of court, Prob.Code 220.  
 Deposit in lieu of sureties on bond, Prob.Code 194.  
 Payment of estates into state treasury, Prob.Code 430.  
 Return receipt on mailing notice to holders of recorded claims of issuance of letters, Prob.Code 295.

- EXECUTORS AND ADMINISTRATORS—C't'd**  
Record books. County Clerks, this index.
- Recording,**  
Bond of personal surety, Prob.Code 202.  
Certificate, order for payment of estates in-  
to state treasury, Prob.Code 428.  
Letters, foreign wills, Prob.Code 105.  
Oaths, Prob.Code 190.  
Payment of estates into state treasury,  
Prob.Code 427.  
Receipt, Prob.Code 430.  
Release of recorded lien on surety's prop-  
erty, Prob.Code 212.  
Recovery of possession of estate property, duty,  
Prob.Code 233.  
References, account for final settlement, Prob.  
Code 405.  
Registrar, evidences of interest, etc., of small  
estates, furnishing affidavit to, Prob.Code 137.  
Rejection. Claims against estates, ante.  
Release,  
Deposits in lieu of sureties on bonds, Prob.  
Code 194.  
Personal surety on bond before estate fully  
administered, Prob.Code 211.  
Recorded lien on personal surety's property,  
Prob.Code 212.  
Recorded lien on property of personal sure-  
ty, Prob.Code 211.  
Resignation, effect, Prob.Code 221.
- Removal,**  
Appointment of successor, Prob.Code 220.  
Bond, failure to give, Prob.Code 217.  
Citations and notices, personal service,  
Prob.Code 222.  
Claims, failure to endorse or annex memo-  
randum on allowance or rejection, Prob.  
Code 310.  
Co-executor or administrator, Prob.Code  
240.  
Costs adjudged against, removal for cause,  
Prob.Code 245.  
Failure to give bond, Prob.Code 217.  
Further administration, Prob.Code 223.  
Grounds for, Prob.Code 222.  
Independent executor, effect, Prob.Code 154.  
Orders,  
Contents, Prob.Code 222.  
Failure to return inventory, appraise-  
ment and list of claims, Prob.Code 260.  
Purchase of claims against estates, ground  
for, Prob.Code 324.  
Statement of condition of estate, failure to  
file, Prob.Code 194.  
With notice, grounds for, Prob.Code 222.  
Without notice, grounds for, Prob.Code 222.
- Renewal,**  
Liens, limitation on period, Prob.Code 329.  
Obligations, Prob.Code 234.
- Rentals from oil or gas or mineral lease, treat-  
ment as income, Prob.Code 239.**
- Renting and hiring, generally, Prob.Code 359-  
366.**
- Repairs, Prob.Code 230.**
- Report,**  
Appraisal, filing by court, Prob.Code  
254.  
Condition of estate, Prob.Code 262.  
Failure to file, penalty, Prob.Code 403.  
Hiring or renting, Prob.Code 364-366.  
Livestock sale, Prob.Code 335.  
Loss, damage or destruction of property  
hired or rented, Prob.Code 364.  
Sales, post.
- Representative, defined, Prob.Code 3.**
- Resignation,**  
Accounting on, Prob.Code 221.  
Application, Prob.Code 221.  
Appointment, Prob.Code 76.  
Appointment of successor, Prob.Code 220.  
Citation, Prob.Code 221.
- EXECUTORS AND ADMINISTRATORS—C't'd**  
Resignation—Cont'd  
Co-executor or administrator, Prob.Code  
240.  
Final discharge, Prob.Code 221.  
Further administration, Prob.Code 223.  
Hearing application for, Prob.Code 221.  
Independent executor, effect, Prob.Code 154.  
Order of discharge, Prob.Code 221.  
Requisites of discharge, Prob.Code 221.  
Review, order setting aside sale of property,  
Prob.Code 355.  
Revocation. Letters testamentary or of admin-  
istration, ante.
- Rights,**  
Common law, powers and duties governed  
by, Prob.Code 32.  
Subsequent representatives, succession to  
prior rights, Prob.Code 224, 226.  
Rights of way, sales, Prob.Code 351.
- Royalties,**  
Oil and gas or mineral lease, treatment as  
income, Prob.Code 239.  
Pooling or unitization, Prob.Code 369.
- Rules and regulations, bonds, governing, Prob.  
Code 194.**
- Safe deposit corporations,**  
Deposit of assets with, agreement as to,  
Prob.Code 219.  
Deposits with in lieu of sureties on bond,  
Prob.Code 194.
- Safekeeping of estate, expenses, Prob.Code 242.**  
Order of payment, Prob.Code 320.  
Priority of payment, Prob.Code 322.
- Sales,**  
Application,  
Livestock sales, Prob.Code 335.  
Mortgaged property, Prob.Code 338.  
Neglect or failure to apply for, Prob.  
Code 347.  
Orders, Prob.Code 333, 334.  
Real property, Prob.Code 341.  
Citation and return on, Prob.Code  
344.  
Contents, Prob.Code 342.  
Hearing, Prob.Code 343.  
Opposition, filing, Prob.Code 345.
- Auction commission merchant, livestock,  
sale through, Prob.Code 335.**
- Bill of sale, personal property, Prob.Code  
339.**
- Bonded livestock commission merchant, sale  
of livestock through, Prob.Code 335.**
- Bonds,**  
Executor or administrator, Prob.Code  
354.  
Exempt, Prob.Code 333.
- Cash sales, Prob.Code 331, 332.**  
Application for order, Prob.Code 333.  
Real property, Prob.Code 348.
- Charges, livestock sale, Prob.Code 335.**
- Citations and notices,**  
Application for sale of livestock, Prob.  
Code 335.  
Neglect or failure to apply for order,  
Prob.Code 347.
- Community property, surviving spouse, pow-  
ers, Prob.Code 160.**
- Complaint, purchase of property by executor  
or administrator, Prob.Code 352.**
- Conveyance, necessity on sale of personal  
property, Prob.Code 339.**
- Costs, liability on purchase of property by  
executor or administrator, Prob.Code 352.**
- Court must order, Prob.Code 331.**
- Credit sales, Prob.Code 331, 332.**  
Application for order, Prob.Code 333.  
Personal property, Prob.Code 337.  
Real property, Prob.Code 348.
- Crops, Prob.Code 334.**
- Damages for neglect, Prob.Code 358.**

**EXECUTORS AND ADMINISTRATORS—C't'd**  
**Sales—Cont'd**

- Decree, personal property, Prob.Code 339.
- Deterioration, property liable to, Prob.Code 333.
- Directions of will, compliance with, Prob. Code 332.
- Easements, Prob.Code 351.
- Evidence, livestock sale, Prob.Code 335.
- Evidence of title, personal property, Prob. Code 339.
- Exempt property, Prob.Code 333, 334.
- Family allowance to widows and minors, raise funds for, Prob.Code 292, 293.
- Filing,
  - Application for sale of mortgaged property, Prob.Code 338.
  - Mortgage or trust deed, Prob.Code 357.
  - Opposition to application for real property sale, Prob.Code 345.
- Foreign wills, powers, Prob.Code 107.
- Growing crops or livestock, Prob.Code 334.
- Harvested crops or livestock, Prob.Code 334.
- Hearing,
  - Application,
    - Failure or neglect of representative to apply for order to sell, Prob. Code 347.
    - Livestocks, sale, Prob.Code 335.
    - Property, sale, Prob.Code 343.
- Liens,
  - Property subject to, Prob.Code 338.
  - Vendor's and trust deed lien, Prob.Code 357.
- Limitation on period for credit sale of personal property, Prob.Code 337.
- Livestock, Prob.Code 334.
  - Special provisions, Prob.Code 335.
- Mineral leases, private sale, Prob.Code 368.
- Mortgaged property, Prob.Code 338.
  - Proceeds of, Prob.Code 325.
- Mortgages, filing and recording, Prob.Code 357.
- Notice,
  - Auction sale of personal property, Prob. Code 336.
  - Purchase on sale of personal property, credit, Prob.Code 337.
- Opposition to real property, application, Prob.Code 345.
- Orders,
  - Application for, Prob.Code 333, 334.
    - Real property, Prob.Code 341.
  - Easements and rights of ways, Prob. Code 351.
  - Livestock, Prob.Code 335.
  - Mortgaged property, Prob.Code 338.
  - Setting aside sale, Prob.Code 355.
  - Necessity, Prob.Code 331, 332.
  - Neglect or failure to apply for, Prob. Code 347.
    - Real property, Prob.Code 346.
    - Will authorizing, effect, Prob.Code 332.
- Perishable property, Prob.Code 333.
- Personal property, Prob.Code 333-339.
  - Credit, Prob.Code 337.
  - Public auction, Prob.Code 336.
  - Report, Prob.Code 339.
- Posting, notice, auction sale of personal property, Prob.Code 336.
- Private, mineral leases, Prob.Code 368.
- Procedure, easements and rights of way, Prob.Code 351.
- Property,
  - Claims, for payment, Prob.Code 326.
  - Exempt from forced sale, Prob.Code 333.
  - Not demanded, Prob.Code 427.
  - Subject to lien, Prob.Code 338.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
**Sales—Cont'd**

- Public auction, personal property, Prob. Code 336, 337.
- Public auction or private, Prob.Code 331, 332.
  - Application for order, Prob.Code 333.
  - Mortgaged property, Prob.Code 338.
  - Real property, Prob.Code 348.
    - Order, contents, Prob.Code 346.
- Purchase by executor or administrator prohibited, Prob.Code 352.
- Real property,
  - Advertisements, private sales, necessity, Prob.Code 350.
  - Affidavits, verification of exhibits by, Prob.Code 342.
  - Applications, Prob.Code 341.
    - Citation and return on, Prob.Code 344.
    - Contents, Prob.Code 342.
    - Hearing, Prob.Code 343.
    - Opposition, filing, Prob.Code 345.
  - Bidder, failure to comply on public sale, Prob.Code 349.
  - Bonds, Prob.Code 354.
    - Contents of order, Prob.Code 346.
  - Cash sales, Prob.Code 348.
  - Citations and notices, Prob.Code 344.
    - Private sales, necessity, Prob.Code 350.
    - Publication, Prob.Code 349.
  - Contents of reports of sale, Prob.Code 353.
  - Continuance, Prob.Code 349.
    - Hearing application, Prob.Code 343.
  - County judge, hearing application for, Prob.Code 343.
  - Credit sales, Prob.Code 348.
  - Deeds and conveyances,
    - Contents, Prob.Code 356.
    - Delivery, Prob.Code 357.
    - Prima facie evidence of sale, Prob. Code 356.
    - Vesting title by, Prob.Code 356.
  - Default in payment of principal or interest, effect, Prob.Code 348.
  - Description, order, contents, Prob.Code 346.
  - Easements, Prob.Code 351.
  - Exhibits, Prob.Code 342.
  - Filing, opposition to application, Prob. Code 345.
  - Foreclosure of vendor's lien or mortgage, redemption of property acquired by, Prob.Code 348.
  - Hearing, application, Prob.Code 343.
  - Judicial sales, redemption of property acquired by, Prob.Code 348.
  - Liens, notes secured by vendor's lien, Prob.Code 348.
  - Mortgage, foreclosure, redemption of property acquired by, Prob.Code 348.
  - Necessity, order, contents, Prob.Code 346.
  - Notes, execution by purchaser, Prob. Code 348.
  - Notice, publication, Prob.Code 349.
  - Order, contents, Prob.Code 346.
  - Penalties for neglect, Prob.Code 358.
  - Posting, citation, service by, Prob.Code 344.
  - Private sales, Prob.Code 350.
  - Public auction or private, Prob.Code 348.
  - Public auctions, method of sale, Prob. Code 349.
  - Reconveyance upon redemption, Prob. Code 348.
  - Redemption of property acquired by foreclosure of vendor's lien or mortgage, Prob.Code 348.



**EXECUTORS AND ADMINISTRATORS—C't'd**  
Sales—Cont'd

Real property—Cont'd  
 Reference of notice of sale, contents, Prob.Code 349.  
 Reports, Prob.Code 353.  
     Order, contents, Prob.Code 346.  
 Rights of way, Prob.Code 351.  
 Selection of property to be sold, Prob.Code 340.  
 Temporary administrator, Prob.Code 132.  
 Terms, Prob.Code 348.  
     Order, contents, Prob.Code 346.  
 Time and place, Prob.Code 349.  
 Trust deeds, redemption of property acquired through sale under, Prob.Code 348.  
 Vendor's lien, foreclosure, redemption of property acquired by, Prob.Code 348.  
 Verification, exhibits by affidavit, Prob.Code 342.  
 Recording, mortgage and trust deed, Prob.Code 357.  
 Regulations governing sales of personal property, Prob.Code 339.  
 Reports,  
     Action of court on, Prob.Code 355.  
     Contents, real property, Prob.Code 346.  
     Continuance of public sales of real property, Prob.Code 349.  
     Livestock, Prob.Code 335.  
     Personal property, Prob.Code 339.  
     Real property, Prob.Code 353.  
 Rights of way, Prob.Code 351.  
 Securities, exempt, Prob.Code 333.  
 Specific legacies, Prob.Code 333.  
     Exempt, Prob.Code 334.  
 Temporary administrator, returns, filing, Prob.Code 134.  
 Title to purchaser of livestock, Prob.Code 335.  
 Trust deeds,  
     Filing and recording, Prob.Code 357.  
     Lien, Prob.Code 357.  
 Vendor's lien, Prob.Code 357.  
     Notes, reservation, Prob.Code 348.  
 Vesting title of personal property, decree, Prob.Code 339.  
 Void, purchase by executor or administrator, Prob.Code 352.  
 Waiver,  
     Security on sale of personal property on credit, Prob.Code 337.  
     Vendor lien prohibited, Prob.Code 357.  
 Waste, property liable to, Prob.Code 333.  
 Wills, authorized by, Prob.Code 332.  
 Sales exempt from securities law, 579—3.  
 Securities Law, exemption transaction, 579—3.  
 Securities,  
     Deposit in lieu of sureties on bond, Prob.Code 194.  
     Possession, proof, necessity for approval of annual account, Prob.Code 401.  
     Sales, exempt, Prob.Code 333.  
 Separate property,  
     Administration, Prob.Code 177, 188.  
     Inventory, Prob.Code 250.  
 Setting apart homestead and other exempt property, Prob.Code 270—285.  
     Allowance in lieu of, Prob.Code 273.  
         Exempt property, Prob.Code 273.  
         Homestead, limitation on amount, Prob.Code 273.  
     Payment, persons to whom made, Prob.Code 275.  
         Method of payment, Prob.Code 274.  
     Sale of estate to raise, Prob.Code 276.  
     Delivery, persons entitled to, Prob.Code 272.

**EXECUTORS AND ADMINISTRATORS—C't'd**

Setting apart homestead and other exempt property—Cont'd  
 Exempted property not considered in determining whether estate is solvent or insolvent, Prob.Code 280.  
 Funeral expenses, liability for payment of claims for, Prob.Code 300.  
     Exempt property, Prob.Code 281.  
 Homestead,  
     Election by surviving husband to occupy, effect upon partition, Prob.Code 283.  
     Liability for debts, Prob.Code 270.  
     Nature of property, Prob.Code 282.  
     Separate property, Prob.Code 282.  
     Surviving husband's rights, Prob.Code 283.  
     Surviving widow, election to occupy, effect upon partition, Prob.Code 284.  
 Insolvent estate, Prob.Code 279.  
     Determination, Prob.Code 280.  
     Liens, preference, Prob.Code 277.  
 Last sickness expenses, liability of exempted property for payment of claims for, Prob.Code 281, 300.  
 Liability for debts, Prob.Code 281.  
     Homestead, Prob.Code 270.  
 Liens and encumbrances, preference, Prob.Code 277.  
 Nature of homestead property, Prob.Code 282.  
 Order, Prob.Code 271.  
 Partition and distribution,  
     Homestead, Prob.Code 285.  
         Surviving husband, election to occupy, effect, Prob.Code 283.  
         Surviving widow, election to occupy, effect upon, Prob.Code 284.  
     Solvent estate, Prob.Code 278.  
     Payment, method, Prob.Code 274.  
 Solvent estates, Prob.Code 278.  
     Determination, Prob.Code 280.  
     Liens, preference, Prob.Code 277.  
     Time for making, Prob.Code 271.  
 Setting aside acts of, effect on rights of third persons, Prob.Code 188.  
 Settlement of estate, Prob.Code 404—414.  
     Accounts, small estates, Prob.Code 143.  
     County court, jurisdiction, Prob.Code 4.  
     Final settlement, Prob.Code 404—414.  
         Action of court, Prob.Code 408.  
         Appointment of successor representative prior to filing, Prob.Code 220.  
         Citation for presentation, Prob.Code 406, 407.  
         Discharge, Prob.Code 408.  
         Failure to make, ground for removal, Prob.Code 222.  
         Filing, neglect or failure to file, procedure, Prob.Code 406.  
         Inheritance taxes, payment, requisites to approval, Prob.Code 410.  
         Money becoming due pending final discharge, Prob.Code 409.  
         Neglect or failure to deliver estate, procedure, Prob.Code 414.  
         Offsets, credits and bad debts, Prob.Code 412.  
         Order of judgment, resignation, effect, Prob.Code 221.  
         Partition and distribution, Prob.Code 408.  
         Exhibits and accounts, filing, Prob.Code 375.  
         Jurisdiction of county court, Prob.Code 4.  
         Lapse of time, effect, Prob.Code 92.  
 Sickness. Last sickness, ante.  
 Signature, bonds, Prob.Code 194.  
 Small estates. Administration of small estates, ante.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
 Solvent estates. Setting apart homestead and other exempt property, ante.  
 Specific performance of decedent's bond or written agreement to make title on sale of property, Prob.Code 27.  
 State treasury. Payment of estates into, ante.  
 Statute of limitations, tolling, Prob.Code 209.  
 Subsequent personal representatives, Prob.Code 223-227.  
 Subsequent representatives, additional powers of successor appointee, Prob.Code 225.  
 Succeeding independent executor, powers of administrator with will annexed, Prob.Code 154.  
**Successors,**  
 Appointment, Prob.Code 220.  
 Resignation, Prob.Code 221.  
 Rights, powers and duties, succession to, Prob.Code 224.  
**Suits,**  
 Bidder, failure to comply with bid on public sales of real property, Prob.Code 349.  
 Borrowing money for payment of claims established by, Prob.Code 329.  
 Claims against estate, ante.  
 Community property, surviving spouse, powers, Prob.Code 160.  
 Creditor to obtain order for payment of claim, Prob.Code 326.  
 Heirship, actions to determine, ante.  
 Independent executor, pleading, Prob.Code 147.  
 Payment of estates into state treasury,  
 Damages, Prob.Code 432.  
 Recovery, Prob.Code 433.  
 Purchase of property by executor or administrator, costs, Prob.Code 352.  
 Rejected claim, establishment by, Prob.Code 310.  
 State treasurer, enforce payment of estates into treasury, Prob.Code 432.  
 Successor appointee, additional powers, Prob.Code 225.  
 Summary proceedings, small estates, Prob.Code 143.  
**Sureties on bonds, Prob.Code 194.**  
 Agreement with as to deposit of assets, Prob.Code 219.  
 Citation after demand on failure to pay claim, Prob.Code 328.  
 Costs adjudged against, Prob.Code 245.  
 Defined, Prob.Code 3.  
 Deposits in lieu of, Prob.Code 194.  
 Discharge, Prob.Code 209, 210.  
 Resignation, Prob.Code 221.  
 Liability for neglect in collection of claims and recovery of property, Prob.Code 233.  
 Notice of decrease in amount, Prob.Code 208.  
 Penalty for failure to give notice, Prob.Code 297.  
**Personal, Prob.Code 194.**  
 Affidavit, Prob.Code 201.  
 Bond as lien on real property of, Prob.Code 202.  
 Lien, release before estate fully administered, Prob.Code 211.  
 Release of recorded lien on property, Prob.Code 212.  
 Signatures, Prob.Code 194.  
 Petition for release before estate fully administered, Prob.Code 210.  
 Resignation, effect, Prob.Code 221.  
 Sales of property, liability for neglect of representative, Prob.Code 358.  
**Suspension of powers, orders for new bonds, effect, Prob.Code 207.**  
**Taxes,**  
 Affidavit of personal surety on bond, contents, Prob.Code 201.

**EXECUTORS AND ADMINISTRATORS—C't'd**  
**Taxes—Cont'd**  
 Homestead, liability for, Prob.Code 270.  
 Inheritance, payment, requisite to approval of final account, Prob.Code 410.  
 Mortgage or pledge of real or personal property to borrow money for payment, Prob.Code 329.  
 Temporary administration, Prob.Code 131-135.  
**Temporary administrators,**  
 Accounting, Prob.Code 134.  
 Appeals, pending from orders or judgments appointing, Prob.Code 28.  
**Appointment,**  
 Application, Prob.Code 131.  
 Authorization, Prob.Code 131.  
 Citation or notice, necessity, Prob.Code 131.  
 Contest, Prob.Code 131.  
 Exhibit for setting aside, Prob.Code 131.  
 Letters, pending contest for grant of, Prob.Code 132.  
 List of property on expiration, Prob.Code 134.  
 Necessity, Prob.Code 131.  
 Order, Prob.Code 131.  
 Pending will contest, Prob.Code 132.  
 Perpetuation, Prob.Code 131.  
 Setting aside, Prob.Code 131.  
 Will contest, pending, Prob.Code 132.  
 Bond, Prob.Code 131-133, 194.  
 Closing administration by, Prob.Code 135.  
 Cumulative provisions, Prob.Code 132.  
 Delivery of estate to persons entitled to possession, Prob.Code 135.  
 Discharge, Prob.Code 135.  
 Duties on expiration of appointment, Prob.Code 134.  
 Exhibit of acts on expiration of appointment, Prob.Code 134.  
 Final account, Prob.Code 407.  
 Form of oath, Prob.Code 190.  
 Letters, Prob.Code 131.  
 Contest on grant, Prob.Code 132.  
 Limited powers, Prob.Code 131, 132.  
 Necessity of appointment, Prob.Code 131.  
 Oath, Prob.Code 131, 190.  
 Orders, Prob.Code 133.  
 Pending will contest, Prob.Code 132.  
 Permanency, Prob.Code 131.  
 Personal representative defined, Prob.Code 3.  
 Powers, Prob.Code 132, 133.  
 Representative defined, Prob.Code 3.  
 Sureties on bond, release from liability, Prob.Code 135.  
 Tender, money due during vacancy, Prob.Code 220.  
**Terms,**  
 Loans, Prob.Code 329.  
 Mineral leases, binding, Prob.Code 367.  
**Third persons, rights on dealing with, Prob.Code 188.**  
 Time of execution of mineral leases, Prob.Code 367.  
**Title, purchaser of livestock, Prob.Code 335.**  
 Title papers, possession, Prob.Code 232.  
**Transfer agent, evidences of interest, etc., of small estates, Prob.Code 137.**  
 Transfer taxes, mortgage or pledge of real or personal property to borrow for payment, Prob.Code 329.  
**Trust companies,**  
 Deposit of assets with, agreement as to, Prob.Code 219.  
 Deposits with in lieu of sureties on bond, Prob.Code 194.  
**Trust deeds,**  
 Filing and recording, sale of real property, Prob.Code 357.

**EXECUTORS AND ADMINISTRATORS—Cont'd**

- Trust deeds—Cont'd
  - Mortgage or pledge of real or personal property by, Prob.Code 329.
  - Redemption of property acquired through sale under, Prob.Code 348.
- Unitization agreements, minerals,
  - Ancillary instruments, execution without court order, Prob.Code 370.
  - Execution with or without unitization clauses, Prob.Code 367.
  - Neglect to apply for authority to subject property to, procedure, Prob.Code 371.
  - Royalties, Prob.Code 369.
  - Validation, Prob.Code 372.
- Vacancies, payment or tender of money due during, Prob.Code 220.
- Validation,
  - Mineral leases and pooling or unitization agreements, Prob.Code 372.
  - Prior modes of service of citation, Prob.Code 129.
- Validity of acts of, Prob.Code 188.
- Value of property, affidavit of personal surety on bond, contents, Prob.Code 201.
- Verification,
  - Application to resign, Prob.Code 221.
  - Expense accounts, Prob.Code 244.
- Waiver,
  - Appraisalment, Prob.Code 254.
  - Security on sale of personal property on credit, Prob.Code 337.
  - Vendor's lien prohibited, Prob.Code 357.
- Widows,
  - Family allowance to widows and minors, ante.
  - Setting apart homestead and other exempt property, generally, ante.
- Wills, generally, this index.
- Withdrawal,
  - Deposit of assets, agreement as to, Prob.Code 219.
  - Deposits in lieu of sureties on bonds, Prob.Code 194.
- Withdrawing estate from administration, Prob.Code 262-269.
- Bond for debts, Prob.Code 263.
  - Approval, Prob.Code 264.
  - Lien on property to secure payment, Prob.Code 266.
  - Suit on by creditor, Prob.Code 268.
- Citation, Prob.Code 262.
- Creditors, suit by, Prob.Code 268, 269.
- Discharge of executor or administrator, Prob.Code 265.
- Distributees, suit by creditors against, Prob.Code 269.
- Exhibit of condition of estate, Prob.Code 262.
- Lien on property, Prob.Code 266.
- Order,
  - Closing administration, Prob.Code 265.
  - Delivery of estate to persons entitled to, Prob.Code 264.
  - Discharging executor or administrator, Prob.Code 265.
  - Partition and distribution, Prob.Code 267.
  - Report on condition of estate, Prob.Code 262.
- Writing, expense charges, Prob.Code 244.

**EXEMPT PROPERTY**

Defined, Prob.Code 3.

**EXEMPTIONS**

Insurance, this index.

Life insurance counselor license law, Ins.Code 21.07-2.

Lloyd's plan insurance companies, Ins.Code 18.23.

Public Surveyors Registration Law, persons exempt, 5282a.

**EXEMPTIONS—Cont'd**

- Reciprocal exchanges, exempt from insurance laws, Ins.Code 19.12.
- Securities, Insurance Securities Law, 580-4.
- Securities Exemption Law, 579-4.
  - Pleading, 579-39.
  - Transaction, 579-3.
- Transactions, Insurance Securities Law, 580-3.

**EXHIBITS**

- Executors and Administrators, this index.
- Guardian and Ward, this index.
- Record book, probate minutes, contents, Prob.Code 15.

**EXPECTANCY**

Wills, passage of interest under, Prob.Code 58.

**EXPENSES AND EXPENDITURES**

- Examination of insurance carriers, Ins.Code 1.16.
- Executors and Administrators, this index.
- Receivers, endangered estate of minor or incompetent, Prob.Code 136.

**EXTENSION**

Executors and administrators, obligation owing by or to estate, Prob.Code 234.

**FACSIMILES**

- Corporation seal and signatures, 1334b.
- Signature to public securities, 717j.

**FACTORIES**

See Executors and Administrators, this index.

**FAMILY HISTORY**

Recorded instruments as prima facie evidence in action to determine heirship, Prob.Code 52.

**FANNIN COUNTY**

Juvenile board, 5139L.

**FARM MUTUAL INSURANCE**

- Assessment as needed plan, defined, Ins.Code 16.01.
- Charter, prerequisites, Ins.Code 16.06.
- Companies subject to law, Ins.Code 16.01.
- Exemption from law, Ins.Code 2.20, 5.50, 5.54.
- Incorporation, conditions, Ins.Code 16.06.
- Liquidation or rehabilitation, Ins.Code 21.28.
- Minimum insurance requirement, exemption, Ins.Code 21.45.
- Rural property, defined, Ins.Code 16.01.

**FARMS**

See Executors and Administrators, this index.

**FEDERAL AID**

Yorks Creek Improvement District, 8280-167.

**FEDERAL OLD AGE AND SURVIVORS INSURANCE**

Adjutant general, agreements respecting coverage of state employees whose salaries are paid from United States funds, 695g. State employees, coverage, 695h.

**FEDERAL PROJECT**

Defined, 7472e.

**FEDERAL SAVINGS & LOAN ASSOCIATION**

Shares or share accounts, guardians, investments in, Prob.Code 389.

**FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

Share or share accounts insured by, guardians, investments in, Prob.Code 389.

**FEES**

- Admission fees, state property, 5438d.
- Executors and Administrators, this index.
- Filing,
  - Corporations, non-profit poultry associations, 1302d-1.
  - Statement of perpetual care fund, 912a-3.

**FEES—Cont'd**

Guardian and Ward, this index.  
 Insurance agents, special fund, Ins.Code 21.07.  
 Insurance Securities Law, 580—37.  
 Jefferson County Water Control and Improvement District No. 10, 8280—166.  
 Junior college districts, use of buildings or equipment, 2815r—1.  
 Motor vehicle certificate of title, disposition, PC 1436—1, § 57.  
 Mutual life insurance companies, charter fee, Ins.Code 11.02.  
 Partition and distribution of estates, commissioners, Prob.Code 380.  
 Prepaid funeral benefits, application for permit, 548b.  
 Public platform tonnage scales, counties, 2372n.  
 Reciprocal exchanges, schedule, Ins.Code 19.11.  
 Record book,  
   Probate fee book, contents, Prob.Code 16.  
   Small estates, recording in, Prob.Code 137.  
 Securities law, 579—37.  
   General revenue fund, 579—38.  
 Students,  
   College of Arts and Industries, 2628d.  
 Wills, deposit with county clerk, Prob.Code 71.

**FELONIES**

Coin-operated machines, breaking and entering, PC 1402a.

**FIDELITY, GUARANTY AND SURETY COMPANIES**

Liquidation or rehabilitation, Ins.Code 21.28.

**FIDUCIARIES**

Wills, appointment of spouse as, divorce, effect, Prob.Code 69.

**FILING**

Bond or written agreement to make title on sale of property, Prob.Code 27.  
 Certified copies, judgment, action to determine heirship, Prob.Code 56.  
 Citation and notices, copy mailed by registered mail, Prob.Code 33.  
 Complaint, specific performance of decedent's contract to sell property, Prob.Code 27.  
 County clerk, applications, etc., filing with, Prob.Code 11.  
   Costs, security for, Prob.Code 12.  
 Cross-interrogatories by judge, Prob.Code 22.  
 Evidence, action to determine heirship, Prob.Code 53.  
 Executors and Administrators, this index.  
 Guardian and Ward, this index.  
 Interrogatories, copy, Prob.Code 22.  
 Notice of intention to take depositions, Prob.Code 22.  
 Opposition to probate proceedings, persons entitled to file, Prob.Code 10.  
 Petition, heirship, actions to determine, Prob.Code 49.  
 Power of attorney waiving right to letters testamentary or of administration, Prob.Code 79.  
 Receiver, bond on taking charge of estate for minor or incompetent, Prob.Code 136.  
 Record book, judge's probate docket, contents, Prob.Code 13.  
 Report of accounting by person receiving money from county clerk as custodian of minor, etc., Prob.Code 144.  
 Transcript and record on transfer of action to determine heirship, Prob.Code 51.  
 Wills, this index.

**FINAL SETTLEMENT**

Executors and Administrators, this index.  
 Guardian and Ward, this index.

**FINES AND PENALTIES**

Accident and sickness insurance violations, Ins.Code 3.70—9.  
 Annual account, personal representative, failure to file, Prob.Code 400.  
 Bill of lading, fictitious, PC 1690b.  
 Bill of sale, fictitious, PC 1690b.  
 Coin-operated machines, breaking and entering, PC 1402a.  
 Deaf person, finger alphabet cards inducing sales, PC 1137m.  
 Diseased persons handling food, PC 705d.  
 Excise tax on radios and television sets, mis-handling, 70477—1.  
 Executors and Administrators, this index.  
 Failure of personal representative to file exhibits or reports, Prob.Code 403.  
 Finger alphabet cards inducing sales, deaf persons, PC 1137m.  
 Fishing with electricity producing apparatus, PC 924a.  
 Food, handling by diseased persons, PC 705d.  
 Great Seal of Texas, imitation for advertising, PC 157a.  
 Groceries, sales below cost, PC 1111m.  
 Insurance Securities Law, fraud, 580—30.  
 Intoxicating liquor, possession near athletic events, PC 666—25b.  
 Legal reserve life insurance agents, Ins.Code 21.07—1, § 14.  
 Lewd publications, tie-in sales, PC 527a.  
 Life insurance counselor, acting without license, Ins.Code 21.07—2.  
 Manifest, commodities transported, fictitious, PC 1690b.  
 Medical examiners, counties of 250,000 or more, CCP 989a, § 13.  
 Public surveyors, violation of registration law, 5282a.  
 Sales below cost, PC 1111m.  
 Securities law, offenses, 579—30.  
 Sweet potato inspection, interference, 118c—3.  
 Tie-in sales, lewd publications, PC 527a.

**FIRE AND MARINE INSURANCE**

Assessment of stockholders, failure to pay, Ins.Code 6.06.  
 Impairment of capital or surplus,  
   Assessment of stockholders, Ins.Code 6.05.  
   New stock to make good, Ins.Code 6.07.  
   Reduction of capital stock to make good, Ins.Code 6.04.  
   Stockholders failing to pay assessment, Ins.Code 6.06.  
 New stock, capital and surplus impaired, Ins.Code 6.07.  
 Real estate, purpose, Ins.Code 6.08.  
 Surplus impairment, new stock to make good; Ins.Code 6.07.

**FIRE INSURANCE**

Assessment of stockholders, failure to pay, Ins.Code 6.06.  
 Certificates of authority, renewal, Ins.Code 2.20.  
 Impairment of capital or surplus,  
   Assessment of stockholders, Ins.Code 6.05.  
   Reduction of capital stock to make food, Ins.Code 6.04.

**FIRES AND FIRE PREVENTION**

South Central Interstate Forest Fire Protection Compact, 2613c.

**FISH**

Local and special acts applicable to enumerated counties, PC 978j note.  
 Transporting fresh iced fish, exemption from law, 911b, § 1a.

**FLAGS**

State Flag, generally, this index.

**FLOOD CONTROL**

Trinity River Authority, 8280—188.

**FLOOD CONTROL DISTRICTS**

Jackson county, 8280—131.

Yorks Creek Improvement District, 8280—167.

**FOOD AND DRUGS**

Handling by diseased persons, PC 705d.

**FOREIGN CORPORATIONS**

Assumed names, use, BusCorp 2.05.

Authorized corporate surety, defined, Prob.Code 3.

Computation of reserve liability, insurance companies, Ins.Code 3.30.

Consolidation, domestic and foreign corporations, BusCorp 5.07

Definition, BusCorp 1.02.

Insurance companies,

Computation of reserve liability, Ins.Code 3.30.

Permission to do business, Ins.Code 21.44.

Life, health and accident insurance companies, stock and surplus requirements, Ins.Code 3.22.

Merger, domestic and foreign corporations, BusCorp 5.07.

Mutual insurance companies, premiums, Ins.Code 15.11.

Name, BusCorp 2.05-2.08.

Registered name, BusCorp 2.07.

Renewal, BusCorp 2.08.

Registered office and agent, BusCorp 2.09, 2.10.

Reserved name, BusCorp 2.06.

Securities law, service of process, 579—15.

**FOREIGN EXECUTORS AND ADMINISTRATORS**

See Executors and Administrators, this index.

**FOREIGN GOVERNMENT**

Waiver of notice of hearing in probate proceeding by representative of, Prob.Code 35.

**FOREIGN WILLS**

See Wills, this index.

**FOREST FIRE CONTROL**

South Central Interstate Forest Fire Protection Compact, 2613c.

**FORGERY**

Wills, limitation of action to cancel on ground of, Prob.Code 93.

**FORMALITIES**

Wills, Prob.Code 59.

Revocation, Prob.Code 63.

**FORMS**

Easements, Texas agricultural and mechanical college system, 2613a—7.

Permit, securities law, 579—9.

Wills, certificate of acknowledgment, etc., Prob.Code 59.

**FORT BEND COUNTY**

Exclusion, deposit of navigation district revenue law, 8244a.

Water supply districts, 8280—187.

**FOUNDATION SCHOOL PROGRAM**

Calculation of total sum of local funds to be contributed, 2922—16.

**FRANCHISE TAXES**

Voluntary non-profit poultry associations incorporated, exemption, 1302d—1.

**FRATERNAL BENEFIT ASSOCIATIONS OR SOCIETIES**

Conversion, mutual or stock life insurance company, Ins.Code 10.40.

Liquidation or conservation, Ins.Code 21.28.

Minimum insurance requirement, exemption, Ins.Code 21.45.

Reserves, benefit certificates, Ins.Code 10.08.

**FRAUD**

Defined, 579—2.

Insurance Securities Law, 580—2.

Guardian and ward, loans, liability for, Prob.Code 392.

Insurance Securities Law, penalty, 580—30.

Securities law, offenses and penalties, 579—30.

Wills, limitation of actions to cancel on ground of, Prob.Code 93.

**FRAUDULENT PRACTICE**

Defined, 579—2.

Insurance Securities Law, 580—2.

Insurance Securities Law, penalty, 580—30.

**FRESH WATER SUPPLY DISTRICTS**

Certified copy of Legislative Act, filing, 8280—7.

Division of district, election, 7930—5.

Election, division of district, 7930—5.

**FUNDS**

Cemetery perpetual care enforcement fund, 912a—3.

Constitutional permanent improvement fund, payment of breakwater construction, 6833g.

Insurance agents special fund, Ins.Code 21.07.

Insurance companies, investment, Ins.Code 2.10.

Insurance Securities Act Fund, deposit, 580—38.

Perpetual care and maintenance guarantee fund, cemeteries, 912a—29.

Special Department of Agriculture Fund, deposits, 135b—1, § 10.

State social security administration fund, created, 695h.

**FUNERAL EXPENSES**

Claims include, Prob.Code 3.

Executors and Administrators, this index.

**GALVESTON COUNTY**

Criminal district attorney, 326k—28.

Exclusion, navigation district revenue deposit law, 8244a.

**GAME AND FISH COMMISSION**

Closed areas, hunting and fishing, PC 978f—5.

Preservation of wildlife and fish, authority, PC 978f—5.

Protection of wildlife or fish, authority, PC 978f—5.

Shooting resort, license, PC 908.

Special permits, closed areas, PC 978f—5.

**GAME, FISH, OYSTERS, ETC.**

Age of persons exempt from license, 4032c.

Buffalo, protection, PC 978h.

Closed areas, hunting and fishing, PC 978f—5.

Electricity producing apparatus, fishing, PC 924a.

Fines and penalties,

Closed areas, hunting and fishing, PC 978f—5.

Hunting,

Closed areas, authority of commission, PC 978f—5.

Licenses and permits,

Age for exemption, 4032c.

Exemptions, age, 4032c.

Preservation,

Trinity River Authority, 8280—188.

Wildlife or fish, authority of commission, PC 978f—5.

Sabine river, hunting and fishing rights, 4026b.

Salt water trout, size, PC 934a.

Sheepshead, size, PC 934a.

“Telephoning,” penalty, PC 924a.

**GARBAGE**

Public disposal grounds, acquisition by county, 2351g.

**GARNISHMENT**

Executors and administrators, deposit in lieu of sureties on bond, Prob.Code 194.

**GAS**

Storage, handling, etc., 6053.  
Transportation, 6053.

**GAS WELLS**

See oil and gas, generally, this index.

**GASOLINE AND PETROLEUM PRODUCTS**

Storage, handling, etc., 6053.

**GATESVILLE STATE SCHOOL FOR BOYS**

Youth development council fund, appropriation from for repair of school buildings, 4386d note.

**GENDER**

Masculine includes feminine and neuter, Prob. Code 3.

**GENERAL REVENUE FUND**

Securities law fees, paid into, 579—38.

**GIFT TAXES**

Executors and administrators, etc., mortgage or pledge of real or personal property to borrow for payment, Prob.Code 329.

**GIFTS**

Candidate for election, statement filed, Elec. Code 14.08.

Descent and distribution,

Gratuitous inter vivos transfer as, Prob. Code 44.

Property derived by, Prob.Code 39.

Recreational programs, 1015c—1.

**GILLESPIE COUNTY**

38th Judicial District, 199(38).

**GONZALES COUNTY**

District court, additional district court, 199(25).  
Jurors, selection, 199(25).  
Second 25th judicial district court, permanent, 199(25).

**GOVERNING BODY**

Jefferson County Water control and improvement District No. 10, 8280—166.

**GOVERNOR**

Appointments,  
Judge,

136th district court, 199(136).

153rd judicial district, 199(153).

Federal project, engineering report, 7472e.

State Building Commission, member, 678m.

State employees social security, duties, 695h.

Texas Commission on Higher Education, appointment of members, 2919e—2.

**GRAND JURY**

Bailiffs,

Counties of

190,000 to 200,000, compensation, CCP 367l.

138th District Court, 199(138).

**GRAPEFRUIT**

Branding or marking, shipped into Texas, 118b, §§ 24, 24A.

**GREAT SEAL OF TEXAS**

Imitation for advertising, penalty, PC 157a.

**GROCERIES**

Definitions, Sales Limitation Act, PC 1111m.

Sales below cost, limitation, PC 1111m.

**GROUP LIFE INSURANCE**

Amount of insurance, Ins.Code 3.50.

Debtors, policy issued to creditor, Ins.Code 3.50.

Definitions, Ins.Code 3.50.

Public employees, Ins.Code 3.50.

Tex.St.Supp. '56—65

**GUADALUPE COUNTY**

District court, additional court, 199(25).

Jurors, selection, 199(25).

Second 25th judicial district court, permanent, 199(25).

Yorks Creek Improvement District, powers, 8280—167.

**GUARANTY**

Manufacturer or distributor of liquors to retailer, prohibited, PC 667—24.

**GUARDIAN AD LITEM**

Appointment at hearing upon information that person of unsound mind or habitual drunkard is without guardian, Prob.Code 417.

Waiver of notice of hearing in probate proceeding, Prob.Code 35.

**GUARDIAN AND WARD**

See, also, Executors and Administrators, generally, this index.

Absent or sick guardian, return, revocation of letters, Prob.Code 220.

Accounts and accounting,

Annual accounts, Prob.Code 399—403.

Approval, requisites, Prob.Code 401.

Citation of guardian for failure to return, Prob.Code 400.

Correction, Prob.Code 401.

Depositary, bank or trust company certificate, annexation to, Prob.Code 399.

Failure to return, Prob.Code 400.

Filing, Prob.Code 401.

Penalty for failure to file, Prob.Code 400.

Rules governing, Prob.Code 401.

Vouchers for items of credit claimed, Prob.Code 401.

Certificate of depositary annexed to, Prob. Code 399.

Final account,

Action of court, Prob.Code 408.

Attorney, appointment to represent ward, Prob.Code 411.

Audit and settlement, Prob.Code 408.

Citation to present, Prob.Code 406, 407.

Discharge, Prob.Code 408.

Filing, neglect or failure to file, procedure, Prob.Code 406.

Inheritance taxes, payment, requisite to approval, Prob.Code 410.

Money becoming due pending final discharge, Prob.Code 409.

Partition and distribution, Prob.Code 408.

Report of hiring or renting, Prob.Code 365.

Requisites, Prob.Code 405.

Final settlement, Prob.Code 404—414.

Verified account, contents, Prob.Code 405.

Funds received from governmental agency, Prob.Code 228.

Guardian of estate or person, Prob.Code 399.

Revocation of letters of guardianship, Prob.Code 123.

Labor of ward, value of, Prob.Code 413.

Notice to veterans' administration, Prob. Code 330.

Person appointed to receive funds from governmental agency, Prob.Code 228.

Rents and profits, Prob.Code 230.

Revenues, Prob.Code 230.

Services of ward, value of, Prob.Code 413.

Temporary guardian, Prob.Code 134.

Administration, closing, Prob.Code 404.

Ad valorem taxes, borrowing money for payment, Prob.Code 329.

Advertisements, mineral leases, application to lease at private sale, necessity, Prob.Code 363.

**GUARDIAN AND WARD—Cont'd**

**Affidavits,**  
 Proof of possession of securities necessary for approval of annual account, Prob.Code 401.  
 Report of investments and loans, verification by, Prob.Code 395.  
**Age of minor, application for appointment, contents, Prob.Code 111.**  
**Agreement for,**  
 Partition of ward's interest in real property, Prob.Code 388.  
 Pooling or unitization of minerals, contents, Prob.Code 369.  
**Aliens, disqualified to serve as, Prob.Code 110.**  
**Allowance in lieu of setting apart homestead and other exempt property, payment to guardian, Prob.Code 274.**  
**Annuities, purchase for ward, Prob.Code 390.**  
**Apartment, representative, non-resident, transcript evidencing, Prob.Code 124.**  
**Appeals, bond, necessity, Prob.Code 29.**  
**Appellate jurisdiction, district courts, Prob. Code 5.**  
**Applicable law, Prob.Code 108.**  
**Applications,**  
 Appointment, Prob.Code 111.  
     County judge, causing commencement of proceedings for, Prob.Code 112.  
     Non-resident, Prob.Code 124.  
     Notice, Prob.Code 130.  
     Person's estate, contents, Prob.Code 111.  
     Service of notice, Prob.Code 130.  
     Temporary guardian, Prob.Code 131.  
**Authority to,**  
     Borrow money, Prob.Code 329.  
     Subject property to mineral lease, etc., Prob.Code 371.  
**Contributions, Prob.Code 398.**  
**Expenditure of funds of veterans administration's beneficiary, notice, Prob.Code 330.**  
**Guardianship, record book, probate minutes, contents, Prob.Code 15.**  
**Investments in real property, Prob.Code 393.**  
**Life insurance contracts, continuance, Prob. Code 390.**  
**Mineral leases,**  
     Authority to make, contents, Prob.Code 367.  
     Private sale, Prob.Code 368.  
**Partition of ward's interest in real property, Prob.Code 388.**  
**Pooling or unitization of minerals or mineral leases, contents, Prob.Code 369.**  
**Ratification of agreement for partition of ward's estate in realty, Prob.Code 388.**  
**Removal of guardianship to another county, Prob.Code 121.**  
**Sale of real property for payment of expenses, Prob.Code 341.**  
**Appointment,**  
 Appeals, Prob.Code 28.  
 Applications, ante.  
 Attorney to represent ward, Prob.Code 411.  
 Co-guardians, Prob.Code 116.  
     Non-residents, transcript evidencing, Prob.Code 124.  
 Commencement of proceeding, Prob.Code 111.  
     County judge, Prob.Code 112.  
 Committee, non-resident, transcript evidencing, Prob.Code 124.  
 Contest, Prob.Code 113.  
     Citation and notice, Prob.Code 130.  
 County court, jurisdiction, etc., Prob. Code 4.  
     Guardian to receive funds from governmental sources, Prob.Code 4.

**GUARDIAN AND WARD—Cont'd**

**Appointment—Cont'd**  
 County judge, commencement of proceedings for, Prob.Code 112.  
 Curator, non-resident, transcript evidencing, Prob.Code 124.  
 Disqualification, finding of non-disqualification before, Prob.Code 114.  
 Evidence, Prob.Code 186.  
 Facts required to be proved, Prob.Code 114.  
 Failure to qualify, effect, Prob.Code 119.  
 Findings as prerequisite, Prob.Code 114.  
     Jury trial, verdict or judgment, necessity, Prob.Code 115.  
 Guardian of estate, Prob.Code 116.  
     Minors, estates, Prob.Code 109.  
     Order, contents, Prob.Code 184.  
 Guardian of person, Prob.Code 116.  
     Order, contents, Prob.Code 184.  
 Habitual drunkards, Prob.Code 418.  
 Husband and wife, joint appointment, Prob. Code 116.  
 Insane persons, Prob.Code 418.  
 Joint, husband and wife, Prob.Code 116.  
 Judgment, necessity for, Prob.Code 115.  
 Jury trial, necessity, Prob.Code 115.  
 Minor of age fourteen, selection by, Prob. Code 118.  
 Minority, finding required before, Prob. Code 114.  
**New guardian,**  
     Failure to qualify, Prob.Code 119.  
     Selection by minor attaining age of fourteen, Prob.Code 118.  
     Upon removal, Prob.Code 123.  
 Non-resident, Prob.Code 124.  
 Notice of application, Prob.Code 130.  
 One person only, Prob.Code 116.  
 Order, contents, Prob.Code 184.  
 Orphans, Prob.Code 109.  
 Parents, Prob.Code 109.  
 Perpetuation, temporary guardian, Prob. Code 131.  
 Persons disqualified, Prob.Code 110.  
 Persons of unsound mind, finding required before appointment, Prob.Code 114.  
 Persons to receive funds from,  
     Governmental agency, powers and duties, Prob.Code 228.  
     Governmental source,  
         County court, jurisdiction, Prob. Code 4.  
         Finding required before, Prob.Code 114.  
         Order, contents, Prob.Code 184.  
 Prerequisites, Prob.Code 114.  
 Process, service, Prob.Code 112.  
 Protection of property and rights of persons, proof, Prob.Code 114.  
 Public assistance, purpose of enabling person to receive, Prob.Code 246.  
 Qualifications, finding by court, Prob.Code 114.  
     Relative for orphan, Prob.Code 109.  
 Removal, new guardian upon, Prob.Code 123.  
     Selection by minor, Prob.Code 118.  
 Separate for person and for estate, Prob. Code 116.  
 Surviving parent, Prob.Code 109.  
 Temporary guardian, post.  
 Term, Prob.Code 120.  
 Transcript, non-residents, Prob.Code 124.  
 Trial by jury, necessity, Prob.Code 115.  
 Tutor, non-residents, transcript evidencing, Prob.Code 124.  
 Venue, Prob.Code 7.  
 Verdict, necessity, Prob.Code 115.  
 Wills, Prob.Code 117.  
     Venue for, Prob.Code 7.

## GUARDIAN AND WARD—Cont'd

Appraisers,  
 Appointment, Prob.Code 248.  
 Order appointing, contents, Prob.Code 184.

Approval, bond of guardian, Prob.Code 193.

Assigns of guardian not to dispute ward's title, Prob.Code 237.

Attachment, complaint for, Prob.Code 26.

Attorneys,  
 Appointment to represent ward in final settlement, Prob.Code 411.  
 Compensation on appointment to represent ward in final settlement, Prob.Code 411.  
 Examination of loans and investments by guardian, Prob.Code 394.

Authorized corporate surety, defined, Prob.Code 3.

Bad debts, final settlement, Prob.Code 412.

Beneficiary of life insurance contract, guardian, prohibition, Prob.Code 390.

Bill of review, Prob.Code 31.

Board, clothing, etc., credit for on final settlement, Prob.Code 413.

Bonds,  
 Annual account, contents, Prob.Code 399.  
 Appeals, necessity, Prob.Code 29.  
 Approval, Prob.Code 193, 194.  
 Complaint to file, Prob.Code 214.  
 Order requiring, Prob.Code 215.  
 Debts, securing by non-resident guardian, Prob.Code 126.  
 Examination by county judge, Prob.Code 36.  
 Exemptions from requirement by will, Prob.Code 195.  
 Foreign guardian of minor distributee, Prob.Code 383.  
 Guardian of,  
 Estate, Prob.Code 194.  
 Person, Prob.Code 193.  
 Person and estate of ward, Prob.Code 194.  
 Guardian under will, Prob.Code 214-217.  
 Amount of bond, Prob.Code 216.  
 Failure to give, effect, Prob.Code 217.  
 Order, requiring, Prob.Code 215.  
 Husband and wife, Prob.Code 200.  
 Investments in, Prob.Code 339.  
 Married person under 21 years of age, Prob.Code 200.  
 Married women, Prob.Code 199.  
 Mineral leases, Prob.Code 368.  
 Pooling or unitization, Prob.Code 369.  
 Requisites, Prob.Code 367.  
 New bonds, Prob.Code 36.  
 Non-resident, Prob.Code 124.

Order,  
 Appointing, contents, Prob.Code 184.  
 Requiring on hearing complaint to file, Prob.Code 215.

Removal of guardianship to another county, Prob.Code 121.

Sale of real property, Prob.Code 356.

Temporary guardian, Prob.Code 131-133, 194.

Wills,  
 Exemption from requirement by, Prob.Code 195.  
 Guardian under, Prob.Code 214-217.  
 Failure to give, effect, Prob.Code 217.  
 Order requiring, Prob.Code 215.

Borrowing money, circumstances authorizing, procedure, Prob.Code 329.

Building and loan associations, shares or share accounts, investments in, Prob.Code 389.

Business,  
 Carrying on operation, Prob.Code 238.  
 Management, compensation, Prob.Code 241.

## GUARDIAN AND WARD—Cont'd

Certificate,  
 Constituting letters, Prob.Code 185.  
 Evidence of appointment and qualification, Prob.Code 186.  
 Filing of transcript on removal of guardianship to another county, Prob.Code 121.  
 Removal of guardianship to another county, Prob.Code 121.

Charitable contributions, procedure for making, Prob.Code 398.

Citations and notices,  
 Annual account, return, Prob.Code 400.

Applications,  
 Appointment of guardian, Prob.Code 130.  
 Pooling or unitization of mineral leases, necessity, Prob.Code 369.  
 Subject property to mineral leases, etc., Prob.Code 371.

Contents, application for authority to make mineral leases, Prob.Code 367.

Exhibits or reports, failure to file, Prob.Code 403.

Final account,  
 Neglect or failure to file, Prob.Code 406.  
 Presentation, Prob.Code 407.

Final settlement, neglect or failure to deliver estate, Prob.Code 414.

Hiring and renting, Prob.Code 361.

Holdings of recorded claims of issuance of letters, number required, Prob.Code 296.

Investment or loan of surplus money, Prob.Code 397.

Mineral leases,  
 Application for authority to make, Prob.Code 367.  
 Application to lease at private sale, necessity, Prob.Code 368.

Neglect to hire or rent, procedure, Prob.Code 362.

Non-resident,  
 Appointment, necessity, Prob.Code 124.  
 Validation of letters, necessity, Prob.Code 125.

Person appointed to receive funds from governmental agency, Prob.Code 228.

Personal service, Prob.Code 130.

Posting, Prob.Code 130.

Purchase of claim by guardian, Prob.Code 324.

Removal of guardianship to another county, Prob.Code 121.

Service,  
 Application for authority to make mineral leases, Prob.Code 367.  
 Method, Prob.Code 33.  
 Personal on guardian on removal of guardianship to another county, Prob.Code 121.

Sureties on bond on removal of guardianship to another county, Prob.Code 121.

Temporary guardian, application for appointment, Prob.Code 131.

Veterans administration, Prob.Code 330.

Waiver of issuance, Prob.Code 130.

Cities or towns, bonds, investments in, Prob.Code 389.

Claims,  
 Action by court, Prob.Code 312.  
 Guardian's claim against ward, Prob.Code 317.

Affidavit,  
 Authentication of claim by other than individual owners, Prob.Code 304.  
 Supported by, Prob.Code 301.  
 Verification of guardian's claim against ward by, Prob.Code 317.

Allowance, account by guardian of estate, Prob.Code 399.



**GUARDIAN AND WARD—Cont'd**

**Claims—Cont'd**  
 Appeals, Prob.Code 312.  
 Guardian's claims against ward, Prob. Code 317.  
**Approval,**  
     Necessity for payment, Prob.Code 319.  
     Temporary guardian, Prob.Code 132.  
 Approval or allowance, necessity for payment, Prob.Code 320.  
 Assets, deficiency, effect, Prob.Code 321.  
 Authentication, Prob.Code 301.  
 Barred by limitation, not to be allowed, Prob.Code 298.  
 Beneficiary of veterans administration, notice, Prob.Code 330.  
 Cancellation on purchase by guardian, Prob. Code 324.  
 Collection, Prob.Code 230.  
 Complaint to file bond, Prob.Code 214.  
 Contest, Prob.Code 312.  
 Deficiency of assets, effect, Prob.Code 321.  
 Defined, Prob.Code 3.  
 Disapproval,  
     Claims barred by limitation, Prob.Code 298.  
     Temporary guardian, Prob.Code 132.  
 Docket. Claims docket, post.  
 Evidence, lost or destroyed claims, Prob. Code 303.  
**Filing,**  
     County clerk, filing with, Prob.Code 311.  
     Tolling statute of limitation by, Prob. Code 299.  
 Final account, contents, Prob.Code 405.  
 Guardian's claim, Prob.Code 317.  
**Judgment,**  
     Appeal, guardian's claim against ward, Prob.Code 317.  
     Necessity for payment, Prob.Code 319.  
     Presentment as prerequisite for, Prob. Code 314.  
 Limitation of action on, Prob.Code 298, 299.  
 Lost or destroyed, evidence, Prob.Code 303.  
**Memorandum,**  
     Allowance or rejection, Prob.Code 309.  
     Failure to endorse or annex, effect, Prob.Code 310.  
 Notice to holders of recorded claims of issuance of letters, Prob.Code 295.  
 Order, pro rata payment, Prob.Code 321.  
**Payment,**  
     Approval or judgment, necessity, Prob. Code 319.  
     Assets, deficiency, effect, Prob.Code 321.  
     Closing administration after, Prob.Code 404.  
     Pro rata, Prob.Code 321.  
     Temporary guardian, Prob.Code 132.  
     Time for, Prob.Code 320.  
     Unauthenticated claim, Prob.Code 305.  
**Presentation,**  
     Judgment, prerequisite for, Prob.Code 314.  
     Time for, Prob.Code 298.  
 Pro rata payment, Prob.Code 321.  
 Purchase by guardian prohibited, Prob.Code 324.  
 Recorded, notice to holders of issuance of letters, Prob.Code 295.  
**Rejection,**  
     Account by guardian of estate, Prob. Code 399.  
     Sued on, tolling statute of limitation, Prob.Code 299.  
 Sale of realty for payment, Prob.Code 341.  
 Statute of limitation,  
     Barred by, Prob.Code 298.  
     Tolling, Prob.Code 299.  
 Sued on, rejected claim, tolling statute of limitation, Prob.Code 299.

**GUARDIAN AND WARD—Cont'd**

**Claims—Cont'd**  
 Suit on rejected claim, Prob.Code 313.  
 Temporary guardian, powers, Prob.Code 132.  
 Time for payment, Prob.Code 320.  
 Verification, guardian's claim against ward, Prob.Code 317.  
 Claims docket, Prob.Code 14.  
 Action by court, Prob.Code 312.  
 Entry of guardian's claim against ward upon, Prob.Code 317.  
**Clerks of court,**  
**Fees,**  
     Certification of account, application, etc., Prob.Code 330.  
     Guardian of beneficiary of veterans administration, Prob.Code 330.  
 Foreign court, attestation and certification of transcript upon a non-resident guardian, etc., Prob.Code 124.  
 Letters, issuance, Prob.Code 184.  
 Notices to veterans administrations, Prob. Code 330.  
 Temporary administrator, list of property, filing with, Prob.Code 134.  
 Transcript on removal of guardianship to another county, transmittal, Prob.Code 121.  
 Closing of estates, Prob.Code 404.  
     Final settlement, Prob.Code 408.  
 Closing temporary guardianship, Prob.Code 135.  
 Clothing, credit for on final settlement, Prob. Code 413.  
 Collections, powers, Prob.Code 230.  
**Commencement of proceedings,**  
     Appointment of guardian, Prob.Code 111.  
     Benefit of ward, Prob.Code 113.  
 Commission, Prob.Code 241.  
 Committee, non-resident, transcript evidencing appointment, Prob.Code 124.  
 Common law, rights, powers and duties governed by, Prob.Code 32.  
 Common ownership of property, partition, Prob.Code 388.  
 Compensation, Prob.Code 241.  
     Attorney appointed to represent ward in final settlement, Prob.Code 411.  
**Complaint,**  
     Annual account, failure to file, Prob.Code 400.  
     Exhibits or reports, failure to file, Prob. Code 403.  
     Failure to rent property, Prob.Code 362.  
     Final account, neglect or failure to file, Prob.Code 406.  
     Final settlement, neglect or failure to deliver estate, Prob.Code 414.  
     Hiring or renting without order of court, Prob.Code 360.  
     Invest or loan surplus money, Prob.Code 397.  
     Purchase of claim by guardian, Prob.Code 324.  
     To file bond, Prob.Code 214.  
 Conduct of persons, notorious, disqualification to serve as guardian, Prob.Code 110.  
 Consent to contributions by ward, Prob.Code 398.  
 Consideration, mineral leases, order, contents, Prob.Code 367.  
 Consummation of estate, sales for purpose of, Prob.Code 341.  
 Contents, application for appointment, Prob. Code 111.  
**Contests,**  
     Application for appointment, citation and notice, Prob.Code 130.  
     Appointment of guardian, Prob.Code 113, 130.  
     Proceedings, persons entitled to, Prob.Code 10.

## GUARDIAN AND WARD—Cont'd

Contests—Cont'd  
 Temporary guardian, appointment, Prob. Code 131.

Continuance,  
 Guardianship on removal from one county to another, Prob.Code 122.

Hearing on,  
 Annual account, Prob.Code 401.  
 Application for authority to make, Contributions, Prob.Code 398.  
 Mineral leases, Prob.Code 367.  
 Partition of ward's estate in real property, Prob.Code 388.

Continuation, guardianship removed to another county, Prob.Code 122.

Contracts,  
 Investments in real property, approval, Prob.Code 393.  
 Life insurance or annuities, purchase, Prob. Code 390.

Contributions,  
 Application for, Prob.Code 398.  
 Consent by ward, Prob.Code 398.

Conveyances, non-resident, validation, Prob. Code 125.

Corporate fiduciary, defined, Prob.Code 3.

Corporate stock,  
 Personal liability as holder or subscriber, BusCorp 2.21.  
 Voting, BusCorp 2.29.

Correction of annual account, Prob.Code 401.

Costs,  
 Collecting funds from governmental agency, payment, Prob.Code 228.  
 Exemption in guardianship for reception of government funds, Prob.Code 246.  
 Proceeding against estates of incompetents, Prob.Code 247.

Costs and security therefor, laws regulating, Prob.Code 12.

Counties, bonds, investments in, Prob.Code 389.

County clerks,  
 Application for authority, Make mineral leases, filing with, Prob. Code 367.  
 Pool or unitize minerals, filing with, Prob.Code 369.  
 Subject property to mineral lease, etc., filing with, Prob.Code 371.

Citations and notices, presentation of account for final settlement, Prob.Code 407.

Claims, filing with, Prob.Code 311.

Consent to charitable contributions, filing with, Prob.Code 398.

Contributions, application for, filing with, Prob.Code 398.

Duty on removal of guardianship to another county, Prob.Code 121.

Oath of temporary guardian filed with, Prob. Code 131.

Transcript on removal of guardianship from one county to another, transmittal to, Prob.Code 121.

County Courts, this index.

County Judges, this index.

Court, action on removal of guardianship to another county, Prob.Code 121.

Credits, final settlement, Prob.Code 412.

Curator, non-resident, transcript evidencing appointment, Prob.Code 124.

Death,  
 Citation and notices on presentation of account for final settlement, Prob.Code 411.

Guardian,  
 Minor's selection of successor, Prob. Code 118.  
 New appointment, Prob.Code 118, 119.

Insane persons, effect, Prob.Code 404.

## GUARDIAN AND WARD—Cont'd

Death—Cont'd  
 Minor, settlement in closing estate, Prob. Code 404.  
 Ward, attorney, appointment to represent, Prob.Code 411.

Debts,  
 Collection, Prob.Code 230.  
 Disqualification of debtor of estate to serve as guardian, Prob.Code 110.  
 Non-resident guardian, payment before removal of ward's property from state, Prob.Code 126.

Delivery of exempt property, Prob.Code 272.

Development of minerals,  
 Application for authority to lease property for, contents, Prob.Code 367.  
 Pooling or unitization, Prob.Code 369.

Disability of minority, removal, settlement in closing of estate, Prob.Code 404.

Disbursements, annual account by guardian of estate, Prob.Code 399.

Discharge,  
 Final settlement, Prob.Code 408.  
 Order for, Prob.Code 408, 409.  
 Money becoming due pending final discharge, Prob.Code 409.

District courts, appeal, action of court on claim, Prob.Code 312.

Districts, bonds, investments in, Prob.Code 389.

Disqualification,  
 Finding of non-disqualification before appointment, Prob.Code 114.  
 Persons disqualified to serve as guardians, Prob.Code 110.

Duties,  
 Guardian of person and estate, Prob.Code 231.  
 Humane treatment of minor, Prob.Code 229.  
 Person appointed guardian to receive funds from governmental agency, Prob.Code 228.  
 Subsequent guardians, succession to prior duties, Prob.Code 226.

Education,  
 Account by guardian of person, Prob.Code 399.  
 Amount allowable for ward's education, Prob.Code 236.  
 Duties of guardian, Prob.Code 229.  
 Expenditures, Prob.Code 236.  
 Sale of real property to provide income for, Prob.Code 341.  
 Separate guardian of person and estate, Prob.Code 236.

Educational purposes, contributions, procedure, Prob.Code 398.

Enforcement of orders against guardian by attachment and imprisonment, Prob.Code 24.

English language, inability to read or write, disqualification to serve as guardian, Prob. Code 110.

Estate,  
 Appointment for estate of minor, Prob.Code 109.  
 Defined, Prob.Code 3.

Evidence,  
 Appointment and qualification, Prob.Code 186.  
 Certificate as letters, Prob.Code 185.

Examination into well-being of ward by county judge, Prob.Code 36.

Executors, etc., of guardian not to dispute ward's title, Prob.Code 237.

Exhaustion of estate, effect, Prob.Code 404.

Exhibits, Prob.Code 399-403.

Condition of estate, voluntary presentation, Prob.Code 402.  
 Failure to file, penalty, Prob.Code 403.  
 Mineral leases, order, contents, Prob.Code 367.

GUARDIAN AND WARD—Cont'd

Exhibits—Cont'd

Securities necessary to prove possession in order to approve annual account, Prob. Code 401.

Expenses,

Administration, sale of real property for, application for, Prob.Code 341.  
Final account, contents, Prob.Code 405.

Exploration of minerals,

Application for authority to lease property for, contents, Prob.Code 367.  
Pooling or unitization, Prob.Code 369.

Factory,

Carrying on operation, Prob.Code 238.  
Management, compensation, Prob.Code 241.

Failure of guardian to qualify, effect, Prob. Code 119.

Family allowance, payment to guardian, Prob. Code 291.

Farm,

Carrying on operation, Prob.Code 238.  
Management, compensation, Prob.Code 241.

Federal government, appointment of guardian to enable person to receive public assistance from, fees and costs, exemption, Prob.Code 246.

Federal savings and loan associations, shares or share accounts, investments in, Prob. Code 389.

Federal savings and loan insurance corporation, investments in shares or share accounts insured by, Prob.Code 389.

Fees, Prob.Code 241.

Attorneys examining loans and investments, Prob.Code 394.

Certification of copy of account, application, etc., Prob.Code 330.

Exemption in guardianships for reception of governmental funds, Prob.Code 246.

Transcript on removal of guardianship to another county, Prob.Code 121.

Filing,

Account or application for expenditure or investment of funds, notice to veterans administration, Prob.Code 330.

Annual account, failure to file, penalty, Prob.Code 400.

Application for,

Appointment, Prob.Code 111, 112.

Authority to borrow money, Prob.Code 329.

Authority to make mineral leases, Prob. Code 367.

Contributions, Prob.Code 398.

Investments in real property, Prob.Code 393.

Partition of ward's interest in real property, Prob.Code 388.

Pooling or unitization of minerals, Prob. Code 369.

Removal of guardianship to another county, Prob.Code 121.

Unitization or pooling of mineral leases, Prob.Code 369.

Certificate on removal of guardianship to another county, Prob.Code 121.

Claims with county clerk, Prob.Code 311.

Complaint,

Failure or neglect to deliver estate on final settlement, Prob.Code 414.

Failure to rent property, Prob.Code 362.

Invest or loan surplus money, Prob. Code 397.

To file bond, Prob.Code 214.

Exhibits or reports, failure to file, penalty Prob.Code 403.

Final account, neglect or failure, procedure, Prob.Code 406.

GUARDIAN AND WARD—Cont'd

Filing—Cont'd

Mineral leases, authority to subject property to, neglect to apply for, Prob.Code 371.

Oath, Prob.Code 189.

Temporary guardian, Prob.Code 131.

Oath and bond, non-resident, Prob.Code 124.

Report of,

Financial condition on application for continuance of life insurance contracts, Prob.Code 390.

Hiring or renting, Prob.Code 365.

Temporary guardian, list of property, Prob. Code 134.

Transcript of record of appointment of non-resident, Prob.Code 124.

Final settlement, Prob.Code 404-414.

Account, action of court on, Prob.Code 408.

Attorney, appointment to represent ward, Prob.Code 411.

Estate, Prob.Code 404, 405.

Citation upon presentation, Prob.Code 407.

Money becoming due pending final discharge, Prob.Code 409.

Neglect or failure to deliver estate, procedure, Prob.Code 414.

Offsets, credits and bad debts, Prob.Code 412.

Partition and distribution, Prob.Code 408.

Financial condition, report, filing on application for continuance of life insurance contracts, Prob.Code 390.

Findings as prerequisite to appointment, Prob. Code 114.

Jury trial, verdict or judgment, necessity, Prob.Code 115.

Foreign guardian, minor distributee, bond, Prob. Code 383.

Fraud, loans, liability for, Prob.Code 392.

Funds, investment or expenditure, beneficiary of veterans administration, notice, Prob.Code 330.

Gift taxes, borrowing money for payment, Prob.Code 329.

Guardian of estate,

Account, return, Prob.Code 399.

Accounting for rents, etc., Prob.Code 230.

Compensation, Prob.Code 241.

Payments to guardian of person for education and maintenance, Prob.Code 236.

Powers, rights and duties, Prob.Code 230, 231.

Guardian of person,

Accounts, Prob.Code 399.

Annual account, penalty for failure to file, Prob.Code 400.

Charge and control, Prob.Code 229.

Compensation, Prob.Code 241.

Education and maintenance of ward, Prob. Code 236.

Final account, neglect or failure to file, Prob.Code 406.

Habitual drunkards or person of unsound mind, Prob.Code 418.

Powers, duties and rights, Prob.Code 231.

Support and education, duties, Prob.Code 229.

Habitual drunkards,

Accounts, settlement on restoration of ward to sober habits, Prob.Code 426.

Application for appointment, Prob.Code 111.

County judge, powers, Prob.Code 112.

Application of provisions, Prob.Code 420.

Appointment, Prob.Code 109, 114, 418.

Citations and notices, Prob.Code 130.

Restoration of ward to sober habits, Prob.Code 426.

## GUARDIAN AND WARD—Cont'd

Habitual drunkards—Cont'd  
 Citations and notices—Cont'd  
   Service on application for appointment as guardian, Prob.Code 130.  
 Confinement, Prob.Code 422.  
   Expenses, Prob.Code 424.  
   Recovery by county, Prob.Code 425.  
 Cost of proceeding on finding, Prob.Code 247.  
 County judge, commencement of proceedings for appointment, Prob.Code 112.  
 County treasury, payment of costs in proceeding against estate of from, 247.  
 Debtors, disqualified to serve as guardian, Prob.Code 110.  
 Defined, Prob.Code 3.  
 Determination whether person is habitual drunkard by jury, Prob.Code 417.  
 Discharge on restoration of ward to sober habits, Prob.Code 426.  
 Education of children, Prob.Code 421.  
 Expenses of confinement, Prob.Code 424.  
   Recovery by county, Prob.Code 425.  
 Finding required before appointment of guardian, Prob.Code 114.  
 Hearing on information that person is without guardian, Prob.Code 417.  
 Inexperienced person disqualified from serving as guardian, Prob.Code 110.  
 Information that person is without guardian, Prob.Code 415.  
   Hearing upon, Prob.Code 417.  
   Warrant, issuance upon, Prob.Code 416.  
 Judgment,  
   Necessity for appointment of guardian, Prob.Code 115.  
   Person is habitual drunkard, Prob.Code 418.  
   Setting aside and granting new trial, Prob.Code 419.  
 Jury,  
   Hearing on information that person is without guardian, Prob.Code 417.  
   Necessity for appointment of guardian, Prob.Code 115.  
   Restoration of ward to sober habits, Prob.Code 426.  
 Liability for maintenance, Prob.Code 423.  
   Recovery by county of sums paid for, Prob.Code 425.  
 New trial, Prob.Code 419.  
 Non-resident, qualification as guardian for, Prob.Code 124.  
 Notice, Prob.Code 418.  
 Order,  
   Discharge on restoration of ward to sober habits, Prob.Code 426.  
   Support family and education of children, Prob.Code 421.  
 Parties in law suit, disqualified to serve as guardian, Prob.Code 110.  
 Person appointed to receive funds from governmental agency, procedure, Prob.Code 228.  
 Persons disqualified to serve as guardians, Prob.Code 110.  
 Posting notice of determination, Prob.Code 418.  
 Restoration to sober habits, effect, Prob.Code 426.  
 Service of citations and notices, Prob.Code 130.  
 Support of ward's family, Prob.Code 421.  
 Temporary guardian, appointment, Prob.Code 131.  
 Trial, restoration to sober habits, Prob.Code 426.  
 Validation, mineral leases in pooling or unitization agreements, Prob.Code 372.

## GUARDIAN AND WARD—Cont'd

Habitual drunkards—Cont'd  
 Verdict, Prob.Code 419.  
   Necessity for appointment of guardian, Prob.Code 115.  
 Warrant, issuance on information that person is without guardian, Prob.Code 416.  
 Hearing,  
   Account, application for expenditure or investment for beneficiary of veterans administration, Prob.Code 330.  
   Annual accounts, Prob.Code 401.  
   Application for,  
   Approval of partition of ward's interest in realty, Prob.Code 388.  
   Authority to make contributions, Prob.Code 398.  
   Authority to make mineral leases, Prob.Code 367, 371.  
   Investments in real property, Prob.Code 393.  
   Pooling or unitization of mineral leases, Prob.Code 369.  
   Ratification of agreements for partition of ward's estate in realty, Prob.Code 388.  
   Removal of guardianship to another county, Prob.Code 121.  
 Complaint,  
   Failure to hire or rent property, Prob.Code 362.  
   Final settlement, neglect or failure to deliver estate, Prob.Code 414.  
   Invest or loan surplus money, Prob.Code 397.  
 Exhibits or reports, failure to file, Prob.Code 403.  
 Mineral leases, application to lease at private sale, Prob.Code 368.  
 Purchase of claim by guardian, Prob.Code 324.  
 Hiring and renting, Prob.Code 359-366.  
   Annual account, contents, Prob.Code 399.  
   Application, Prob.Code 361.  
   Authority, Prob.Code 359.  
   Credit, Prob.Code 363.  
   Installment payments, effect, Prob.Code 363.  
   Neglect, procedure in case of, Prob.Code 362.  
   Note with personal security for amount, necessity, Prob.Code 363.  
   Notice, posting or publication, Prob.Code 361.  
 Order of court,  
   Liability for hiring or renting without, Prob.Code 360.  
   Necessity, Prob.Code 359.  
 Report, Prob.Code 364, 365.  
   Action of court on, Prob.Code 366.  
   Loss, damage or destruction of property, Prob.Code 364.  
 Return of property in good condition, Prob.Code 364.  
 Homestead,  
   Election to occupy, effect on partition, Prob.Code 284.  
   Use and occupation prohibited, effect on partition, Prob.Code 285.  
 Husband and wife,  
   Bond, Prob.Code 200.  
   Married woman, Prob.Code 199.  
 Community property,  
   Delivery to same spouse upon demand, Prob.Code 158.  
   Insane persons, Prob.Code 158.  
   Insane spouse, Prob.Code 157.  
   Joint appointment, Prob.Code 116.  
 Illiterate, disqualified to serve as guardian, Prob.Code 110.  
 Improvements, borrowing of money for, authority, Prob.Code 329.

GUARDIAN AND WARD—Cont'd

Income of estate,  
 Negligible, effect, Prob.Code 404.  
 Ward's estate, sale of realty to make up deficiency, Prob.Code 341.  
 Income taxes, borrowing money for payment, Prob.Code 329.  
 Incompetents,  
   County court, appointment, Prob.Code 4.  
   Venue for appointment, Prob.Code 7.  
 Inexperienced person, disqualified from serving as guardian, Prob.Code 110.  
 Inheritance taxes,  
   Borrowing money for payment, Prob.Code 329.  
   Payment, requisite to approval of final account, Prob.Code 410.  
 Insane persons,  
   Absence, appointment of receiver for endangered estate, Prob.Code 136.  
   Accounts, settlement on restoration of ward to sound mind, Prob.Code 426.  
   Application for appointment, Prob.Code 111.  
   County judge, powers, Prob.Code 112.  
   Application of provisions, Prob.Code 420.  
   Appointment, Prob.Code 418.  
   Bill of review, Prob.Code 31.  
   Citations and notices,  
     Restoration of ward to right mind, Prob.Code 426.  
     Service on application for appointment of guardian, Prob.Code 130.  
   Community property, Prob.Code 157, 158.  
   Confinement, Prob.Code 422.  
   Expenses, Prob.Code 424.  
     Recovery by county of sums paid for, Prob.Code 425.  
   Cost of proceeding on finding, Prob.Code 247.  
   County courts, appointment, jurisdiction, Prob.Code 4.  
   County judge, commencement of proceedings for appointment, Prob.Code 112.  
   County treasury, payment of costs in proceeding against estates of from, Prob.Code 247.  
   Death, settlement or closing estate on, Prob.Code 404.  
   Debtors, disqualified to serve as guardian, Prob.Code 110.  
   Determination whether person is of unsound mind by jury, Prob.Code 417.  
   Discharge on restoration of ward to sound mind, Prob.Code 426.  
   Disqualified to serve as guardians, Prob.Code 110.  
   Education of children, Prob.Code 421.  
   Expenses of confinement, Prob.Code 424.  
     Recovery by county, Prob.Code 425.  
   Findings by court required before appointment, Prob.Code 114.  
   Hearing on information that person is without guardian, Prob.Code 417.  
   Husband and wife, community property, Prob.Code 157, 158.  
   Inexperienced person disqualified from serving as guardian, Prob.Code 110.  
   Information that person is without guardian, Prob.Code 415.  
   Hearing on, Prob.Code 417.  
   Warrant, issuance, Prob.Code 416.  
 Judgment,  
   Necessity for appointment of guardian, Prob.Code 115.  
   Setting aside and granting new trial, Prob.Code 419.  
   That person is insane, Prob.Code 418.  
 Jury,  
   Hearing on information that person is without guardian, Prob.Code 417.

GUARDIAN AND WARD—Cont'd

Insane persons—Cont'd  
 Jury—Cont'd  
   Necessity for appointment of guardian, Prob.Code 115.  
   Restoration of ward to sound mind, Prob.Code 426.  
 Liability for maintenance, Prob.Code 423.  
   Recovery by county, Prob.Code 425.  
 Maintenance, funds received from governmental agency, use for, Prob.Code 228.  
 Marriage, settlement or closing estate, Prob.Code 404.  
 Mineral leases, pooling or unitization clauses, execution with or without, Prob.Code 367.  
 New trial, Prob.Code 419.  
 Non-residents, qualification as guardian for persons of unsound mind, Prob.Code 124.  
 Notice, Prob.Code 418.  
 Orders,  
   Discharge on restoration of ward to sound mind, Prob.Code 426.  
   Support of family and education of children, Prob.Code 421.  
 Person appointed guardian to receive funds from governmental agency, procedure, Prob.Code 228.  
 Persons disqualified to serve as guardians, Prob.Code 110.  
 Persons of unsound mind, defined, Prob.Code 3.  
 Persons qualified to serve as guardians, Prob.Code 109.  
 Persons receiving funds from governmental agency, duties, Prob.Code 228.  
 Pooling clauses of mineral leases, execution with or without, Prob.Code 367.  
 Posting notice of determination, Prob.Code 418.  
 Restoration to sound mind,  
   Effect, Prob.Code 426.  
   Settlement or closing estate, Prob.Code 404.  
 Separate property, necessity, Prob.Code 157.  
 Service of citations and notices, Prob.Code 130.  
 Support,  
   Family, Prob.Code 421.  
   Funds received from governmental agency, use for, Prob.Code 228.  
 Temporary guardian, appointment, Prob.Code 131.  
 Trial, restoration to sound mind, Prob.Code 426.  
 Unitization clauses of mineral leases, execution with or without, Prob.Code 367.  
 Validation, mineral leases and pooling or unitization agreements, Prob.Code 372.  
 Verdict, Prob.Code 419.  
   Necessity for appointment of guardian, Prob.Code 115.  
   Warrant, issuance on information that person is without guardian, Prob.Code 416.  
 Interest,  
   Annual account, contents, Prob.Code 399.  
   Liability for on failure to loan or invest funds, Prob.Code 396.  
   Loans, Prob.Code 391.  
 Interest in land, defined, Prob.Code 367.  
 Investments, Prob.Code 389.  
   Affidavit, verification of report by, Prob.Code 395.  
   Annuity contracts, Prob.Code 390.  
   Attorney, examination by, Prob.Code 394.  
 Bonds,  
   Political subdivisions, Prob.Code 389.  
   State bonds, Prob.Code 389.  
   United States, Prob.Code 389.  
   Citation, show cause on investment of surplus money, Prob.Code 397.

## GUARDIAN AND WARD—Cont'd

## Investments—Cont'd

- Contracts, annuities or life insurance, Prob. Code 390.
  - Examination by attorney, Prob.Code 394.
  - Federal savings and loan associations' shares or share accounts, Prob.Code 389.
  - Federal savings and loan insurance corporation, share or share accounts insured by, Prob.Code 389.
  - Funds of beneficiary of veterans administration, notice, Prob.Code 330.
  - Interest, liability of guardian for, Prob. Code 396.
  - Liability, failure to invest, Prob.Code 396.
  - Life insurance or annuity contracts, Prob. Code 390.
  - Loans, Prob.Code 391.
    - Attorney, examination by, Prob.Code 394.
    - Interest, Prob.Code 391.
    - Liability, Prob.Code 392.
      - Failure to loan, Prob.Code 396.
    - Personal responsibility, Prob.Code 392.
    - Report, Prob.Code 395.
    - Security for, Prob.Code 391.
    - Surplus money, procedure to require, Prob.Code 397.
  - Real property,
    - Application, action by court, etc., Prob. Code 393.
    - Approval of contract, Prob.Code 393.
    - Report of contract, Prob.Code 393.
    - Title insurance policy, Prob.Code 394.
    - Title to ward, Prob.Code 393.
  - Report, Prob.Code 395.
  - Restrictions, Prob.Code 389.
  - Shares or share accounts, building and loan associations, Prob.Code 389.
  - Surplus money, procedure to require, Prob. Code 397.
  - Vendor's lien notes, Prob.Code 391.
  - Verification of report by affidavit, Prob. Code 395.
- Issuance of letters, Prob.Code 184, 185.
- Joint appointment of husband and wife, Prob. Code 116.
- Judge's probate docket, Prob.Code 13.
- Judgments and decrees,
  - Costs against estates of incompetents, Prob. Code 247.
  - Necessity for appointment of guardian, Prob.Code 115.
  - Transcript on removal of guardianship to another county, Prob.Code 121.
- Jurisdiction,
  - County courts, Prob.Code 4.
  - District courts, Prob.Code 5.
- Jury trial for appointment, necessity, Prob.Code 115.
- Labor of ward, accounting for value, Prob.Code 413.
- Land, defined, Prob.Code 367.
- Law applicable, Prob.Code 108.
- Leases, mineral leases, Prob.Code 367-372.
  - Non-resident guardian, Prob.Code 125.
- Letters,
  - Bond, issuance without requirement of, Prob.Code 195.
  - Evidence of appointment and qualification, Prob.Code 186.
  - Issuance by clerk of court, Prob.Code 184, 185.
  - Lost or destroyed, reissuance, Prob.Code 187.
  - Non-resident guardian, Prob.Code 124.
    - Validation, Prob.Code 125.
  - Revocation on return of absent or sick guardian, Prob.Code 220.
  - Temporary guardian, Prob.Code 131.
- Liability, loans, Prob.Code 392.

## GUARDIAN AND WARD—Cont'd

- Life insurance company, defined, Prob.Code 390.
- Life insurance, purchase, Prob.Code 390.
- Limitation of actions,
  - Claims, Prob.Code 298.
  - Tolling of statute, Prob.Code 299.
- Limitation of investment in insurance, Prob. Code 390.
- Literary purposes, contributions, procedure, Prob.Code 398.
- Loans,
  - Affidavit, verification of report by guardian, Prob.Code 395.
  - Attorney, examination by, Prob.Code 394.
  - Authority to borrow money, Prob.Code 329.
  - Interest, Prob.Code 391.
  - Liability, Prob.Code 392.
    - Failure to loan, Prob.Code 396.
  - Report, Prob.Code 395.
  - Security for, Prob.Code 391.
  - Surplus money, procedure to require, Prob. Code 397.
  - Verification of report by affidavit, Prob. Code 395.
- Lost or destroyed letters from reissuance, Prob. Code 187.
- Maintenance,
  - Account by guardian of person, Prob.Code 399.
  - Amount allowable for, Prob.Code 236.
  - Credit on final settlement, Prob.Code 413.
  - Duty of guardian, Prob.Code 229.
  - Sale of real property to provide for, Prob. Code 341.
  - Separate guardian of person and estate, Prob.Code 236.
- Management of properties, Prob.Code 230.
- Marriage,
  - Insane persons, effect, Prob.Code 404.
  - Minor, settlement and closing of estate, Prob.Code 404.
- Medical treatment, consent, 3174b-2.
- Mineral development, defined, Prob.Code 367.
- Mineral interests, sales, Prob.Code 341.
- Mineral leases, Prob.Code 367-372.
  - Applications, rules, Prob.Code 367.
  - Authority to subject property to, neglect to apply for, procedure, Prob.Code 371.
  - Conditional validity, Prob.Code 367.
  - Non-resident guardian and ward, validation, Prob.Code 125.
  - Notices, rules, Prob.Code 367.
  - Orders, rules, Prob.Code 367.
  - Pooling or unitization,
    - Action of court, Prob.Code 369.
    - Ancillary instruments, execution without court order, Prob.Code 370.
    - Application for, contents, Prob.Code 369.
    - Authority to subject property to, neglect to apply for, procedure, Prob. Code 371.
    - Citation and notices, necessity, Prob. Code 369.
    - Hearing of application, Prob.Code 369.
    - Order, contents, Prob.Code 369.
    - Royalty on minerals, Prob.Code 369.
    - Validation, Prob.Code 372.
  - Private sale, Prob.Code 368.
  - Rules concerning applications, orders, notices, etc., Prob.Code 367.
  - Validation, Prob.Code 372.
- Minority, finding required before appointment of guardian, Prob.Code 114.
- Minors,
  - County court, appointment, Prob.Code 4.
  - Defined, Prob.Code 3.
  - Disqualification to serve as guardians, Prob. Code 110.

## GUARDIAN AND WARD—Cont'd

Minors—Cont'd  
 Removal of disability process, order, etc., nonresident minors, 5923a.  
 Venue for appointment, Prob.Code 7.  
 Mortgages, loans, security for, Prob.Code 391.  
 Names,  
 Application for appointment of guardian, contents, Prob.Code 111.  
 Order appointing, contents, Prob.Code 184.  
 Natural guardians, Prob.Code 109.  
 Negligence, loans, liability for, Prob.Code 392.  
 Net funded debt, defined, Prob.Code 389.  
 Non-residents,  
 Appointment, Prob.Code 124.  
 Attorney, appointment to represent ward, Prob.Code 411.  
 Bond, Prob.Code 124.  
 Citation and notices on presentation of account for final settlement, Prob.Code 407.  
 Debts, payment before removal of ward's property from state, Prob.Code 126.  
 Delivery of property to, Prob.Code 127.  
 Letters, Prob.Code 124.  
 Validation, Prob.Code 125.  
 Mineral leases, validation, Prob.Code 125.  
 Qualification in another state, etc., Prob.Code 124.  
 Removal of ward's property from state, Prob.Code 126.  
 Transcript of appointment, duties, Prob.Code 124.  
 Validation of previously issued letters, Prob.Code 125.  
 Notes,  
 Annual account, contents, Prob.Code 399.  
 Loans, security for, Prob.Code 391.  
 Notices. Citations and notices, generally, ante.  
 Oaths, Prob.Code 189, 191.  
 Non-resident, filing, Prob.Code 124.  
 Requisite for qualification, Prob.Code 189.  
 Temporary guardian, Prob.Code 131.  
 Obligations, enforcement, Prob.Code 230.  
 Offsets, final settlement, Prob.Code 412.  
 Oil and gas,  
 Leases, Prob.Code 367.  
 Private sale, Prob.Code 368.  
 Pooling or unitization of royalty on minerals, Prob.Code 369.  
 Orders,  
 Appointment of guardian, contents, Prob.Code 184.  
 Business, etc., carrying on operation, Prob.Code 238.  
 Delivery of property to non-resident guardian, Prob.Code 127.  
 Designating time and place for hearing application for authority to make mineral leases, Prob.Code 367.  
 Enforcement against, Prob.Code 24.  
 Exhibits or reports, filing, Prob.Code 403.  
 Final settlement,  
 Neglect or failure to deliver estate, Prob.Code 414.  
 Partition and distribution, Prob.Code 408.  
 Invest or loan surplus money, Prob.Code 397.  
 Investments in realty, authorizing, Prob.Code 393.  
 Life insurance contracts, continuance, Prob.Code 390.  
 Mineral leases,  
 Authorizing at private sale, Prob.Code 368.  
 Pooling or unitization, Prob.Code 369.  
 Partition of ward's estate in realty, approval, Prob.Code 388.  
 Removal of guardianship to another county, time effective, Prob.Code 121.  
 Report of hiring or renting, confirmation by, Prob.Code 366.

## GUARDIAN AND WARD—Cont'd

Orders—Cont'd  
 Sale of real property, application for, Prob.Code 341.  
 Subjecting property to mineral development, etc., Prob.Code 371.  
 Supporting validation of acts of non-resident guardian, Prob.Code 125.  
 Temporary guardian,  
 Appointment, Prob.Code 131.  
 Extension of rights and powers, Prob.Code 133.  
 Transcript on removal of guardianship to another county, Prob.Code 121.  
 Use of funds received from governmental agency for support and maintenance, Prob.Code 228.  
 Orphans, appointment, Prob.Code 109.  
 Owners, contributions, Prob.Code 398.  
 Parents,  
 Natural guardian of minor children by marriage, Prob.Code 109.  
 Rights to appointment as guardian, Prob.Code 109.  
 Surviving, appointment of guardian by will or written declaration, Prob.Code 117.  
 Survivor as natural guardian of minor children, Prob.Code 109.  
 Parties, disqualification to serve as guardian, Prob.Code 110.  
 Partition and distribution of estate,  
 Appointment, Prob.Code 376.  
 Compensation, Prob.Code 376.  
 Decree, Prob.Code 378.  
 Delivery to for minor distributee, Prob.Code 383.  
 Ward's estate in realty, Prob.Code 388.  
 Payments,  
 Allowance to guardian in lieu of setting apart homestead and other exempt property, Prob.Code 275.  
 Claims, ante.  
 Costs in connection with collecting funds from governmental agency, Prob.Code 228.  
 Debts, sale of real property for, Prob.Code 341.  
 Education and maintenance of ward, sums allowable for, Prob.Code 236.  
 Taxes, borrowing money for, Prob.Code 329.  
 Penalty for failure to file,  
 Annual account, Prob.Code 400.  
 Exhibits or reports, Prob.Code 403.  
 Personal representative, defined, Prob.Code 3.  
 Personal service of citation, waiver by minor, Prob.Code 130.  
 Persons disqualified to serve as guardians, Prob.Code 110.  
 Persons entitled to appointment, Prob.Code 109.  
 Persons qualified to serve as, Prob.Code 109.  
 Persons to receive funds from governmental agency, powers and duties, Prob.Code 228.  
 Petition, account, etc., by guardian of beneficiary of veterans' administration, Prob.Code 330.  
 Political subdivisions, bonds, investments in, Prob.Code 389.  
 Pooling,  
 Agreements,  
 Minerals, ancillary instruments, execution without court order, Prob.Code 370.  
 Validation, Prob.Code 372.  
 Clauses of mineral leases, execution with or without, Prob.Code 367.  
 Mineral leases, neglect to apply for authority to subject property to, procedure Prob.Code 371.  
 Possession of properties, Prob.Code 230.

## GUARDIAN AND WARD—Cont'd

Posting,  
 Citation and notices, Prob.Code 130.  
 Hiring or renting, Prob.Code 361.  
 Mineral leases, application for authority to make, Prob.Code 367.  
 Service by, Prob.Code 130.  
 Temporary guardian, perpetuation of appointment, Prob.Code 131.  
 Service of notice, Prob.Code 130.

Powers,  
 Guardian of person and estate, Prob.Code 231.  
 Person appointed guardian to receive funds from governmental agency, Prob.Code 228.  
 Premiums, life insurance contracts, Prob.Code 390.  
 Probate minutes, contents, Prob.Code 15.  
 Procedure for borrowing money, Prob.Code 329.  
 Process, contest of claims, Prob.Code 312.  
 Production of minerals, pooling or unitization, Prob.Code 369.  
 Profession of ward, duty of guardian regarding, Prob.Code 229.  
 Profits, accounting for, Prob.Code 230.

Property,  
 Defined, Prob.Code 3, 367.  
 Annual account of guardian of estate, Prob.Code 399.  
 Final account, contents, Prob.Code 405.  
 Hiring and renting, Prob.Code 359-366.  
 Non-resident guardian, delivery to, Prob.Code 127.  
 Possession and management, Prob.Code 230.  
 Protection of property or rights of persons, application for appointment, contents, Prob.Code 114.  
 Public assistance, exemption from fees and costs on appointment of guardian for enabling person to receive, Prob.Code 246.

Publication,  
 Citation on presentation of account for final settlement, Prob.Code 407.  
 Notice,  
 Hiring or renting, Prob.Code 361.  
 Mineral leases, application for authority to make, Prob.Code 367.

Purchase, life insurance or annuities, Prob.Code 390.

Qualifications, Prob.Code 189.  
 Non-residents, Prob.Code 124.  
 Persons authorized to serve, Prob.Code 109.

Ranch,  
 Carrying on operation, Prob.Code 238.  
 Management, compensation, Prob.Code 241.

Ratification, agreement for partition of ward's estate in real property, Prob.Code 388.

Real property,  
 Borrowing of money for repair or improvements, authority, Prob.Code 329.  
 Defined, Prob.Code 3.  
 Investments, Prob.Code 393.  
 Non-productive, disposition, Prob.Code 341.  
 Partition of ward's interest, Prob.Code 388.  
 Sale to make up deficiency of ward's estate, Prob.Code 341.  
 Sales, bonds, Prob.Code 356.  
 Undivided interest, disposal, Prob.Code 341.

Receipts,  
 Account by guardian of estate, Prob.Code 399.  
 Guardian appointed to receive funds from governmental agency, Prob.Code 228.

Record books,  
 County Clerks, this index.  
 Judge's probate docket, contents, Prob.Code 13.

Records, removal of guardianship,  
 From another county, necessity, Prob.Code 122.  
 To another county, Prob.Code 121.

## GUARDIAN AND WARD—Cont'd

References, account for final settlement, Prob.Code 405.  
 Reissuance of lost or destroyed letters, Prob.Code 187.  
 Relatives, appointment as guardian for orphan, Prob.Code 109.  
 Removal, Prob.Code 222.  
 Appointment of new guardian on, Prob.Code 118, 119, 123.  
 Bond, failure to give, Prob.Code 217.  
 Grounds, Prob.Code 222.  
 Guardian, new appointment, Prob.Code 118, 119, 123.  
 Guardianship to another county,  
 Action of court, Prob.Code 121.  
 Application, Prob.Code 121.  
 Bond, Prob.Code 121.  
 Certificate of filing of transcript in county to which removed, Prob.Code 121.  
 Continuation after, Prob.Code 122.  
 Hearing on application, Prob.Code 121.  
 Order authorizing, Prob.Code 121.  
 Prerequisites, Prob.Code 121.  
 Procedure, Prob.Code 121.  
 Recording of papers, Prob.Code 121.  
 Transcript of record, Prob.Code 121.  
 Minor's selection of successor, Prob.Code 118.  
 New guardian, appointment, Prob.Code 123.  
 Purchase of claims against ward, ground for, Prob.Code 324.  
 Ward's property from state, non-resident guardian, Prob.Code 126.

Renewal, loans, limitation on period, Prob.Code 329.

Rentals, collection, Prob.Code 230.

Renting, business, etc., for carrying on operation, Prob.Code 238.

Renting and hiring, Prob.Code 359-366.

Rents,  
 Accounting for, Prob.Code 230.  
 Final account, contents, Prob.Code 405.

Repairs, borrowing of money for, authority, Prob.Code 329.

Reports,  
 Failure to file, penalty, Prob.Code 403.  
 Financial condition on application for continuance of life insurance contracts, Prob.Code 390.  
 Hiring and renting of property, Prob.Code 364, 365.  
 Investments in real property contracts, Prob.Code 393.  
 Loss, damage or destruction of property hired or rented, Prob.Code 364.

Representative, defined, Prob.Code 3.

Residence,  
 Application for appointment of guardian, contents, Prob.Code 111.  
 Citation on presentation of account for final settlement, Prob.Code 407.  
 Unknown, attorney, appointment to represent ward, Prob.Code 411.

Resignation of guardian, Prob.Code 221.  
 Minor's selection of successor, Prob.Code 118.  
 New appointment, Prob.Code 118, 119.

Restrictions on investments, Prob.Code 389.

Revenues,  
 Accounting for, Prob.Code 230.  
 Final account, contents, Prob.Code 405.

Revocation of letters,  
 Attaining legal age, Prob.Code 220.  
 By court, Prob.Code 123.

Rights,  
 Guardian of person and estate, Prob.Code 231.  
 Powers and duties governed by common law Prob.Code 32.



**GUARDIAN AND WARD—Cont'd**

Rights—Cont'd  
 Subsequent guardians, succession to prior rights, Prob.Code 226.

Royalties,  
 Minerals in place, sales, Prob.Code 341.  
 Pooling or unitization, Prob.Code 369.

Rules and regulations governing, Prob.Code 108.

Sales,  
 Generally, Prob.Code 331-358.  
 Exempt from Securities Law, 579-3.  
 Mineral interest, Prob.Code 341.  
 Mineral leases, private sale, Prob.Code 368.  
 Non-productive real property, Prob.Code 341.  
 Private, mineral leases, Prob.Code 368.

Real property,  
 Application for, Prob.Code 341.  
 Bonds, Prob.Code 356.  
 Temporary guardian, powers, Prob.Code 132.

Royalties on minerals in place, Prob.Code 341.

Temporary guardian, return, filing, Prob.Code 134.

Scientific purposes, contributions, procedure, Prob.Code 398.

Securities,  
 Annual account, contents, Prob.Code 399.  
 Possession, proof for approval of annual account, Prob.Code 401.

Securities law, exemption sales, 579-3.

Selection of guardian by minor, Prob.Code 118.

Service as guardian,  
 Persons disqualified, Prob.Code 110.  
 Persons qualified, Prob.Code 109.

Services of ward, accounting for value, Prob.Code 413.

Settlement of estates, Prob.Code 404-414.  
 Final settlement, Prob.Code 404, 405.  
 Action of court, Prob.Code 408.  
 Citation on presentation, Prob.Code 407.  
 Neglect or failure to deliver estate, procedure, Prob.Code 414.  
 Partition and distribution, Prob.Code 408.

Money becoming due pending final discharge, Prob.Code 409.

Offsets, credits and bad debts, Prob.Code 412.

Sex, application for appointment of guardian, contents, Prob.Code 111.

State,  
 Appointment of guardian to enable person to receive public assistance from, exemption from fees and costs, Prob.Code 246.  
 Bonds, investments in, Prob.Code 389.

State taxes, borrowing money to pay, Prob.Code 329.

Statute of limitations, tolling, Prob.Code 299.

Subsequent guardians, succession to prior rights and duties, Prob.Code 226.

Suits,  
 Judicial partition of ward's estate in realty, Prob.Code 388.  
 Powers, Prob.Code 230.

Support. Maintenance, generally, ante.

Sureties, citation on removal of guardianship to another county, Prob.Code 121.

Sureties on bond, liability for payment of unauthenticated claim, Prob.Code 305.

Taxes,  
 Borrowing money for payment, Prob.Code 329.  
 Inheritance, payment, requisite to approval of final account, Prob.Code 410.

Temporary guardian,  
 Accounting, Prob.Code 134.  
 Appeals, pending from orders or judgments appointing, Prob.Code 28.

**GUARDIAN AND WARD—Cont'd**

Temporary guardian—Cont'd  
 Appointment,  
 Application, Prob.Code 131.  
 Authorization, Prob.Code 131.  
 Citation or notice, necessity, Prob.Code 131.  
 Contest, Prob.Code 131.  
 Pending granting of letters, Prob.Code 132.  
 Exhibit on setting aside, Prob.Code 131.  
 List of property on expiration, Prob.Code 134.  
 Necessity, Prob.Code 131.  
 Order, Prob.Code 131.  
 Pending will contest, Prob.Code 132.  
 Permanency, Prob.Code 131.  
 Perpetuation, Prob.Code 131.  
 Setting aside, Prob.Code 131.

Bond, Prob.Code 131-133, 194.  
 Closing administration by, Prob.Code 135.  
 Cumulative provisions, Prob.Code 132.  
 Delivery of estate to person entitled to possession, Prob.Code 135.  
 Discharge, Prob.Code 135.  
 Duties on expiration of appointment, Prob.Code 134.  
 Exhibit of acts by on expiration of appointment, Prob.Code 134.  
 Final account, Prob.Code 407.  
 Letters, Prob.Code 131.  
 Limited powers, Prob.Code 131.  
 Oath, Prob.Code 131.  
 Orders, Prob.Code 133.  
 Personal representative, defined, Prob.Code 3.  
 Powers, Prob.Code 132, 133.  
 Representative, defined, Prob.Code 3.  
 Sureties on bond, release from liability, Prob.Code 135.

Terms,  
 Appointment, Prob.Code 120.  
 Loans, Prob.Code 329.  
 Mineral leases, Prob.Code 367.

Time, execution of mineral leases, Prob.Code 367.

Title of ward, guardian, etc., not to dispute, Prob.Code 237.

Title to real property invested in, Prob.Code 393.

Trade, duty and guardian to prepare ward for, Prob.Code 229.

Transcript, non-resident, appointment, Prob.Code 124.

Transcript of record, removal of guardianship to another county, Prob.Code 121.

Transfer taxes, borrowing money for payment, Prob.Code 329.

Trial by jury for appointment, necessity, Prob.Code 115.

Tutor non-resident, transcript evidencing appointment, Prob.Code 124.

United States, bonds, investments in, Prob.Code 389.

Unitization,  
 Agreements, minerals, ancillary instruments, execution without court order, Prob.Code 370.  
 Clauses of mineral leases, execution with or without, Prob.Code 367.  
 Mineral leases,  
 Neglect to apply for authority to subject property to, procedure, Prob.Code 371.  
 Validation, Prob.Code 372.  
 Royalties on minerals, Prob.Code 369.

Validation,  
 Mineral leases and pooling or unitization agreements, Prob.Code 372.  
 Non-residents, letters, Prob.Code 125.

**GUARDIAN AND WARD—Cont'd**

- Venue,  
Application for appointment, contents, Prob.Code 111.  
Appointment, Prob.Code 7.  
Finding before appointment of guardian, Prob.Code 114.
- Verdict, necessity for appointment of guardian, Prob.Code 115.
- Verification, report of investment and loans by affidavit, Prob.Code 395.
- Veterans administration, notice to by guardians, Prob.Code 330.
- Waiver,  
Notice of hearing in probate proceeding, Prob.Code 35.  
Services of citation, Prob.Code 130.
- Veterans administration, service of notice, Prob.Code 330.
- Wills,  
Bond of guardian appointed by surviving parent under will, Prob.Code 195.  
Surviving parent, appointment of guardian by, Prob.Code 117.
- Written declaration, surviving parent, appointment of guardian by, Prob.Code 117.
- GULF OF MEXICO**  
Coastal counties,  
Islands for recreational purposes, 6079c—1.
- HABITUAL DRUNKARDS**  
Common drunkard, defined, Prob.Code 3.  
Costs of proceeding on finding, Prob.Code 247.  
Counties, this index.  
County clerks,  
Custodian of money of drunkard without guardian, Prob.Code 144.  
Accounting by person handling money, report, filing, Prob.Code 144.  
Application for withdrawal, Prob.Code 144.  
Deposit of money in trust account, Prob.Code 144.  
Discharge of person receiving money on filing report of accounting, Prob.Code 144.  
Fees or commissions to person handling or expending money prohibited, Prob.Code 144.  
Payment to person executing bond approved by county judge, Prob.Code 144.  
Priority, persons entitled to on withdrawal, Prob.Code 144.  
Receipt for payment of money by debtor, effect, Prob.Code 144.  
Report of accounting by person handling money, filing with, Prob.Code 144.
- Debtors, payment of money to for drunkard without guardian, Prob.Code 144.  
Residents and non-residents, Prob.Code 144.
- Defined, Prob.Code 3.  
Guardian and Ward, this index.
- Jury trial,  
Concurrence of two juries, Prob.Code 419.  
Determination, Prob.Code 417.  
Probate matters in county court, Prob.Code 21.  
Restoration to sober habits, Prob.Code 426.
- Small claims, payment without guardianship, Prob.Code 144.
- Temporary administration of estates of, Prob.Code 131-135.
- Trial by jury of probate matters in county court, Prob.Code 21.
- HALF BLOOD**  
Inheritance by heirs of, Prob.Code 41.
- HALTOM CITY WATER AUTHORITY**  
Creation authorized, 8280—173.

**HANDWRITING**

Holographic wills, Prob.Code 60.

**HANSFORD COUNTY**

Ground Water Conservation District No. 2, 8280—179.

**HARRIS COUNTY**

Exclusion, navigation district revenue deposit law, 8244a.

South Main Street Municipal Water District, 8280—180.

Water Improvement District No. 1, 8280—190.

**HARTLEY COUNTY**

Ground Water Conservation District No. 2, 8280—179.

**HASKELL COUNTY WATER SUPPLY DISTRICT**

Created, 8280—164.

**HAYS COUNTY**

Yorks Creek Improvement District, powers, 8280—167.

**HEALTH****State Department of Health,**

Commissioner of health, office established, 4418b—1.

**HEARINGS**

Descent and Distribution, this index.

Executors and Administrators, this index.

Guardian and Ward, this index.

Probate matters,

County clerk, sitting in county judge's absence, Prob.Code 20.

Waiver of notice, Prob.Code 35.

**HEIRS**

Defined, Prob.Code 3.

Descent and Distribution, generally, this index.  
Executors and Administrators, generally, this index.

Vesting title in estate not devised or bequeathed in, Prob.Code 37.

Wills, generally, this index.

**HEIRSHIP**

Action to determine. Executors and Administrators, this index.

Judgments and Decrees, this index.

**HEREDITAMENTS**

Wills, passage of interest under, Prob.Code 58.

**HIDALGO COUNTY**

City of McAllen, Water and Sewer Authority, 8280—177.

**HIGHER EDUCATION**

Commission, 2919e—2.

Degree, history required, 2663b—2.

State institutions,

Military and naval training authorized, 2919e—1.

**HIGHWAY COMMISSION**

Easements from Texas prison board, 6203d.

Roads, adjacent to prison, authority to build 6203c—1.

**HILL COUNTY**

Eminent domain, original jurisdiction of county court, 1970—333a.

**HIRING AND RENTING**

Executors and Administrators, this index.

Guardian and Ward, this index.

**HOLES**

Plugging and covering required, PC 1721.

**HOLIDAYS**

Banking holidays, 4591d.

Veterans Day, 4591e.

**HOME RULE CITIES OR TOWNS**

Amendments to charter, validation of proceedings, 1174a-3.

**Bonds,**

Additional bonds, international toll bridge, 1187a-2.

Capital improvements to international bridge, 1187a-2.

Issuance on behalf of improvement district, 709a.

Municipal auditorium, proceedings validated, 1269j-6.

Payable from net revenues, international toll bridge, 1187a-2.

Toll bridges, acquisition and repair, 1015g, § 13.

Unexpended portion of proceeds, disposition, 703a.

**Validation**

Acts, 1118n-6.

Charter amendments, validation of proceedings, 1174a-3.

City council, bonds issued under authority of charter, 1187a-2.

City owned plant, utility or business, lease or sale, 1118n-6.

Eligible city, 1118n-7.

**Leases,**

Plant, utility or business, 1118n-6.

Municipal auditorium, bond proceedings validated, 1269j-6.

Sales, plant, utility or business, 1118n-6.

Toll bridges, acquisition, 1015g, § 1.

**Validation.**

Amendment, election proceedings, 1174a-3.

**Bonds,**

Revenues pledged, 1118n-6.

**HOMESTEAD**

Executors and Administrators, this index.

Illegitimate child, treatment as legitimate for purpose of determining, Prob.Code 42.

Setting apart homestead and other exempt property. Executors and Administrators, this index.

**HOPKINS COUNTY**

62nd Judicial District, 199(62).

**HOSPITAL DISTRICTS**

Generally, 4494n.

**HOSPITALIZATION**

Navigation districts, officers and employees, 8227a.

**HOTCH-POTCH**

Descent and distribution, advancements, bringing into, Prob.Code 44.

**HOWARD COUNTY**

Adult probation officer, 326k-27.

Investigator authorized, 326k-27.

**HUSBAND AND WIFE**

Action, support of children, 4639b.

Executors and Administrators, generally, this index.

Guardian and Ward, this index.

Habitual drunkards, liability for maintenance, Prob.Code 423.

Insane Persons, this index.

Wills, this index.

**HUTCHINSON COUNTY**

Domestic relations court, creation and jurisdiction, 2338-6.

Ground Water Conservation District No. 2, 8280-179.

**ICE BOXES**

Abandonment in places accessible to children, penalty, PC 1721A.

**IDIOTS**

Defined, Prob.Code 3.

Insane Persons, generally, this index.

**ILLEGITIMATE CHILDREN**

Child, defined, Prob.Code 3.

Inheritance rights, Prob.Code 42.

**IMPRISONMENT**

Probate matters, orders, enforcement by, Prob.Code 24.

**IMPROVEMENT DISTRICTS**

Atascosa and Frio Counties Improvement District No. 1, 8280-175.

Yorks Creek Improvement District, 8280-167.

**INCLUDE**

Defined, 579-2.

**INCOME**

Pension trust, disposition, 7425d.

Texas agricultural and mechanical college system, accounting, 2613a-7.

**INCOME TAXES**

Executors and administrators, mortgage or pledge of property to borrow for payment, Prob.Code 329.

Guardian and ward, borrowing money for payment, Prob.Code 329.

**INCOMPETENT PERSONS**

Counties, this index.

Defined, Prob.Code 3.

Insane Persons, generally, this index.

**INCORPORATED TOWNS**

Population less than 15,000, validation of incorporation, 974d-5.

**INCORPORATION OF INSURANCE COMPANIES**

Articles of incorporation, Ins. Code 2.02.

Farm mutual insurance, Ins. Code 16.06.

General provisions Ins. Code 2.01.

**INDEPENDENCE DAY**

Legal holiday, 4591d.

**INDEPENDENT ADMINISTRATION**

Executors and Administrators, this index.

**INDEPENDENT SCHOOL DISTRICTS**

Abolishment, frequency of election, 2767-1.

Ad valorem tax, maximum, 2784e-1.

Board of trustees, election, 2775a-1.

Bond issue authorized, 2784e-1.

Boundaries, change, counties of 100,000 or more, 2766a.

Collection of delinquent taxes, employment of attorney, 2802-1.

Commissioner of Education, financial reports, 2833.

Election, board of trustees, 2775a-1.

Employees, group life insurance, Ins. Code 3.50.

Libraries, provision for, 2909b.

**INDEXES**

Certified copy, judgment, action to determine heirship, Prob.Code 56.

Record books,

County clerk, duty, Prob.Code 17.

Small estates, Prob.Code 137.

Statement of description of real property of personal surety on bond, Prob.Code 202.

Wills deposited with county clerk, Prob.Code 71.

**INDORSEMENT**

Wills, wrapper on deposit with county clerk, Prob.Code 71.

**INFANTS**

Bill of review, probate matters, time for, Prob.Code 31.

Claims include liabilities against estate of, Prob.Code 3.

**INFANTS—Cont'd**

Clothing, receivers, expenditures for, Prob.Code 136.  
 Contributions, receiver of endangered estate of minor without guardian, Prob.Code 136.  
 Correction of probate proceedings, time, Prob. Code 30.  
 County clerks,  
   Custodian of money of minor without guardian, Prob.Code 144.  
   Accounting by person handling money, report, filing with, Prob.Code 144.  
   Application for withdrawal, Prob.Code 144.  
   Deposit of money in trust account, Prob. Code 144.  
   Discharge of person receiving money on filing report of accounting, Prob.Code 144.  
   Fees or commissions to person handling or expending money prohibited, Prob. Code 144.  
   Payment to person executing bond approved by county judge, Prob.Code 144.  
   Priority, persons entitled to on withdrawal, Prob.Code 144.  
   Receipt for money received from debtor, effect, Prob.Code 144.  
   Report of accounting by person handling money, filing with, Prob.Code 144.  
   Residents and non-residents, Prob.Code 144.  
 Debtors, payment of money to, Prob.Code 144.  
 Debtors, payment of money to county clerk for minor without guardian, Prob.Code 144.  
 Definition, children, Prob.Code 3, 67.  
 Education, receivers, expenditures for, Prob. Code 136.  
 Estate endangered, appointment of receiver, Prob.Code 136.  
 Executors and Administrators, this index.  
 Guardian and Ward, generally, this index.  
 Investments, receiver of endangered estate of minor without guardian, Prob.Code 136.  
 Jurisdiction, domestic relations court for Hutchinson county, 2338—6.  
 Loans, receiver of endangered estate of minor without guardian, Prob.Code 136.  
 Non-residents, payment of small claims without guardianship, Prob.Code 144.  
 Payment of small claims without guardianship, Prob.Code 144.  
 Receivers, endangered estate of minor without guardian,  
   Accounting, Prob.Code 136.  
   Action by judge, Prob.Code 136.  
   Appointment, Prob.Code 136.  
   Closing receivership, Prob.Code 136.  
   Compensation, Prob.Code 136.  
   County judge, approval of expenses, Prob. Code 136.  
   Education, clothing or subsistence, expenditures for, Prob.Code 136.  
   Expenditures, Prob.Code 136.  
   Investments, loans and contributions by, Prob.Code 136.  
   Recording, orders, bonds, etc. in receivership proceedings, Prob.Code 136.  
   Reports, investments, etc., Prob.Code 136.  
 Residents, payment of small claims without guardianship, Prob.Code 144.  
 Revision of probate proceedings, time, Prob. Code 30.  
 Sexual senses, application of law, PC 1147.  
 Small claims, payment without guardianship, Prob.Code 144.  
 Subsistence, receivers, expenditure for, Prob. Code 136.  
 Support by parent, action, 4639b.

**INFANTS—Cont'd**

Temporary administration, Prob.Code 131—135.  
 Wills, this index.

**INHERITANCE**

Descent and Distribution, generally, this index.  
 Executors and Administrators, generally, this index.

**INHERITANCE TAXES**

Claims include liabilities for, Prob.Code 3.  
 Executors and Administrators, this index.  
 Guardian and ward,  
   Borrowing money for payment, Prob.Code 329.  
   Payment, requisite to approval of final account, Prob.Code 410.

**INJUNCTIONS**

Communist Party, 6889—3A.  
 Insurance Securities Law, 580—33.  
 Liquidation of insurance companies, Ins. Code 21.28.  
 Securities law, 579—33.  
 Stay of judgment, order or decision, probate proceedings, Prob.Code 31.

**INJURIES**

Estate of minor or incompetent, danger of, appointment of receiver, Prob.Code 136.

**INQUESTS**

Dead bodies,  
   Medical examiner, counties of 250,000 or more, CCP 989a, § 9.

**INSANE PERSONS**

Bill of review, time for, probate matters, Prob. Code 31.  
 Claims include liabilities against estate of, Prob. Code 3.  
 Clothing, receivers, expenditures for, Prob.Code 136.  
 Contributions, receiver of endangered estate of incompetent without guardian, Prob.Code 136.  
 Correction of probate proceedings, time, Prob. Code 30.  
 Costs of proceeding on finding, Prob.Code 247.  
 Counties, this index.  
 County clerks,  
   Custodian of money of person of unsound mind without guardian, Prob.Code 144.  
   Accounting by person handling money, report, filing with, Prob.Code 144.  
   Application for withdrawal, Prob.Code 144.  
   Debtors, payment of money to, Prob. Code 144.  
   Deposit of money in trust account, Prob. Code 144.  
   Discharge of person receiving money on filing report of accounting, Prob.Code 144.  
   Fees or commissions to person handling or expending money prohibited, Prob. Code 144.  
   Payment to person executing bond approved by county judge, Prob.Code 144.  
   Priority, persons entitled to on withdrawal, Prob.Code 144.  
   Receipt for money received from debtor, effect, Prob.Code 144.  
   Report of accounting of person handling money, filing with, Prob.Code 144.  
   Residents and non-residents, Prob.Code 144.  
 Debtors, payment of money to county clerk for person of unsound mind without guardian, Prob.Code 144.  
 Defined, Prob.Code 3.  
 Education, receivers, expenditures for, Prob. Code 136.

**INSANE PERSONS—Cont'd**

Estate endangered, appointment of receiver, Prob.Code 136.  
 Executors and administrators, disqualified to serve as, Prob.Code 78.  
 Guardian and Ward, this index.  
 Husband and wife, community property, Administration, Prob.Code 155-177.  
 Appraisal, return by competent spouse, Prob.Code 157.  
 Appraisers, application for appointment by competent spouse, Prob.Code 157.  
 Bond, competent spouse, Prob.Code 157.  
 Guardian, duty, Prob.Code 158.  
 Inventory, return by competent spouse, Prob.Code 157.  
 List of claims, return by competent spouse, Prob.Code 157.  
 Recovery of competency, effect, Prob.Code 159.  
 Rights of survivor in absence of children, Prob.Code 155.  
 Investments, receiver of endangered estate of incompetent without guardian, Prob.Code 136.  
 Jury trial,  
     Concurrence of two juries, Prob.Code 419.  
     Determination, Prob.Code 417.  
     Probate matters in county court, Prob.Code 21.  
     Restoration to sound mind, Prob.Code 426.  
 Limited partnership, general partner, 6132a, § 21.  
 Loans, receiver of endangered estate of incompetent without guardian, Prob.Code 136.  
 Non compos mentis, defined, Prob.Code 3.  
 Non-residents, payment of small claims without guardianship, Prob.Code 144.  
 Payment of small claims without guardianship, Prob.Code 144.  
 Receivers,  
     Appointment to take charge of endangered estate, Prob.Code 136.  
     Endangered estate of incompetent without guardian,  
         Accounting, Prob.Code 136.  
         Action by judge, Prob.Code 136.  
         Appointment for, Prob.Code 136.  
         Closing receivership, Prob.Code 136.  
         Compensation, Prob.Code 136.  
         County judge, approval of expenses, Prob.Code 136.  
         Education, clothing or subsistence, expenditures for, Prob.Code 136.  
         Expenditures, Prob.Code 136.  
         Investments, loans and contributions by, Prob.Code 136.  
         Recording, orders, bonds, etc., in receivership proceedings, Prob.Code 136.  
 Residents, payment of small claims without guardianship, Prob.Code 144.  
 Revision of probate proceedings, time, Prob.Code 30.  
 Small claims, payment without guardianship, Prob.Code 144.  
 Subsistence, receivers, expenditures for, Prob.Code 136.  
 Temporary administration of estates of, Prob.Code 131-135.  
 Trial by jury of probate matters in county court, Prob.Code 21.  
 Wills, limitation of action for cancellation after removal of disabilities, Prob.Code 93.

**INSOLVENCY**

Definition, BusCorp 1.02.

**INSPECTION AND INSPECTORS**

Intoxicating liquors, maximum inspection fee, PC 666-21¼.  
 Minimum and maximum salaries, hides and animals, 3883i.  
 Record books, open for public inspection, Prob.Code 17.

**INSPECTION AND INSPECTORS—Cont'd**

Wills, removal from county clerk's office, Prob.Code 90.

**INSTRUMENTS**

Recorded, prima facie evidence in action to determine heirship, Prob.Code 52.

**INSURANCE**

Accident and Sickness Insurance, generally, this index.

**Agents,**

    Division of commissions, Ins. Code 21.11.  
     Fees for special fund, Ins. Code 21.07.  
     Licenses and license taxes,  
         Legal reserve life insurance agents, Ins. Code 21.07-1.  
         Nonresidents, Ins. Code 21.07-1, § 7.

Amendments, charters, Ins. Code 2.03.

**Application,**

    Charter, examination, Ins. Code 2.04.  
     Incorporation, hearing, Ins. Code 2.01.

Articles of incorporation, Ins. Code 2.02.

    Oath by officers, Ins. Code 2.05.

**Assessments,**

    Liquidation of insurer, Ins. Code 21.28.

**Stockholders,**

    Capital and surplus impaired, Ins. Code 6.05.  
     Failure to pay, Ins. Code 6.06.

**Capital,**

**Impairment,**

    Assessment of stockholders, Ins. Code 6.05.  
     New stock to make good, Ins. Code 6.07.

    Oath regarding, Ins. Code 2.05.

**Capital stock,**

    Impairment, Ins. Code 1.10.  
     Items comprising, Ins. Code 2.08.

**Carrier,**

    Defined, Ins. Code 1.14.  
     Examination, Ins. Code 1.15.

**Certificate of authority,**

    Issuance, Ins. Code 1.14, 2.21.  
     Renewal, fire or casualty insurer, Ins. Code 2.20.  
     Revocation or modification, Ins. Code 1.19, 21.45.

**Charters,**

    Amendments, Ins. Code 2.03.  
     Application, examination, Ins. Code 2.04.  
     Oath regarding, Ins. Code 2.05.  
     Revocation, Ins. Code 21.45.  
     Stipulations, oath of correctness, Ins. Code 2.05.

Claim reserves, Ins. Code 21.39.

Commissions, splitting with nonresident, Ins. Code 21.11.

Corporation law, governing insurance companies, Ins. Code 3.69.

**Definitions,**

    Legal reserve life insurance agents, Ins. Code 21.07-1, § 1.  
     Liquidation of insurance company, Ins. Code 21.28.

Examination of carriers, Ins. Code 1.15.

    Expenses, Ins. Code 1.16.

Examiners, oath and bond, Ins. Code 1.18.

    Exceptions from law, Ins. Code 5.50, 5.54.

**Exemptions from laws,**

    County mutual insurance companies, Ins. Code 17.22.

    Livestock insurance companies, Ins. Code 2.03-1.

    Lloyd's plan companies, Ins. Code 18.23.

    Minimum insurance requirement, Ins. Code 21.45.

    Reciprocal exchanges, Ins. Code 19.12.

Expenses of examination, Ins. Code 1.16.

Findings by board, examination of insurer, Ins. Code 1.15.

Formation of company, Ins. Code 2.01.

**INSURANCE—Cont'd**

Funds, investment, Ins. Code 2.10.  
 Impairment of surplus, Ins. Code 1.10.  
   Reduction of capital stock to make good, Ins. Code 6.04.  
 Incorporation, general provisions, Ins. Code 2.01.  
**Investments,**  
   Funds, Ins. Code 2.10.  
 Items of capital stock and minimum surplus, Ins. Code 2.08.  
 Judicial review, board's action, Ins. Code 21.44.  
 Laws governing, Ins. Code 2.18, 3.69.  
 Legal reserve life insurance agent, Ins. Code 21.07—1.  
 Life insurance counselor, Ins. Code 21.07—2.  
 Livestock insurance companies, exemption, Ins. Code 2.03—1.  
 Lost reserves, Ins. Code 21.39.  
 Market value, determination, Ins. Code 1.15.  
 Minimum insurance to be maintained, Ins. Code 21.45.  
 Minimum surplus, items comprising, Ins. Code 2.08.  
 New stock to make good impairment, Ins. Code 6.07.  
 Nonresident agent, splitting commission, Ins. Code 21.11.  
 Policy forms, companies affected, Ins. Code 5.13.  
 Prepaid funeral benefits, 548b.  
 Privileges and powers, additional, Ins. Code 2.07.  
 Rating forms, companies affected, Ins. Code 5.13.  
 Real estate, holding, Ins. Code 6.08.  
 Recording agent, splitting commission, Ins. Code 21.11.  
 Reduction of capital stock to make good impairment of surplus, Ins. Code 6.04.  
 Re-insurance, Ins. Code 5.76.  
 Renewal certificates of authority, fire or casualty insurer, Ins. Code 2.20.  
**Securities.** Insurance Securities Act, generally, this index.  
 Simultaneous death, providing for disposition of property on, effect, Prob.Code 47.  
**Stock and stockholders,**  
   Assessment to make good impairment, Ins. Code 6.05.  
   Failure to pay assessment, Ins. Code 6.06.  
   Investment of funds, Ins. Code 3.39.  
   Items comprising, Ins. Code 2.08.  
   New stock, impairment of capital and surplus, Ins. Code 6.07.  
   Reduction of stock to make good impairment of surplus, Ins. Code 6.04.  
**Surplus, impairment, Ins. Code 1.10.**  
   Assessment of stockholders, Ins. Code 6.05.  
   New stock to make good, Ins. Code 6.07.  
 Value, determination, Ins. Code 1.15.

**INSURANCE COMMISSIONERS**

See Board of Insurance Commissioners, generally, this index.

**INSURANCE SECURITIES ACT**

**Actions,**  
   Commissions, 580—35.  
   Purchaser, 580—34.  
 Administration of law, 580—36.  
 Advertising, penalties, 580—23.  
 Agents, registration, 580—12, 580—18.  
   Revocation, 580—26.  
 Annual registration, renewal, 580—19.  
 Application to qualify securities, examination by board, 580—8.  
 Burden of proof, exemption, 580—39.  
 Certificate of good standing, foreign issuer, 580—6.  
 Certificates. Registration, post.  
 Certified copies of papers filed, evidence, 580—31.  
 Citation of law, 580—1.  
 Commissions, actions to collect, 580—35.  
 Compensation for services, actions, 580—35.

Tex.St.Supp. '56—66

**INSURANCE SECURITIES ACT—Cont'd**

Consent to service of process, 580—6.  
 Construction of law, 580—32.  
**Dealers,**  
   Denial of registration, hearing, 580—16.  
   Form of registration certificate, 580—17.  
   Nonresidents, 580—15.  
   Permit, 580—5.  
   Registration, 580—12, 580—13.  
     Certificates, 580—14.  
     Revocation, 580—25.  
**Definitions, 580—2.**  
**Deposits by issuer, protection to purchasers, 580—7.**  
**District Court, review of board's decision, 580—28.**  
**Enforcement of law, 580—36.**  
**Evidence, certified copies of papers filed, 580—31.**  
**Examination, application to qualify securities, 580—8.**  
**Exemptions,**  
   Pleading, 580—39.  
   Securities, 580—4.  
   Transactions, 580—3.  
**Fees, 580—37.**  
**Filing, list of securities, 580—24.**  
**Form of dealer's registration certificate, 580—17.**  
**Fraud, penalty, 580—30.**  
**Fund, deposit, 580—38.**  
**Hearing,**  
   Denial of dealer registration, 580—16.  
   Denial of permit, 580—8.  
   Record of testimony, 580—27.  
**Injunctions, 580—33.**  
**Investigations by board, 580—29.**  
**Issuer,**  
   Foreign state, 580—6.  
   Permit, 580—5.  
**Limitation of action, 580—34.**  
**List of securities filed, 580—24.**  
**Misrepresentation, penalty, 580—30.**  
**Nonresident dealers, 580—15.**  
**Notices, registered mail, 580—27.**  
**Papers filed, public records, 580—11.**  
**Penal provisions, 580—30.**  
**Permits,**  
   Issuer of securities, 580—8.  
   Issuer or dealer, 580—5.  
   Sale of securities, 580—10.  
     Form, term and renewal, 580—9.  
**Petition, review of board's decision, 580—23.**  
**Pleading exemptions, 580—39.**  
**Protection to purchasers, deposits by issuer, 580—7.**  
**Purchaser, action, 580—34.**  
**Registered mail, notices, 580—27.**  
**Registry certificate, display, 580—21, 580—22.**  
**Registration,**  
   Agents or salesmen, 580—18.  
     Revocation, 580—26.  
   Certificates, 580—14.  
     Dealers, 580—17.  
     Display, 580—21, 580—22.  
**Dealers,**  
   Hearing after denial, 580—16.  
   Revocation, 580—25.  
   Person selling, 580—12, 580—13.  
   Renewal, 580—19.  
   Securities, 580—5.  
**Review, decisions of board, 580—23.**  
**Revocation of registration,**  
   Agents or salesmen, 580—26.  
   Dealer's registration, 580—25.  
**Sales,**  
   Authorized, 580—20.  
   Voidable, 580—34.

## INSURANCE SECURITIES ACT—Cont'd

**Salesmen,**  
 Defined, Insurance Securities Law, 580—2.  
 Registration, 580—12, 580—18.  
 Revocation, 580—26.

**Securities,**  
 Defined, Insurance Securities Law, 580—2.  
 Exempt from law, 580—4.

**Subpoenas, investigations by board, 580—29.**  
**Testimony at hearing, record, 580—27.**  
**Transactions exempt from law, 580—3.**  
**Use of permit to aid sales, 580—10.**  
**Voidable sales, 580—34.**

**INSURER**  
 Defined, liquidation of insurance companies, Ins. Code 21.28.

**INTEREST**  
 See Guardian and Ward, this index.

**INTEREST IN LAND**  
 Defined, Prob.Code 367.

**INTERESTED PERSONS**  
 Defined, Prob.Code 3.

**INTERNATIONAL BOUNDARY**  
 Toll bridges, acquisition by counties, 6795c.

**INTERPRETERS**  
 District Courts, appointment and salary, 3737d—1.

**INTERROGATORIES**  
 Filing copy, probate matters, Prob.Code 22.

**INTERSTATE COMMERCE**  
 Foreign corporations, not transacting business in state, BusCorp 8.01.

**INTESTACY**  
 Passage of title to estate on, Prob.Code 37.  
 Persons who take title to estate on, Prob.Code 38.

**INTOXICATING LIQUORS**  
 Athletic events, possession, PC 666—25b.  
 Beer and malt liquors,  
     Distributors, loans and guaranties to retailers prohibited, PC 667—24.  
     Loans and guaranties by manufacturer or distributor to retailer, prohibited, PC 667—24.  
     Manufacturer, loans and guaranties to retailers prohibited, PC 667—24.  
 Distributor, loans and guaranties to retailer prohibited, PC 667—24.  
**Fees,**  
     Inspection fee, maximum, PC 666—21¼.  
     Guaranties by manufacturers and distributors to retailers, prohibited, PC 667—24.  
     Inspection fee, maximum, PC 666—21¼.  
     Manufacturer, loans and guaranties to distributor prohibited, PC 667—24.

**Possession,**  
     Athletic events, where sponsored, PC 666—25b.  
 Public school athletic events, possession of liquor, PC 666—25b.  
 Retailers, loans and guaranties by manufacturers and distributors prohibited, PC 667—24.

**INVENTORIES**  
 Executors and Administrators, this index.  
 Record book, probate minutes, contents, Prob. Code 15.

**INVESTIGATIONS**  
 Insurance Securities Law, Board of Insurance Commissioners, 580—29.  
 Securities law, 579—29.

**INVESTIGATORS**  
 County attorneys,  
     Counties of more than 37,000, 331g—1.

**INVESTIGATORS—Cont'd**  
 Criminal district attorneys, Harrison county, 326k—33.  
 Howard county, appointment and compensation, 326k—27.  
 Midland county, appointment, 326k—30.  
 Salary, special judicial district of Midland county, 326k—30.

**INVESTMENTS**  
 Guardian and Ward, this index.  
 Insurance company funds, Ins. Code 2.10.  
 Lloyd's plan insurance companies, Ins. Code 18.09.  
 Receiver for endangered estate of minor or incompetent without guardian, Prob.Code 136.  
 Record book, probate minutes, contents, Prob. Code 15.  
 San Augustine Water Authority bonds, 8280—169.

**IRON BRIDGE CROSSING**  
 Dam authorized, 8280—133.

**IRRIGATION**  
 Water improvement districts, manager and tax assessor and collector, 7652b.

**IRRIGATION DISTRICTS**  
 Certified copy of Legislative Act, filing, 8280—7.

**ISLANDS**  
 Gulf of Mexico, recreational purposes, 6079c—1.

**ISSUER**  
 Defined, 579—2, 717k.

**JACKSON COUNTY**  
 Flood control district, established, 8280—131.  
 Water Control and Improvement District No. 1, 8280—161.

**JAILS AND JAILERS**  
 County jails, deduction in time for good behavior, 5118a.

**JASPER COUNTY**  
 Upper Jasper County Water Authority, 8280—184.

**JEFFERSON COUNTY**  
 Criminal district court, authorized to sit at Port Arthur, CCP 52—160a.  
 District court, 136th judicial district, 199(136).  
 58th and 60th judicial district courts, convene at Port Arthur, 199(58, 60).  
 Water Control and Improvement District No. 10, 8280—166.

**JOINT OWNERS**  
 Descent and distribution, simultaneous death, effect, Prob.Code 47.

**JOINT TENANCIES**  
 Descent and distribution, abolished, Prob.Code 46.

**JUDGES**  
 See, also, County Judges, generally, this index.  
 Additional district court, Tarrant county, 199(153).  
 Criminal District Court No. 3 of Dallas County, CCP 52—24c.  
 Domestic relations court,  
     Hutchinson county, 2338—6.  
 153rd judicial district, 199(153).  
 Salaries,  
     Minimum and maximum, 3883i.  
     Second 25th judicial district court, 199(25).  
     Tarrant county, 153rd judicial district, 199(153).

**JUDGMENTS AND DECREES**  
 Admitting will to probate or granting administration, recording, effect, Prob.Code 8.  
 Appeal, probate matters, right to, Prob.Code 28.

**JUDGMENTS AND DECREES—Cont'd**

- Bill of review, time for filing, probate matters, Prob.Code 31.
- County court, probate matters, rendition in open court, Prob.Code 23.
- Executors and Administrators, this index.
- Guardian and Ward, this index.
- Habitual drunkard,
  - Determination, Prob.Code 418.
  - Setting aside and granting new trial, Prob.Code 419.
- Heirship, actions to determine,
  - Certified copy, filing, Prob.Code 56.
  - Conclusiveness, Prob.Code 55.
  - Requisites, Prob.Code 54.
- Insane persons, Prob.Code 418.
  - Setting aside and granting new trial, Prob.Code 419.
- Partition and distribution of estates,
  - Requisites, Prob.Code 378.
  - Vesting title, Prob.Code 380.
- Record book,
  - Judge's probate docket, contents, Prob.Code 13.
  - Probate minutes, contents, Prob.Code 15.
- Specific performance of decedent's contract to sell property, Prob.Code 27.

**JUDICIAL DISTRICTS**

- Angelina county, 199(2).
- Borden County, 132nd Judicial District, 199(132).
- Cameron county, 199(138).
- Cherokee county, 199(2).
- Colorado county, 199(25).
  - Selection of jurors, 199(25).
- Counties composing 102nd District, 199(102).
- County juvenile boards,
  - 38th and 63rd Judicial Districts, 5139H—1.
- Deputy court reporter, 70th judicial district, 2323a.
- Gillespie County, 199(38).
- Gonzales county, 199(25).
  - Selection of jurors, 199(25).
- Guadalupe county, 199(25).
  - Selection of jurors, 199(25).
- Juvenile board, second 38th District, 5139H—2.
- Kimble County, 199(38).
- Lavaca county, 199(25).
  - Selection of jurors, 199(25).
- Midland county, 199(70).
- Nacogdoches county, 199(2).
- Particular districts,
  - 5th judicial district, 199(5).
  - 32nd district, 199(32).
  - 63rd judicial district, 199(63).
  - 88th district, 199(88).
  - 125th judicial district, 199(11).
  - 132nd Judicial District, 199(132).
  - 134th judicial district court, establishment, 199(134).
  - 145th Judicial District, 199(145).
- Special district court,
  - Colorado county, selection of jurors, 199(25).
  - Gonzales county, selection of jurors, 199(25).
  - Guadalupe county, selection of jurors, 199(25).
  - Lavaca county, selection of jurors, 199(25).
- Special district of Midland County, appointment of investigator, 326k—30.
- Willacy county, 199(138).

**JUDICIAL SALES**

- Securities law, exemption, 579—3.

**JUNIOR COLLEGE DISTRICTS**

- Adding territory, 2815s—1.
  - County line school districts, 2815s—1.
- Bonds, authorization, 2815r—1.
- Fees and charges, use of buildings, 2815r—1.
- Property and buildings, acquisition, 2815r—1.

**JUNIOR COLLEGES AND UNIVERSITIES**

- Degree, history required, 2663b—2.

**JURISDICTION**

- Corporation courts,
  - Cities of 130,000 to 285,000, 1200d.
- County courts,
  - Applications for compensation of independent executors, Prob.Code 241.
  - Probate proceedings, Prob.Code 4.
- County courts at law,
  - El Paso county, 1970—141.1.
  - Potter county, 1970—311a.
- District court, probate proceedings, Prob.Code 5.
- Domestic Relations Court,
  - Hutchinson county, 2338—6.
  - Eminent domain, Hill county court, 1970—333a.
- Executors and Administrators, this index.
- Heirship, actions to declare, Prob.Code 48.
- Probate proceedings,
  - Concurrent, effect, Prob.Code 8.
  - Determination of venue, Prob.Code 8.
- Small estates, Prob.Code 137.
- Taylor county court law, 1970—343.
- Waiver of notice of hearing in probate proceeding by submission to, Prob.Code 35.

**JURORS**

- Second 25th judicial district court, 199(25).
- Selection, 25th judicial district, 199(25).

**JURY**

- Commissioners,
  - District court,
    - Selection of jurors, 25th judicial district, 199(25).
    - Selection of jurors, 25th judicial district, 199(25).
- County Courts-at-Law,
  - Potter county, 1970—311a.
- District Court,
  - 138th judicial district, 199(138).
  - 140th judicial district, 199(140).
  - 145th Judicial District, 199(145).
  - Potter county, county court at law, 1970—311a.
  - Second 25th judicial district court, 199(25).
  - Selection of jurors, 25th judicial district, 199(25).
- Summons,
  - Sheriffs power to summon in counties having nine or more district courts, CCP 367g.
- 25th judicial district, selection of jurors, 199(25).

**JURY TRIAL**

- Guardian and ward, necessity for appointment of guardian, Prob.Code 115.
- Habitual Drunkards, this index.
- Insane Persons, this index.
- Probate matters, county court, Prob.Code 21.

**JURY WHEEL**

- Counties exempt, 199(25).

**JUSTICES OF THE PEACE**

- Compensation, fees or salaries,
  - Jurors, 2428.
- Jury fees, 2428.
- Medical examiners in counties of 250,000 or more, CCP 989a, § 12.

**JUVENILE BOARDS**

- Cass county, 5139N.
- Compensation,
  - Cass county, 5139N.
- Counties of
  - More than 500,000, chief juvenile probation officer appointed, 5142c—2.
- Second 38th Judicial District, 5139H—2.
- Titus county, 5139o.

**JUVENILE OFFICERS**

- Bowie county, compensation, 5139M.
- Counties of more than 500,000, appointment, compensation and duties, 5142c—2.
- Probation officers, counties of more than 500,000, 5142c—2.



**KARNES COUNTY**

Game and fish, local and special acts, PC 978j note.

**KIMBLE COUNTY**

38th Judicial District, 199(38).

**LABOR DAY**

Legal holiday, 4591d.

**LABOR DISPUTES**

Injunction to enjoin, 1995, § 17a.  
Right to work, 5154g.

**LABOR UNIONS**

Right to work, 5154g.

**LAKES**

Mineral development district, Caddo Lake, 5421b—1.

**LAMAR STATE COLLEGE OF TECHNOLOGY**

Board of regents,  
Bonds, building additions, 2909c.  
Bonds, additions to buildings, 2909c.  
Buildings, additions authorized, 2909c.

**LAND**

Defined, Prob.Code 367.  
Wills, passage of interest under, Prob.Code 58.

**LAVACA COUNTY**

District court, additional court, 199(25).  
Jurors, selection, 199(25).  
Second 25th judicial district court, permanent, 199(25).

**LAWS**

Repeals, Prob.Code 434.

**LEASES AND LEASING**

Agricultural and mechanical college system, power, 2613a—7.  
Executors and Administrators, this index.  
Home rule city, plant, utility or business, 1118n—6.  
Mineral development,  
Bed of Caddo Lake, 5421b—1.  
Political subdivision land, 5421p.  
Navigation districts, oil, gas and minerals, 8247f.  
Oil and Gas, this index.  
Political subdivision land, mineral development, 5421p.  
Record book, probate minutes, contents, Prob. Code 15.  
State lands, prospecting, 5421c—7.  
Validation, oil, gas and mineral lease, 5421o.  
West Central Texas Municipal Water District, 8280—162.

**LEGACIES AND LEGATEES**

See Wills, generally, this index.

**LEGAL RESERVE LIFE INSURANCE**

Agents,  
Generally, Ins. Code 21.07—1.  
Nonresidents, Ins. Code 21.07—1, § 7.

**LEGION STATE SANATORIUM**

Name changed, 3201b—1.

**LEGISLATURE**

Appropriation requests, higher education, 2919e—2.  
Higher education, appropriation requests, 2919—2.

**LEGITIMACY**

Illegitimate child, treatment as legitimate for purpose of inheritance, Prob.Code 42.  
Intermarriage of parties, descent and distribution, effect, Prob.Code 42.

**LETTERS**

Guardian and Ward, this index.  
Testamentary or of administration. Executors and Administrators, this index.

**LEVEE IMPROVEMENT DISTRICTS**

Certified copy of Legislative Act, filing, 8280—7.

**LEWDNESS**

Immoral publications,  
Possession or sale, PC 527.  
Tie-in sales, PC 527a.  
Tie-in sales, penalty, PC 527a.

**LIABILITIES**

Claims include, Prob.Code 3.  
Wills, refusal to deliver on death of testator, Prob.Code 75.

**LIBERTY COUNTY**

75th Judicial District, 199(75).

**LIBRARIES**

Independent school districts, 2909b.  
Rural school districts, 2909b.

**LICENSES AND LICENSE TAXES**

Life insurance counselor, Ins. Code 21.07—2.  
Lloyd's plan insurance, application fee, Ins. Code 18.04.

**LIENS**

Defined, Prob.Code 3.  
Executors and Administrators, this index.  
Inns, baggage and property of guests, 4594.  
International toll bridge revenue, home rule city, 1187a—2.  
Motels, baggage and property of guests, 4594.  
Rooming houses, baggage and property of guests, 4594.  
Tourist courts, baggage and property of guests, 4594.

**LIFE, HEALTH AND ACCIDENT INSURANCE**

Accident and sickness,  
Age limit, Ins. Code 3.70—7.  
Application, Ins. Code 3.70—5.  
Claim,  
Form, Ins. Code 3.70—3.  
Notice, Ins. Code 3.70—3.  
Defenses, time limit, Ins. Code 3.70—3.  
Definitions, Ins. Code 3.70—1.  
Exceptions from law, Ins. Code 3.70—3.  
Form of policy, Ins. Code 3.70—2.  
Grace period, Ins. Code 3.70—3.  
Hearing, rules and regulations, Ins. Code 3.70—10.  
Hospital treating injured person, lien on proceeds of insurance, 5506a, § 4a.  
Judicial review, rules and regulations, Ins. Code 3.70—10.  
Notice of claim, Ins. Code 3.70—3.  
Waiver, Ins. Code 3.70—6.  
Payment of claims, Ins. Code 3.70—3.  
Policy,  
Form and provisions, Ins. Code 3.70—2.  
Provisions, Ins. Code 3.70—3.  
Violation of statute, Ins. Code 3.70—4.  
Proof of loss, Ins. Code 3.70—3.  
Reinstatement of policy, Ins. Code 3.70—3.  
Scope of act, Ins. Code 3.70—1.  
Simultaneous death of insured and beneficiary, disposition of proceeds, 2583a.  
Violation of law, penalty, Ins. Code 3.70—9.  
Waiver of rights of insurer, Ins. Code 3.70—6.  
Affidavit, stock subscriptions, Ins. Code 3.04.  
Age of person applying for life insurance, Ins. Code 3.49—1, § 1.  
Agents,  
Fees for special fund, Ins. Code 21.07.  
Legal reserve companies, Ins. Code 21.07—1, § 1.  
Annuity contract, legal reserve insurance, Ins. Code 21.07—1.  
Application for charter, Ins. Code 3.04.  
Articles of incorporation, Ins. Code 3.02.  
Filed, Ins. Code 3.04.

**LIFE, HEALTH AND ACCIDENT INSURANCE—Cont'd**

Board of Insurance Commissioners, this index.  
Capital,

Articles of incorporation, Ins. Code 3.02.

Money and securities comprising, Ins. Code 3.39.

Capital stock, impairment, Ins. Code 3.60.

Certificate of authority, Ins. Code 3.06.

Charter, application, Ins. Code 3.04.

Computation of reserve liability, foreign companies, Ins. Code 3.30.

Counselor, life insurance counselor, Ins. Code 21.07—2.

Definitions, legal reserve life insurance, Ins. Code 21.07—1, § 1.

Directors, election, Ins. Code 3.04.

Dividends, declaration and payment, Ins. Code 3.11.

Excess risk, legal reserve life insurance, Ins. Code 21.07—1.

Financial requirements, articles of incorporation, Ins. Code 3.02.

Foreign mutual companies, minimum surplus requirements, Ins. Code 3.22.

Foreign stock company, minimum capital and surplus requirements, Ins. Code 3.22.

Fraternal benefit societies, conversion from, Ins. Code 10.40.

Free surplus, money and securities comprising, Ins. Code 3.39.

Group life insurance, amount of insurance, Ins. Code 3.50.

Impairment of capital stock, Ins. Code 3.60.

Industrial, legal reserve life insurance, Ins. Code 21.07—1.

Insurance contract, legal reserve insurance, Ins. Code 21.07—1.

Investments authorized, Ins. Code 3.39.

Legal reserve companies, Ins. Code 21.07—1.

Agents, Ins. Code 21.07—1, § 1.

Definitions, Ins. Code 21.07—1, § 1.

Legal reserve life insurance agent, Ins. Code 21.07—1.

Nonresidents, Ins. Code 21.07—1, § 7.

Life insurance counselor, Ins. Code 21.07—2.

Limited capital stock companies, Ins. Code 3.03 note.

Mutual assessment companies, conversion, Ins. Code 14.63.

Mutual life insurance company,

Conversion, Ins. Code 11.01.

Incorporation, Ins. Code 11.01.

Privileges and powers, Ins. Code 2.07.

Real estate, authority, Ins. Code 3.40.

Rejected risk, legal reserve life insurance, Ins. Code 21.07—1.

Reserves, Ins. Code 3.32.

Stock and stockholders, Ins. Code 3.02a.

First meeting, Ins. Code 3.06.

Impairment of stock, Ins. Code 3.60.

Vote, Ins. Code 3.04.

Sub-agent, legal reserve life insurance, Ins. Code 21.07—1.

Subscription and payment of stock, Ins. Code 3.02a.

Surplus, money and securities comprising, Ins. Code 3.39.

Weekly premium life insurance on a debit basis, legal reserve life insurance, Ins. Code 21.07—1.

**LIFE INSURANCE**

Descent and distribution,

Conviction of beneficiary for causing death of insured, effect, Prob.Code 41.

Simultaneous death of insured and beneficiary, effect, Prob.Code 47.

Guardians, purchase, Prob.Code 390.

**LIFE INSURANCE COMMISSIONER**

Legal reserve life insurance agents, review of acts, Ins. Code 21.07—1, § 13.

**LIFE INSURANCE COMPANIES**

Defined, Prob.Code 390.

**LIFE INSURANCE COUNSELOR**

Generally, Ins. Code 21.07—2.

**LIMITATIONS, STATUTE OF**

Insurance Securities Law, 580—34.

Securities law violation, 579—34.

**LIMITATIONS OF ACTIONS**

Bill of review, probate proceedings, filing, Prob. Code 31.

Wills,

Cancellation for forgery or fraud, Prob.Code 93.

Contest of probate, Prob.Code 93.

**LIMITED PARTNERSHIP**

Additional limited partners, admission, 6132a § 9.

Amendment of certificate, 6132a, §§ 25, 26.

Assignments and substitutions, 6132a, § 20.

Business which may be carried on, 6132a, § 4.

Cancellation of certificate, 6132a, §§ 25, 26.

Certificate, cancellation or amendment, 6132a, §§ 25, 26.

Citation of law, 6132a, § 1.

Contributions,

Limited partner, 6132a, § 5.

Return, 6132a, § 17.

Creditors of limited partners, remedies, 6132a, § 23.

Death,

General partner, 6132a, § 21.

Limited partner, 6132a, § 22.

Defined, 6132a, § 2.

Dissolution, payment of liabilities, 6132a, § 24.

False statements in certificate, 6132a, § 7.

Formation, 6132a, § 3.

General partners, 6132a, § 10.

Insanity, general partner, 6132a, § 21.

Interest as personal property, 6132a, § 19.

Liability of limited partner, 6132a, § 8.

Liabilities of limited partner to partnership, 6132a, § 18.

Limited partner,

Creditor of partnership, 6132a, § 14.

Creditors of, 6132a, § 23.

Distinguished from general partner, 6132a, § 12.

Liabilities to partnership, 6132a, § 18.

Priority, 6132a, § 15.

Name, 6132a, § 6.

Priority between limited partners, 6132a, § 15.

Proceedings against partnership, parties, 6132a, § 27.

Profits or compensation, share, 6132a, § 16.

Retirement, general partner, 6132a, § 21.

Return of contribution, 6132a, § 17.

Rights of limited partner, 6132a, § 11.

Same person, general partner and limited partner, 6132a, § 13.

**LIQUEFIED PETROLEUM GAS**

Storage, handling, etc., 6053.

**LIQUIDATOR**

Defined, liquidation of insurance companies, Ins. Code 21.28.

**LITERARY ORGANIZATIONS**

Contributions, guardian and ward, procedure, Prob.Code 398.

**LIVESTOCK**

Brands and marks, registration with county clerk, 6899d—1.

Executors and administrators, sales, Prob.Code 334, 335.

Records of slaughtering, PC 1456a.

**LIVESTOCK SANITARY COMMISSION**

Sale of milk from brucellosis cows, certified, PC 712.

## LLOYD'S PLAN INSURANCE

Articles of agreement, Ins. Code 18.04.

### Assets,

Cash or securities, Ins. Code 18.09.

Guaranty fund, Ins. Code 18.05.

Capital structure, Ins. Code 18.04.

Certificate of authority, Ins. Code 18.04.

Examination of company, Ins. Code 18.11.

Exemption from laws, Ins. Code 18.23.

Guaranty fund, impairment, Ins. Code 18.07.

### Impairment,

Guaranty fund and surplus, Ins. Code 18.07.

Minimum surplus, Ins. Code 1.10.

Investments, assets, Ins. Code 18.09.

License, application fee, Ins. Code 18.04.

Liquidation, Ins. Code 21.28.

Minimum insurance to be maintained, Ins.

Code 21.45.

Net assets, investment, Ins. Code 18.05.

Real estate, authority, Ins. Code 18.09.

Reciprocal exchanges, declaration of subscribers, Ins. Code 19.03.

## LOANS

Election candidate, statement filed, Elec. Code 14.08.

Manufacturer or distributor of liquors to retailer, prohibited, PC 667—24.

Receivers of endangered estates of minor or incompetent without guardian, Prob.Code 136.

Record book, probate minutes, contents, Prob. Code 15.

## LOCAL MUTUAL AID ASSOCIATIONS

Agents, fees for special fund, Ins. Code 21.07.

Conversion, stock legal reserve company, Ins. Code 14.63.

Liquidation or rehabilitation, Ins. Code 21.28.

Minimum insurance requirement, exemption, Ins. Code 21.45.

## LOSS

Estate of minor or incompetent, danger of loss, appointment of receiver, Prob.Code 136.

## LOST AND DESTROYED INSTRUMENTS

### Wills,

Application for order admitting to probate, Prob.Code 76.

Certificate of deposit, Prob.Code 71.

## LOVING COUNTY

143rd Judicial District Court, 199(143).

## LUBBOCK COUNTY

District court, 140th judicial district, 199(140).

## LUNATICS

See, also, Insane Persons, generally, this index.

Defined, Prob.Code 3.

## MC ALLEN, CITY OF

Water and Sewer Authority, 8280—177.

## MC KNIGHT STATE TUBERCULOSIS HOSPITAL

Named changed from McKnight State Sanatorium, 3238c.

## MAIL

Registered mail,

Citations and notices, service by, Prob.Code 33.

Notice, death of testator, Prob.Code 71.

## MAINTENANCE

See Guardian and Ward, this index.

## MARKS AND BRANDS

Grapefruit, foreign state or country, 118b, §§ 24, 24A.

## MARRIAGE

Annulment, domestic relations court for Hutchinson county, 2338—6.

Guardian and Ward, this index.

## MARRIAGE—Cont'd

Legitimacy of issue of void marriage, descent and distribution, Prob.Code 42.

License, premarital examination for syphilis, 4604d.

### Wills,

Effect on right to execute, Prob.Code 57.

Provision for management of separate property to survivor, Prob.Code 70.

## MARRIED WOMEN

See Husband and Wife, generally, this index.

## MASCULINE GENDER

Includes feminine and neuter, Prob.Code 3.

## MATAGORDA COUNTY

Exclusion, deposit of navigation district revenue, 8244a.

## MEDICAL ATTENDANCE AND TREATMENT

State hospitals and special schools, authority of board, 3174b—2.

## MEDICAL EXAMINERS

Counties of 250,000 or more, CCP 989a.

Appointment and qualifications, CCP 989a, § 2.

Assistants, CCP 989a, § 3.

Autopsy, CCP 989a, § 9.

Death investigations, CCP 989a, § 6.

Disinterments and cremations, CCP 989a, § 10.

Duties of justices of peace, CCP 989a, § 12.

Offices, CCP 989a, § 5.

Records, CCP 989a, § 11.

Removal of bodies, CCP 989a, § 8.

Reports of death, CCP 989a, § 7.

Salaries, CCP 989a, § 4.

Violations, penalty, CCP 989a, § 13.

## MEETINGS

Corporations, stockholders, BusCorp 2.24—2.29.

## MENTAL CAPACITY

Wills, proof, Prob.Code 88.

## MENTAL DEFECTIVES

Return to home county, 3871a.

## MENTALLY ILL PERSONS

Release, duty of home county, 5561b—1.

## MENTALLY RETARDED PERSONS

Absence without permission, 3871b, § 18.

Admission to jurisdiction of board, 3871b, § 4.

Application, 3871b, § 6.

Judicial procedure, 3871b, § 6.

Order of admission, 3871b, § 10.

Defined, 3871b.

Diagnosis, 3871b, § 13.

Discharge, 3871b, § 16.

Employment, 3871b, § 15.

Facilities, institutions, 3871b, § 12.

Feeble-minded persons previously committed, 3871b, § 22.

Foster homes, 3871b, § 17.

Furlough, 3871b, § 16.

Hearing, application, 3871b, § 7.

Laws repealed, 3871b, § 25.

Order of court, 3871b, § 8.

Persons committed as feeble-minded, 3871b, § 22.

Public schools, attendance, 3871b, § 11.

Purpose of law, 3871b.

Research and study of causes and treatment, 3871b, § 14.

Severability of law, 3871b, § 23.

Short title, 3871b.

Support and maintenance, 3871b, § 21.

Voluntary admission for special training, 3871b, § 9.

**MIDLAND COUNTY**

District court, special district court, 199(70).  
Special judicial district, investigator and stenographer, 326k—30.

**MILK**

Brucellosis cows, sale, PC 712.

**MINERAL DEVELOPMENT**

Defined, Prob.Code 367.

**MINES AND MINERALS**

Development, pooling or unitization, Prob.Code 369.

Exploration, pooling or unitization, Prob.Code 369.

Guardian and Ward, this index.

Interest in land, defined, Prob.Code 367.

Land, defined, Prob.Code 367.

Leases, Prob.Code 367-372.

Application for authority to lease, contents, rules, Prob.Code 367.

Authority to subject property to, neglect to apply for, procedure, Prob.Code 371.

Bids, special sale fee, 5382d—1.

Caddo Lake bed, 5421b—1.

Executors and administrators, bonuses, etc., treatment as income, Prob.Code 239.

Guardian and Ward, this index.

Navigation districts, 8247f.

Notices, rules, Prob.Code 367.

Orders, rules, Prob.Code 367.

Pooling or unitization,

Action for court, Prob.Code 369.

Agreements, validation, Prob.Code 372.

Ancillary instruments, execution without court order, Prob.Code 370.

Application for, contents, Prob.Code 369.

Citation and notices, necessity, Prob.Code 369.

Clauses, execution with or without, Prob.Code 367.

Hearing of application, Prob.Code 369.

Neglect to apply for authority to subject property to, procedure, Prob.Code 371.

Order, contents, Prob.Code 369.

Private sale, Prob.Code 368.

Rules concerning applications, orders, notices, etc., Prob.Code 367.

Validation, 5241o, Prob.Code 372.

Mineral development, defined, Prob.Code 367.

Navigation districts, leases, 8247f.

**Pooling,**

Agreements, ancillary instruments, execution without court order, Prob.Code 370.

Clauses of leases, execution with or without, Prob.Code 367.

Royalties, Prob.Code 369.

Production, pooling or unitization, Prob.Code 369.

Property, defined, Prob.Code 367.

Record book, probate minutes, contents, Prob.Code 15.

Special sale fee, accompanied bid for lease, 5382d—1.

State lands, permits for prospecting, 5421c—7.

Tidewater limits, permits for prospecting, 5421c—7.

Unitization agreement, ancillary instruments, execution without court order, Prob.Code 370.

Unitization clauses of leases, execution with or without, Prob.Code 367.

Unitization of royalty, Prob.Code 369.

**MINORS**

See, also, Infants, generally, this index.

Defined, Prob.Code 3.

Guardian and Ward, this index.

**MINUTES**

Defined, Prob.Code 3.

Evidence, action to determine heirship, recording, Prob.Code 53.

Probate, approval and signing, Prob.Code 23.

Receipt on payment of estates into state treasury, recording, Prob.Code 430.

Receiver, order appointing for estate of minor or incompetent, entry, Prob.Code 136.

Receivership proceedings, orders, etc., recording in, Prob.Code 136.

Record book,

Judge's probate docket, contents, Prob.Code 13.

Probate minutes, Prob.Code 15.

Transcript on transfer of action to determine heirship, recording in, Prob.Code 51.

Wills, foreign will, copies filed and recorded in, Prob.Code 95.

**MISDEMEANORS**

Holes, plugging or covering required, PC 1721.

**MONTGOMERY COUNTY**

Second 9th judicial district court, permanent, 199(9).

**MOORE COUNTY**

Ground Water Conservation District No. 2, 8280—179.

**MORTGAGES**

Defined, Prob.Code 3.

Executors and Administrators, this index.

**MORTGAGES AND TRUST DEEDS**

Banks and trust companies, sale to federal national mortgage association, 342—505a.

Defined, 579—2.

Insurance Securities Law, 580—2.

Sales, exempt from securities law, 579—3.

**MOSQUITO CONTROL DISTRICTS**

Merging separate districts authorized, 4477—2.

**MOTELS AND TOURIST COURTS**

Liens, baggage and property of guests, 4594.

**MOTOR CARRIERS**

Fish, transporting fresh iced fish, excluded from term, 911b, § 1a.

**MOTOR VEHICLES**

Certificate of title, fees, disposition, PC 1436—1, § 57.

Commodities transported, fictitious bill of lading or sale, PC 1690b.

Dual saddle mount method, vehicles allowed, 6701d.

Foreign vehicle, registration, PC 1436—1.

Forfeiture, narcotics transportation, PC 725d.

Headlamp, approval of sale, 6701d, § 108A.

Length, exemption, PC 827a—3.

Lights,

Approval, 6701d, § 108B.

Sale, approval, 6701d, § 108A.

Multiple-beam road lighting equipment, 6701d, § 126.

Narcotics,

Operating while under influence, PC 802a—1.

Transportation, seizure and forfeiture, PC 725d.

Reflectors, approval of sale, 6701d, § 108A.

Registration,

Foreign vehicle, PC 1436—1.

Transportation of narcotics, seizure and forfeiture, PC 725d.

**MUNICIPAL CORPORATIONS**

Eligible city, 1118n—7.

**MUTUAL ASSESSMENT INSURANCE**

Conversion,  
Mutual legal reserve company, Ins. Code 11.10.  
Stock legal reserve company, Ins. Code 14.63.  
Liquidation or rehabilitation, Ins. Code 21.28.  
Reorganization or conversion, Ins. Code 14.61.

**MUTUAL INSURANCE**

Liquidation or rehabilitation, Ins. Code 21.28.  
Minimum insurance to be maintained, Ins. Code 21.45.

**MUTUAL INSURANCE COMPANIES**

Articles of incorporation, signing, Ins. Code 15.04.  
Assessments, policyholders, Ins. Code 15.11.  
Capital structure, Ins. Code 15.04.  
Cash premium, Ins. Code 15.11.  
Certificate of authority, Ins. Code 15.08.  
Certificate of incorporation, Ins. Code 15.04.  
Charter, prerequisite to doing business, Ins. Code 15.08.  
Contingent premium, Ins. Code 15.11.  
Deposits with State Treasurer, Ins. Code 15.06.  
Fidelity bonds, requirements, Ins. Code 15.06.  
Kinds of insurance authorized, Ins. Code 15.06.  
Non-assessable policies, Ins. Code 15.11.  
Policy, maximum premium expressed, Ins. Code 15.11.  
Premiums, expressed in policy, Ins. Code 15.11.  
Rates, Ins. Code 15.06.  
Renewal certificates of authority, Ins. Code 15.08.  
State treasurer, deposits, Ins. Code 15.06.  
Surety bonds, requirements, Ins. Code 15.06.  
Surplus requirements, Ins. Code 15.06.  
Types of insurance authorized, Ins. Code 15.06.

**MUTUAL LIFE INSURANCE COMPANIES**

Affidavit, free surplus amount, Ins. Code 11.02.  
Amendment, charter or articles, Ins. Code 11.01.  
Application for charter, filed, Ins. Code 11.02.  
Articles of incorporation, filed, Ins. Code 11.02.  
Attorney General, approval of conversion, Ins. Code 11.01.  
Board of Insurance Commissioners, this index.  
Certificate of authority, Ins. Code 11.02.  
Contingency reserve, Ins. Code 11.11.  
Conversion,  
Fraternal benefit society, from, Ins. Code 10.40.  
Stock legal reserve life insurance company, into, Ins. Code 11.01.  
Dividends, Ins. Code 11.11.  
Approval of board, Ins. Code 11.12.  
Fees, charter fee, Ins. Code 11.02.  
Free surplus,  
Affidavit of amount, Ins. Code 11.02.  
Amount required, Ins. Code 11.01.  
Impairment, Ins. Code 11.17.  
Incorporation, Ins. Code 11.01.  
Laws governing, Ins. Code 11.19.  
Liquidation or rehabilitation, Ins. Code 21.28.  
Minimum insurance to be maintained, Ins. Code 21.45.  
Minimum surplus maintained, Ins. Code 11.17.  
Mutual assessment companies, conversion, Ins. Code 11.10.  
Reserves, contingency reserve, Ins. Code 11.11.  
Surplus,  
Accounting, Ins. Code 11.12.  
Laws governing, Ins. Code 11.19.

**NACOGDOCHES COUNTY**

District court, 199(2).  
Judicial district, 199(2).  
145th Judicial District Court, 199(145).

**NAMES**

Change, domestic relations court of Hutchinson county, 2338-6.  
Corporations, BusCorp 2.05-2.08.

**NAMES—Cont'd**

Guardian and ward, application for appointment of guardian, contents, Prob.Code 111.  
Limited partnership, 6132a, § 6.  
Wills, subscription by witnesses, Prob.Code 59.

**NARCOTICS**

Hypodermic syringe, possession, PC 725b.  
Motor vehicle, operation, while under influence, offense, PC 802a-1.  
Opium pipe, possession, PC 725b.  
Seizure and forfeiture, unlawful transportation, PC 725d.  
Transportation prohibited, PC 725d.

**NATIONAL BANKS**

Conversion into state bank, 342-314.  
Executors and administrators,  
Deposit of assets with, agreement as to, Prob.Code 219.  
Deposits with in lieu of sureties on bond, Prob.Code 194.

**NAVIGABLE WATERS**

Lands lying across, validation of deeds of acquittance, 5414a-1.

**NAVIGATION AND CANAL COMMISSIONERS**

Officers and employees, retirement, disability and death compensation fund, 8227a.  
Retirement, disability and death compensation fund, officers and employees, 8227a.

**NAVIGATION DISTRICTS**

Board, powers, 8235a.  
Certified copy of Legislative Act, filing, 8280-7.  
Claims, payment, 8235a.  
Contracts,  
Encumbering future revenue, 8235a.  
Deposit of revenues,  
Auction of governing board, 8244a.  
Counties excluded from law, 8244a.  
Employees,  
Hospitalization and medical benefits, 8227a.  
Retirement, disability and death compensation fund, 8227a.  
Governing board, deposit of revenue, 8244a.  
Land, sale or exchange, 8247f.  
Officers,  
Hospitalization and medical benefits, 8227a.  
Retirement, disability and death compensation fund, 8227a.  
Retirement, disability and death compensation fund, 8227a.  
Revenue, deposit in banking corporation, 8244a.  
Taxes, excluded from term revenues, 8244a.  
Willacy county, validation, art. 8198.

**NEGLECTED CHILDREN**

Jurisdiction, domestic relations court for Hutchinson county, 2338-6.

**NEGLIGENCE**

Guardian and ward, loans, liability for, Prob. Code 392.

**NEGOTIABLE SECURITIES**

Executors and administrators, deposit in lieu of sureties on bond, Prob.Code 194.

**NET ASSETS**

Definition, BusCorp 1.02.

**NET ESTATE**

Defined, Prob.Code 3.

**NEW TRIAL**

District courts, motion, (RCP) Rule 329-b.  
Habitual drunkards, Prob.Code 419.  
Insane persons, Prob.Code 419.  
Motion or application,  
County courts, (RCP) Rule 329-a.  
Time, (RCP) Rule 329-a.  
District courts, (RCP) Rule 329-b.

**NEW YEAR'S DAY**

Legal holiday, 4591d.

**NEWSPAPERS**

Citations and notices, probate matters, publication in, Prob.Code 33.

Costs for publishing notice, delinquent tax cases, 7345b-2.

Executors and administrators, publication of notice,

Appointment, Prob.Code 294.

Present claims, Prob.Code 294.

**NON COMPOS MENTIS**

See, also, Insane Persons, generally, this index.

Defined, Prob.Code 3.

**NONPROFIT CORPORATIONS**

Poultry association, 1302d-1.

**NONRESIDENTS**

Consent to service of process, Insurance Securities Law, 580-15.

County clerks, custodian of money of non-resident minor, incompetent, etc., without guardian, Prob.Code 144.

Discharge, nonresident patients and students, state hospitals and special schools, 3174b-1.

Executors and administrators,

Bonuses, etc., treatment as income, Prob. Code 239.

Disqualified to serve as, Prob.Code 78.

Guardian and Ward, this index.

Insurance agents, splitting commissions, Ins. Code 21.11.

Insurance Securities Law, dealers, 580-15.

Legal reserve life insurance agents, Ins. Code 21.07-1, § 7.

Partition and distribution of estates, appointment of attorney to represent, Prob.Code 376.

Patients in state hospitals, discharge, 3174b-1.

Securities law, service of process, 579-15.

Students,

Special schools, discharge, 3174b-1.

Wills, witnesses, proof of attested written will, Prob.Code 84.

**NORTH TEXAS STATE COLLEGE**

Buildings, additions authorized, 2909c.

**NOTICE**

See, also, Citations and Notices, generally, this index.

Assignment of wages, action against employer, 5159c.

Foreign will, record as, Prob.Code 99.

Insurance Securities Law, registered mail, 580-27.

Registered mail, securities law, 579-27.

Securities law, registration refused, 579-16.

**NOXIOUS WEEDS**

Control and eradication,

Districts authorized, 135c.

**NUECES COUNTY**

County courts, creation of county court at law No. II, 1970-339A.

**NUMBER**

Record book, judge's probate docket, contents, Prob.Code 13.

Singular includes plural and plural includes singular, Prob.Code 3.

Wills, certificates of deposit, Prob.Code 71.

**NUNCUPATIVE WILLS**

See Wills, this index.

**OATH OF OFFICE**

Criminal district attorney,

Harrison county, 326k-33.

Polk county, 326k-34.

Randall county, 326k-36.

**OATH OF OFFICE—Cont'd**

Directors, Reagan County Water Supply District, 8230-181.

**OATHS AND AFFIRMATIONS**

Complaint, probate matters, attachment for property, Prob.Code 26.

Executors and Administrators, this index.

Guardian and Ward, this index.

Insurance companies, correctness and truth of articles, Ins. Code 2.05.

Record book, probate minutes, contents, Prob. Code 15.

**OBJECTIONS**

Pleading, probate matters, defects in, Prob. Code 9.

**OCCUPATION TAXES**

Gas production tax, condensate recovered, 7047b.

**OCCUPATIONAL THERAPY**

State hospitals and special schools, sale of goods, 3174b-3.

**OCHILTREE COUNTY**

Ground Water Conservation District No. 2, 8280-179.

**OFFER FOR SALE**

Defined, 579-2.

Securities, registration required, 579-5.

**OFFICERS**

Fees collected, report in counties of 600,000 or more, PC 105.

**OIL AND GAS**

Abandoned wells, plugging or covering, PC 1721.

Agricultural purposes, natural gas made available for, 6050(4), 6050(4a).

Bonds, well drilling, 6029a.

Condensate recovered from gas, taxation, 7047b.

Drilling wells,

Plugging and covering required, PC 1721.

Rules and regulations, 6029a.

Dry hole, abandonment without plugging or covering, penalty, PC 1721.

Executors and Administrators, this index.

Exploratory wells, drilling, 6029a.

Guardian and Ward, this index.

Leases and permits, Prob.Code 367.

Extension of term, 2603a, § 8.

Navigation districts, 8247f.

Private sale, Prob.Code 368.

Royalties by lessee, 2603a, § 8.

Validation, 5421o; Prob.Code 372.

Liquid hydrocarbons recovered from gas, taxation, 7047b.

Navigation districts, leases, 8247f.

Penalties,

Abandonment of hole with covering or plugging, PC 1721.

Plugging and covering holes, neglect, PC 1721.

Plugging and covering of well or hole required, PC 1721.

Reconditioned motor oil, labeling, PC 1106.

Storage, handling, etc., 6053.

Wells, exploratory, 6029a.

**OPIUM**

Pipes, possession, PC 725b.

**OPPOSITION**

Probate matters,

Contest proceedings, persons entitled to file, Prob.Code 10.

Costs, security for on filing, Prob.Code 12.

**ORANGE COUNTY**

Water Control and Improvement District No. 3, proceedings validated, 7880-147z2.

**ORDERS**

County judge, appointment of receiver to take charge of endangered estate of minor or incompetent, Prob.Code 136.  
 Executors and Administrators, this index.  
 Guardian and Ward, this index.  
 Prior probate proceedings, effect on transfer for want of venue, Prob.Code 8.  
 Probate proceedings,  
     Appeals, right to, Prob.Code 28.  
     Bill of review, time for filing, Prob.Code 31.  
     Citations and notices,  
         Specific form not prescribed, procedure, Prob.Code 33.  
     Writs and process, necessity, Prob.Code 33.  
     Costs, security for, Prob.Code 12.  
     County court, rendition in open court, Prob.Code 23.  
     Dockets, call, Prob.Code 19.  
     Enforcement by county or probate judge, Prob.Code 24.  
     Pleading, defects, effect, Prob.Code 9.  
 Receivership proceeding, recording, Prob.Code 136.  
     Endangered estate of minor or incompetent without guardian, Prob.Code 136.  
 Record book,  
     Judge's probate docket, contents, Prob.Code 13.  
     Probate minutes, contents, Prob.Code 15.  
 Transfer of action to determine heirship to county of administration, Prob.Code 51.  
 Wills,  
     Admission to probate, Prob.Code 89.  
     Delivery of will deposited with county clerk, Prob.Code 71.

**ORDINANCES AND RESOLUTIONS**

Corporation courts, cities of 130,000 to 285,000, 1200d.

**OVERTHROW OF GOVERNMENT**

Outlawing organizations advocating, 6889—3A.

**OWNERSHIP**

Joint, descent and distribution, Prob.Code 46.  
 Simultaneous death, effect, Prob.Code 47.

**PAPERS**

Newspapers, generally, this index.  
 Probate proceedings, county clerk, filing with, Prob.Code 11.

**PARENT AND CHILD**

Incompetents, liability of parents for maintenance, Prob.Code 423.  
 Medical treatment, state hospitals and special schools, consent, 3174b—2.  
 Natural guardians, Prob.Code 109.

**PARKS AND PLAYGROUNDS**

County parks,  
     Counties of less than 80,000 population, 6079b.  
 Maintenance and operation, counties of less than 80,000 population, 6079b.

**PARTIES**

Absence in probate proceeding, notice, service, Prob.Code 22.  
 Attorneys, notices, probate proceedings, service on entry by appearance in lieu of service on party, Prob.Code 34.  
 Guardians, disqualification to serve as, Prob.Code 110.  
 Heirship, actions to determine, Prob.Code 49.  
 Witnesses, deposition, notice to examine and sign, (RCP) Rule 209.

**PARTITION AND DISTRIBUTION OF ESTATE**

Descent and Distribution, this index.  
 Estates of decedents. Descent and Distribution, this index.

**PARTITION AND DISTRIBUTION OF ESTATE—Cont'd**

Record book, probate minutes, contents, Prob.Code 15.  
 Ward's estate in realty, Prob.Code 388.

**PARTNERSHIP**

Limited Partnership, generally, this index.

**PAYMENTS**

See, also, Executors and Administrators, this index.  
 Retirement, death or benefit plan, discharge, 5221d.

**PENALTIES**

See Fines and Penalties, generally, this index.

**PENITENTIARY**

Roads, authority to build, 6203c—1.

**PENSION TRUST**

Defined, 7425d.

**PENSIONS**

Cities of 500,000 or more, police officers' pension fund, 6243g—1.  
 Firemen, policemen and fire alarm operators, Cities of more than 384,000, 6243g.  
 Police officers' pension fund, cities of 500,000 or more, 6243g—1.

**PERMITS**

County mutual insurance, Ins. Code 17.02.  
     Prior permits, Ins. Code 17.03.  
 Insurance Securities Act, this index.  
     Prepaid funeral benefits, 548b.  
     Prospecting state land, 5421c—7.  
     Radios, sale or distribution, 70477—1.  
     Sale of insurance securities, 580—8, 580—9.  
     Securities Act, this index.  
     Television sets, sale or distribution, 70477—1.  
     Yorks Creek improvement district, 8280—167.

**PERPETUAL CARE CEMETERIES**

Annual report, 912a—33.  
 Articles of incorporation, filing, 912a—28.  
 Cancellation of charter, 912a—30.  
 Charter, cancellation, 912a—30.  
 Distance from city, 912a—24.  
 Examination, banking commissioner, 912a—31.  
 Filing fees, 912a—3.  
 Funds,  
     Maintained within state, 912a—32.  
     Perpetual care and maintenance guarantee fund, 912a—29.  
 Location, city limits, 912a—24.  
 Minimum capital requirements, 912a—28.  
 Records maintained, 912a—32.  
 Reports, 912a—33.

**PERSON**

Defined, Prob.Code 3.

**PERSONAL PROPERTY**

Defined, Prob.Code 3.  
 Executors and Administrators, this index.  
 Wills,  
     Nuncupative, disposal by, Prob.Code 64.  
     Passage of interest under, Prob.Code 58.

**PERSONAL REPRESENTATIVES**

Defined, Prob.Code 3.  
 Executors and Administrators, generally, this index.  
 Guardian and Ward, generally, this index.

**PERSONAL SURETIES**

See Executors and Administrators, this index.

**PERSONS INTERESTED**

Defined, Prob.Code 3.

**PERSONS OF UNSOUND MIND**

See, also, Insane Persons, generally, this index.  
 Defined, Prob.Code 3.

**PETITION**

See Pleading, this index.

**PHEASANTS**

Shooting resort, minimum released, PC 908.

**PINK BOLLWORM**

Election, cotton growers, 82a.  
Texas Commissioner of Agriculture, additional powers, 82a.

**PLEADINGS**

Exemptions, securities law, 579—39.

Petition,

Action to determine heirship, Prob.Code 49.  
County clerks, filing with, Prob.Code 11.

Probate proceedings,

County clerk, filing with, Prob.Code 11.  
Defects, effect, Prob.Code 9.

Transcript on transfer of action to determine heirship, Prob.Code 51.

**PLEDGES**

Corporate stock, voting, BusCorp 2.29.

Executors and administrators, real or personal property, authority, Prob.Code 329.

Securities law, exempt sales, 579—3.

**PLUGGING**

Wells, cisterns and holes, required, PC 1721.

**PLURAL NUMBER**

Includes singular, Prob.Code 3.

**POLITICAL SUBDIVISIONS**

Bonds, guardians, investments in, Prob.Code 389.

Defined, 695g.

Lease of land, mineral development, 5421p.

**POLK COUNTY**

Second 9th judicial district court, permanent, 199(9).

**POLLS**

Jefferson County Water Control and Improvement District No. 10, 8280—166.

**POOLING**

Guardian and Ward, this index.

Mines and Minerals, this index.

**POSSESSION**

Executors and administrators, property in common ownership, Prob.Code 235.

Wills, interest subject to devise by, Prob.Code 58.

**POSTHUMOUS CHILDREN**

Executors and Administrators, this index.

Wills, Prob.Code 66.

**POSTING**

Citations and notices,

Return, sufficiency, Prob.Code 33.

Service by, Prob.Code 33.

Validation, Prob.Code 129.

Executors and Administrators, this index.

Guardian and Ward, this index.

Notice of intention to take depositions, attorney or opposing party absent in probate proceeding, Prob.Code 22.

**POTTER COUNTY**

County court at law, created and jurisdiction, 1970—311a.

**POULTRY**

Voluntary non-profit associations, corporations authorized, 1302d—1.

**POWER OF ATTORNEY**

Letters testamentary or of administration, waiver by, Prob.Code 79.

**PREMIUMS**

Mutual insurance companies, expressed in policy, Ins. Code 15.11.

**PRESENTMENT**

See Executors and Administrators, this index.

**PRESERVATION**

Receiver, estate of minor or incompetent, duties, Prob.Code 136.

**PRESIDENT**

Sulphur River Municipal Water District, 8280—165, § 4.

**PRETERMITTED CHILDREN**

Wills, Prob.Code 66.

**PRIMA FACIE EVIDENCE**

See Evidence, this index.

**PRIMARY ELECTIONS**

Expenses,

Apportionment, Elec. Code 13.08.

Assessment of candidates, Elec. Code 13.08.

Condition precedent to placing name on ballot, Elec.Code 13.15.

Filing fees, Elec. Code 13.15.

Gifts and loans received by candidate, statement filed, Elec. Code 14.08.

Polling places, counties over 800,000, Elec.Code 13.04a.

**PRIOR-SERVICE CREDIT**

Teachers retirement system, 6228a—2.

**PRISON BOARD**

Roads, authority to build, 6203c—1.

**PRISON SYSTEM**

Retirement, custodial employee, 6228a.

**PRISONERS**

County jails, good behavior, 5118a.

**PROBATE**

Wills, applications, written will not produced, contents, Prob.Code 81.

**PROBATE COURTS**

See, also, County Courts, generally, this index.

Judges, minimum and maximum salaries, 3883i.

**PROBATE DOCKET**

See Executors and Administrators, this index.

**PROBATE JUDGES**

See, also, County Judges, generally, this index.

Defined, Prob.Code 3.

**PROBATE MATTER**

Defined, Prob.Code 3.

**PROBATE PROCEEDINGS**

Defined, Prob.Code 3.

**PROBATION AND PAROLE OFFICERS**

Adult,

Howard County, 326k—27.

Travis County, secretary, CCP 781b—1.

Counties of more than 500,000, juvenile probation officers, 5142c—2.

Juvenile probation officers, counties of more than 500,000, 5142c—2.

Tarrant county, adult probation officer, CCP 781b—2.

**PROBATION DEPARTMENT**

Child support fund, counties of more than 350,000, 5142a—1.

**PROCEEDINGS FOR PROBATE**

Defined, Prob.Code 3.

**PROCEEDINGS IN PROBATE**

Defined, Prob.Code 3.

**PROCESS**

Affidavit, residence of defendant unknown, (RCP) Rule 758.

Contest of probate proceedings, persons entitled to, Prob.Code 10.



**PROCESS—Cont'd**

County clerks, issuance in probate matters, Prob.Code 33.

Insurance Securities Law, investigations by board, 580—23.  
Nonresidents, Insurance Securities Law, 580—15.

Residence of party unknown, affidavit, (RCP) Rule 758.  
Service.

Divorce, waiver, (RCP) Rule 119.  
Probate Code, effect upon, Prob.Code 2.  
Secretary of State, securities law, 579—6.  
Securities law, 579—15.

Unknown residence of defendant, affidavit, (RCP) Rule 758.

**PROFITS**

Guardian and ward, accounting, Prob.Code 230.

**PROF**

Citations and notices, probate matters, publication, Prob.Code 33.  
Wills, this index.

**PROPERTY**

Defined, Prob.Code 3, 367.  
Executors and Administrators, this index.  
Guardian and Ward, this index.

**PROTECTION**

Executors and Administrators, this index.  
Guardian and Ward, this index.  
Jefferson County Water Control and Improvement District No. 10, acquisition, 8280—166.

**PUBLIC BUILDINGS, GROUNDS AND WORKS**

Lease, home rule city, 1118n—6.  
Sale, home rule city, 1118n—6.  
State Building Commission, powers and duties, 678m.

**PUBLIC LANDS**

Minerals, mining claim, etc.,  
Leases,  
Caddo Lake bed, 5421b—1.  
Political subdivisions, 5421p.

**PUBLIC PLATFORM TONNAGE SCALES**

Counties, purchase authorized, 2372n.  
Regulation in area declared subject to epidemic, counties of 800,000 or more, 2372m.

**PUBLIC UTILITIES**

Home rule city, sale or lease, 1118n—6.  
Lease, home rule city, 1118n—6.  
Sale, home rule city, 1118n—6.

**PUBLICATION**

Citation and Notices, this index.  
Receiver, estate of minor or incompetent, duties, Prob.Code 136.

**PURCHASES**

Executors and administrators, property, Prob. Code 234.

**QUAIL**

Shooting resort, minimum released, PC 908.

**RABIES**

Regulation in area declared subject to epidemic, counties, 2372m.

**RADIO**

Definitions, 70477—1.  
Tax, sale, distribution or use, 70477—1.

**RAILROAD COMMISSION**

Oil and gas,  
Drilling wells, regulations, 6029a.  
Rules and regulations,  
Drilling wells, 6029a.

**RANCHES**

See Executors and Administrators, this index.

**RANDALL COUNTY**

County attorney, office abolished, 326k—36.  
Criminal district attorney, 326k—36.

**RATES**

Mutual insurance companies, Ins. Code 15.06.

**REAGAN COUNTY**

Water supply districts, 8280—181.

**REAL ESTATE**

Casualty insurance companies, purchasing and holding, Ins. Code 8.18.  
Corporations, powers, BusCorp 2.02.  
Fire and marine insurance companies, Ins. Code, 6.08.  
Hospital districts, 4494n.  
Jefferson County Water Control and Improvement District No. 10, acquisition, 8280—166.  
Life, health and accident insurance companies, authority, Ins. Code 3.40.  
Lloyd's plan insurance companies, Ins. Code 18.09.  
Navigation districts, sale or exchange, 8247f.  
West Central Texas Municipal Water District, acquisition, 8280—162.

**REAL ESTATE BROKERS**

Administration of act by Texas Real Estate Commission, 6573a.  
Administrator,  
Application for license filed with, 6573a.  
Appointment by commission, powers, compensation, etc., 6573a.  
Appeal to district court from decision cancelling license, 6573a.  
Bond, administrator to furnish, 6573a.  
Commission. Texas Real Estate Commission, post.  
Delegation of authority by commission or administrator, 6573a.  
Executive secretary, Texas Real Estate Commission, 6573a.  
Fees and assessments, license, 6573a.  
Fiduciary agents, statute inapplicable, 6573a.  
Injunction, action against violators, 6573a.  
Investigation as to violations, powers of commission, 6573a.  
License,  
Application, additional information required by commission, 6573a.  
Cancellation, grounds, 6573a.  
Granting by Commission, 6573a.  
Hearing on charges to cancel license, 6573a.  
Notice to Commission of change of employment of salesmen, 6573a.  
Process, service on administrator as service on Commission, 6573a.  
Records, administrator as manager and custodian, etc., 6573a.  
Summons, authority of Commission to issue, 6573a.  
Texas Real Estate Commission,  
Copies of instruments filed with, admissibility in evidence, 6573a.  
Creation, powers and duties, compensation, etc., 6573a.  
Fees, collection, disposition, 6573a.  
Notice of refusal to grant license, 6573a.  
Payment of moneys into state treasury, etc., 6573a.  
Petition against by party aggrieved by decision of, 6573a.  
Salesmen, notice of change of employment, etc., 6573a.  
Subpoenas, authority to issue, 6573a.  
Trustees, statute relating to inapplicable, 6573a.  
Witnesses, examination by Commission, 6573a.

**REAL PROPERTY**

Defined, Prob.Code 3.  
Executors and Administrators, this index.

**REAL PROPERTY—Cont'd**

Record book, probate minutes, contents, Prob. Code 15.  
Wills, subject to devise, Prob.Code 58.

**RECEIPTS**

Executors and Administrators, this index.  
Wills,

Delivery on death of testator, taking, Prob. Code 71.  
Removal for inspection, Prob.Code 90.

**RECEIVERS AND RECEIVERSHIP**

Corporate stock,  
Personal liability as holder or subscriber, BusCorp 2.21.  
Voting, BusCorp 2.29.

Endangered estate of minors and incompetents, Prob.Code 136.

Insurance companies, Ins. Code 21.28.  
Life, health and accident insurance companies, impairment of stock, Ins. Code 3.60.  
Sales, exempt from securities law, 579—3.

**RECIPROCAL EXCHANGES**

Certificate of authority, Ins. Code 19.10.  
Denial, Ins. Code 19.06.  
Exemption from laws, Ins. Code 19.12.  
Fees, Ins. Code 19.11.  
Fidelity bond, deposit requirements, Ins. Code 19.06.  
Financial requirements, Ins. Code 19.06.  
Impairment of minimum surplus, Ins. Code 1.10.  
Liquidation, Ins. Code 21.28.  
Minimum insurance to be maintained, Ins. Code 21.45.  
Non-assessable policies, Ins. Code 19.03.  
Premium specified, Ins. Code 19.03.  
Renewal certificates of authority, Ins. Code 19.10.  
Reserves, Ins. Code 19.06.  
Schedule of fees, Ins. Code 19.11.  
Subscribers, declarations, Ins. Code 19.03.  
Surety bond, deposit requirements, Ins. Code 19.06.  
Surplus required, Ins. Code 19.06.  
Taxes, Ins. Code 19.11.

**RECORD BOOKS**

Claim docket, Prob.Code 14.  
County Clerks, this index.  
Custody, Prob.Code 17.  
Evidence, Prob.Code 18.  
Index, Prob.Code 17.  
Inspection, open for public inspection, Prob.Code 17.  
Judge's probate docket, contents, Prob.Code 13.  
Probate fee book, Prob.Code 16.  
Probate minutes,  
Approval and signing by judge, Prob.Code 23.  
Contents, Prob.Code 15.  
Small estates, Prob.Code 137.

**RECORDS AND RECORDING**

Accounts, receivership proceedings, Prob.Code 136.  
Bonds, receivership proceedings, Prob.Code 136.  
Certified copy, judgment, action to determine heirship, filing, Prob.Code 56.  
Evidence, action to determine heirship, Prob. Code 53.  
Executors and Administrators, this index.  
Guardian and Ward, this index.  
Instruments recorded as prima facie evidence in action to determine heirship, Prob.Code 52.  
Juvenile probation officers, counties of more than 500,000, 5142c—2.  
Notices, receivership proceedings, Prob.Code 136.  
Orders, receivership proceedings, Prob.Code 136.  
Receivership proceedings, orders, etc., endangered estate of minor or incompetent without guardian, Prob.Code 136.

**RECORDS AND RECORDING—Cont'd**

Reports, receivership proceedings, Prob.Code 136.  
Securities law, open to inspection, 579—11.  
Wills, this index.

**RECREATION PROJECTS**

Counties, cities and towns, authorization, 1015c—1.  
Islands, counties on Gulf of Mexico, 6079c—1.  
Trinity River Authority, 8280—188.

**REDUCTION SURPLUS**

Definition, BusCorp 1.02.

**REEVES COUNTY**

143rd Judicial District Court, 199(143).

**REFRIGERATORS**

Abandonment in places accessible to children, penalty, PC 1721A.

**REFUNDING BONDS**

Atascosa and Frio Counties Improvement District No. 1, 8280—175.  
Bell County Water Control and Improvement District, 8280—182, 8280—183.  
Benbrook Water and Sewer Authority, 8280—163.  
Breakwater construction, 6839g.  
Cities, serial refunding bonds authorized, 802g.  
City of McAllen Water and Sewer Authority, 8280—177.  
Haltom City Water Authority, 8280—173.  
Harris County Water Improvement District No. 1, 8280—190.  
Haskell County Water Supply District, 8280—164.  
Issuer, general provisions, 717k.  
Jackson County Water Control and Improvement District No. 1, 8280—161.  
San Augustine Water Authority, 8280—169.  
Serial refunding bonds authorized, 802g.  
Travis County Improvement District No. 1, 8280—168.  
Two Mile Creek Conservation and Reclamation District of Calhoun County, 8280—186.  
Tyler County Water Control and Improvement District No. 1, 8280—185.  
West Central Texas Municipal Water District, 8280—162.  
Yorks Creek Improvement District, 8280—167.

**REGENTS**

Junior college districts,  
Acquisition of property and buildings, 2815r—1.

**REGISTERED DEALERS**

Defined, 579—2.

**REGISTERED MAIL**

Notices,  
Insurance Securities Law, 580—27.  
Securities law, 579—27.

**REGISTRATION**

Dogs, counties, 2372m.  
Insurance Securities Act, this index.  
Securities Act, this index.

**REINSURANCE**

Eligibility and approval of board, Ins. Code 5.76.

**RELEASE**

See Executors and Administrators, this index.

**RELIGIOUS SOCIETIES OR INSTITUTIONS**

Securities exempt from law, 579—4.

**REMAINDERS**

Wills, passage of interest under, Prob.Code 58.

**REMOVAL**

Executors and Administrators, this index.  
Guardian and Ward, this index.

**RENEWAL**

Executors and administrators, obligations owing by or to estate, Prob.Code 234.

**RENTS AND RENTING**

Executors and administrators, oil and gas or mineral leases, treatment as income, Prob. Code 239.

Guardian and Ward, this index.

Hiring and renting. Executors and Administrators, this index.

Record book, probate minutes, contents, Prob. Code 15.

Wills, passage of interest under, Prob.Code 58.

**REPAIRS**

Executors and administrators, Prob.Code 230.

**REPEALS**

Generally, Prob.Code 434.

Securities law, 579—41.

**REPLACEMENT COSTS**

Defined, Sales Limitation Law, PC 1111m.

**REPORTERS**

Domestic relations court,

Hutchinson county, 2338—6.

El Paso county, county court at law No. 2, 1970—141.1.

Particular judicial districts,

2nd 9th Judicial District Court, 199(9).

75th Judicial District, 199(75).

88th Judicial District 199(88).

136th Judicial District 199(136).

138th District Court, 199(138).

140th Judicial District, 199(140).

153rd Judicial District, appointed, 199(153).

Potter county, county court at law, 1970—311a.

Second 25th judicial district court, 199(25).

**REPORTS**

Executors and Administrators, this index.

Guardian and Ward, this index.

Person receiving money from county clerk as custodian of minor, incompetent, etc., without guardian, Prob.Code 144.

Receivers of endangered estate of minors or incompetents without guardian, Prob.Code 136.

Receivership proceedings, recording, Prob.Code 136.

Record book, probate minutes, contents, Prob. Code 15.

**REPRESENTATIVES**

Defined, Prob.Code 3.

Executors and Administrators, generally, this index.

Personal representatives. Executors and Administrators, generally, this index.

**RESERVES**

Fraternal benefit societies, Ins.Code 10.08.

Insurance companies, loss or claims, Ins. Code 21.39.

Life, health and accident insurance companies, Ins. Code 3.32.

**RESIDENTS AND RESIDENCE**

County clerks, custodian of money of resident minor, incompetent, etc., without guardian, Prob.Code 144.

Defendant, unknown, affidavit, (RCP) Rule 758.

Guardian and Ward, this index.

Nuncupative will, requisite, Prob.Code 65.

**RESIGNATION**

Executors and Administrators, this index.

Guardian and Ward, this index.

**RESTAURANTS**

Diseased persons handling food, penalty, PC 705d.

**RETAIL DEALERS**

Defined,

Radios and television sets, 70477—1.

Sales Limitation Law, PC 1111m.

Radios and television sets, excise tax, 70477—1.

**RETIREMENT**

Limited partnership, general partner, 6132a, § 21.

Teachers retirement system, 2922—1.

**RETIREMENT, DISABILITY AND DEATH COMPENSATION FUND**

Navigation districts, officers and employees, 8227a.

**RETURNS**

Citations and notices, Prob.Code 33.

Directed to sheriff or constable, Prob.Code 33.

Validation, Prob.Code 129.

Executions in probate matters, Prob.Code 25.

**REVENUE**

Guardian and ward, accounting for, Prob.Code 230.

Junior college districts, pledge for payment of bonds, 2815r—1.

Navigation districts, deposit, 8244a.

**REVERSION**

Wills, passage of interest under, Prob.Code 58.

**REVIEW**

Board of insurance commissioners decision, Ins. Code 1.15, 21.44.

Life insurance commissioner, legal reserve life insurance agent, Ins. Code 21.07—1, § 13.

**REVOCATION**

Guardian and ward, letters of guardianship by court, Prob.Code 123.

Wills, this index.

**RIGHT OF WAY**

Executors and administrators, sales, Prob.Code 351.

**RIO GRANDE RIVER**

International toll bridge, home rule city bonds, 1187a—2.

**RIVER AUTHORITIES**

Certified copy of Legislative Act, filing, 8280—7.

**RIVERS**

Sabine river, hunting and fishing rights, 4026b.

**ROADS**

Abandonment, infrequent use, 6703a.

County roads,

Abandonment,

Infrequent use, 6703a.

Districts,

Bond issue authorized, 752a.

Easements from prison board, 6203d.

Islands, coastal counties, recreational purposes, 6079c—1.

Prisons, adjacent to, 6203c—1.

Recreational purposes, islands in coastal counties, 6079c—1.

Surplus in sinking fund, disposition, 752a.

**ROOMING HOUSES**

Liens, baggage and property of guests, 4594.

**ROYALTIES**

Executors and administrators, oil and gas or mineral leases, treatment as income, Prob. Code 239.

Guardian and ward, sales of royalties on minerals in place, Prob.Code 341.

Pooling or unitization of, Prob.Code 369.

**RULES AND REGULATIONS**

Costs, probate matters, security for, governing, Prob.Code 12.

**RULES AND REGULATIONS—Cont'd**

Descent and distribution, Prob.Code 38.  
 Evidence, probate matters, Prob.Code 22.  
 Executors and administrators,  
   Bonds, rules governing, Prob.Code 194.  
   Deposits in lieu of sureties on bonds, Prob.  
   Code 194.  
 Guardianships, governing, Prob.Code 108.  
 Wills, execution, Prob.Code 57.  
 Witnesses, application to, Prob.Code 22.

**RUNNELS COUNTY**

Game and fish, local and special acts, PC 978j  
 note.

**RUNNING AT LARGE**

Dogs, counties, 2372m.

**RURAL HIGH SCHOOL DISTRICTS**

Ad valorem tax, maximum, 2784e—1.  
 Bond issue authorized, 2784e—1.  
 Collector of taxes, 2922i(8).  
 Consolidation, independent school districts,  
 2922i.  
 Libraries, provision for, 2909b.

**SABINE RIVER**

Dam authorized, 8280—133.  
 Non-navigable hunting and fishing rights,  
 4026b.

**SAFE DEPOSIT COMPANIES**

Executors and administrators,  
   Deposit of assets with, agreement as to,  
   Prob.Code 219.  
   Deposits with in lieu of sureties on bond,  
   Prob.Code 194.

**SALARIES AND COMPENSATION**

Adult probation officer,  
   Howard county, 326k—27.  
   Travis county, CCP 781b—1.  
 Assistant,  
   District attorney,  
     109th judicial district, 326k—31.  
 Cass county juvenile board, 5139N.  
 Commissioners of the Court of Criminal Ap-  
 peals, 6819a—10.  
 Commissions, Insurance Securities Law, 580—  
 35.  
 County Judge,  
   See, also, County Judges, this index.  
 County juvenile board, 5139, 5139b.  
   Harrison and Rusk Counties, 5139J.  
 County officials, minimum and maximum sal-  
 aries, 3883i.  
 Criminal district attorney,  
   Cass county, 326k—32.  
   Galveston county, 326k—28.  
   Harrison county, 326k—33.  
   Polk county, 326k—34.  
   Randall county, 326k—36.  
 District attorneys,  
   105th Judicial District, 326k—29.  
 District Court Judges,  
   See, also, District Courts, this index.  
 District officials, minimum and maximum sal-  
 aries, 3883i.  
 Fannin County juvenile board, 5139L.  
 Fee basis county officials, maximum compensa-  
 tion, 3883h.  
 Grand jury bailiffs,  
   Counties of 190,000 to 200,000, CCP 367i.  
 Insurance agents, splitting commissions, Ins.  
 Code 21.11.  
 Insurance Securities Law, action to collect,  
 580—35.  
 Investigators,  
   Counties of more than 37,000, 331g—1.  
   Howard county, 326k—27.  
   109th judicial district, 326k—31.  
   Special judicial district of Midland County,  
   326k—30.

**SALARIES AND COMPENSATION—Cont'd**

Judges,  
   District Courts, this index.  
   El Paso county court at law, 1970—141.1.  
   Potter county court at law, 1970—311a.  
 Justices of the Supreme Court, 6819a—10.  
 Juvenile board,  
   Second 38th Judicial District, 5139H—2.  
   Titus County, 5139o.  
 Juvenile officers,  
   Bowie County, 5139M.  
   Counties of more than 500,000, 5142c—2.  
 Maximum compensation, fee basis for officials,  
 3883h.  
 Medical examiners, counties of 250,000 or more,  
 CCP 989a, § 4.  
 Secretary,  
   Travis county, CCP 781b—1.  
 70th Judicial District, district attorney, 326k—  
 35.  
 Special judge, county court at law,  
   Lubbock county, 1970—340, §§ 14, 15.  
   Potter county, 1970—311a.  
 Texas Commission on Higher Education, 2919e—  
 2.  
 Titus County juvenile board, 5139o.  
 Vocational teachers, additional, 2922—14.  
 Water improvement districts, manager and tax  
 assessor and collector, 7652b.

**SALES**

Below cost, groceries, penalty, PC 1111m.  
 Defined, 579—2.  
   Insurance Securities Law, 580—2.  
 Executors and Administrators, this index.  
 Excise tax, radios and television sets, 7047i—1.  
 Foreign wills, powers of foreign executor or  
 trustee, Prob.Code 107.  
 Groceries below cost, penalty, PC 1111m.  
 Guardian and Ward, this index.  
 Home rule city, plant, utility or business,  
 1118n—6.  
 Insurance securities,  
   Authorization, 580—20.  
   Voidable, 580—34.  
 Motor vehicle lighting equipment, approval,  
 6701d, § 108A.  
 Radios, sale, distribution or use, tax, 7047i—1.  
 Record book, probate minutes, contents, Prob.  
 Code 15.  
 Retail sale, defined, radios and television sets,  
 7047i—1.  
 Securities Act, this index.  
 Specific performance of decedent's contract to  
 sell property, Prob.Code 27.  
 Television, sale, distribution or use, excise tax,  
 7047i—1.  
 Tie-in sales, lewd publications, penalty, PC  
 527a.

**SALESMEN**

Action for commission, securities law, 579—35.  
 Defined, 579—2.  
 Insurance Securities Act, this index  
 Registration, securities law, 579—18.  
 Revocation of registration, securities law, 579—  
 26.  
 Sale of securities, 579—20.  
 Securities Act, this index.

**SALT WATER TROUT**

Size, PC 934a.

**SAN ANTONIO STATE TUBERCULOSIS  
 HOSPITAL**  
 Legion branch, 3201b—1.

**SAN JACINTO COUNTY**

Second 9th judicial district court, permanent,  
 199(9).

**SAN JACINTO DAY**

Legal holiday, 4591d.

**SATURDAY**

Bank or trust company, option to close, 4591d.

**SCALES**

Public platform tonnage scales, counties authorized to purchase, 2372n.

**SCHOOL LAND BOARD**

Bids, special sale fee, 5382d—1.

**SCHOOLS AND SCHOOL DISTRICTS**

Ad valorem tax, maximum, 2784e—1.

Annexation,

Districts,

Election, 2815g—49.

Validation, 2815g—47, 2815g—4.

Athletic events, possession of intoxicating liquor, PC 666—25b.

Attendance, reports to commissioner, 2875.

Board for Texas state hospitals and special schools, contracts with public schools to educate inmates of special schools, 3183e.

Bonds,

Annexation of districts, 2815g—49.

Election, 2815g—49.

Authorized, 2784e—1.

Elections,

Annexation of districts, 2815g—49.

Military training, 2919f.

Validation,

Bond elections, 2815g—48.

Commissioner of Education,

Books, requisition reports, 2875.

Subject taught in public schools, 2911.

Common school districts,

Annexation to independent school districts, 2815g—49.

Bonds, refunding revenue bonds, 2802e—1.

Refunding revenue bonds, 2802e—1.

Consolidation,

Validation, 2815g—48.

Detachment of territory, validation, 2815g—48.

Elections, validation, 2815g—48.

Independent districts,

Annexation to common school districts, 2815g—49.

Bonds,

Refunding revenue bonds, 2802e—1.

Intoxicating liquor, possession near athletic events, PC 666—25b.

Law schools, approval of Supreme Court, 306.

Mentally retarded persons, attendance, 3871b, § 11.

Military training, bonds authorized, 2919f.

Pupils,

Maximum attendance reported to commissioner, 2875.

Special schools, board authorized to contract with public schools to educate inmates, 3183e.

State Board of Education,

Deaf and blind persons, care and education, 2675c—1.

Taxes and taxation,

Ad valorem,

Maximum, 2784e—1.

Annexation of districts, 2815g—49.

Validation,

Elections, 2815g—48.

Trustees,

Ad valorem tax, maximum, 2784e—1.

Election, annexation of districts, 2815g—49.

Validation,

Creation of districts, 2815g—47, 2815g—50.

Establishment, organization, etc., of school districts, 2815g—48.

**SCIENTIFIC ORGANIZATIONS**

Contributions, guardian and ward, procedure, Prob.Code 398.

**SCURRY COUNTY**

132nd Judicial District, 199(132).

**SEALS**

Corporations, facsimile, 1334a.

County court at law No. 2, El Paso county, 1970—141.1.

Foreign wills, Prob.Code 95, 96.

138th District Court, 199(138).

Stock certificates, facsimile, 1334b.

**SEAWALLS**

Counties on Gulf of Mexico, construction authorized, 6839g.

**SECRETARY OF STATE**

Administration of securities law, 579—36.

Constitutional amendment election, duties, Elec. Code 6.07.

Corporations,

Agent for service of process, BusCorp 2.11.

Appeals from Secretary, BusCorp 9.04.

Articles of dissolution, voluntary dissolution, Bus Corp 6.11, 6.12.

Articles of incorporation,

Certificate of amendment, effect, Bus Corp 4.06.

Delivery to, BusCorp 3.01.

Filing, BusCorp 2.14, 3.03.

Articles of amendment, BusCorp 4.05.

Restated articles of incorporation, BusCorp 4.07.

Articles of merger or consolidation, filing, BusCorp 5.04.

Certificate of amendment, articles of incorporation, BusCorp 4.05.

Certificate of incorporation, BusCorp 3.03.

Certificates, prima facie evidence, BusCorp 9.05.

Certification to Attorney General of defaulting corporations, BusCorp 7.02.

Filing fees, BusCorp 10.01.

Decree of dissolution, BusCorp 7.10.

Forms, BusCorp 9.06.

Interrogatories by Secretary, BusCorp 9.01, 9.02.

Information disclosed not public, Bus Corp 9.02.

Merger or consolidation,

Domestic and foreign corporations, filing plan, BusCorp 5.07.

Foreign and domestic corporations, plan filed, BusCorp 5.07.

Powers of Secretary, BusCorp 9.03.

Record of services of processes, BusCorp 2.11.

Reduction of stated capital, statement, filing, BusCorp 4.12.

Registered name, filing, BusCorp 2.07.

Registered office or agent, change, BusCorp 2.10.

Reserved name, filing, BusCorp 2.05.

Share issue, filing statement of resolution, BusCorp 2.13.

Statement of cancellation of shares, filing, BusCorp 4.10.

Treasury shares, BusCorp 4.11.

Statement of intent to dissolve,

Filing, BusCorp 6.04.

Effect, BusCorp 6.05.

Procedure after filing, BusCorp 6.06.

Statement of revocation of voluntary dissolution proceedings, filing, BusCorp 6.09.

Time for filing documents, BusCorp 9.07.

Voluntary dissolution, BusCorp 6.01.

Fees,

Securities law, 579—37.

General revenue fund, 579—38.

Foreign corporations,

Agent for service of process, BusCorp 8.10.

Appeals from Secretary, BusCorp 9.04.

Application for,

Certificate of authority, forms, BusCorp 8.05.

**SECRETARY OF STATE—Cont'd.**

- Foreign corporations—Cont'd
  - Application for—Cont'd
    - Withdrawal,
      - Filing, BusCorp 8.15.
      - Forms, BusCorp 8.14.
  - Articles of incorporation, amendment, filing, BusCorp 8.11.
  - Articles of merger with other foreign corporation, filing, BusCorp 8.12.
  - Certificate of authority, BusCorp 8.01.
    - Application for amended certificate, BusCorp 8.13.
    - Filing application, BusCorp 8.06.
    - Filing decree of revocation, BusCorp 8.17.
    - Issuance, BusCorp 8.06.
  - Certificate of withdrawal, BusCorp 8.14.
  - Change of name, BusCorp 8.04.
  - Failure to file articles of incorporation with, revocation of certificate, BusCorp 8.16.
  - Forms, BusCorp 9.06.
  - Interrogatories by Secretary, BusCorp 9.01, 9.02.
  - Powers of Secretary, BusCorp 9.03.
  - Service of process, agent for, BusCorp 8.10.
  - Statement of change of registered office or agent, filing, BusCorp 8.09.
  - Time for filing documents, BusCorp 9.07.
- Injunctions, securities law, 579—33.
- Investigations, securities law, 579—29.
- Securities Act, this index.
- Service of process, securities law, 579—6.

**SECURITIES**

- See, also, Executors and Administrators, this index.
- Insurance Securities Act, generally, this index.
- Public securities, facsimile signature, 717j.
- Reciprocal exchanges, deposits, Ins. Code 19.06.

**SECURITIES ACT**

- Actions,
  - Commission, 579—35.
  - Purchaser, limitations, 579—34.
- Administration of law, 579—36.
- Advertisement,
  - Registration, 579—21.
  - Securities, 579—23.
- Agents,
  - Action for commission, 579—35.
  - Display or advertisement of registration, 579—21.
  - Offenses and penalties, 579—30.
  - Permit and registration, 579—5.
  - Registration, 579—18.
  - Revocation of registration, 579—26.
  - Sale of securities, 579—20.
- Appeal from decision of secretary of state, 579—28.
- Application,
  - Examination, 579—8.
  - Registration of dealer, 579—13.
- Certificate of good standing, 579—6.
- Certificates of registration, 579—18.
  - Form, 579—17.
  - Issued, 579—14.
  - Posting, dealer, 579—22.
- Citation of law, 579—1.
- Commissions, actions for, 579—35.
- Consent to service of process, 579—6.
- Construction of law, 579—32.
- Dealers,
  - Action for commission, 579—35.
  - Agents or salesmen, registration, 579—18.
  - Application for registration, 579—13.
  - Consent to service of process, 579—6.
  - Display or advertisement of registration, 579—21.
  - Exempt transactions, 579—3.
  - List kept by Secretary of State, 579—12.
- Decision of Secretary of State, appeal, 579—28.
- Definition, 579—2.
- Display of registration, 579—21.
- District of Columbia securities, exempt, 579—4.
- Effective date of law, 579—42.
- Enforcement of law, 579—36.
- Evidence, certified copies of papers filed, 579—31.
- Exempt securities, 579—4.
- Exemptions, pleadings, 579—39.
- Fees,
  - General revenue fund, 579—38.
  - Secretary of State, 579—37.
- Foreign company, consent to service of process, 579—15.
- Form of permit, 579—9.
- Fraud, penalty, 579—30.
- Hearing, registration of applicant refused, 579—16.
- Injunctions, 579—33.
- Insurance Securities Act, generally, this index.
- Investigation by Secretary of State, 579—29.
- List of securities offered for sale, filed, 579—24.
- Non-resident dealers, consent to service of process, 579—15.
- Notices,
  - Registered mail, 579—27.
  - Registration refused, 579—16.
- Offenses, 579—30.
- Papers filed with Secretary of State, 579—11.
  - Certified copies as evidence, 579—31.
- Partial invalidity, effect, 579—40.
- Penalties, 579—30.
- Permits,
  - Aid to sale of securities prohibited, 579—10.
  - Dealer, agent or salesman, 579—5.
  - Form and contents, term and renewal, 579—9.
- Pleading exemptions, 579—39.
- Posting certificate of registration, 579—22.
- Protection to purchasers, 579—7.
- Qualifying securities, 579—8.
- Records open to inspection, 579—11.
- Registered dealer, 579—14.
- Registered mail, notices, 579—27.
- Registration,
  - Agents, dealers or salesmen, 579—5, 579—12, 579—18.
  - Method of registration, 579—13.
  - Certificates of registration, ante.
  - Display or advertisement, 579—21.
  - Renewal, 579—19.
  - Securities, 579—5.
- Renewal,
  - Permit, 579—9.
  - Registration, 579—19.
- Repeal of prior law, 579—41.
- Revocation of registration,
  - Agents or salesmen, 579—26.
  - Dealers, 579—25.
- Sales,
  - Authorized persons, 579—20.
  - Exemption transactions, 579—3.
  - Voidable sales, 579—34.

**SECURITIES ACT—Cont'd**

- Dealers—Cont'd
  - List of securities filed, 579—24.
  - Method of registration, 579—13.
  - Non-residents, service of process, 579—15.
  - Offenses and penalties, 579—30.
  - Permit and registration, 579—5.
  - Posting certificate of registration, 579—22.
  - Registration, revocation, 579—25.
  - Registration certificates, 579—14.
  - Revocation of registration, 579—25.
  - Sale of securities, 579—20.
  - Temporary permission, 579—14.
  - Use of permit to aid sales securities forbidden, 579—10.

## SECURITIES ACT—Cont'd

**Salesmen,**  
 Action for commissions, 579—35.  
 Display or advertisement of registration, 579—21.  
 Offenses and penalties, 579—30.  
 Permit and registration, 579—5.  
 Registration, 579—18.  
 Revocation of registration, 579—26.  
 Sale of securities, 579—20.  
**Savings clause, 579—41.**  
**Secretary of State,**  
 Administration and enforcement of law, 579—36.  
 Appeal from ruling, 579—8.  
 Application,  
     Dealer, 579—13.  
     Qualifying securities, 579—8.  
 Certified copy of papers filed as evidence, 579—31.  
 Decision, appeal to district court of Travis county, 579—28.  
 Deposit in trust company or bank required, 579—7.  
 Fees, 579—37.  
     General revenue fund, 579—38.  
 Form of registration certificates, 579—17.  
 Hearing,  
     Record, 579—27.  
     Registration refused, 579—16.  
 Injunctions, 579—33.  
 Investigation, 579—29.  
 List of securities filed, 579—24.  
 Non-resident, consent to service of process, 579—15.  
 Papers filed, 579—11.  
 Permit or registration, 579—5.  
 Permit qualifying securities, 579—9.  
 Record of proceedings, 579—27.  
 Registration certificates, form, 579—17.  
 Registration of agents or salesmen, 579—18.  
     Record, 579—12.  
 Registry certificate, 579—14.  
 Revocation of registration,  
     Agents or salesmen, 579—26.  
     Dealers, 579—25.  
 Securities offered for sale, list filed with, 579—24.  
     Service of process, 579—6.  
     Transaction exemption, revocation, 579—3.  
 Subpoenas, investigations, 579—29.  
 Transactions, 579—3.  
 United States securities, exempt, 579—4.  
 Voidable sales, 579—34.  
 Witnesses, investigations by secretary of state, 579—29.

**SELL**  
 Defined, 579—2.  
 Securities, registration required, 579—5.

**SEPARATE PROPERTY**  
 Executors and administrators, administration, Prob.Code 188.  
 Husband and wife, wills, powers to survivor, Prob.Code 70.

**SEROLOGIC TEST**  
 Premarital examination for syphilis, 4604d.

**SETTLEMENT OF ESTATES**  
 Guardian and Ward, this index.

**SEVERABILITY**  
 Probate Code, Prob.Code 2.

**SEWERS, SEWERAGE AND SEWER SYSTEMS**  
 Benbrook Water and Sewer Authority, 8280—163.  
 City of McAllen Water and Sewer Authority, 8280—177.  
 Jefferson County Water Control and Improvement District No. 10, 8280—166.

## SEWERS, SEWERAGE AND SEWER SYSTEMS—Cont'd

Travis County Improvement District No. 1, 8280—168.

## SEX

Guardian and ward, application for appointment, contents to show minor's sex, Prob. Code 111.

## SHARES

Definition, BusCorp 1.02.

## SHELBY COUNTY

Water supply district, 8280—171.

## SHELLFISH

Transporting, exemption from law, 911b, § 1a.

## SHERIFFS AND CONSTABLES

Attachment for property, writ directed to, Prob. Code 26.

Citations and notices,

    Application for appointment of guardian, duty, Prob.Code 130.

    Directed to, Prob.Code 33.

    Posting, Prob.Code 33.

    Validation, Prob.Code 129.

    Return, Prob.Code 33.

Compensation,

    Minimum and maximum salaries, 38831.

District court, 153rd judicial district, 199(153).

El Paso county, county court at law No. 2, 1970—141.1.

Executions in probate matters directed to, Prob. Code 25.

Lubbock county, 140th judicial district, 199(140).

136th judicial district, 199(136).

138th district court, 199(138).

Potter county, county court at law, 1970—311a.

Prisoners in county jail, time off, good behavior, 5113a.

Tarrant county, 153rd judicial district court, attendance, 199(153).

Two-way radios authorized, counties of 600,000 or more, 6889e.

Warrant, issuance to on information that incompetent person is without guardian, Prob. Code 416.

Writ of attachment directed to, Prob.Code 26.

## SHERMAN COUNTY

Ground Water Conservation District No. 2, 8280—179.

## SHORT TITLE

Probate Code, Prob.Code 1.

## SICKNESS

Nuncupative will, requisites, Prob.Code 65.

## SICKNESS INSURANCE

Accident and Sickness Insurance. Life, Health and Accident Insurance, this index.

## SIGNATURES

Citation and notices, probate matters, Prob. Code 33.

Corporation officers, facsimile, 1334a.

Corporation stocks and bonds, facsimile authorized, 1334b.

County clerks, applications and papers in probate matters, filed with, Prob.Code 11.

Executions in probate matters, Prob.Code 25.

Facsimile, corporation officers, 1334a.

Probate minutes, Prob.Code 23.

Public securities, facsimile authorized, 717j.

Wills, necessity, Prob.Code 59.

## SIMULTANEOUS DEATH

Descent and distribution, passage of title on, Prob.Code 47.

## SINGULAR NUMBER

Includes plural, etc., Prob.Code 3.

**SINKING FUND**

Road building, counties and districts, 752a.

**SLAUGHTERING ANIMALS**

Records required, PC 1456a.

**SLOT MACHINES**

Breaking and entering, penalty, PC 1402a.

**SMALL ESTATES**

Administration. Executors and Administrators, this index.

**SOCIAL SECURITY ACT**

State employees, provision for coverage, 695h.

**SOIL CONSERVATION**

Trinity River Authority, 8280—188.

**SOUTH CENTRAL INTERSTATE FOREST FIRE PROTECTION COMPACT**

Generally, 2613c.

**SPECIFIC PERFORMANCE**

Enforcement, Prob.Code 27.

**SPECIAL SCHOOLS**

Contracts with public schools to educate inmates of, 3183e.

Nonresident students, discharge, 3174b—1.

**STATE**

Bonds, guardian and ward, investments in, Prob.Code 389.

**Clerks,**

State Employees and Clerks, generally, this index.

**Employees or clerks,**

Group life insurance, Ins. Code 3.50.

State Employees and Clerks, generally, this index.

**Funds,**

State Social Security administration fund, 695h.

**STATE AGENCIES**

State employees social security, 695h.

**STATE BOARD OF REGISTRATION FOR PUBLIC SURVEYORS**

Members, powers and duties, 5282a.

**STATE BUILDING COMMISSION**

Powers and duties, 678m.

**STATE DEPARTMENTS**

Blind made products, preference, 634.

Supplies, preference to blind made products, 634.

**STATE EMPLOYEES OR CLERKS**

Prior service retirement credit, 6228a—2.

Social security benefits, 695h.

**STATE FLAG**

Description, clarifying, 6142a.

**Display,**

Marks or advertising, penalty, 6139.

Texas Week, 6144a.

With other flags, 6142b.

Protection, penalty for violation, 6139.

**STATE FORESTER**

South central interstate forest fire protection compact, administrator, 2613c.

**STATE HEALTH OFFICER**

Name changed to Commissioner of Health, 4418b—1.

**STATE HOSPITALS AND SPECIAL SCHOOLS**

See, also, Index in:

Volume 2, Civil Statutes.

Volume 9A, Civil Statutes.

Admission of patients, 3193—1.

**Discharge,**

Nonresident patients and students, 3174b—1.

Patient returned to home county, 5561b—1.

**STATE HOSPITALS AND SPECIAL SCHOOLS**

—Cont'd

Mentally Retarded Persons, generally, this index.

Nonresident patients or students, discharge, 3174b—1.

Occupational therapy programs, sale of goods, 3174b—3.

**Patients,**

Committed, 3193—1.

Treatment or services without consent, 3174b—2.

**STATE INSTITUTIONS**

Higher education,

Military and naval training authorized, 2919c—1.

**STATE LAND SURVEYORS**

Exempt from registration law, 5282a.

**STATE LANDS**

Prospecting for minerals, permits, 5421c—7.

**STATE PARKS**

Improvement bonds, validation, 6070f.

**STATE PROPERTY**

Admission fees, 5438d.

**STATE TEACHERS' COLLEGES**

Bonds, additions to buildings, authorization, 2909c.

Buildings, additions authorized, 2909c.

**STATE TREASURER**

Bond issue, duties, 717k.

Casualty insurance companies, deposit of securities, Ins. Code 8.05.

Constitutional amendment election, duties, Elec. Code 6.07.

Department of Agriculture Fund, deposit, 135b—1, § 10.

Deposits with, corporate dissolution, amounts due certain shareholders and creditors, Bus Corp 7.11.

Excise tax, radios and television sets, 70477—1.

Insurance agents special fund, Ins. Code 21.07.

Insurance Securities Act Fund, 580—38.

Reciprocal exchanges, deposit of securities, Ins. Code 19.06.

Special fund, special sale fee, 5382d—1.

State social security administration fund, 695h.

**STATE TREASURY**

See Executors and Administrators, this index.

**STATED CAPITAL**

Definition, BusCorp 1.02.

**STATEWIDE MUTUAL ASSESSMENT COMPANIES**

Agents, fees for special fund, Ins. Code 21.07.

Conversion, stock legal reserve company, Ins. Code 14.63.

Liquidation or rehabilitation, Ins. Code 21.28.

Minimum insurance to be maintained, Ins. Code 21.45.

**STATUTES**

Repeals, Prob.Code 434.

Validation, mineral leases in pooling or unitization agreements based on statutes, Prob. Code 372.

**STAY**

Probate proceedings, judgment, order or decision, Prob.Code 31.

Probate proceedings commenced in more than one county, Prob.Code 8.

**STENOGRAPHERS**

Criminal district attorney,

Harrison county, 326k—33.

Polk county, 326k—34.



**STENOGRAPHERS—Cont'd**

District attorneys,  
Special judicial district of Midland County,  
326k—30.

**STOCK AND STOCKHOLDERS**

Certificates,  
Seal and signature, facsimile, 1334b.  
Signatures, 1334a.  
Facsimile signature and seal, 1334b.  
Federal national mortgage association, invest-  
ment by bank or trust company, 342—505a.  
Impairment of capital stock, insurance compa-  
nies, Ins. Code 1.10.  
No par value, defined, Insurance Securities Law,  
580—2.  
Perpetual care cemeteries, minimum capital,  
912a—28.  
Registration of securities, 579—5.  
Signature on certificate, facsimile, 1334a.

**STOCK INSURANCE COMPANIES**

Liquidation, Ins. Code 21.28.

**STOCK LAWS**

Running at large,  
Ballot for election, 6935.  
Election,  
Ballot, 6935.  
Proclamation of result, 6937.

**STORAGE**

Gasoline and petroleum products, 6053.

**STUDENT UNIONS**

College of Arts and Industries, fees to retire  
bonds, 2628d.

**STUDENTS**

Fees, College of Arts and Industries, 2628d.

**SUBDIVISIONS**

Probate Code, legal effect, Prob.Code 2.

**SUBPOENAS**

Insurance Securities Law, investigations by  
board, 580—29.  
Investigations by Secretary of State, securities  
law, 579—29.  
Labor disputes, witnesses, 1995, § 17a.  
Securities law, investigations by Secretary of  
State, 579—29.

**SUBSCRIBER**

Definition, BusCorp 1.02.

**SUBSCRIPTION**

Definition, BusCorp 1.02.

**SUBSISTENCE**

Minors or incompetents, receivers, expenditures  
for, Prob.Code 136.

**SUBVERSIVE ORGANIZATIONS**

Taxation, 7150.

**SUICIDE**

Inheritance, right to, Prob.Code 41.

**SUITS**

See, also, Executors and Administrators,  
this index.  
Assignment of wages, action against employers,  
5159c.  
Delinquent taxes, costs of publication of notice,  
7345b—2.  
Insurance Securities Law, purchaser, 580—34.  
Securities law violation, 579—34.

**SULPHUR RIVER MUNICIPAL WATER DIS-  
TRICT**

Created, 8280—165.

**SUMMARY PROCEEDINGS**

Small estates after personal representative ap-  
pointed, Prob.Code 143.

**SUNDAY**

Banking holiday, 4591d.

**SUPPLIES**

Blind made products, preference in state depart-  
ments, 634.  
Specifications, compliance, 653.

**SUPPORT**

Children,  
Action against parent, 4639b.  
Juvenile probation officer, receipts and dis-  
bursements, 5142c, § 3, 5142c—2.  
Wife,  
Juvenile probation officers, receipts and  
disbursements, 5142c § 4, 5142c—2.

**SUPREME COURT**

Justices,  
Salary, 6819a—10.

**SURETY**

Defined, Prob.Code 3.  
Executors and Administrators, this index.

**SURPLUS**

Definition, BusCorp 1.02.

**SURVEYS AND SURVEYORS**

Certificates, public surveyors, 5282a.  
Exemptions from registration, 5282a.  
Public surveyors,  
Qualifications for registration, 5282a.  
Registration, 5282a.  
Registration law, violations and penalties,  
5282a.  
Underground water reservoir, 8280—179.

**SWEET POTATOES**

Inspection, grades and classifications, 118c—3.

**SYPHILIS**

Premarital examination, 4604d.

**TARRANT COUNTY**

Adult probation and parole officer, appoint-  
ment, CCP 781b—2.  
Benbrook Water and Sewer Authority estab-  
lished, 8280—163.  
District courts, 153rd judicial district, 199(153).  
Haltom City Water Authority, 8280—173.  
153rd judicial district, 199(153).

**TAX ASSESSORS AND COLLECTORS**

Compensation,  
Fee basis, registration of motor vehicles,  
PC 1436—1, § 57.  
Counties,  
Fees, motor vehicle registration, PC 1436—  
1, § 57.  
Counties of 150,000 or more, deputies author-  
ized, 3902h—2.  
Jackson County Water Control and Improve-  
ment District No. 1, 8280—161.  
Jefferson County Water Control and Improve-  
ment District No. 10, appointment, 8280—166.

**TAXES AND TAXATION**

Bell County Water Control and Improvement  
District No. 4, 8280—183.  
Cities, towns and villages,  
Airport revenue bonds, cities over 250,000,  
1269j—5.  
Water supply, 1109g.  
Claims include, Prob.Code 3.  
Contract motor carrier, intangible assets and  
property, 7105a.  
Elections,  
Jackson County Water Control and Im-  
provement District No. 1, 8280—161.  
Jefferson County Water Control and Im-  
provement District No. 10, 8280—166.  
Excise tax, radios and television sets, 70477—1.  
Executors and Administrators, this index.

**TAXES AND TAXATION—Cont'd**

Exemptions,  
 Bonds of Jackson County Water Control and Improvement District No. 1, 8280—161.  
 Guardian and ward, borrowing money for payment, Prob.Code 329.  
 Inheritance Taxes, generally, this index.  
 Intangibles, contract motor carriers, 7105a.  
 Jackson County Water Control and Improvement District No. 1, 8280—161.  
 Jefferson County Water Control and Improvement District No. 10, election, 8280—166.  
 Maintenance taxes, annexation of school districts, 2815g—49.  
 Radios, excise tax, 7047f—1.  
 Reagan County Water Supply District, 8280—181.  
 Reciprocal exchanges, Ins. Code 19.11.  
 Subversive organizations, not exempt, 7150.  
 Television sets, excise tax, 7047f—1.  
 Trinity River Authority, 8280—188.

**TAYLOR COUNTY**

Court at law, authority and jurisdiction, 1970—343.

**TEACHERS**

Certificates, 2891b.  
 Prior service credit, retirement system, 6228a—2.  
 Retirement system, 2922—1.  
 Vocational teachers, additional salary, 2922—14.

**TEACHERS RETIREMENT SYSTEM**

Prior service credit, 6228a—2.

**TELEVISION**

Definitions, 7047f—1.  
 Tax, sale, distribution or use, 7047f—1.

**TEMPORARY ADMINISTRATORS**

See Executors and Administrators, this index.

**TEMPORARY GUARDIANS**

See Guardian and Ward, this index.

**TENEMENTS**

Wills, passage of interest under, Prob.Code 58.

**TERM OF COURT**

County court at law,  
 El Paso county, 1970—141.1.  
 Potter county, 1970—311a.  
 Domestic relations court,  
 Hutchinson county, 2338—6.

**TESTAMENTARY CAPACITY**

Necessity, Prob.Code 57.  
 Holographic will, Prob.Code 60.  
 Proof, Prob.Code 88.

**TESTAMENTS**

See Wills, generally, this index.

**TESTATORS**

See Wills, generally, this index.

**TEXAS AGRICULTURAL AND MECHANICAL COLLEGE SYSTEM**

Leases and easements, power, 2613a—7.

**TEXAS CITIZEN**

Defined, 3871b.

**TEXAS COMMISSION OF HIGHER EDUCATION**

Generally, 2919e—2.

**TEXAS SECURITIES**

Defined, Ins. Code 3.34.

**TEXAS SOUTHERN UNIVERSITY**

Buildings, additions authorized, 2909c.  
 Curriculum, reserve commission award, 2643f—1.  
 Reserve commission awards, mutually agreeable contracts authorized, 2643f—1.

**TEXAS STATE COLLEGE FOR WOMEN**

Bonds, addition to buildings, 2909c.  
 Buildings, additions authorized, 2909c.

**TEXAS TECHNOLOGICAL COLLEGE**

Board of directors,  
 Additions to buildings authorized, 2909c.  
 Bonds, additions to buildings, authorization, 2909c.  
 Buildings, additions authorized, 2909c.

**THANKSGIVING DAY**

Legal holiday, 4591d.

**THIRD PERSONS**

Executors and administrators, rights on dealing with, Prob.Code 188.

**TIMBER AND LOGS**

Hauling, length of vehicle, PC 827a—3.

**TIME**

Bill of review, probate proceedings, filing, limitation, Prob.Code 31.  
 Citations and notices, probate proceedings, posting at courthouse, Prob.Code 33.  
 Revision and correction of probate proceedings, Prob.Code 30.

**TITLE**

Executors and administrators, purchaser of livestock, Prob.Code 335.  
 Passage on intestacy, Prob.Code 37.  
 Short title, Probate Code, Prob.Code 1.  
 Simultaneous death, passage on, Prob.Code 47.  
 Specific performance of decedent's bond or agreement to make title on sale of property, Prob.Code 27.  
 Wills, foreign wills, record as notice of, Prob.Code 99.

**TITLE INSURANCE**

Minimum insurance to be maintained, Ins. Code 21.45.

**TITUS COUNTY**

Juvenile board, 5139o.

**TOLL BRIDGES**

Border counties, acquisition, 6795c.  
 Home rule cities or towns, acquisition, 1015g, § 13.  
 Rio Grande river, home rule city bonds, 1187a—2.

**TOLLS**

Border counties, 6795c.

**TOMBSTONES**

Claims include expenses of, Prob.Code 3.

**TORT**

Claims include liabilities arising in, Prob.Code 3.

**TRADE-MARKS AND TRADE-NAMES**

Carbonated goods, etc., containers, 843; PC 1058.

**TRANSCRIPTS**

Guardian and ward, record on removal of guardianship to another county, Prob.Code 121.  
 Heirship, actions to determine, transfer, Prob.Code 51.

**TRANSFER OF ACTION**

Heirship, determination, Prob.Code 51.

**TRANSFER TAXES**

Executors and administrators, mortgage or pledge of property to borrow for payment, Prob.Code 329.  
 Guardian and ward, borrowing money for payment, Prob.Code 329.

**TRANSFERS**

Descent and distribution, gratuitous inter vivos transfer as gift, Prob.Code 44.

## TRANSFERS—Cont'd

Probate proceeding for want of venue, Prob. Code 8.

## TRANSPORTATION

Feeble-minded or mentally retarded persons, return to home county, 3871a.

Fictitious bill of sale or bill of lading, penalty, PC 1690b.

Gas, 6053.

Liquefied petroleum gas, 6053.

Mental patient, return to home county, 5561b—1.

Motor vehicles, dual saddle mount method, 6701d.

## TRAVIS COUNTY

Adult probation officer, appointment, CCP 781b—1.

Appeal to district court from order of Secretary of State, securities law, 579—28.

Board of insurance commissioners, review of decisions, Ins. Code 1.15, 21.44.

Water control and improvement district, 8280—178.

Water Improvement District No. 1, 8280—168.

## TREASURY SHARES

Definition, BusCorp 1.02.

## TRIAL

County court, probate matters, jury, Prob.Code 21.

Guardian and ward, necessity for appointment of guardian, Prob.Code 115.

Habitual drunkards, restoration to sober habits, Prob.Code 426.

Insane persons, restoration to sound mind, Prob. Code 426.

Proceedings to determine whether person is of unsound mind or habitual drunkard, Prob. Code 417.

## TRINITY COUNTY

Second 9th judicial district court, permanent, 199(9).

## TRUST COMPANIES

Closing for general banking purposes, option, 4591d.

Corporate fiduciary, defined, Prob.Code 3.

Deposits under Securities Law, 579—7.

Executors and administrators,

Deposit of assets with, agreement as to, Prob.Code 219.

Deposits with in lieu of sureties on bond, Prob.Code 194.

Insurance business, liquidation or rehabilitation, Ins. Code 21.28.

Investments.

Stock of federal national mortgage association, 342—505a.

Legal holidays, 4591d.

Limited banking service, option, 4591d.

Mortgages, sale to federal national mortgage association, 342—505a.

Saturday, option to close, 4591d.

Weekdays, option to close, 4591d.

## TRUST DEEDS

See Executors and Administrators, this index.

## TRUSTS AND TRUSTEES

Community administrator, statutory trustee, Prob.Code 167.

Corporate stock,

Personal liability as holder or subscriber, BusCorp 2.21.

Voting, BusCorp 2.29.

Defined, 579—2.

Foreign wills, Prob.Code 107.

Pension trust defined, 7425d.

Perpetual care and maintenance guarantee fund, cemeteries, 912a—29.

## TRUSTS AND TRUSTEES—Cont'd

Power of sale under foreign will, Prob.Code 107.

Retirement or benefit plan, discharge by payment, 5221d.

Sales, exempt from securities law, 579—3.

Simultaneous death, trust providing for disposition of property on, effect, Prob.Code 47.

Waiver of notice of hearing in probate proceeding, Prob.Code 35.

## TUTORS

Guardian and ward, non-residents, transcript evidencing appointment, Prob.Code 124.

## TYLER COUNTY

Water Control and Improvement District No. 1, 8280—185.

## ULTRA VIRES

Corporations, defense, BusCorp 2.04.

## UNBORN PERSONS

Descent and distribution, right to, Prob.Code 41.

Inheritance, right to, Prob.Code 41.

## UNIFORM STOCK TRANSFER ACT

Business Corporation Act, effect of provisions, BusCorp 2.22.

## UNITED STATES

Guardian and ward, investments in bonds of, Prob.Code 389.

Military and naval training, state supported institutions of higher learning, 2919e—1.

Remand to state court, copy of order filed, (RCP) Rule 237-a.

Securities, exempt from law, 579—4.

## UNITIZATION

See Guardian and Ward, this index.

## UNIVERSITY OF TEXAS

Board of regents,

Buildings and grounds authorized, 2909c.

Bonds,

Additions to buildings, 2909c.

Buildings and grounds, additions authorized, 2909c.

## UNSOUND MIND

See Insane Persons, generally, this index.

## USE

Defined, radios and television sets, 70471—1.

## VACCINATION

Rabies, counties, 2372m.

## VALIDATION

Bond proceedings, municipal auditoriums, 1268j—6.

Charter amendment election, home rule cities, 1174a—3.

Citation, prior modes of service, Prob.Code 129.

Cities, towns or villages, incorporation, 966d.

Deeds of acquittance, lands lying across water courses or navigable streams, 5414a—1.

Guardian and ward, non-residents, letters, Prob.Code 125.

Incorporation, cities and towns less than 15,000, 974d—5.

Leases,

Oil, gas and minerals, 5421a.

Mineral leases and pooling or unitization agreements, Prob.Code 372.

Navigation districts, sale or exchange of land, 8247f.

Orange County Water Control and Improvement District No. 3, proceedings, 7880—147z2.

Prior probate proceedings on transfer for want of venue, Prob.Code 8.

Scrip and interest-bearing time warrants, payment of county indebtedness, 2368a—4.

Water control and improvement district proceedings, 7880—147c9.

**VALIDATION—Cont'd**

Water supply districts, contracts between eligible cities and eligible districts, 1109f.  
Willacy County Navigation District, art. 8198.  
Wills, citation, prior modes of service, Prob. Code 129.

**VENUE**

Administration of estates of decedents, Prob. Code 6.  
Guardian and Ward, this index.  
Heirship, actions to declare, Prob.Code 48.  
Injunction, labor disputes, 1995, § 17a.  
Labor disputes, injunction, 1995, § 17a.  
Probate of wills, Prob.Code 6.  
Probate proceedings,  
  Concurrent, Prob.Code 8.  
  Jurisdiction to determine, Prob.Code 8.  
Small estates, Prob.Code 137.  
Support of children, action, 4639b.  
Wills, probate, Prob.Code 6.

**VERDICTS**

Guardian and ward, necessity for appointment of guardian, Prob.Code 115.  
Habitual drunkards, Prob.Code 419.  
Insane persons, Prob.Code 419.

**VERIFICATION**

See Executors and Administrators, this index.

**VERIFIED**

Definition, BusCorp 1.02.

**VESSELS**

Narcotics transportation, seizure and forfeiture, PC 725d.  
Transportation of narcotics, seizure and forfeiture, PC 725d.

**VETERANS**

Holiday, 4591e.

**VETERANS' ADMINISTRATION**

Guardian and ward, notice to by guardians, Prob.Code 330.

**VOCATIONAL TEACHERS**

Salary, additional, 2922—14.

**VOLUNTARY NON-PROFIT POULTRY ASSOCIATION**

Incorporation authorized, 1302d—1.

**VOTING MACHINES**

Transportation, certificate of convenience to transport, Elec. Code 7.14.

**VOTING TRUSTS**

Corporate stock, creation, BusCorp 2.30.

**WAGES**

Assignment, action against employer, 5159c.  
Defined, state employees social security, 695h.

**WAIVER**

Executors and Administrators, this index.  
Guardian and Ward, this index.  
Notice of hearing in probate proceeding, Prob. Code 35.

**WALLER COUNTY**

District Court judge, juvenile board, 5139k.  
Juvenile board, 5139k.

**WARD COUNTY**

143rd Judicial District Court, 199(143).

**WARDS**

See Guardian and Ward, generally, this index.

**WASTE**

Estate of minor or incompetent, appointment of receiver, Prob.Code 136.

**WATER CONSERVATION AND RECLAMATION DISTRICTS**

Certified copy of Legislative Act, filing, 8280—7.

**WATER CONSERVATION AND RECLAMATION DISTRICTS—Cont'd**

Lower Colorado River Authority, 8280—107.  
Sabine River Authority of Texas, 8280—133.  
West Central Texas Municipal Water District, 8280—162.

**WATER CONTROL AND IMPROVEMENT DISTRICTS**

Area of more than 80,000 acres, election of directors, 7880—38a.

**Bell County,**

District No. 1, 8280—189.

District No. 3, 8280—182.

District No. 4, 8280—183.

Benbrook Water and Sewer Authority, 8280—163.

Boling Municipal Water District, 8280—172.

**Bonds,**

District boundaries co-terminous with city or town, 7880—20a.

Boundaries co-terminous with city or town, validation of acts, 7880—20a.

Certified copy of Legislative Act, filing, 8280—7.  
City of McAllen Water and Sewer Authority, 8280—177.

Colorado County Water Control and Improvement District No. 1, 8280—170.

Directors, district of more than 80,000 acres, 7880—38a.

Fort Bend County Water Supply District, 8280—187.

Harris County Improvement District No. 1, 8280—190.

Jackson county, 8280—161.

Jefferson county, No. 10, 8280—166.

Orange county, validation of proceedings, 7880—147z2.

Reagan County Water Supply District, 8280—181.

South Main Street Municipal Water District, 8280—180.

Travis County Improvement District No. 1, 8280—168.

Two Mile Creek Conservation and Reclamation District of Calhoun County, 8280—186.

Tyler County Water Control and Improvement District No. 1, 8280—185.

Upper Jasper County Water Authority, 8280—184.

Validation of proceedings, 7880—147c9.

**WATER CONTROL AND PRESERVATION DISTRICTS**

Atascosa and Frio Counties Improvement District No. 1, 8280—175.

Certified copy of Legislative Act, filing, 8280—7.

Ground Water Conservation District No. 2, 8280—179.

Trinity River Authority, 8280—188.

**WATER CONTROL DISTRICTS**

Certified copy of Legislative Act, filing, 8280—7.

**WATER IMPROVEMENT DISTRICTS**

Atascosa and Frio Counties Improvement District No. 1, 8280—175.

Certified copy of Legislative Act, filing, 8280—7.

Manager, employment, 7652b.

Runnels County Water Improvement District, 8280—176.

Salary, manager and tax assessor and collector, 7652b.

Tax assessor and collector, employment, 7652b.

Travis County Improvement District No. 1, 8280—168.

**WATER REVENUE BONDS**

Eligible city, 1118n—7.

## WATER SUPPLY AND CONTROL DISTRICTS

Certified copy of Legislative Act, filing, 8280—7.  
Dallas county, directors, 8280—148.  
Ground Water Conservation District No. 2, 8280—179.  
Sulphur River Municipal Water District, 8280—165.

## WATER SUPPLY DISTRICTS

Board of supervisors, authority to borrow money, 7922.  
City of McAllen Water and Sewer Authority, 8280—177.  
Contracts, eligible cities and eligible districts, 1109f.  
Eligible cities and eligible districts, contracts by and between, 1109f.  
Haltom City Water Authority, 8280—173.  
Haskell County Water Supply District, created, 8280—164.  
Newton county, 8280—174.  
Notes, authority of board of supervisors, 7922.  
Reagan County Water Supply District, 8280—181.  
San Augustine Water Authority, 8280—169.  
Shelby County Water Supply District, 8280—171.  
West Central Texas Municipal Water District, 8280—162.

## WATERS AND WATER COURSES

Deeds of acquittance to lands lying across, validation, 5414a—1.  
Federal project, recommendation by board of water engineers, 7472e.  
Investigation of county water needs, 1644a—1.  
Riparian owners, vested rights protected, 7612b.  
Riparian user, statement of water use, 7612, 7612a.  
State board of water engineers,  
Certified copy of Legislative Act creating districts, filed, 8280—7.  
Federal project, recommendations, 7472e.  
Permits, Yorks Creek improvement district, 8280—167.

## WATERWORKS AND WATER SUPPLY

Cities, towns and villages,  
Contracts respecting, 1109g.  
Jefferson County Water Control and Improvement District No. 10, 8280—166.  
Natural gas, availability for pumping water for agricultural purposes, 6050(4), 6050(4a).  
Sabine River, dam, 8280—133.

## WEEDS

Districts for control and eradication of noxious weeds, 135c.

## WEEKDAYS

Bank or trust company, option to close, 4591d.

## WEIGHTS AND MEASURES

Public platform tonnage scales, counties authorized to purchase, 2372n.  
Vehicles in transportation, exceptions, PC 827a—2.

## WELLS

Drilling, underground water reservoir, 8280—179.  
Plugging and covering required, PC 1721.

## WHOLE BLOOD

Inheritance by heirs of, rights, Prob.Code 41.

## WHOLESALE

Defined,  
Sales Limitation Law, PC 1111m.

## WIDOWS

See Executors and Administrators, this index.

## WILD LIFE RESOURCES

Local and special acts applicable to enumerated counties, PC 978j note.

## WILLACY COUNTY

District court, special district court, 199(138).

## WILLACY COUNTY NAVIGATION DISTRICT

Validation, art. 8198.

## WILLIAMSON COUNTY

Water control and improvement district, 8280—178.

## WILLS

Acknowledgment, Prob.Code 59.  
Adoption, after-adopted children, Prob.Code 67.  
Administration under will. Executors and Administrators, this index.  
Admission in evidence of certified copy of recorded testimony regarding, Prob.Code 89.  
Admission to probate, self-proved will, Prob.Code 59.  
Affidavits,

Attesting witnesses, Prob.Code 59.  
Certificate of deposit, lost, stolen or destroyed, Prob.Code 71.  
Death of testator, Prob.Code 71.  
Holographic will, Prob.Code 60.  
Proof of written will produced in court, Prob.Code 84.

After-adopted children, Prob.Code 67.

After-born children, Prob.Code 67.

Age,

Holographic will, testator of, Prob.Code 60.  
Person entitled to execute, Prob.Code 57.  
Testator, proof, Prob.Code 88.  
Witnesses, Prob.Code 59.

Amendment, self-proved will, Prob.Code 59.

Applications. Probate, post.

Armed forces, member,

Holographic will, Prob.Code 60.  
Proof, Prob.Code 88.  
Right to execute, Prob.Code 57.

Attestation, Prob.Code 59.

Foreign will, Prob.Code 95-98.

Holographic will, Prob.Code 60.

Written will, proof, Prob.Code 84.

Cancellation, Prob.Code 63.

Forgery or fraud, limitation of actions, Prob.Code 93.

Certificates,

Acknowledgments and affidavits evidenced by, Prob.Code 59.

Attestation of foreign will, Prob.Code 97.

Deposit of will, Prob.Code 71.

Judge as to attestation of copy of foreign will, Prob.Code 95, 96.

Certified copies,

Recording, Prob.Code 89.

Written order of findings by court of contents of oral will, Prob.Code 91.

Children,

Death prior to testator, Prob.Code 68.

Defined, Prob.Code 67.

Descendants, Prob.Code 67.

Living when will executed, Prob.Code 67.

Not living when will executed, Prob.Code 67.

Posthumous, Prob.Code 66.

Pretermitted, Prob.Code 66, 67.

Choses in action, subject to devise, Prob.Code 58.

Citations and notices,

Contents and issuance, Prob.Code 128.

Death of testator, Prob.Code 71.

Devisees and legatees, deposit of will, Prob.Code 71.

Nuncupative will,

Application for probate, Prob.Code 128.  
Contest, Prob.Code 86.

Probate, post.

Service, Prob.Code 128.

Clauses, revocation, method, Prob.Code 63.

## WILLS—Cont'd

Clerks of court,  
 Attestation, foreign will, Prob.Code 95.  
 Custody of original probated wills, Prob. Code 90.  
 Delivery to by custodian on receiving notice of death of testator, Prob.Code 75.  
 Foreign wills, delivery to, Prob.Code 98.  
 Recording of foreign will, Prob.Code 98.

Codicils,  
 Revocation by, Prob.Code 63.  
 Self-proved will, Prob.Code 59.

Community property, management and control, provision for, Prob.Code 70.

Contents, Prob.Code 10.  
 Citation, Prob.Code 128.

Contests,  
 Foreign will, Prob.Code 95, 96.  
 Notice, Prob.Code 100, 101.  
 Original probate, Prob.Code 103.  
 Limitation of action on probate, Prob.Code 93.  
 Nuncupative will, Prob.Code 86.  
 Probate proceedings, persons entitled to, Prob.Code 10.  
 Self-proved will, Prob.Code 59.  
 Temporary administrator, appointment pending, Prob.Code 132.

Contribution between devisees and legatees, Prob.Code 66, 67.

Conveyances, foreign will, effective as deed of conveyance, Prob.Code 98.

Copies, foreign will,  
 Filing and recording, effect, Prob.Code 95, 96.  
 Prima facie evidence of probate, Prob.Code 97.  
 Proof of contents, Prob.Code 104.  
 Recording, effect, Prob.Code 98.

Corroboration of testimony of interested witness, Prob.Code 62.

County clerks,  
 Custody, Prob.Code 81.  
 Original probated wills, Prob.Code 90.  
 Deposit with during testator's lifetime, Prob.Code 71.  
 Foreign will, recording, Prob.Code 98.

Courts, deposit with during testator's lifetime, Prob.Code 71.

Custody, Prob.Code 90.  
 Finding of contents in will not in custody of court, Prob.Code 91.

Death,  
 Devisee or legatee prior to testator, Prob. Code 68.  
 Testator,  
 Affidavit, Prob.Code 71.  
 Notice of, duty and liability of custodian, Prob.Code 75.  
 Passage of title to estate upon, Prob. Code 37.  
 Proof, Prob.Code 88.

Deed records, foreign wills, filing and recording in, Prob.Code 96.

Defined, Prob.Code 3.

Delivery,  
 Clerk of court by custodian on receiving notice of death of testator, Prob.Code 75.  
 Death of testator, receipt, taking, Prob. Code 71.  
 Deposited will, Prob.Code 71.

Deposit with county clerk, Prob.Code 90.

Deposit with court during testator's lifetime, Prob.Code 71.

Depositions, proof of written will produced in court by, Prob.Code 84.

Descent and Distribution, generally, this index.

Destruction, Prob.Code 63.  
 Revocation by, Prob.Code 63.

Discovery after grant of administration, Prob. Code 83; 220.

## WILLS—Cont'd

Divorce, effect upon, Prob.Code 69.

Effect, not effectual until probated, Prob.Code 94.

Enclosed, method on deposit with county clerk, Prob.Code 71.

Estates and interests which may pass under, Prob.Code 58.

Evidence,  
 Certified copies,  
 Probate of will, Prob.Code 89.  
 Written order of findings of contents of oral will, Prob.Code 91.  
 Committing to writing, Prob.Code 87.  
 Foreign will, copy as prima facie evidence of probate, Prob.Code 97.  
 Nuncupative will, committing testimony to writing, necessity, Prob.Code 86.  
 Probate, application, hearing, committing to writing, Prob.Code 87.  
 Probate proceedings, Prob.Code 22.

Execution,  
 Persons entitled to execute, Prob.Code 57.  
 Procedure, Prob.Code 59.  
 Proof, Prob.Code 88.

Executors and Administrators, generally, this index.

Expectancy, passing of interest under, Prob. Code 58.

Expenses, allowance for defense, Prob.Code 243.  
 Fee for deposit, Prob.Code 71.

Fiduciary, appointment of spouse as, divorce, effect, Prob.Code 69.

Filing,  
 Affidavit, certificate of deposit, lost, stolen or destroyed, Prob.Code 71.  
 Deposit, numbering upon, Prob.Code 71.  
 Foreign will, Prob.Code 95, 96.  
 Notice of contest, effect upon, Prob.Code 101.  
 Probated in another jurisdiction, Prob. Code 105.  
 Setting aside, Prob.Code 100.

Findings, contents of oral will or will not in custody of court, Prob.Code 91.

Foreign wills, Prob.Code 95-107.  
 Attestation, Prob.Code 95.  
 Clerks of court, delivery to, Prob.Code 98.  
 Contest, Prob.Code 95, 96.  
 Notice, Prob.Code 100, 101.  
 Original probate, Prob.Code 103.  
 Deed of conveyance, effective as, Prob.Code 98.  
 Executor, bond, Prob.Code 106.  
 Filing, Prob.Code 95, 96.  
 Letters, Prob.Code 105.  
 Notice,  
 Contest, Prob.Code 100, 101.  
 Record of as, Prob.Code 99.

Original probate,  
 Proof of, Prob.Code 104.  
 State, Prob.Code 103.

Power of sale of foreign executor or trustee, Prob.Code 107.

Prima facie evidence of probate, Prob.Code 97.

Probate, post.  
 Proof, Prob.Code 95-98.  
 Original probate, Prob.Code 104.

Recording, Prob.Code 95-99.  
 Effect, Prob.Code 98.

Rejection in foreign proceedings, effect, Prob.Code 102.

Sales, powers, Prob.Code 107.  
 Seal, Prob.Code 95, 96.

Trustees, sales, powers, Prob.Code 107.

Forgery, limitation of actions to cancel for, Prob.Code 93.

Form, certificate of acknowledgment, etc., Prob. Code 59.

## WILLS—Cont'd

Formalities, Prob.Code 59.  
 Proof, Prob.Code 88.  
 Revocation, Prob.Code 63.

Fraud, limitation of action to cancel on ground of, Prob.Code 93.

Guardians, appointment by, Prob.Code 117.  
 Venue for, Prob.Code 7.

Handwriting of testator, Prob.Code 60.

Heirship, actions to determine. Executors and Administrators, this index.

Herediments, subject to devise, Prob.Code 58.

Holographic, Prob.Code 60.  
 Proof, Prob.Code 84.

Husband and wife,  
 Competency to make, Prob.Code 57.  
 Holographic will, Prob.Code 60.  
 Marriage, effect upon execution, Prob.Code 57.  
 Powers to survivor under will, Prob.Code 70.  
 Separate property, provision for management and distribution, Prob.Code 70.  
 Surviving wife as principal beneficiary,  
 Posthumous children, effect, Prob.Code 66.  
 Pretermitted children, effect, Prob.Code 66, 67.

Independent administration. Executors and Administrators, this index.

Indexes to wills deposited with county clerk, Prob.Code 71.

Indorsement, wrapper on deposit with county clerk, Prob.Code 71.

Infants,  
 After-adopted children, Prob.Code 67.  
 After-born children, Prob.Code 67.  
 Authority to execute, Prob.Code 57.  
 Death prior to testator, Prob.Code 68.  
 Defined, Prob.Code 67.  
 Descendants, Prob.Code 67.  
 Limitation of actions to cancel after removal of disabilities, Prob.Code 93.  
 Living when will executed, Prob.Code 67.  
 Not living when will executed, Prob.Code 67.  
 Posthumous children, Prob.Code 66.  
 Pretermitted, Prob.Code 66.  
 Right to make, Prob.Code 57.  
 Subscribing witnesses, Prob.Code 59.

Inspection, removal from county clerk's office, Prob.Code 90.

Interested witness, devise and bequest to, Prob. Code 61, 62.

Interests which may pass under, Prob.Code 58.

Jurisdiction,  
 Probate, post.  
 Proof, Prob.Code 88.

Lands, subject to devise, Prob.Code 58.

Lapse of legacy or devise, Prob.Code 68.

Last sickness, requisite of nuncupative will, Prob.Code 65.

Limitation of actions,  
 Cancellation for forgery or fraud, Prob.Code 93.  
 Contest of probate, Prob.Code 93.

Mail, registered, notice, death of testator, Prob. Code 71.

Management of separate property, provision for, Prob.Code 70.

Maritime service, member of,  
 Holographic will, Prob.Code 60.  
 Right to execute, Prob.Code 57.

Marriage,  
 Effect upon right to execute, Prob.Code 57.  
 Holographic will, Prob.Code 60.  
 Proof, Prob.Code 88.  
 Survivor, management of separate property, provisions for, Prob.Code 70.

## WILLS—Cont'd

Member of armed forces,  
 Holographic will, Prob.Code 60.  
 Right to execute, Prob.Code 57.

Mental capacity,  
 Power to execute, Prob.Code 57.  
 Proof, Prob.Code 88.

Military service, members,  
 Execution by, Prob.Code 57.  
 Proof, Prob.Code 88.

Names, subscription by witnesses, Prob.Code 59.

Necessity of probate, Prob.Code 94.

Notice,  
 Contests,  
 Foreign will, Prob.Code 100, 101.  
 Nuncupative will, Prob.Code 86.  
 Death of testator, Prob.Code 71.  
 Duty and liability of custodian, Prob. Code 75.  
 Deposit with court during testator's lifetime not to constitute, Prob.Code 71.  
 Record of foreign will as, Prob.Code 99.

Null and void upon divorce of testator, Prob. Code 69.

Nuncupative,  
 Application for probate, Prob.Code 81.  
 Citation, contents, Prob.Code 128.  
 Capacity to make, Prob.Code 64.  
 Notice of, Prob.Code 86.  
 Personal property, disposal by, Prob.Code 64.  
 Place of making, Prob.Code 65.  
 Probate, post.  
 Proof,  
 Time for, Prob.Code 86.  
 Witnesses required, Prob.Code 65.

Requisites, Prob.Code 65.

Sickness of testator as requisite, Prob. Code 65.

Summoning to contest, Prob.Code 86.

Testimony committed to writing, Prob.Code 86.

Time for making, Prob.Code 86.  
 Witnesses, Prob.Code 65, 86.

Oral, finding of contents by court by written order, Prob.Code 91.

Orders, delivery of will deposited with county clerk, Prob.Code 71.

Parent by adoption, disposal of property by, Prob.Code 40.

Personal property, subject to devise, Prob.Code 58.

Persons entitled to make, Prob.Code 57.

Possession, interest in, passing under, Prob. Code 58.

Posthumous children, Prob.Code 66.

Posting, citations and notices,  
 Service by, Prob.Code 128.  
 Validation, Prob.Code 129.

Power to make, Prob.Code 57.

Pretermitted children, Prob.Code 66, 67.

Probate,  
 Action of court on, Prob.Code 89.  
 Affidavits, signature or handwriting of testator, Prob.Code 84.  
 Age of testator, proof, Prob.Code 88.

Application,  
 Citation, contents regarding, Prob.Code 128.  
 Combining with application for appointment of executor or administrator, Prob.Code 76.  
 Contents, Prob.Code 81.  
 Nuncupative wills, Prob.Code 81.  
 Foreign will, Prob.Code 95.  
 Setting aside, Prob.Code 100.  
 Hearing, Prob.Code 83.  
 Committing testimony to writing, necessity, Prob.Code 87.

## WILLS—Cont'd

## Probate—Cont'd

## Application—Cont'd

- Nuncupative will, citation, contents, Prob.Code 128.
- Persons who may make, Prob.Code 76.
- Second application, procedure pertaining to, Prob.Code 83.
- Written will, filing with, Prob.Code 81.
- Armed forces, membership, proof, Prob.Code 88.
- Bonds,
  - Exemption from requirement, Prob.Code 195.
  - Show cause for, Prob.Code 214.
- Certified copies,
  - Recording, Prob.Code 89.
  - Written order of findings by court of contents of oral will, Prob.Code 91.
- Citations and notices, Prob.Code 128.
  - Application,
    - Written will not produced, Prob.Code 128.
    - Written will produced in court, Prob.Code 128.
  - Contents, nuncupative will or written will not produced, Prob.Code 128.
  - Death of testator, duty and liability of custodian, Prob.Code 75.
  - Service, Prob.Code 75.
    - Necessity, Prob.Code 128.
    - Personal, Prob.Code 128.
    - Posting, Prob.Code 128.
    - Proof of, Prob.Code 88.
    - Publication, Prob.Code 128.
    - Validation, prior modes of service, Prob.Code 129.
- Compelling production of will, procedure, Prob.Code 75.
- Concurrent venue, effect, Prob.Code 3.
- Contests,
  - Temporary administrator, appointment pending, Prob.Code 132.
  - Validity, limitations of action, Prob.Code 93.
- County clerk, deposit with, Prob.Code 90.
- County court, jurisdiction, Prob.Code 4.
- Custodian, duty and liability, Prob.Code 75.
- Custody of probated wills, Prob.Code 90.
- Damages, refusal to deliver, Prob.Code 75.
- Death, proceedings before, void, Prob.Code 72.
- Death of testator, proof, Prob.Code 83.
- Depositions, signature or handwriting of testator, Prob.Code 84.
- Effectual, no will effectual until probated, Prob.Code 94.
- Estate of living person, void, Prob.Code 72.
- Exemption from requirement of bond, directing, Prob.Code 195.
- Expenses, allowance for defense of will, Prob.Code 243.
- Filing with application for, Prob.Code 81.
- Findings of contents of oral will or will not in custody of court, Prob.Code 91.
- Foreign wills, Prob.Code 95.
  - Contests, Prob.Code 95, 100.
    - Original probate, Prob.Code 103.
  - Evidence, Prob.Code 97.
  - Filing, effect, Prob.Code 95.
  - Original probate, Prob.Code 103.
    - Proof, Prob.Code 104.
  - Procedure, Prob.Code 95.
  - Proof, Prob.Code 98.
    - Original probate, Prob.Code 104.
  - Recording, effect, Prob.Code 95.
  - Rejection, Prob.Code 100.
    - Foreign proceedings, effect, Prob.Code 102.
  - Setting aside, Prob.Code 100.

## WILLS—Cont'd

## Probate—Cont'd

- Hearings, application, committing testimony to writing, necessity, Prob.Code 87.
- Holographic will, proof, Prob.Code 84.
- Inability to produce will, Prob.Code 81.
- Jurisdiction,
  - Concurrent, Prob.Code 8.
  - County court, Prob.Code 4.
  - District court, Prob.Code 5.
  - Evidence, Prob.Code 88.
- Jury trial, Prob.Code 21.
- Letters testamentary or of administration, generally. Executors and Administrators, this index.
- Limitation of actions, contest, Prob.Code 93.
- Limitation on time for, Prob.Code 73.
- Lost or destroyed, application for, Prob.Code 76.
- Marriage, proof, Prob.Code 88.
- Necessity, Prob.Code 94.
- Nuncupative,
  - Application for, Prob.Code 81.
  - Proof, Prob.Code 86.
  - Time for proof, Prob.Code 86.
  - Witnesses, Prob.Code 86.
- Orders,
  - Admission to probate, Prob.Code 89.
  - Application, Prob.Code 76.
- Period for not to affect settlement of estate, Prob.Code 92.
- Pleadings, defects, effect, Prob.Code 9.
- Proceedings before death, void, Prob.Code 72.
- Proof, Prob.Code 88.
  - Attested written will, Prob.Code 84.
  - Foreign wills, Prob.Code 95-98.
    - Original probate, Prob.Code 104.
  - Nonproduction of will, cause, Prob.Code 85.
  - Nuncupative will, Prob.Code 86.
  - Self-proved will, necessity of further proof, Prob.Code 84.
  - Subscribing witnesses, Prob.Code 84.
  - Written will not produced in court, Prob.Code 85.
  - Written will produced in court, Prob.Code 84.
- Record, oral will or will not in custody of court, Prob.Code 91.
- Refusal to deliver will, liability, Prob.Code 75.
- Self-proved will, Prob.Code 59.
- Service of citation, necessity, Prob.Code 128.
- Setting aside former probate, determination, Prob.Code 83.
- Settlement of estate, period for probate, effect upon, Prob.Code 92.
- Time for, Prob.Code 73.
- Trial by jury, Prob.Code 21.
- Validation, Prob.Code 129.
- Venue, Prob.Code 6.
  - Proof, Prob.Code 88.
- Production, duty and liability of custodian, Prob.Code 75.
- Proof,
  - Acceptance of will for deposit, proof before, Prob.Code 71.
  - Attested written will, Prob.Code 84.
  - Death of testator, Prob.Code 71.
  - Foreign wills, Prob.Code 95-98.
    - Original probate, Prob.Code 104.
  - Holographic wills, Prob.Code 84.
  - Nonproduction of will, cause, Prob.Code 85.
  - Nuncupative will, Prob.Code 86.
    - Witnesses, requisites, Prob.Code 65.
  - Probate, ante.
  - Self-proved will, necessity of further proof, Prob.Code 84.



## WILLS—Cont'd

## Proof—Cont'd

- Written will not produced in court, Prob. Code 85.
- Written will produced in court, Prob.Code 84.
- Property subject to devise and bequest, Prob. Code 58.
- Real property, subject to devise, Prob.Code 58.
- Receipt, removal for inspection, Prob.Code 90.
- Record book, probate minutes, contents, Prob. Code 15.
- Recording,
  - Certified copies, Prob.Code 89.
  - Written order of findings of contents of oral will, Prob.Code 91.
- Foreign wills, Prob.Code 95-99.
  - Notice of contest, effect upon, Prob. Code 101.
  - Probated in another jurisdiction, Prob. Code 105.
  - Setting aside, Prob.Code 100.
- Remainders, subject to devise, Prob.Code 58.
- Rents, subject to devise, Prob.Code 58.
- Requisites, Prob.Code 59.
- Residence, requisite of nuncupative will, Prob. Code 65.
- Reversion, passing of interest under, Prob. Code 58.
- Revocation, Prob.Code 63.
  - Proof of non-revocation, Prob.Code 88.
  - Self-proved will, Prob.Code 59.
- Right to make, Prob.Code 57.
- Sales authorized by, Prob.Code 332.
- Seals, foreign wills, Prob.Code 95, 96.
- Self-proved, Prob.Code 59.
  - Holographic will, Prob.Code 60.
  - Necessity of further proof, Prob.Code 84.
- Separate property of husband or wife, management and distribution, Prob.Code 70.
- Significance of depositing with court during testator's lifetime, Prob.Code 71.
- Signing, necessity, Prob.Code 59.
- Simultaneous death, providing for disposition of property upon, effect, Prob.Code 47.
- Sound mind,
  - Holographic will, necessity, Prob.Code 60.
  - Proof, Prob.Code 88.
  - Requisites to execution, Prob.Code 57.
- Subscribing witness as devisee or legatee under, Prob.Code 61, 62.
- Subsequent will, revocation by, Prob.Code 63.
- Surrender, certificate of deposit, Prob.Code 71.
- Tenements, subject to devise, Prob.Code 58.
- Testamentary capacity,
  - Holographic will, Prob.Code 60.
  - Necessity, Prob.Code 57.
  - Proof, Prob.Code 88.
- Testamentary trustee, foreign will, Prob.Code 107.
- Title, foreign wills, record as notice of, Prob. Code 99.
- Unborn children, Prob.Code 66, 67.
- Validation, prior modes of service of citation, Prob.Code 129.
- Validity, foreign wills, contest, Prob.Code 95, 96.
- Venue, probate, Prob.Code 6.
- Vesting title of estate in heirs, etc., Prob.Code 37.
- Void, divorce, Prob.Code 69.
- Void bequest to witnesses, Prob.Code 61.
  - Corroboration of testimony of interested witness, effect, Prob.Code 62.
- Witnesses, Prob.Code 59.
  - Attestation,
    - Affidavits, Prob.Code 59.
    - Holographic will, necessity, Prob.Code 60.
  - Devisee and legatee under, Prob.Code 61, 62.
  - Nuncupative will, Prob.Code 65, 86.

## WILLS—Cont'd

- Writing, necessity, Prob.Code 59.
- Written in handwriting of testator, Prob.Code 60.

## WITHDRAWALS

- Estate from administration. Executors and Administrators, this index.

## WITNESSES

- Contest of probate proceedings, persons entitled to process for, Prob.Code 10.
- Heirship, actions to determine, evidence by, Prob.Code 53.
- Insurance Securities Law, investigations by board, 580-29.
- Labor disputes, injunction to enjoin, 1995, § 17a.
- Record book, probate fee book, contents, Prob. Code 16.
- Rules applicable, probate proceedings, Prob. Code 22.
- Securities law, investigations by Secretary of State, 579-29.
- Wills, this index.

## WORDS AND PHRASES

- "And", Insurance Securities Law, 580-2.
- And may be read or, 579-2.
- Annuity contract, legal reserve life insurance companies, Ins. Code 21.07-1, § 1.
- Assessment as needed plan, mutual insurance, Ins. Code 16.01.
- Assets, liquidation of insurance company, Ins. Code 21.28.
- Board,
  - Accident and sickness insurance, Ins. Code 3.70-1.
  - Liquidation of insurance companies, Ins. Code 21.28.
  - Mentally retarded persons law, 3871b.
  - Recreational programs, 1015c-1.
  - Registration for public surveyors, 5282a.
- Bona fide residents of the county, 4437a, § 6A.
- Broker, 579-2.
  - Insurance Securities Law, 580-2.
- Carrier, insurance law, Ins. Code 1.14.
- Comic book, PC 527b.
- Company, 579-2.
  - Insurance Securities Law, 580-2.
- Comptroller, 70471-1.
- Corruptive comic book, PC 527b.
- Cost basis, Sales Limitation Act, PC 1111m.
- County line school district, 2815s-1.
- Court, liquidation of insurance companies, Ins. Code 21.28.
- Custodial employee, retirement law, 6228a.
- Dealer, 579-2.
  - Insurance Securities Law, 580-2.
- Delinquency proceeding, liquidation of insurance companies, Ins. Code 21.28.
- Department, mentally retarded persons law, 3871b.
- Depraved comic book, PC 527b.
- Distribution, radios and television sets, 70471-1.
- Distributor, radios and television sets, 70471-1.
- District, noxious weed control district, 135c.
- Eligible city, 1118n-7.
- Employer, unemployment compensation, 5221b-17.
- Employment, state employees social security, 695h.
- Engineering report, 7472e.
- Enter, PC 1402a.
- Excess risk, legal reserve life insurance companies, Ins. Code 21.07-1, § 1.
- Federal agency, 1528e, § 2, 7472e.
- Federal Insurance Contributions Act, 695h.
- Federal project, 7472e.
- Food, PC 705d.
- Fraud, 579-2.
  - Insurance Securities Law, 580-2.

## WORDS AND PHRASES—Cont'd

Fraudulent practice, 579—2.  
 Insurance Securities Law, 580—2.  
 Governing body, recreational programs, 1015c—1.  
 Governmental unit, recreational programs, 1015c—1.  
 Governor, 7472e.  
 Includes, 579—2.  
 Insurance Securities Law, 580—2.  
 Industrial, legal reserve life insurance, Ins. Code 21.07—1, § 1.  
 Insurance contract, legal reserve companies, Ins. Code 21.07—1, § 1.  
 Insurer, liquidation of insurance companies, Ins. Code 21.28.  
 Issuer, 579—2.  
 Bonds, 717k.  
 Insurance Securities Law, 580—2.  
 Land occupier, noxious weed control, 135c.  
 Landowner, noxious weed control, 135c.  
 Lewd comic book, PC 527b.  
 Life insurance agent, Ins. Code 21.07—1.  
 Life insurance counselor, Ins. Code 21.07—2.  
 Limited partnership, defined, 6132a, § 2.  
 Liquidator, liquidation of insurance companies, Ins. Code 21.28.  
 Livestock, PC 1456a.  
 Masculine gender includes feminine and neuter gender, 579—2.  
 Insurance Securities Law, 580—2.  
 Mentally retarded persons, 3871b.  
 Mortgage, 579—2.  
 Insurance Securities Law, 580—2.  
 No par value, 579—2.  
 Insurance Securities Law, 580—2.  
 Non-par, 579—2.  
 Noxious weeds, 135c.  
 Offer for sale, 579—2.  
 Insurance Securities Law, 580—2.  
 "Or", Insurance Securities Law, 580—2.  
 Or may be read and, 579—2.  
 Par value, 579—2.  
 Pension trust, 7425d.  
 Person, 1528c, § 2, 70477—1.  
 Public surveyors registration law, 5282a.  
 Slaughterers of livestock, PC 1456a.  
 Plural number includes singular number, 579—2.  
 Insurance Securities Law, 580—2.  
 Policy of accident and sickness insurance, Ins. Code 3.70—1.  
 Political subdivision, 695g.  
 Present tense includes future tense, 579—2.  
 Insurance Securities Law, 580—2.  
 Public surveying, 5282a.  
 Public surveyor, 5282a.  
 Radios, 70477—1.  
 Registered dealer, 579—2.  
 Insurance Securities Law, 580—2.  
 Registered public surveyor, 5282a.  
 Rejected risk, legal reserve life insurance companies, Ins. Code 21.07—1, § 1.  
 Replacement costs, Sales Limitation Law, PC 1111m.  
 Resident property taxpaying voter, noxious weed control, 135c.  
 Retail sale price, radios and television sets, 70477—1.  
 Retail sales,  
 Radios and television sets, 70477—1.  
 Sales Limitation Law, PC 1111m.  
 Retailer,  
 Radios and television sets, 70477—1.  
 Sales Limitation Law, PC 1111m.

## WORDS AND PHRASES—Cont'd

Revenues, navigation districts, 8244a.  
 Rural property, mutual insurance, Ins. Code 16.01.  
 Sale, 579—2.  
 Insurance Securities Law, 580—2.  
 Sales at retail, Sales Limitation Law, PC 1111m.  
 Sales at wholesale, Sales Limitation Law, PC 1111m.  
 Salesman, 579—2.  
 Insurance Securities Law, 580—2.  
 Secretary, registration for public surveyors, 5282a.  
 Secretary of Health, Education and Welfare, state employees social security, 695h.  
 Securities, 579—2.  
 Insurance Securities Law, 580—2.  
 Sell, 579—2.  
 Insurance Securities Law, 580—2.  
 Sell at retail, Sales Limitation Law, PC 1111m.  
 Sell at wholesale, Sales Limitation Law, PC 1111m.  
 Shooting preserves, PC 908.  
 Shooting resort, PC 908.  
 Singular number includes plural number, 579—2.  
 Insurance Securities Law, 580—2.  
 Slaughterer, PC 1456a.  
 Social Security Act, 695h.  
 State agency, state employees social security, 695h.  
 State employee, state employees social security, 695h.  
 Sub-agent, legal reserve life insurance, Ins. Code 21.07—1, § 1.  
 Television sets, 70477—1.  
 Texas Business Corporation Act, BusCorp 1.02.  
 Texas citizen, 3871b.  
 Texas securities, Ins. Code 3.34.  
 Toll bridge, 6795c.  
 Trust, 579—2.  
 Use, radios and television sets, 70477—1.  
 User, radios and television sets, 70477—1.  
 Wages, state employee social security, 695h.  
 Weekly premium life insurance on a debit basis, legal reserve companies, Ins. Code 21.07—1, § 1.  
 Wholesale sales, Sales Limitation Law, PC 1111m.  
 Wholesaler, Sales Limitation Law, PC 1111m.

**WRITTEN INSTRUMENTS**  
 Ancient documents, copies, evidence, 3725.

**WRITING**  
 Citations and notices, necessity, Prob.Code 33.  
 Executors and administrators, expense charges, Prob.Code 244.  
 Wills, necessity, Prob.Code 59.

**WRITS**  
 County clerk, issuance in probate matters, Prob.Code 33.  
 Partition and distribution of estates, service, Prob.Code 380.

**YORKS CREEK IMPROVEMENT DISTRICT**  
 Generally, 8280—167.

**YOUTH DEVELOPMENT COUNCIL**  
 Gatesville State School for Boys, appropriations out of funds for repair of school buildings, 4386d note.