

Texas Historical Statutes Project

1975 SUPPLEMENT
TO
WEST'S TEXAS STATUTES 1974



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West's Texas Statutes and Codes

1975 Supplement
to
Compact Edition

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PREFACE

This 1975 Supplement to West's Texas Statutes and Codes, Compact Edition, includes the text of all the general and permanent laws of the State of Texas enacted at the Regular Session of the 64th Legislature, and the text of changes in the Texas Constitution as adopted by the people at the Special Election held on April 22, 1975.

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

Parks and Wildlife Code

Included in this Supplement is the complete text of the Parks and Wildlife Code, as enacted by Acts 1975, 64th Leg., ch. 545, and amended by Acts 1975, 64th Leg., ch. 456. The Code is another unit of the Texas Legislative Council's on-going statutory revision program, authorized by Civil Statutes, Art. 5429b-. A Disposition Table, providing a means of tracing repealed subject matter into the new Code, and a detailed descriptive word Index, facilitating the search for specific provisions therein, are also included following the text of the Code.

Special Law Tables

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

Indexes

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

THE PUBLISHER

December, 1975

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EFFECTIVE DATES

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

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

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

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CITE THIS BOOK

Thus:

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

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**CONSTITUTION
OF THE
STATE OF TEXAS 1876**

Adopted February 15, 1876

As amended to November 4, 1975

**ARTICLE III
LEGISLATIVE DEPARTMENT**

REQUIREMENTS AND LIMITATIONS

Section

48-a, 48-b. Repealed.

51-e, 51-f. Repealed.

**§ 24. Compensation and Expenses of Members of
Legislature; Duration of Sessions**

Sec. 24. Members of the Legislature shall receive from the Public Treasury a salary of Six Hundred Dollars (\$600) per month. Each member shall also receive a per diem of Thirty Dollars (\$30) for each day during each Regular and Special Session of the Legislature. No Regular Session shall be of longer duration than one hundred and forty (140) days.

In addition to the per diem the Members of each House shall be entitled to mileage at the same rate as prescribed by law for employees of the State of Texas.

[Adopted April 22, 1975.]

REQUIREMENTS AND LIMITATIONS

§§ 48-a, 48-b. Repealed. April 22, 1975

See, now, art. 16, § 67.

§§ 51-e, 51-f. Repealed. April 22, 1975

See, now, art. 16, § 67.

ARTICLE XVI

GENERAL PROVISIONS

Section

62, 63. Repealed.

67. State and Local Retirement Systems [NEW].

§§ 62, 63. Repealed. April 22, 1975

See, now, § 67 of this article.

§ 67. State and Local Retirement Systems

Sec. 67. (a) General Provisions. (1) The legislature may enact general laws establishing systems and programs of retirement and related disability

and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.

(2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas also may be authorized by law.

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons 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. The legislature by law may further restrict the investment discretion of a board.

(4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect at the time of the adoption of this section remain in effect, subject to the general powers of the legislature established in this subsection.

(b) State Retirement Systems. (1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.

(2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of appellate courts and judicial districts as may be included under the system by law.

(3) The amount contributed by a person participating in the Employees Retirement System of Texas or the Teacher Retirement System of Texas shall be established by the legislature but may not be less than six percent of current compensation. The amount contributed by the state may not be less than six percent nor more than 10 percent of the aggregate compensation paid to individuals participating in the system. In an emergency, as determined by the governor, the legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems. (1) The legislature shall provide by law for:

(A) the creation by any city or county of a system of benefits for its officers and employees;

(B) a statewide system of benefits for the officers and employees of counties or other po-

litical subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and

(C) a statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.

(2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System. (1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect. Contributions required and benefits payable are to be as provided by law.

(2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

(e) Anticipatory Legislation. Legislation enacted in anticipation of this amendment is not void because it is anticipatory.

[Adopted April 22, 1975.]

INDEX TO
CONSTITUTION OF TEXAS 1876

<p>AGED PERSONS Tax exemption, residence homestead exemption, Art. 8, § 1-b.</p> <p>CITIES AND TOWNS Local retirement systems, Art. 16, § 67.</p> <p>COMPENSATION Legislative members, Art. 3, § 24.</p> <p>COUNTIES Pensions and retirement, Art. 16, § 67.</p> <p>DEATH BENEFITS State and local retirement systems, Art. 16, § 67.</p> <p>DISABILITY BENEFITS State and local retirement systems, Art. 16, § 67.</p> <p>DOMICILE AND RESIDENCE Tax exemption, residence homestead exemption, Art. 8, § 1-b.</p>	<p>EMPLOYEES RETIREMENT SYSTEM OF TEXAS Generally, Art. 16, § 67.</p> <p>HOMESTEAD Residence homestead tax exemption, Art. 8, § 1-b.</p> <p>INVESTMENTS Pensions and retirement, state-wide benefit systems, Art. 16, § 67.</p> <p>JUDICIAL RETIREMENT SYSTEM Generally, Art. 16, § 67.</p> <p>LEGISLATURE Members, Compensation, Art. 3, § 24. Sessions, Duration, Art. 3, § 24.</p> <p>LOCAL RETIREMENT SYSTEMS Generally, Art. 16, § 67.</p> <p>MUNICIPAL EMPLOYEES RETIREMENT Generally, Art. 16, § 67.</p>	<p>PENSIONS Generally, Art. 16, § 67.</p> <p>POLITICAL SUBDIVISIONS Pensions and retirement, Art. 16, § 67.</p> <p>PUBLIC OFFICERS AND EMPLOYEES Pensions and retirement, Art. 16, § 67.</p> <p>RESIDENCE HOMESTEAD EXEMPTION Generally, Art. 8, § 1-b.</p> <p>SCHOOLS AND SCHOOL DISTRICTS Teachers, Retirement system, Art. 16, § 67.</p> <p>STATE AND LOCAL RETIREMENT SYSTEMS Generally, Art. 16, § 67.</p> <p>TAXES AND TAXATION Residence homestead exemption, Art. 8, § 1-b.</p> <p>TEACHERS RETIREMENT SYSTEM Generally, Art. 16, § 67.</p> <p>TRAVELLING EXPENSES Legislature, members, Art. 3, § 24.</p>
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BUSINESS AND COMMERCE CODE

TITLE 1. UNIFORM COMMERCIAL CODE

CHAPTER 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

SUBCHAPTER A. SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 9.110. Sufficiency of Description.

Except as provided in Subsections (c) and (f) of Section 9.402, any description of personal property or real estate is sufficient for the purposes of this chapter whether or not it is specific if it reasonably identifies what is described.

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 1, eff. June 19, 1975.]

SUBCHAPTER D. FILING

§ 9.402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) A form substantially as follows is sufficient to comply with Subsection (a):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

1. This financing statement covers the following types (or items) of property:

(Describe) _____

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) _____

3. (If applicable) The above goods are or are to become fixtures on (or where appropriate substitute either "The above timber is standing on _____" or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on _____")

(Describe Real Estate) _____

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner of the real estate concerned is _____

4. (If products of collateral are claimed) Products of the Collateral are also covered.

(use _____

whichever _____
Signature of Debtor (or Assignor)

is _____

Signature of Secured Party (or Assignee)

applicable)

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

(e) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or a financing statement filed as a fixture filing (Section 9.313), must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(f) A mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, from the date of its filing for record if (1) the goods or other collateral are described in the mortgage by item or type, (2) in the case of a fixture filing, the goods are or are to become fixtures related to the real estate described in the mortgage, (3) in the case of timber to be cut, the timber is standing on the real estate described in the mortgage, (4) in the case of minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, the minerals or the like (including oil and gas) or the accounts are to be financed at the wellhead or minehead of the well or mine located on the real estate described in the mortgage, (5) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (6) the mortgage is duly filed for record. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

[See Compact Edition, Volume 1 for text of (g) and (h)]

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, §§ 2, 3, eff. June 19, 1975.]

§ 9.403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be \$3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$6.00, plus in each case, if the financing statement is subject to Subsection (e) of Section 9.402, \$3.00.

(f) A mortgage which is effective as a filing under Subsection (f) of Section 9.402 remains effective as such a filing as to the types of collateral enumerated in Subsection (f) of Section 9.402 until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(g) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or is filed as a fixture filing, it shall be filed for record and recorded, and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

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

[Amended by Acts 1975, 64th Leg., p. 941, ch. 353, § 4, eff. June 19, 1975.]

§ 9.404. Termination Statement

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) If the termination statement is in the standard form prescribed by the Secretary of State, the uniform fee for filing and indexing the termination statement shall be \$3.00, and otherwise shall be \$6.00, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, \$3.00.

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 5, eff. June 19, 1975.]

§ 9.405. Assignment of Security Interest; Duties of Filing Officer; Fees

(a) A financing statement may disclose an assignment of a security interest in the collateral described

in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the financing statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9.403.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be \$3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$6.00, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, \$3.00.

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 6, eff. June 19, 1975.]

§ 9.406. Release of Collateral; Duties of Filing Officer; Fees

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be \$3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$6.00, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, \$3.00.

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 7, eff. June 19, 1975.]

SUBCHAPTER E. DEFAULT

§ 9.504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may

be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party who has duly filed a financing statement indexed in the name of the debtor in this state or from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

[See *Compact Edition, Volume 1 for text of (d) and (e)*]

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 8, eff. June 19, 1975.]

§ 9.505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation

[See *Compact Edition, Volume 1 for text of (a)*]

(b) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party who has duly filed a financing statement indexed in the name of the debtor in this state or from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under Section 9.504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

[Amended by Acts 1975, 64th Leg., p. 943, ch. 353, § 9, eff. June 19, 1975.]

1 West's Tex.Stats. & Codes '75 Supp.—2

CHAPTER 11. EFFECTIVE DATE AND TRANSITION PROVISIONS—1973 AMENDMENTS

§ 11.105. Transition Provision on Change of Place of Filing

[See *Compact Edition, Volume 1 for text of (a)*]

(b) With respect to any collateral, other than fixtures or minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, which are covered by a financing statement or security agreement filed as a financing statement or continuation statement filed prior to January 1, 1974, and which shall not have lapsed prior to January 1, 1974, acquired by the debtor on or after January 1, 1974, any effective financing statement or security agreement filed as a financing statement or continuation statement described in this section and purporting to cover such after-acquired collateral shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the code with its 1973 amendments.

[See *Compact Edition, Volume 1 for text of (c)*]

(d) If the filing for record of a mortgage would have been effective as to the types of collateral enumerated in Subsection (f) of Section 9.402 if the 1973 amendments had been in effect on the date of the filing for record of the mortgage, the mortgage shall be deemed effective as such a filing as to the types of collateral enumerated in Subsection (f) of Section 9.402 of this code, as amended, on January 1, 1974.

[Amended by Acts 1975, 64th Leg., p. 944, ch. 353, §§ 10, 11, eff. June 19, 1975.]

§ 11.108. Presumption That Rule of Law Continues Unchanged

Unless a change in law has clearly been made, the provisions of this title with 1973 and 1975 amendments shall be deemed declaratory of the meaning of the title.

[Amended by Acts 1975, 64th Leg., p. 944, ch. 353, § 12, eff. June 19, 1975.]

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 17. DECEPTIVE TRADE PRACTICES

SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

§ 17.45. Definitions

As used in this subchapter:

(1) "Goods" means tangible chattels or real property purchased or leased for use.

(2) "Services" means work, labor, or service purchased or leased for use, for other than commercial or business use, including services furnished in connection with the sale or repair of goods.

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

(4) "Consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services.

[See Compact Edition, Volume 1 for text of (5) to (9)]

[Amended by Acts 1975, 64th Leg., p. 149, ch. 62, § 1, eff. Sept. 1, 1975.]

§ 17.54. Damages: Defense

No award of damages may be given in any action filed under Section 17.51 of this subchapter if the defendant:

(1) proves that the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid the error; and

(2) made restitution of all consideration received from all members of the class, as the court may determine and direct.

[Amended by Acts 1975, 64th Leg., p. 149, ch. 62, § 2, eff. Sept. 1, 1975.]

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Generally, 17.41 et seq.

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Deceptive trade practices, 17.41 et seq.

LEASES
Deceptive trade practices, 17.41 et seq.

REAL ESTATE
Deceptive trade practices, 17.41 et seq.

TEXAS EDUCATION CODE

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Chapter	Section
14. Scholastic Census [Repealed]	

TITLE 3. HIGHER EDUCATION

SUBTITLE A. HIGHER EDUCATION IN GENERAL

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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. TITLE, ORGANIZATION, AND PURPOSE

§ 1.04. Applicability

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Any educational institution supported either wholly or in part by state tax funds shall, if undertaking to provide educational services to any individual within the jurisdiction or geographical boundaries of the educational institution, provide equal educational services to all individuals within its jurisdiction or geographical boundaries pursuant to the provisions of this code and pursuant to the provisions of regulations promulgated by the Central Education Agency to give effect to the intent of the legislature in its enactment of this code. No individual otherwise eligible for educational services through an educational institution supported either wholly or in part by state tax funds may deny services to any individual solely on the basis of the individual's having a physical or mental handicap, but the educational institution shall instead be obligated to provide handicapped individuals such special educational services as might from time to time be authorized by law or, where expressly authorized,

to assist in and contribute toward the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments. *[Amended by Acts 1975, 64th Leg., p. 2377, ch. 734, § 1, eff. June 21, 1975.]*

CHAPTER 3. TEACHER RETIREMENT SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

§ 3.02. Definitions and Qualifications of Terms

(a) In this chapter, unless the context clearly requires a different meaning, the words and phrases defined below in this section shall have the meanings hereinbelow given.

[See Compact Edition, Volume 1 for text of (1) to (15)]

(16) "Military duty" means:

(A) active duty in the Armed Forces of the United States during World War I or a period within 12 months thereafter;

(B) active duty in the Armed Forces of the United States during World War II or a period within 12 months thereafter;

(C) any active duty in the Armed Forces or Reserve Components of the United States or any of their auxiliaries during either a period when the United States was or is at war or involved in a police action with foreign powers, as defined by the State Board of Trustees in accordance with this chapter, or a period within 12 months thereafter; or

(D) any active duty in the Armed Forces or Reserve Components of the United States or the Texas Army or Air National Guard to which the member has been called or ordered to duty under the authority of Federal law.

[See Compact Edition, Volume 1 for text of (17) to (21)]

(22) "School year" means the year beginning on or about September 1 of any calendar year and ending August 31 of the following calendar year. However, the school year for a member whose contract year begins on or after July 1 and extends after August 31 of the same calendar year shall commence from the beginning date of the contract for the school year, but in no case may the school year include more than twelve months. The employer shall certi-

fy annually the beginning date of the member's contract in such form and under such procedures as may be required by the Board of Trustees.

[See Compact Edition, Volume 1 for text of (a)(23) to (c)]

[Amended by Acts 1975, 64th Leg., p. 122, ch. 57, § 1, eff. April 18, 1975; Acts 1975, 64th Leg., p. 2373, ch. 732, § 1, eff. June 21, 1975.]

Section 2 of ch. 732 provided:

"Sec. 2. The annual compensation beginning with the 1970-71 school year for members who retire after the effective date of this Act may be adjusted to conform to the provisions of Section 1 of this Act in accordance with such rules and procedures as the Board of Trustees shall adopt."

SUBCHAPTER B. CREDITABLE SERVICE

§ 3.23. Membership Service Credits

(a) Under such rules and regulations as the State Board of Trustees may adopt, a member shall be allowed membership service credit for each year of service rendered in accordance with the provisions of this chapter if he has made and maintained with the retirement system all deposits and payments required by this chapter or prior existing laws.

(b) Any member who performed one or more years of military duty while a member of the retirement system shall be permitted to deposit to his individual account in the member savings account for each year of duty an amount equal to his deposits made with the retirement system during the last preceding full year of service as a teacher or auxiliary employee. He shall then be entitled to one year of membership service credit for each year of military duty.

(c) Any member who performed one or more years of military duty prior to becoming a member of the retirement system shall be permitted to deposit to his individual account in the member savings account for each year of such military duty, but not to exceed five years, an amount equal to his deposits made with the retirement system during the first full year of service as a teacher or auxiliary employee after becoming a member of the retirement system. He shall then be entitled to one year of membership service credit for each year of military duty.

(d) In addition to the deposits required for the membership service credit authorized in Subsections (b) and (c) of this section, the member shall be required to pay a fee of five percent per annum of such deposits from the date the member receives 10 years of credit for service actually rendered in the public schools of Texas until the date of deposit. Fees shall be credited to the state contribution account.

[Amended by Acts 1975, 64th Leg., p. 122, ch. 57, § 2, eff. April 18, 1975.]

Section 1 of the 1975 amendatory act amended Section 3.02; § 3 thereof provided: "Notwithstanding the provisions of Section 4 of this Act [emergency provision], the fee provided by Section 2 of this Act to be incorporated in Subsection (d), Section 3.23, Texas Education Code, shall become effective on September 1, 1975."

§ 3.25. Reinstatement of Service Credits

(a) Any teacher or auxiliary employee who has executed a waiver of membership in the retirement system shall have the privilege of electing to receive full membership service credit, provided such teacher or auxiliary employee after becoming a member of the retirement system shall deposit all back deposits, assessments, and dues which he would have paid or deposited had he been a member of the retirement system during each of the years he actually taught or was employed as an auxiliary employee in the public schools following the date on which he first became eligible for membership in the retirement system, together with interest from the date each amount was payable at the rate of five percent per annum. The interest shall be credited to the state contribution account.

(b) Any person who terminates or has terminated membership in the retirement system by withdrawal of deposits or by absence from service shall have the privilege of reinstating such terminated membership by rendering service for two subsequent consecutive creditable years or for a subsequent continuous period equal in duration to the period from the date of the relevant withdrawal to the beginning date of such period of creditable service, whichever is shorter, and by depositing the amount withdrawn plus membership fees for the years during which membership was terminated plus a reinstatement fee of five percent per annum from the date of withdrawal to date of redeposit. The reinstatement fee shall be credited to the state contribution account.

(c) Any person who terminates or has terminated membership in the retirement system by retiring under the provisions of Section 3.31 of this chapter shall have the privilege of reinstating such terminated membership by rendering service for five consecutive years and depositing an amount equal to service retirement benefits received plus a reinstatement fee of five percent per annum from the date of his return to employment to the date of redeposit and an amount equal to six percent of his total annual compensation after his return to employment plus a reinstatement fee of five percent per annum on such percentage of compensation from the end of the respective year of service to the date of deposit plus membership fees for the years after his return to employment. Upon payment of the amount required by this subsection the reinstated member shall receive credit for each year's service both before and after his initial retirement. Reinstatement fee shall be credited to the state contribution account.

(d) The amounts to be deposited shall be determined in each case by the State Board of Trustees and no person shall be granted retirement upon such

service credits until the amount so determined is paid in full.

[Amended by Acts 1975, 64th Leg., p. 36, ch. 19, § 1, eff. March 20, 1975.]

Sections 2 to 9 of the 1975 Act amended Sections 3.26, 3.33, 3.34, 3.36, 3.37, 3.52 and 3.57; §§ 10, 11 thereof provided:

"Sec. 10. Notwithstanding the provisions of Section 12 of this Act, the fees and interest charges provided by Sections 1, 2, and 9 of this Act to be incorporated in Subsections (b) and (c) of Section 3.25, Subsection (b) of Section 3.26, and Subsection (g) of Section 3.57, Texas Education Code, shall become effective on September 1, 1975. Until that date the fees and interest charges, if any, in effect immediately prior to the adoption of this Act shall be continued."

"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 of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

§ 3.26. Purchase of Credit for Out-of-State Service

(a) Any member of the retirement system who has been employed as a teacher or as an auxiliary employee in any public school system maintained in whole or in part by any other state or territory of the United States or by the United States for children of United States citizens may purchase equivalent membership service credits under this retirement system for such service.

(b) For each year that out-of-state service credit is desired, the member shall deposit to his individual account with the retirement system 12 percent of the annual compensation received during his first year as a teacher or auxiliary employee of this state which is both after the out-of-state service and September 1, 1956, or, in the event the member has no creditable service in Texas after September 1, 1956, 12 percent of his rate of annual compensation during his last creditable year of service in Texas prior to that date and subsequent to the out-of-state service. In addition the member shall pay a fee at the rate of five percent per annum of the amount which the member is eligible to deposit for each year of credit under Subsection (c)(1) of this section. Such fee shall accrue on each amount from the date the member is first eligible to make the deposit for credit until the date of deposit, except that no fees shall begin to accrue before the member completes 10 years of actual service in the public schools in Texas. A deposit for at least one year's credit must be made with the initial application and all payments for out-of-state service for which credit is desired must be made before retirement.

(c) For each year that deposits are made, the member shall be granted immediately upon payment of the required deposit one year's membership service credit subject, however, to the special conditions which are:

(1) No person shall be allowed to acquire credits on the basis of employment as a teacher or auxiliary employee outside this state in excess of one year for each one year of service in Texas.

(2) In the event credits for employment outside this state must be disallowed in part because of the member's failure to qualify the non-Texas service under the provisions of this section, his deposits made for the years disallowed (considered to be those last purchased) will be refunded to him.

(3) No more than 10 years' total credit can be purchased under the provisions of this section.

(d) No member by reason of any credits purchased for non-Texas teaching or auxiliary employment shall be entitled to service retirement benefits under this section until he has actually rendered at least 10 years of creditable service in Texas, excluding any credit for non-Texas employment. Equivalent membership service credits granted for out-of-state service shall not be used in computing the member's "best-ten-years-average compensation."

(e) All such deposits shall be credited, pending retirement, to the member's individual account in the member's savings account.

[Amended by Acts 1975, 64th Leg., p. 37, ch. 19, § 2, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

SUBCHAPTER C. BENEFITS

§ 3.31. Service Retirement Benefits

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) An auxiliary member who has retired or who retires on a standard service retirement benefit at normal retirement age shall in any event be entitled to receive a minimum standard service retirement benefit of \$5 per month for each year of creditable service to which he is entitled or \$60 per month, whichever is greater. An auxiliary member who has retired or who retires on a service retirement allowance or option other than a standard service retirement benefit shall in any event be entitled to receive the actuarial equivalent of a minimum standard service retirement benefit of \$5 per month for each year of creditable service to which he is entitled or the actuarial equivalent of a minimum standard service retirement benefit of \$60 per month, whichever is greater.

[See Compact Edition, Volume 1 for text of (e) to (g)]

[Amended by Acts 1975, 64th Leg., p. 7, ch. 6, § 1, eff. Feb. 13, 1975.]

Section 2 of the 1975 Act provided: "Section 1 of this Act applies to benefits payable on the last day of February, 1975, and subsequent months."

See, also, note under Section 3.38.

§ 3.33. Beneficiary Designation

(a) Any member may provide in writing on a form the executive secretary or his duly authorized representative prescribes that the benefits payable under this chapter in the event of his death shall be paid to

the designated beneficiary. The member may change or revoke a designation previously made by filing with the State Board of Trustees, on a form the executive secretary or his duly authorized representative prescribes, a notice of change or revocation.

(b) In the event a member fails to designate a beneficiary, or the designated beneficiary predeceases the member and there is no designation effective at the date of death, the death benefits and election right to survivor benefits, if applicable, shall vest (in the order listed) with

- (1) the surviving spouse of the deceased; or
- (2) the children of the deceased in equal portions or their descendants, such descendants being entitled only to such portion of said benefits as the parent through whom they are entitled to those benefits would be entitled if alive; or
- (3) the dependent parent or parents of the deceased in equal portions; or
- (4) the member's estate or heirs.

[Amended by Acts 1975, 64th Leg., p. 38, ch. 19, § 3, March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.34. Death Benefits

(a) If a member dies before retirement and during any school year in which he is in service, his eligible designated beneficiary shall be paid, at the beneficiary's election, the greatest of the following amounts in the manner the State Board of Trustees 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) 60 monthly payments equal to the monthly installments of a standard annuity (calculated as provided in Section 3.02(a)(20) of this code); or
- (4) an annuity payable for the designated beneficiary's life with payments equal to those under Option One in Section 3.31(b)(1) of this code had the member retired at the end of the month preceding his death; or
- (5) the accumulated contributions of the member's member savings account.

(b) If a member dies during an absence from service, his designated beneficiary shall be paid:

- (1) the same benefits payable upon the member's death in active service if the absence of the member from service was due to sickness, accident, or other cause which the State Board of Trustees determines to be involuntary or in furtherance of the objectives or welfare of the

public school system, or during a period when he was eligible to retire or would become eligible without further service to retire within five years of his last covered employment; or

(2) the accumulated contributions in the member's individual account if the absence of the member from service was not the result of sickness, accident, or other justifiable cause determined in this chapter.

[Amended by Acts 1975, 64th Leg., p. 38, ch. 19, § 4, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.36. Benefits Payable Upon Death After Retirement

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

(b) If a member retires upon a disability retirement benefit and dies while drawing his benefit, his beneficiary may elect to receive, in lieu of the benefit provided in Subsection (a) of this section, the same death benefit to which he would have been entitled had the deceased been in active service at death.

[See Compact Edition, Volume 1 for text of (c) to (h)]

[Amended by Acts 1975, 64th Leg., p. 39, ch. 19, § 5, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.37. Employment After Retirement

(a) Any person receiving a service retirement benefit from the retirement system may be employed in the public schools of Texas under the following conditions:

- (1) on a part-time day-to-day basis only not to exceed 100 school days in any one school year as a substitute for an employee who is absent from duty;
- (2) as a substitute in a vacant position until such position can be filled, but not to exceed 45 days, but any substitute employment in a vacant position shall be deducted from the 100 days permitted as a substitute for an absent employee; or
- (3) on as much as a one-third time basis if the retired member is over age 60.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) A person receiving a service retirement benefit from the retirement system who is employed in any position in the public schools of Texas except as provided in this section, shall forfeit all retirement benefits for any month in which such employment occurs. Employment which begins as substituting may become permanent employment. A person who substitutes on a day-to-day basis in a regular posi-

tion for an absent employee for more than 100 school days or for more than 45 school days in a vacant position and then continues in the same position shall be considered to have been a regular employee since the first day of employment and forfeits his retirement benefits for all months of employment in that position.

[Amended by Acts 1975, 64th Leg., p. 39, ch. 19, § 6, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.38. Limited Adjustment of Benefits in Effect
[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) The amount of monthly benefits payable to retired members or their beneficiaries, to members retired on a disability, or to beneficiaries of deceased members pursuant to Section 3.31, Subsection (c) of Section 3.32, and Subsections (a)(3) and (a)(4) of Section 3.34 of this chapter, as amended, shall be increased by a percentage of the amount otherwise payable under the provisions of this chapter, including previously enacted applicable increases, in effect immediately prior to the effective date of this subsection. The amount of such percentage increase shall be as follows: 18 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to March 31, 1969; 12 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to May 31, 1971, but on or after March 31, 1969; 5 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to September 1, 1973, but on or after May 31, 1971. Annuity payments forfeited pursuant to this chapter are subject to the increases provided in this subsection with respect to both the transfer required in Section 3.53 of this chapter and any resumption in due course of such payments to the retired member or beneficiary.

[Amended by Acts 1975, 64th Leg., p. 7, ch. 6, § 3, eff. Feb. 13, 1975.]

Sections 4 to 7 of the 1975 amendatory act provided:

"Sec. 4. Section 3 of this Act takes effect only if the constitutional amendment proposed by Senate Joint Resolution No. 3, 64th Legislature, Regular Session, 1975, is adopted [so adopted by voters at election held April 22, 1975], and if so, Section 3 takes effect for benefits payable on the last day of the month in which the amendment is adopted.

"Sec. 5. The amount of monthly benefits payable under the Teacher Retirement System to retired members or their beneficiaries, to members retired on a disability, or to beneficiaries of deceased members pursuant to Section 3.31, Subsection (c) of Section 3.32, and Subsections (a)(3) and (a)(4) of Section 3.34 of the Texas Education Code, as amended, shall be increased by a percentage of the amount otherwise payable under the provisions of Chapter 3 of the code, as amended, including previously enacted applicable increases, in effect immediately prior to the effective date of this section. The amount of such percentage increase shall be as follows: 18 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to March 31, 1969; 12 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to May 31, 1971, but on or after March 31, 1969; 5 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to September 1, 1973, but on or after May 31, 1971. Annuity payments forfeited pursuant to Chapter 3 of the Texas Education Code, as amended, are subject to the increases provided in this section with respect to both the transfer required in Section 3.53 of the code and any resumption in due course of such payments to the retired member or beneficiary.

"Sec. 6. Section 5 of this Act applies to benefits payable on the last day of February, 1975. Such increases in benefits shall be paid through the last day of the month in which the proposed amendment to the constitution is voted on by the qualified voters of this state, but not later than November 30, 1975, and shall not continue to be paid thereafter unless the qualified voters adopt the constitutional amendment.

"Sec. 7. Contingent on the adoption of the constitutional amendment, there is hereby appropriated from the General Revenue Fund to the Teacher Retirement System of Texas \$98 million in addition to the amounts required by Section 3.58 of the Texas Education Code, such sum having been actuarially determined to be the amount necessary to fund the increases in benefits herein provided for the duration of the life expectancy of the annuitants eligible to receive such increases. The State Comptroller of Public Accounts, on adoption of the constitutional amendment, shall transfer this appropriated amount to the Teacher Retirement System of Texas for deposit in the system's retired reserve fund. In addition, there is hereby appropriated from the General Revenue Fund to the Teacher Retirement System of Texas \$4 million which shall be transferred to the system immediately after the effective date of this Act."

SUBCHAPTER D. ADMINISTRATION
AND ORGANIZATION

§ 3.52. Member Savings Account

(a) In the member savings account shall be accumulated the regular percentage contributions made by members from their compensation together with interest allowable thereon. Interest on members' contributions shall be credited annually on August 31 at the rate of five percent of the average balance in the account during the preceding year.

[See Compact Edition, Volume 1 for text of (b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 7, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.55. Interest Account

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

(b) Once each year on August 31, transfers from the interest account shall be made:

(1) to the member savings account in an amount sufficient to credit the members' contributions with interest at the rate of five percent;

(2) to the retired reserve account in an amount sufficient to credit the average balance of the reserve account with interest at the rate of four and three-fourths percent per annum; or a higher rate as calculated pursuant to Subsection (c) of this section;

(3) to the expense account in an amount designated by the State Board of Trustees pursuant to Section 3.56(d) of this chapter; and

(4) to the state contribution account any balance remaining in the interest account.

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

[Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 8, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.57. Member Contributions

[See Compact Edition, Volume 1 for text of (a) to (f)]

(g) If deductions which should have been made from any member's salary were not in fact made,

the member must pay these deductions, plus a five percent per annum fee on the unpaid amount from the end of the school year such deductions were due until the date of payment, on terms prescribed by the State Board of Trustees. The member shall thereupon receive credit for the prior service to which he may be entitled under this chapter. Fees shall be credited to the state contribution account.

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

[Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 9, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

CHAPTER 4. PENAL PROVISIONS

§ 4.25. Thwarting Compulsory Attendance Law

(a) If any parent or person standing in parental relation to a child, within the compulsory school attendance ages and not lawfully exempt or properly excused from school attendance, fails to require such child to attend school for such periods as required by law, it shall be the duty of the proper attendance officer to warn, in writing, the parent or person standing in parental relation that attendance must be immediately required. If after this warning the parent or person standing in parental relation wilfully fails to comply, the attendance officer shall file a complaint against him in the county court, in the justice court of his resident precinct, or in the municipal court of the municipality in which he resides. Any parent or person standing in parental relation convicted of wilfully violating this section shall be fined not less than \$5 nor more than \$25 for the first offense, not less than \$10 nor more than \$50 for the second offense, and not less than \$25 nor more than \$100 for a subsequent offense. Each day the child remains out of school after the warning has been given or the child ordered to school by the juvenile court may constitute a separate offense.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 1356, ch. 513, § 1, eff. Sept. 1, 1975.]

TITLE 2. PUBLIC SCHOOLS

CHAPTER 11. CENTRAL EDUCATION AGENCY

SUBCHAPTER A. GENERAL PROVISIONS

- Section 11.052. Director of Education for the Visually Handicapped [NEW].
- 11.061. Management and Supervision of the Texas School for the Blind [NEW].
- 11.062. Business Office of Texas School for the Blind [NEW].
- 11.063. Staffing and Funding of School for the Blind [NEW].
- 11.071. Travel and Clothing Expenses for Certain Blind Students [NEW].

- 11.091. Diagnostic and Evaluation Center [NEW].
- 11.102. Supplemental Allowances for Exceptional Expenses of Blind Education [NEW].
- 11.161. Educational Programs for Blind Adults [NEW].
- 11.19. Educational Programs for Gifted and Talented Students [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 11.052. Director of Education for the Visually Handicapped

(a) With the approval of the State Board of Education, the commissioner of education shall appoint a Director of Education for the Visually Handicapped, who together with not less than three nor more than five qualified coordinators shall be primarily responsible for the development and administration of a comprehensive statewide plan for the education of the visually handicapped which will ensure that visually handicapped children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision.

(b) The director shall be responsible for:

(1) the development of standards and guidelines for all special education services for the visually handicapped which the Central Education Agency is authorized to provide or support pursuant to the provisions of this code, including matters related to standards and accreditation;

(2) the supervision of such field offices as might from time to time be established to assist local school districts in serving visually handicapped children more effectively;

(3) the development and administration of special programs for children handicapped by both serious visual loss and serious hearing loss;

(4) the evaluation of special education services provided for visually handicapped children by local school districts and the approval or disapproval of state funding of such services;

(5) the maintenance of effective liaison between special education programs provided for the visually handicapped by local school districts and related initiatives exerted by the Governor's Coordinating Office for the Visually Handicapped, the State Commission for the Blind, the Department of Mental Health and Mental Retardation, the School for the Blind, and other related programs, agencies, or facilities as appropriate; and

(6) the furnishing of such reports, data, statistical information, and perceptions as might be required by the Governor's Coordinating Office for the Visually Handicapped in order to validly measure and assess the impact of all educational programs affecting the blind and visually handicapped of the state, including programs of higher education funded to provide necessary manpower for this field.

(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped developed, administered, and coordinated by the director and his staff shall include but not be limited to the following:

(1) adequate provision for comprehensive diagnosis and evaluation of each school-age child having a serious visual impairment;

(2) procedures, format, and content of the individualized written service plan for each such visually handicapped child;

(3) emphasis on providing educational services to visually handicapped children in their home communities whenever possible;

(4) Methods to assure that visually handicapped children receiving special education services in local school systems receive, prior to being placed in a classroom setting or within a reasonable time thereafter, the compensatory skills training, communicative skills, orientation and mobility training, social adjustment skills, and vocational or career counseling required in order for such students to succeed in classroom settings and to derive lasting benefits of a practical nature from the education obtained in local school systems;

(5) flexibility on the part of the local school systems to meet the special needs of visually handicapped children through:

(A) specialty staff and resources provided by the local school district;

(B) contractual arrangements with other qualified agencies, either public or private;

(C) supportive assistance from regional service centers, field offices of the Central Education Agency, or adjacent school districts;

(D) short-term or long-term services through the Texas School for the Blind or related types of facilities or programs;

(E) other instructional and service arrangements approved by the director; or

(F) any combination of the foregoing;

(6) a statewide admission, review, and dismissal process;

(7) provision for effective interreaction between the visually handicapped child's classroom setting and his home environment, including provision for parental training and counseling either by local school personnel or by representatives of other organizations directly involved in the development and implementation of the individualized written service plan for the child;

(8) a requirement for the continuing education and professional development of local school district staff providing special education services to the visually handicapped;

(9) adequate monitoring and precise evaluation of special education services provided to visually handicapped children through local school districts; and

(10) a requirement that local school districts providing special education services to visually handicapped children develop procedures for assuring that staff assigned to work with the visually handicapped children have prompt and effective access directly to resources available through cooperating agencies in the area, through the Texas School for the Blind, through the Central Media Depository, the Comprehensive Diagnostic and Evaluation Center, sheltered workshops participating in the state program of purchases of blind-made goods and services, and related types of resources.

(d) In developing, administering, and coordinating the statewide plan for the education of the visually handicapped, it shall be the duty of the director to encourage the use of all pertinent resources, whether such resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of cooperative working relationships and by assisting in the development of contractual arrangements between local school districts and other organizations, and it shall be the duty of the director to discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services.

[Added by Acts 1975, 64th Leg., p. 2397, ch. 734, § 23, eff. June 21, 1975.]

§ 11.06. Functions and Purposes of Texas School for the Blind

The Texas School for the Blind is constituted, funded, and operated for the following functions and purposes:

(1) to provide educational services on a residential basis to blind children and youth who, for whatever reasons, are unable to obtain adequate educational opportunities in their local communities;

(2) to provide short-term services to blind children and youth for the purpose of equipping such blind children and youth to be able to benefit from educational services available in their local communities;

(3) to serve multiply handicapped blind children and youth who cannot be effectively assisted through community programs, but whose developmental capacities are such that it may not be convincingly demonstrated that the children and youth should appropriately be admitted to residential institutions operated by the State Department of Mental Health and Mental Retardation;

(4) to serve as the primary catalyst within the State of Texas for promoting greater excellence and relevance in educational services for blind individuals;

(5) to serve as a resource to local school programs throughout the state in connection with the efforts of local school programs to serve blind and visually handicapped individuals effectively;

(6) to serve as a mechanism for training and ongoing staff development for those who are involved in providing educational and closely related services to blind or visually handicapped children and youth in local communities throughout the state;

(7) to serve as a research and demonstration facility through which new and improved methods of providing educational services are developed to meet the current and future educational needs of blind and visually handicapped children and youth and through which are developed new and innovative methods of applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve the educational problems of blind and visually handicapped children or youth; and

(8) to cooperate with any and all other public or private organizations, as appropriate, in more effectively carrying out, through effective interagency coordination and vigorous interagency communication, those provisions of this code which relate to the education of the blind and visually handicapped, as well as those provisions of closely related state statutes.

[Amended by Acts 1975, 64th Leg., p. 2393, ch. 734, § 19, eff. June 19, 1975.]

§ 11.061. Management and Supervision of the Texas School for the Blind

(a) There is established as the principal governing body for the Texas School for the Blind a five-member board consisting of five individuals designated by the membership of the State Board of Education from among its membership to serve in this capacity and to be known as the Board of the Texas School for the Blind. The State Board of Education shall cause the Board of the Texas School for the Blind to be constituted annually, designating members with a view toward assuring continuity and a progressively increasing knowledge and expertise about matters related to the operation of the Texas School for the Blind.

(b) The chief administrative officer of the Texas School for the Blind shall be its superintendent, who is empowered to take all necessary and appropriate action to carry out the functions and purposes of the Texas School for the Blind, pursuant to such general policies as the Board of the Texas School for the

Blind might from time to time prescribe, and subject only to a requirement of reporting not less than quarterly to the Board of the Texas School for the Blind as to his activities, progress in the implementation of general policies prescribed by the board, matters of programmatic exceptionality, general statistical summaries of services provided by the Texas School for the Blind during the period covered by the report, budget matters of major consequence or concern, and such additional matters as the Board of the Texas School for the Blind might from time to time request to be specifically covered in the superintendent's reports.

(c) The superintendent and Board of the Texas School for the Blind are to function, insofar as possible, in a posture, attitude, and capacity equivalent to the manner in which the superintendent and board of a local independent school district function.

(d) The Board of the Texas School for the Blind shall establish and not less than semi-annually meet with two advisory committees, the nature and composition of which shall be as hereinafter indicated, and both of which shall be available to the superintendent for consultation and assistance on request at any time.

(e) There shall be an educational advisory committee consisting of two teachers employed in classroom settings at the Texas School for the Blind, two teachers working primarily with blind and visually handicapped students in public school settings, and two staff of the Texas School for the Blind not employed in classroom settings.

(f) There shall be a consumers advisory committee, consisting of the parents of two students attending the Texas School for the Blind, the parents of two blind children enrolled in public school programs, one former graduate of the Texas School for the Blind employed in a profession other than education, and one former student of the Texas School for the Blind successfully engaged in a vocation not normally requiring college training.

(g) Members of the two advisory committees shall serve two-year terms, and shall be appointed by the Board of the Texas School for the Blind following consideration of such recommendations as might be made by the Superintendent of the Texas School for the Blind.

(h) The Board of the Texas School for the Blind shall annually elect one of its members to serve as chairman.

(i) Members of the advisory committees to the superintendent and Board of the Texas School for the Blind shall receive no salary for their services but shall be entitled to reimbursement for the actual and necessary expenses of their travel in providing services for the Texas School for the Blind.

[Added by Acts 1975, 64th Leg., p. 2394, ch. 734, § 20, eff. June 21, 1975.]

§ 11.062. Business Office of Texas School for the Blind

(a) Within 30 days next following the date on which this section becomes effective, there shall be established on the campus of the Texas School for the Blind a business office to handle all fiscal, budgetary, purchasing, and personnel matters incidental to the operation of the Texas School for the Blind. The staff of the business office shall be appointed by the Board of the Texas School for the Blind on recommendation of the superintendent. The staff of the campus business office shall, at a minimum, include a qualified business manager, a well-qualified accountant, a purchasing and supply officer, a personnel clerk, an accounting clerk, and a capable secretary or clerk-typist.

(b) The Board of Education is directed to transfer to the School for the Blind for defraying the costs of its campus business office, such sums as might be necessary out of amounts appropriated and expended for the operation of the agency's special schools business office. If employees designated by the Board of the Texas School for the Blind to staff the campus business office are selected from among Central Education Agency staff assigned to its special schools business office, there shall be no reduction in the total number of business office staff employed on the payroll of the Central Education Agency unless the Board of Education, on recommendation of the Commissioner of Education, determines that a reduction in force is necessary for reasons unrelated to the establishment of a campus business office at the Texas School for the Blind. If employees designated by the Board of the Texas School for the Blind to staff the campus business office are selected from positions other than those presently existing in the special schools business office of the Central Education Agency, there shall be a reduction in the staff of the special schools business office proportionate to the cost of establishing the campus business office at the Texas School for the Blind.

(c) Appropriate classification levels of staff assigned to the campus business office of the Texas School for the Blind shall be determined by the Commissioner of Education, following recommendations offered by the superintendent and following consultation with the State Classification Officer. The state comptroller shall pay the salaries of the employees of the campus business office on receipt of a letter from the State Classification Officer.

(d) The staff of the campus business office of the Texas School for the Blind shall assist the superintendent in preparing and executing the school's operating budget, in preparing and defending the school's future budget requests before the State Board of Education and the legislature, and in developing and administering such grant proposals as

might from time to time be submitted by the Texas School for the Blind to the federal government, other state agencies, and private organizations, subject only to such general policies as might be prescribed by the Board of the Texas School for the Blind.

(e) Requisitions and vouchers duly issued by the campus business office of the School for the Blind to the State Board of Control and to the state comptroller shall be honored by the State Board of Control and the state comptroller.

(f) With the concurrence of the superintendent and Board of the Texas School for the Blind, the campus business office may enter into such contractual arrangements as seem economical, efficient, and feasible regarding the use of electronic data processing equipment, cooperative arrangements for plant maintenance and groundskeeping, shared use of staff and physical plant, and related matters.

[Added by Acts 1975, 64th Leg., p. 2395, ch. 734, § 20, eff. June 21, 1975.]

§ 11.063. Staffing and Funding of School for the Blind

(a) With the concurrence of the Board of the Texas School for the Blind, the superintendent is authorized to adopt a salary structure for the Texas School for the Blind with maximum levels not to exceed an amount equivalent to the maximum salary levels of the five local independent school districts offering the highest salaries, and not less than those of the Austin Independent School District, including consideration of employee benefits, being paid to staff employed for the special education of children with severely disabling handicaps.

(b) The funding of the Texas School for the Blind shall consist of:

(1) such amounts as might be specifically appropriated to the Texas School for the Blind by the legislature;

(2) such sums as which the Central Education Agency might make available to the Texas School for the Blind pursuant to other provisions of this code;

(3) budgets developed through contracts and agreements;

(4) amounts received through gifts and bequests; and

(5) payments from local school districts in an amount equivalent to the amount of ad valorem tax collections which would have been expended on each child sent to the Texas School for the Blind from within its geographical boundaries had the child been enrolled in a program of special education offered by the local independent school district.

(c) All amounts whatsoever and howsoever received by the Texas School for the Blind are hereby appropriated for expenditure in relation to the functions and purposes of the Texas School for the Blind as set forth in Section 11.06 of this code.

[Added by Acts 1975, 64th Leg., p. 2394, ch. 734, § 20, eff. June 21, 1975.]

§ 11.071. Travel and Clothing Expenses for Certain Blind Students

Economically deprived children attending the Texas School for the Blind shall be entitled to the same clothing and travel benefits as are allowed under Section 11.051 of this code for economically deprived children attending the Texas School for the Deaf. [Added by Acts 1975, 64th Leg., p. 2397, ch. 734, § 22, eff. June 21, 1975.]

§ 11.08. Medical Services for the Texas School for the Blind

Appropriate ophthalmological or optometric services shall be provided to examine and treat all students at the Texas School for the Blind in relation to their ophthalmic needs. Other specialty medical and psychological services shall be provided as needed. [Amended by Acts 1975, 64th Leg., p. 2397, ch. 734, § 21, eff. June 21, 1975.]

§ 11.091. Diagnostic and Evaluation Center

(a) With the advice of its technical advisory council, the Governor's Coordinating Office for the Visually Handicapped shall establish a comprehensive diagnostic and evaluation center and program in Austin for multiply handicapped blind children and youth. The center shall be operated on a cooperative, interagency basis under the general coordination of the Governor's Coordinating Office for the Visually Handicapped.

(b) To the maximum extent feasible and practicable, the diagnostic and evaluation center shall utilize resources available in the Austin area through the State Commission for the Blind, the Texas School for the Blind, the Criss Cole Rehabilitation Center, the State Department of Mental Health and Mental Retardation, the University of Texas, and other public or private organizations in the area.

(c) The purposes and functions of the diagnostic and evaluation center are:

(1) to provide thorough diagnostic studies of multiply handicapped blind children and youth, to determine the nature and scope of special education and related services needed by the individuals, which studies shall at the minimum consist of a comprehensive evaluation of pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs and which bear on the types of

special services the individual needs in order to obtain maximum benefits from educational services;

(2) to develop scientifically valid instruments, methodologies, and procedures for measuring in a useful and meaningful manner the total developmental assets and deficiencies that relate to the capacity of a multiply handicapped blind child or youth to benefit from educational programs and to prepare for a full and useful life as an independent, contributing member of society;

(3) to test, develop, demonstrate, and help implement concepts, formats, and processes for establishing, executing, periodically reviewing, and from time to time modifying individualized written service plans for all blind or visually handicapped children or youth participating in educational programs within the State of Texas;

(4) to stimulate and assist in the development of more adequate diagnostic and evaluative resources in other communities for blind and visually handicapped children and youth throughout the state, experimenting with a variety of new and innovative methods for providing such diagnostic and evaluative services at the community level with a view toward ultimately assuring timely and convenient access to the diagnostic and evaluative resources required for developing and carrying out individualized service plans with optimum effectiveness; and

(5) to develop new and innovative methods for applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve the educational problems of blind and visually handicapped children or youth.

(d) The costs of the comprehensive diagnostic and evaluation center and program, including initial costs of establishment and recurrent costs of operation, shall be defrayed through such sums as the legislature might appropriate for these purposes, through such grants, gifts, bequests, and donations as the cooperating agencies might receive for the establishment and support of the center and program, through reasonable fees charged to organizations requesting diagnostic and evaluative services for multiply handicapped blind children and youth, and through such budgets as might be developed by the cooperating agencies with interagency contracts.

(e) Every blind or visually handicapped individual eligible for educational services through preschool, kindergarten, elementary, secondary, or vocational-technical programs within the State of Texas shall receive the educational programs according to an individualized written service plan which:

(1) shall be developed following adequate diagnosis and evaluation of all pertinent medical,

psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs;

(2) shall be jointly developed by a representative of an educational program who is qualified and experienced in working with individuals handicapped by serious visual loss, by the blind or handicapped individual and his parent or guardian, and by representatives of other public or private organizations providing or capable of providing specialized services which tend to assure greater effectiveness of the educational effort exerted in behalf of the blind or visually handicapped individual;

(3) specifies in measurable terms the goals and objectives to be accomplished as a result of the educational and specialized services to be provided by the various organizations working with the blind or visually handicapped individual;

(4) specifies the time by which each service is to be initiated, the anticipated duration of each service, and the time within which the objectives and goals of the services might be achieved;

(5) contains a procedure and schedule for periodic review and evaluation of progress toward established objectives and goals based on objective criteria and contains a record of the reviews and evaluations;

(6) summarizes the views of the blind or visually handicapped individual, or, as appropriate, his parent or guardian or other representative concerning his goals and objectives and the special services being provided;

(7) outlines the obligations undertaken by the individual's family in connection with the individualized written service plan, including family commitments regarding physical restoration services, procurement of optical aids, and related services;

(8) provides assurances that the blind or visually handicapped individual has been informed of his rights and the means by which he may express and seek remedy for his dissatisfactions, including but not limited to procedures for utilizing the ombudsman services of the Governor's Coordinating Office for the Visually Handicapped;

(9) reflects that the individual has been provided a detailed explanation of the various service resources available to him within the community and throughout the state;

(10) reflects that the individualized written service plan has been reviewed as frequently as necessary, but in no event less than once annu-

ally, by competent educational authorities, representatives of cooperating organizations, the individual and his parent or guardian, and that the plan has been modified, refined, or redeveloped in a manner consistent with determinations made through such review;

(11) describes in detail the arrangements made to provide the blind or visually handicapped individual with orientation and mobility training, instruction in Braille or use of large print, other training to compensate for serious visual loss, access to special media, and special tools, appliances, aids, or devices commonly utilized by individuals with serious visual losses; and

(12) sets forth the plans and arrangements made for contacts with and continuing services to the blind or visually handicapped individual during periods in which he might not be involved in school programs.

(f) Whenever services are terminated under an individualized written service plan on the basis that the handicapped individual is not capable of benefitting from educational services, the following conditions and procedures must be met or carried out:

(1) the decision shall be made only with the full participation of the blind or visually handicapped individual, his parent or guardian, and representatives of other organizations in the area in which the individual resides who are also providing services to the individual;

(2) the rationale for the decision shall be recorded as an amendment to the individualized written service plan, certifying that the concerted provision of educational and related services has demonstrated beyond reasonable doubt that the individual is not capable of benefitting from educational services;

(3) a copy of the individualized written service plan and the certification that the individual is not capable of benefitting from educational services will be sent to the Governor's Coordinating Office for the Visually Handicapped for review and further investigation, following which, if it is determined that the termination of services is appropriate and justified, recommendations and referrals will be offered to the blind or visually handicapped individual and his parent or guardian regarding services to be considered through residential school programs, other state institutions, community facilities operated by the State Department of Mental Health and Mental Retardation, or other resources as appropriate to the case and as accessible to the individual's parents or guardian;

(4) until such time as when the individual whose written plan of services has been terminated attains the age of 21 years and is referred

for consideration for vocational rehabilitation services, there shall be at least an annual review of the individual's case, during which the individual and his parent or guardian will be afforded clear opportunity for full consultation in the reconsideration of the determination that the individual is incapable of benefitting from educational services, except in situations where a periodic review is precluded because the individual has refused services or has refused a periodic review, or is no longer present in the state or cannot be located, or has a medical condition that is rapidly progressive or terminal.

[Added by Acts 1975, 64th Leg., p. 2383, ch. 734, § 13, eff. June 21, 1975.]

§ 11.10. Special Day Schools for the Deaf

[See *Compact Edition, Volume 1 for text of (a) to (r)*]

(s) Operating costs for the program in each regional day school program for the deaf shall be determined and paid on the following basis:

(1) An estimated allocation of \$2,700 for each student enrolled in the program of the regional day school program for the deaf in any current year.

(2) Considering that the professional leadership represented in the new positions of Director of Deaf Education and regional superintendents is vital to the effect of this Act, salaries for these positions shall permit recruitment and retention of properly qualified persons.

(3) Teachers, principals, supervisors, counselors, para-professional and supporting personnel shall be employed in such numbers as the Central Education Agency finds to be necessary to establish and operate the regional day school programs for the deaf, and such numbers shall not be less than student-professional ratios known to be requisite for success in education of deaf children. Salaries of all personnel employed in the regional day school programs for the deaf shall be determined in accordance with policies established by the State Board of Education.

[See *Compact Edition, Volume 1 for text of (t) and (u)*]

[Amended by Acts 1975, 64th Leg., p. 1401, ch. 542, § 1, eff. June 19, 1975.]

§ 11.102. Supplemental Allowances for Exceptional Expenses of Blind Education

From the Foundation School Fund there shall be made available a special supplemental allowance for each blind student or for each student with a serious visual handicap and another medically diagnosed handicap of a significantly limiting nature, who is receiving special education services through any ap-

proved program whatsoever. The amount of the special supplemental allowance for each blind student or for each such multiply handicapped student shall be equivalent to the special allocation for deaf students enrolled in regional day school programs, as authorized by Paragraph (1), Subsection (s), Section 11.10 of this code. The supplemental allowances may be expended only for special services uniquely required by the nature of the student's handicap and may not be used in lieu of educational funds otherwise available under this code and through state or local appropriations.

[Added by Acts 1975, 64th Leg., p. 2382, ch. 734, § 10, eff. June 21, 1975.]

§ 11.161. Educational Programs for Blind Adults

The Central Education Agency shall establish and develop a state program for the education of blind adults, according to the same criteria, standards, and guidelines as used in providing educational services to the adult deaf pursuant to Section 11.16 of this code.

[Added by Acts 1975, 64th Leg., p. 2399, ch. 734, § 24, eff. June 21, 1975.]

§ 11.18. Adult Education

(a) As used in this section, the following words and phrases shall have the indicated meanings:

(1) "Adult education" means services and instruction provided by public local education agencies below the college credit level for adults.

(2) "Adult" means any individual who is over the age of compulsory school attendance as set forth in Section 21.032 of this code.

(3) "Community education" means the concept which involves the people of the community in a program designed to fulfill their educational needs, while promoting more effective use of public education facilities and other public facilities for the purpose of providing recreational, cultural, and other related community services.

(b) The Central Education Agency shall:

(1) manage this program with adequate staffing to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for education and training of adults;

(2) develop, implement, and regulate a comprehensive statewide program for community level education services to meet the special needs of adults;

(3) develop the mechanism and guidelines for coordination of comprehensive adult education and related skill training services for adults with other agencies, both public and private, in

planning, developing, and implementing related programs, including community education programs;

(4) administer all state and federal funds for adult education and related skill training in Texas;

(5) prescribe and administer standards and accrediting policies for adult education;

(6) prescribe and administer rules and regulations for teacher certification for adult education; and

(7) accept and administer grants, gifts, services, and funds from available sources for use in adult education.

[See Compact Edition, Volume 1 for text of (c) and (d)]

(e) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in Texas and to implement and support a statewide program to meet the total range of adult needs for adult education, related skill training, and pilot programs to demonstrate the effectiveness of the community education concept using not more than five percent of the funds allocated for adult education. An additional sum of money may be appropriated for the purpose of skill training in direct support of industrial expansion and start-up, in those locations, industries, and occupations designated by the Texas Industrial Commission, when such training is also in support of the basic purposes of this section.

[Amended by Acts 1975, 64th Leg., p. 466, ch. 200, § 1, eff. May 15, 1975.]

§ 11.19. Educational Programs for Gifted and Talented Students

(a) The Central Education Agency shall establish a program for the provision of educational opportunities for gifted and talented students commensurate with their capabilities for learning and their special talents.

(b) As used in this section, the term "gifted and talented students" means students with extraordinary learning or leadership ability or outstanding talent in the creative or vocational arts whose development requires programs or services beyond the level of those ordinarily provided in regular school programs.

(c) The commissioner shall appoint a full-time director of programs for the gifted and talented. The director, with the approval of the State Board of Education, shall develop and annually update a statewide plan for the provision and coordination of programs for the gifted and talented. The plan shall include the following:

(1) the development of criteria for the identification of gifts and talents of students;

(2) the development and intraagency coordination of instructional programs and techniques designed to meet the individual needs of gifted and talented students in all educational fields;

(3) the development of training programs for professional personnel involved with the education of gifted and talented students;

(4) coordination of all state, federal, and local resources available for the education of the gifted and talented; and

(5) a statement of the objectives of the program, the methods to be used in obtaining the objectives, and the methods to be used in assessing the results.

(d) There shall be an advisory council on the education of the gifted and talented composed of nine citizens of the state who have demonstrated a competence for and an interest in the development of programs for the gifted and talented. Four members of the council shall be appointed by the governor, and five members shall be appointed by the commissioner with the approval of the State Board of Education. Council members serve for terms of two years without compensation but are entitled to reimbursement for actual expenses incurred in carrying out the work of the council. Council members shall select a chairman who shall convene the council not less than four times a year. The director shall designate an employee of his office to act as executive secretary of the council and shall furnish all clerical assistance necessary for the council to carry out its responsibilities.

The council shall assist the director in developing the state plan for the education of the gifted and talented. The director shall present all proposed rules and regulations relating to the program to the council for their review and comment prior to submitting the rules and regulations to the State Board of Education for their approval.

(e) The commissioner may appoint regional advisory councils on the education of the gifted and talented in each of the regional service centers to assist in the implementation of the state program at the local level.

(f) The director, with the approval of the State Board of Education, may establish demonstration programs for the education of gifted and talented students in various regions of the state. The cost per student of the programs over and above the cost per student covered by the Minimum Foundation School Program in each district shall be borne by the state and each participating district on the same percentage basis applicable to financing the Foundation School Program within the district. The total cost to the state for all demonstration programs conducted during each academic year may not exceed \$500,000. The state's share of the cost shall be paid from the Foundation School Program Fund and

shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

A school district or a combination of school districts desiring to participate in a demonstration program for the education of the gifted and talented shall submit to the director a detailed plan describing the gifted or talented students to be served, the objectives and methods of obtaining the objectives for the proposed program, and the method of assessing the results of the program. All proposed demonstration programs shall be reviewed by the advisory council on the education of the gifted and talented prior to submission to the State Board of Education for approval.

[Added by Acts 1975, 64th Leg., p. 2298, ch. 716, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER B. STATE BOARD OF EDUCATION

§ 11.24. General Powers and Duties

(a) The State Board of Education is the policy-forming and planning body for the public school system of the state. It shall also be the State Board for Vocational Education and as such, the board shall have all the powers and duties conferred on it by the various statutes relating to the State Board for Vocational Education. The State Board of Education (State Board for Vocational Education) may contract with the Coordinating Board, Texas College and University System, so that the coordinating board may assume the leadership role and administrative responsibility of the State Board for Vocational Education for state level administration of technical-vocational education programs in Texas public community colleges, public technical institutes, and other eligible public postsecondary institutions.

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

[Amended by Acts 1975, 64th Leg., p. 2057, ch. 676, § 4, eff. June 20, 1975.]

§ 11.27. Providing for Deaf and Blind, Totally Blind and Nonspeaking, and Other Multiply Handicapped Persons

(a) For the purposes of this section, unless the context otherwise requires,

(1) "totally deaf and blind person" means a person having such defects of hearing and sight that in the opinion of the board he may not be cared for, treated, or educated in the manner provided elsewhere in this code for the deaf or blind;

(2) "totally blind and nonspeaking person" means a person having such defects of sight and speech that in the determination of the board he may not be cared for, treated, or educated in the manner provided elsewhere in this code for the blind or nonspeaking; and

(3) "multiply handicapped person" means a person with a combination of handicapping conditions which, in the determination of the board, prevent him from being cared for, treated, or educated in the manner provided elsewhere in this code for the multiply handicapped.

(b) The State Board of Education may provide for the maintenance, care, and education of persons under the age of 21 years who are totally deaf and blind, totally blind and nonspeaking or multiply handicapped.

(c) The board may accept such persons on application of the parent or guardian and may require reimbursement for the cost of their maintenance, care, and education as is provided by law for other deaf and blind, blind and nonspeaking, or multiply handicapped persons.

(d) The board may negotiate and enter into contracts with public or private institutions inside or outside 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, totally blind and nonspeaking or multiply handicapped; it may also provide maintenance, the necessary attendants, and transportation to and from such institution for such persons. The costs of these services may be paid from appropriations made to the Central Education Agency for the care of persons who are totally deaf and blind, totally blind and nonspeaking, or multiply handicapped.

[Amended by Acts 1975, 64th Leg., p. 1032, ch. 398, § 1, eff. June 19, 1975.]

§ 11.32. Regional Education Media Centers

[See Compact Edition, Volume 1 for text of (a) to (i)]

(j) The state shall allot and pay to each approved center annually an amount determined on the basis of not to exceed \$1 per scholastic in average daily attendance for the next preceding school year in the district or districts that are participants in an approved center. The funds or amount provided by the state shall be used only to purchase, maintain, and service educational media or equipment for the center which have had prior approval of its Regional Media Board and the Central Education Agency through its budgetary system.

[See Compact Edition, Volume 1 for text of (k) to (m)]

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 7, eff. Sept. 1, 1975.]

§ 11.33. Regional Education Service Centers

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Basic costs for the provision of regional education services to school districts and coordination of educational planning in the region and for administrative costs necessary to support these services shall be paid from the Foundation School Program under a formula developed by the state commissioner of education and approved by the State Board of Education. Such allotment amounts here authorized to be granted by the State Board of Education shall not exceed in any year a sum equal to \$3 multiplied by the average daily attendance in the public schools of Texas as determined for the next preceding school year.

[See *Compact Edition, Volume 1 for text of (d) to (g)*]

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 8, eff. Sept. 1, 1975.]

CHAPTER 12. TEXTBOOKS

SUBCHAPTER C. LOCAL OPERATIONS

§ 12.63. Title, Custody, and Disposition

[See *Compact Edition, Volume 1 for text of (a) to (e)*]

(f) Pursuant to rules and regulations promulgated by the State Board of Education, the commissioner of education shall make available on request copies of discontinued textbooks for use in libraries maintained in city and county jails, institutions within the Department of Corrections, and other state agency institutions.

[Amended by Acts 1975, 64th Leg., p. 46, ch. 25, § 1, eff. Sept. 1, 1975.]

CHAPTER 13. TEACHERS

SUBCHAPTER B. CERTIFICATION OF TEACHERS

§ 13.032. Rules and Regulations

[See *Compact Edition, Volume 1 for text of (a) and (b)*]

(c) In developing standards for programs in teacher education, the board shall provide each approved institution with a statement of the general qualifications required for each area of specialization for which a teaching certificate is authorized. The board may not require an institution to teach a particular doctrine or to conduct instruction on the basis of, or in accordance with, any particular pedagogical method, whether expressed in terms of behavioral or performance-based objectives, competencies, or other explicit assessment devices. A person who has been granted a degree upon completing a teacher-training program at an approved college or university for teacher education is entitled to an

appropriate teaching certificate, provided he meets all other standards required by this code.

[Amended by Acts 1975, 64th Leg., p. 1815, ch. 551, § 1, eff. Sept. 1, 1975.]

CHAPTER 14. SCHOLASTIC CENSUS [REPEALED]

Chapter 14, Scholastic Census, was repealed by Acts 1975, 64th Leg., p. 6, ch. 4, § 1.

§§ 14.01, 14.02. Repealed by Acts 1975, 64th Leg., p. 6, ch. 4, § 1, eff. Feb. 13, 1975

§§ 14.07 to 14.09. Repealed by Acts 1975, 64th Leg., p. 6, ch. 4, § 1, eff. Feb. 13, 1975

CHAPTER 15. STATE FUNDS FOR THE SUPPORT OF PUBLIC SCHOOLS

§ 15.12. Use of Available School Fund

[See *Compact Edition, Volume 1 for text of (a) and (b)*]

(c) The responsibility of a school district to participate in the costs of providing special education services to physically or mentally handicapped children domiciled within its geographical boundaries is not abated by a determination that it would be useless or inconsistent with the child's best interests to attend the regular classrooms or special educational facilities of the school district, and a school district's eligibility for state funds through the Foundation School Program established in Chapter 16 of this code¹ is conditioned on the school district's making available, in accordance with regulations of the Central Education Agency and for the purpose of assuring equal educational opportunities for handicapped children domiciled within the school district's geographical boundaries, a sum of money derived from local ad valorem property tax collections which is for each handicapped child at least equivalent to the average amount expended from local ad valorem property collections on each child regularly enrolled in the educational programs operated by the school district.

[Amended by Acts 1975, 64th Leg., p. 2378, ch. 734, § 3, eff. June 21, 1975.]

¹Section 16.001 et seq.

CHAPTER 16. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 16.001. State Policy.
- 16.002. Purpose of Foundation School Program.
- 16.003. Student Eligibility.
- 16.004. Scope of Program.
- 16.005. Administration of the Program.

SUBCHAPTER B. REQUIREMENTS FOR DISTRICT PARTICIPATION IN THE FOUNDATION SCHOOL PROGRAM FUND

- 16.051. Required Compliance.
- 16.052. Operation of Schools.
- 16.053. Accreditation.
- 16.054. Student/Teacher Ratios.
- 16.055. Compensation of Professional and Paraprofessional Personnel.
- 16.056. Texas Public Education Compensation Plan.

SUBCHAPTER C. PERSONNEL SUPPORT COMPONENT

- 16.101. Personnel Support: General Rules.
- 16.102. Regular Education Program Personnel.
- 16.103. Vocational Personnel Units.
- 16.104. Comprehensive Special Education Program for Exceptional Children.
- 16.161. Responsiveness to Special Needs of Blind and Deaf Children.

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Chapter 16, formerly consisting of Sections 16.01 to 16.98, was amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, to consist of Sections 16.001 to 16.304.

DISPOSITION TABLE

Showing where provisions of former Chapter 16 (Sections 16.01 to 16.98) are now covered in Sections 16.001 to 16.304 and elsewhere in the Education Code.

Former Sections	New Sections	Former Sections	New Sections
16.01	16.002	16.310	16.055(b)
16.02	—	16.311	—
16.03	—	16.312	16.056(a)
16.04	16.003		16.056(b)
	16.102	16.313	16.056(c)
16.07	—	16.314	—
16.08	21.913	16.315	—
16.11	16.101	16.316	16.056(d)
	16.102	16.45	16.151
16.12	—		16.152
16.13	16.102(c)	16.51	16.201
16.14	16.103	16.52	16.202
16.15	—	16.53	16.203
16.16	16.104	16.54	16.204
16.17	—	16.55	16.205
to	—	16.56	16.206
16.19	—	16.57	16.207
16.21	—	16.58	16.208
16.22	—	16.59	16.209
16.301(a)	16.055(a)	16.60	16.210
16.301(b)	—	16.61	16.211
to	—	16.62	—
16.301(d)	—	16.63	16.212
16.302	—	16.71	16.251
to	—	16.711	—
16.309	—		

Former Sections	New Sections	Former Sections	New Sections
16.72		16.85	16.255
to		16.861	21.008(b)
16.76	-----	16.862	21.008(a)
	16.256	16.863	21.008(c)
16.77	-----	16.864	21.008(d)
16.78	-----		to
16.79(a)	-----		21.008(g)
16.79(b)		16.971	
to		to	
16.79(d)	-----	16.975	-----
	16.254	16.98	-----
16.80	-----		
	19.246		
16.81	-----		
	19.247		
16.82	-----		

SUBCHAPTER A. GENERAL PROVISIONS

§ 16.001. State Policy

It is the policy of this state that each student enrolled in the public school system shall have access to programs and services that are appropriate to his educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

The 1975 Act, which by §§ 1 to 9 revised this Chapter 16 and made other conforming amendments, provided in §§ 10 to 15:

"Sec. 10. (a) The governor shall conduct a study to determine methods of allocating state funds to school districts which will insure that each student of this state has access to programs and services that are appropriate to his educational needs regardless of geographical differences and varying local economic factors. The Lieutenant Governor, the Speaker of the House, and the Chairmen of the following committees; the Senate Finance Committee, the House Ways and Means Committee, the Senate Education Committee, and the House Public Education Committee, shall advise and consult on all aspects of the study.

"(b) The study shall include a determination of each school district's ability to support public education based on the value of taxable property in the district. The determination shall be made in accordance with the provisions of relevant Acts of the 64th Legislature, Regular Session. All records and property of the Legislative Property Tax Committee are hereby transferred to the governor to assist him in carrying out the study.

"(c) In conducting the study, the governor may require state agencies and school districts to submit any information deemed relevant to the purposes of the study. The Legislative Council and the Legislative Budget Board and all other state agencies shall cooperate with the governor's office in the conduct of the study.

"(d) The governor shall submit a summary of his recommendations and proposed legislation to implement them to each member of the legislature not later than November 1, 1976.

"(e) There is hereby appropriated to the governor from the General Revenue Fund for the biennium ending August 31, 1977, the sum of \$5,000,000 to carry out the provisions of this section.

"(f) The provisions of this section expire August 31, 1977."

"Sec. 11. Article 7100, Revised Civil Statutes of Texas, 1925, as amended, is repealed."

"Sec. 12. (a) The Legislative Budget Board shall conduct a performance audit and evaluation to determine that the methods by which state funds are allocated to vocational and special education programs are consistent with the objectives of the programs.

"(b) The State Board of Education in cooperation with the Legislative Budget Board shall develop appropriate criteria, including cost-effective or performance-based criteria, or both, for funding and evaluation of vocational and special education programs.

"(c) The Legislative Budget Board shall recommend funding levels for the programs at the beginning of each regular session of the legislature which will insure adequate delivery of services."

"Sec. 13. (a) Not later than July 15, 1975, the governor shall transmit to the commissioner of education the Official Compilation of 1974 School District Market Value Data prepared by his office with all necessary adjustments and corrections which the facts warrant.

"(b) The commissioner of education shall appoint a review panel consisting of five persons representing different areas of the state who are knowledgeable in the field of property taxation to review all questions relating to the property values reported for school districts in the official compilation and to recommend necessary adjustments based on factual evidence to the commissioner.

"(c) Members of the review panel are entitled to compensation of \$75 per day and reimbursement for actual and necessary expenses incurred in carrying out their duties.

"(d) There is hereby appropriated to the commissioner of education from the General Revenue Fund for the biennium ending August 31, 1977, the sum of \$200,000 to carry out the provisions of this section."

"Sec. 14. This Act takes effect on September 1, 1975, except that the section amending the Texas Unemployment Compensation Act and the section providing for the adjustments and corrections of the Official Compilation of 1974 School District Market Value Data take effect immediately."

"Sec. 15. If any provision of this Act or the application thereof to any person or circumstance is declared invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable."

§ 16.002. Purpose of Foundation School Program

The purpose of the Foundation School Program set forth in this chapter is to guarantee that each school district in the state has adequate resources to provide each eligible student a basic instructional program suitable to his educational needs.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.003. Student Eligibility

A student is entitled to the benefits of the Foundation School Program if he is 5 years of age or older and under 21 years of age at the beginning of the scholastic year and has not graduated from high school. A child is not eligible for enrollment in the first grade unless he is at least six years of age at the beginning of the scholastic year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.004. Scope of Program

Under the Foundation School Program, a school district may receive state financial aid for minimum personnel salaries, current operating expenses, categorical program aid, and transportation services. The amount of state aid to each school district shall be based on the district's ability to support its public schools.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.005. Administration of the Program

The commissioner of education, with the approval of the State Board of Education, shall take such action, require such reports, and make such rules

and regulations consistent with the terms of this chapter as may be necessary to implement and administer the Foundation School Program.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

[Sections 16.006 to 16.050 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS FOR DISTRICT PARTICIPATION IN THE FOUNDATION SCHOOL PROGRAM FUND

§ 16.051. Required Compliance

In order to receive financial support from the Foundation School Fund, a school district must comply with the standards set forth in this subchapter. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.052. Operation of Schools

Each school district must operate its schools each year for not less than 180 school days. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.053. Accreditation

Beginning with the 1977-1978 school year each school district must be accredited by the Central Education Agency. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.054. Student/Teacher Ratios

Each school district must employ a sufficient number of certified teachers to maintain an average

ratio of not less than one teacher for each 25 students in average daily attendance.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.055. Compensation of Professional and Paraprofessional Personnel

(a) A school district must pay each employee who is qualified for and employed in a position classified under the Texas Public Education Compensation Plan set forth in Section 16.056 of this chapter not less than the minimum monthly base salary, plus increments for teaching experience, specified for the position.

(b) Salaries shall be paid on the basis of a minimum of 10 months' service, which must include 180 school days plus not more than 10 days of inservice training and preparation. Personnel employed for more than 10 months shall be paid not less than the minimum monthly base pay plus increments for experience for each month of actual employment. Personnel employed for 11 months must render 210 days of service, and personnel employed for 12 months must render 230 days of service.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.056. Texas Public Education Compensation Plan

(a) School district personnel who are qualified for and employed in positions described in Subsection (b) of this section shall be paid not less than the monthly base salary, plus increments for teaching experience, for the applicable pay grade in the following salary schedule.

SALARY BY STEPS ABOVE BASE

Pay Grade	Personnel Unit Value	Base Monthly Salary	1	2	3	4	5	6	7	8	9	10
1	.50	\$ 430	\$ 445	\$ 461	\$ 478	\$ 495	\$ 513	\$ 532	\$ 552	\$ 573	\$ 595	\$ 618
2	.60	490	508	527	547	568	590	613	637	662	689	717
3	.75	580	603	617	652	678	705	734	764	796	829	864
4	.80	610	634	659	685	713	742	773	805	839	874	911
5	.90	670	697	725	755	786	819	853	889	927	967	1009
6	.95	700	729	759	790	823	858	894	932	972	1014	1058
7	1.00	800	830	862	895	930	967	1005	1045	1087	1131	1178
8	1.00	860	895	930	967	1005	1045	1087	1131	1178	1227	1278
9	1.15	890	925	961	999	1039	1081	1125	1171	1220	1271	1325
10	1.20	920	956	994	1034	1076	1120	1166	1214	1265	1318	1374
11	1.25	950	988	1027	1068	1111	1157	1205	1255	1308	1363	1421
12	1.30	980	1019	1060	1103	1148	1195	1245	1297	1352	1410	1470
13	1.40	1040	1082	1126	1172	1221	1272	1326	1382	1441	1503	1568
14	1.50	1100	1145	1192	1242	1294	1349	1406	1466	1529	1595	1665
15	1.75	1250	1303	1358	1416	1477	1541	1608	1678	1752	1830	1912
16	2.00	1400	1460	1523	1589	1658	1731	1808	1888	1972	2061	2154
17	2.25	1550	1618	1689	1763	1841	1923	2009	2099	2194	2294	2399
18	2.50	1700	1775	1854	1937	2024	2115	2211	2312	2418	2529	2645

For the 1975-76 school year each individual shall be placed in the salary step immediately above the one occupied during the 1974-75 school year and shall advance one step for each year of experience thereafter until the maximum is reached.

(b) The position descriptions, required preparation | authorized for each position under the Texas Public
and education, and number of monthly payments | Education Compensation Plan are as follows:

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
1	10	Aide I	Assist teacher by duplicating materials; performing clerical operations; supervising students in routine drills or in P. T. drills or lunchroom supervision. Assist in office procedures at file clerk level.	Some high school, community ties. High school graduate.
2	10	Aide II	Assist teacher in class drill exercises, in spotting student problems or problem students; perform functions of Aide I, as needed. Perform stenographic, book-keeping, and other clerical functions.	High school graduate. High school graduate and business college training.
3	10	Aide III	Assist teacher in most routine drill of students; work in team teaching productively. Perform as an 'Assistant Teacher' under direction of qualified teacher. Perform secretarial, high-level receptionist, junior accounting, personnel assistant, campus principal secretary, etc.	2 years college or experience equivalent. 2 years college plus business training.
4	10	Teacher Trainee I	Emergency Permit Teacher without degree, but with personal traits needed to function in the classroom. Teaches students under frequent supervisory check by principal, grade-level or department head.	Minimum 2 years college, normally no less than 3 years college.
5	10	Teacher Trainee II	Emergency Permit Teacher with college degree but deficiencies in educational preparation in professional or academic background. Teaches students under frequent supervisory check by principal, grade-level or department head.	College degree but certain educational deficiencies.
5	10	Certified Non-degree Teacher	Teach at grade level or in teaching field for which prepared, under general supervision only.	Fully certified as teacher, but no college degree.
7	10	Nurse, R.N.	School nurse without degree.	R.N. (only)
7	10	Teacher, B.A.	Teach at grade level or in teaching field for which prepared, under general supervision only.	Degree, no deficiency in professional education or in teaching field. Fully certified.

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
7	10 11 12	Vocational Teachers	Teach in approved vocational program.	Bachelor's degree; certified, or approved by State Board of Vocational Education.
7	10	Librarian I	Supervise school library or function as one of several librarians on a major campus.	Degree; certified.
7	10	Visiting Teacher I	Works on personal, educational, family, and community problems with children, parents, school personnel, and community agencies.	Degree; certified.
7	10	Nurse, B.A.	School nurse.	R.N. Degree; certified.
8	10	Teacher, M.A.	Teach at grade level or in teaching field for which prepared, under general supervision only.	Master's degree; fully certified.
8	10 11 12	Vocational Teacher	Teach in approved vocational program.	Master's degree; certified.
8	10	Librarian II	Supervise school library or function as one of several librarians on a major campus.	Master's degree; fully certified.
8	10	Physician	Serve as school physician.	M.D. degree.
8	10	Visiting Teacher II	Works on personal, educational, family and community problems with children, parents, school personnel, and community agencies.	Master's degree; certified.
9	10	Special Duty Teacher	Teach regular load at grade level or in teaching field for which prepared, under general supervision only, and perform special duty as sponsor of major student program; serve as cooperating teacher for student teacher; direct after-hour recreation or "lighted library"; serve as team leader in team teaching; direct band or major music group; serve as coach or assistant coach.	Fully certified as teacher and special training for special duty assignment and holder of master's degree.
10	10	Counselor I	Provide guidance services to students with limited personal guidance.	Fully certified.
10	10	Supervisor I	Provide consultant services to teachers in a grade level or adjacent grades or in a teaching field or group of related fields.	Fully certified.
10	10	Instructional Officer I	Serve as part-time principal on campus with 19 or fewer teachers.	Certified as administrator.
10	10	Administrative Officer I	Serve as principal functional assistant to superintendent in system of 5,000 ADA or less.	College degree with major or minor in assignment.

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
11	10	Instructional Officer II	Serve as part-time principal on campus with 20 or more teachers.	Certified as administrator.
11	10	Administrative Officer II	Serve as principal functional assistant to superintendent in system of 5,001-12,500 ADA.	Same as Administrative Officer I plus experience in function.
12	10	Teacher Leader	(1) as grade-level head, department head, coordinate work of minimum of five teachers; or (2) as director of learning or resource center provide instructional leadership to minimum of 10 classroom teachers.	Fully certified as teacher; usually would have special training in assignment.
12	11	Instructional Officer III	Serve as full-time principal on campus with 19 or fewer teachers.	Fully certified as administrator.
12	10	Administrative Officer III	Direct major administrative activity in a system of 12,501-25,000 ADA.	Same as Administrative Officer I plus minimum 2 years' related experience.
13	11	Instructional Officer IV	Serve as full-time principal on campus with 20-49 teachers.	Fully certified as administrator.
13	11	Instructional Officer IV	Serve in a system of 12,501-25,000 ADA under an assistant superintendent as key specialist for major instructional program.	Fully certified as administrator or in suitable specialty.
13	12	Administrative Officer IV	Serve in capacity comparable to Instructional Officer IV above.	Same as Administrative Officer I plus 3 years' experience in function.
14	11	Instructional Officer V	Serve as full-time principal on campus with 50-99 teachers.	Fully certified as administrator.
14	12	Instructional Officer V	Serve as full-time principal on campus with 100 or more teachers.	Fully certified as administrator.
14	12	Administrative Officer V	Serve as superintendent of system of 3,000 ADA or less.	Fully certified as administrator.
14	12	Instructional/Administrative Officer V	(1) Serve as assistant superintendent in system of 12,501-25,000 ADA or one of several in larger system; (2) serve in system of 25,001-50,000 ADA to direct (under an assistant superintendent) major instructional function.	Fully certified as administrator or in specialty.
14	12	Administrative Officer V	Serve in administrative capacity of comparable level as above in personnel, business, accounting, planning, research, etc.	Same as Administrative Officer I plus 5 years' related experience.
15	12	Administrative Officer VI	Serve as superintendent in system of 3,001-5,000 ADA.	Fully certified as administrator.

Pay Grade	No. Mos. Paid	Class Title	Description of Positions Assigned to Class Title	Required Preparation and Education
15	12	Instructional/ Administrative Officer VI	Serve as assistant superintendent or high-level director for major program (such as instruction, business manager, personnel director, research, planning) in system of 25,001-50,000 ADA.	Fully certified as administrator or in specialty.
16	12	Administrative Officer VII	Serve as superintendent in system of 5,001-12,500 ADA.	Fully certified as administrator.
16	12	Instructional/ Administrative Officer VII	Serve as assistant superintendent or equivalent status, coordinating group of major functions in system of more than 50,000 ADA.	Fully certified as administrator or in specialty.
17	12	Administrative Officer VIII	Serve as superintendent in system of 12,501-50,000 ADA.	Fully certified as administrator.
18	12	Administrative Officer IX	Serve as superintendent in system of more than 50,000 ADA.	Fully certified as administrator.

(c) With the approval of the State Board of Education, the commissioner of education may add additional positions and months of service to the Texas Public Education Compensation Plan to reflect curriculum and program changes authorized by law. The pay grade assigned to each new position shall be comparable to the pay grade for authorized personnel with similar academic training, experience, and duties.

(d) A person certified to teach in the public schools of Texas who holds a bachelor of laws or doctor of jurisprudence degree from an accredited law school shall have his minimum salary calculated on the basis of a master's degree.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

[Sections 16.057 to 16.100 reserved for expansion]

SUBCHAPTER C. PERSONNEL SUPPORT COMPONENT

§ 16.101. Personnel Support: General Rules

A school district's entitlement for personnel support is equal to the aggregate minimum salaries required by law for personnel units allotted to the district in accordance with the provisions of this subchapter. For the 1975-1976 and 1976-1977 school years, no school district with fewer than 1,000 students in average daily attendance shall receive fewer professional units for its regular education

program than it received for the 1974-1975 school year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.102. Regular Education Program Personnel

(a) Regular education program personnel units shall be allotted to each school district on the basis of the district's current average daily attendance during the 180-day school term for the 1975-1976 school year and on the basis of the district's current average daily attendance for the best 170 days of the 180-day school term for each school year thereafter.

(b) A district's average daily attendance in regular education programs is determined by subtracting from the average daily attendance the average daily full-time equivalent student attendance in vocational and special education programs. A district's full-time equivalent students in average daily attendance in vocational and special education programs are determined by applying to the average daily attendance in the programs the ratio of the number of hours per school day devoted to the programs to six hours. Until the beginning of the 1977-1978 school year, the attendance of kindergarten students may not be counted for personnel unit allotment purposes for more than one-half of a school day during the full school year or for the full school day for more than one-half of the school year unless the student is educationally handicapped. An educationally handicapped student is a student who cannot speak and comprehend the English language or who is from a

family whose income, according to standards promulgated by the State Board of Education, is at or below a subsistence level.

(c) Each school district shall be allotted personnel units on the basis of the district's average daily attendance in regular education programs as follows:

(1) one personnel unit for each 19 students in average daily attendance in kindergarten and grades 1 through 3;

(2) one personnel unit for each 21 students in average daily attendance in grades 4 through 6;

(3) one personnel unit for each 20 students in average daily attendance in grades 7 through 9; and

(4) one personnel unit for each 18 students in average daily attendance in grades 10 through 12.

(d) The personnel unit allotment for a school district which contains at least 300 square miles and which has not more than 1,000 students in average daily attendance in its regular education program shall be adjusted according to the following formula:

$[1 + (1000 - ADA) (.000455)] \times RPU = APU$
where RPU is the district's regular personnel units determined in accordance with Subsection (c) of this section; and APU is the district's adjusted personnel units.

(e) Fractional personnel units in excess of one-half shall be counted as whole units.

(f) A school district may use its personnel units for any combination of personnel classified under the Texas Public Education Compensation Plan which the district feels will best meet the needs of the students in the district, provided that the total of the number of personnel units for each position chosen multiplied by the personnel unit value for that position specified on the salary schedule, does not exceed the total number of personnel units to which the district is entitled under the provisions of this section. The commissioner, with the approval of the State Board of Education, shall establish minimum standards for staffing patterns for all personnel.

(g) A district need not employ personnel for the full number of personnel units to which it is entitled. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.103. Vocational Personnel Units

(a) Vocational personnel units for each school district shall be determined and allotted as prescribed by this section.

(b) Each school district having a four-year accredited high school shall be eligible, under rules and regulations of the State Board of Education, for two

vocational teacher units to teach one or more vocational programs provided there is a need thereof, and provided the programs have been approved by the commissioner of education.

(c) Additional vocational teacher units for districts with four-year accredited high schools may be allotted according to needs determined by a survey of the community and approved by the commissioner of education.

(d) A district having an accredited high school which qualifies, according to the rules and regulations of the State Board of Education, for less than one vocational teacher unit, may be allotted by the commissioner of education a fractional part of a vocational teacher professional unit. A fractional part of a vocational teacher professional unit shall entitle a district to employ a part-time vocational teacher or assign a classroom teacher to serve as part-time vocational teacher.

(e) Each school district having a four-year accredited high school shall be eligible, under rules and regulations approved by the State Board of Education, for such specialized vocational supervisor units and vocational counselor units as there is a need, and in the number determined by application of formulas adopted by the State Board of Education and subject to approval by the commissioner of education.

(f) Vocational professional unit allotments, except classroom teachers who also served as part-time vocational teachers, shall be made in addition to other professional unit allotments. In addition to the regular operating allowance, there shall be an additional allocation of \$400 for each vocational teacher unit.

(g) School districts which, because of limited enrollments, tax resources, or facilities are unable to offer appropriate vocational education in all occupational areas needed may enter into contracts with post-secondary public institutions, as defined by the State Board of Education, to provide for such appropriate vocational education instruction provided the instructors and instructional materials and equipment utilized meet secondary school program requirements.

(h) The contract shall be executed pursuant to rules and regulations of the State Board of Education and the cost to the state shall not exceed the cost that would result if the programs were operated by the respective school districts entering into the contracts.

(i) The legislature shall set a limit on the amount of funds that may be expended under the provisions of this section each year in the General Appropriations Act. Should the amount of funds required to fully fund the provisions of this section pursuant to the rules and regulations of the State Board of Education exceed the amount set by the legislature, the commissioner, with the approval of the board,

shall make such adjustments as are necessary to reduce the total cost of the vocational education program to the limit set by the legislature.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.104. Comprehensive Special Education Program for Exceptional Children

(a) It is the intention of this section to provide for a comprehensive special education program for exceptional children in Texas.

(b) As used in this section:

(1) "Exceptional children" means children between the ages of 3 and 21, inclusive, with educational handicaps (physical, retarded, emotionally disturbed, and/or children with language and/or learning disabilities) as hereinafter more specifically defined; autistic children; and children leaving and not attending public school for a time because of pregnancy—disabilities which render regular services and classes of the public schools inconsistent with their educational needs.

(2) "Physically handicapped children" means children of educable mind whose body functions or members are so impaired from any cause that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

(3) "Mentally retarded children" means children whose mental capacity is such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

Text of subs. (2) and (3), subsec. (b), of Section 16.16, as amended by Acts 1975, 64th Leg., p. 2381, ch. 734, §§ 7, 8

(2) "Handicapped children" means children who have physical or mental disabilities, singularly or in combination, that:

(A) cannot readily be corrected through routine medical services of a nonextended nature;

(B) for the children constitute or result in a substantial handicap to the deriving of benefits from regular classroom programs and routine school activities; and

(C) can reasonably be expected to render the children eligible for vocational rehabilitation services or, if the handicaps are particularly severe, eligible for referral to vocational rehabilitation agencies for evaluation of eligibility for vocational rehabilitation services, at the time when the children reach the age at which vocational rehabilitation services may appropriately be provided.

(3) Repealed by Acts 1975, 64th Leg., p. 2381, ch. 734, § 8, eff. June 21, 1975.

(4) "Emotionally disturbed children" means children whose emotional condition is medically and/or psychologically determined to be such that they cannot be adequately and safely educated in the regular classes of the public schools without the provision of special services.

(5) "Language and/or learning disabled children" means children who are so deficient in the acquisition of language and/or learning skills including, but not limited to, the ability to reason, think, speak, read, write, spell, or to make mathematical calculations, as identified by educational and/or psychological and/or medical diagnosis that they must be provided special services for educational progress. The term "language and/or learning disabled children" shall also apply to children diagnosed as having specific development dyslexia.

(6) "Special services" required for the instruction of or program for exceptional children means special teaching in the public school curriculum inside and/or outside the regular classroom; corrective teaching, such as lipreading, speech correction, sight conservation, corrective health habits; transportation, special seats, books, instructional media, and supplies; professional counseling with students and parents; supervision of professional services and pupil evaluation services; established teaching techniques for children with language and/or learning disabilities.

(c) Under rules, regulations, and/or formulas adopted by the State Board of Education subject to the provisions of this section, exceptional children teacher units, in addition to other professional and paraprofessional unit allotments herein authorized, shall be allotted to any eligible school district in the number determinable thereunder. Exceptional children teacher units for pupils who are both severely physically handicapped and mentally retarded shall be allocated on a separate formula from other type units.

(d) Professional personnel for the operation and maintenance of a program of special education shall be:

(1) exceptional children teachers;

(2) special education supervisors;

(3) special education counselors;

(4) special service teachers, such as itinerant teachers of the homebound and visiting teachers, whose duties may or may not be performed in whole or in part on the campus of any school; and

(5) psychologists and other pupil evaluation specialists. The minimum salary for such spe-

cialist to be used in computing salary allotment for purposes of this section shall be established by the commissioner of education.

(e) Paraprofessional personnel for the operation and maintenance of a program of special education shall consist of persons engaged as teacher aides, who may or may not hold a teacher certificate. The qualifications and minimum salary levels of paraprofessional personnel for salary allotment purposes of this section shall be established by the commissioner of education.

(f) Quantitative bases for the allotment of all special education unit personnel under Subsection (c) of this section shall be established by the commissioner of education under rules adopted by the State Board of Education. Any school district, at its expense, may employ any special education personnel in excess of its state allotment and may supplement the minimum salary allotted by the state for any special education personnel, and any district is authorized at local expense to pay for all or part of further or continuing training or education of its special education personnel.

(g) Special education unit personnel may be employed and/or utilized on a full-time, part-time, or consultative basis, or may be allotted by the commissioner of education, pursuant to cooperative districts' agreement, jointly to serve two or more school districts. Two or more school districts may operate jointly their special education program and any school district may contract where feasible with any other school district for all or any part of the program of special education for the children of either district, under rules and regulations established by the commissioner of education.

(h) To each school district operating an approved special education program there shall also be allotted a special service allowance in an amount to be determined by the commissioner of education for pupil evaluation, special seats, books, instructional media, and other supplies required for quality instruction.

(i) The minimum monthly base pay and increments for teaching experience for an exceptional children teacher or a special service teacher conducting a 10, 11, or 12 months special education program approved by the commissioner of education shall be the same as that of a classroom teacher as provided in Subchapter B of this chapter; provided that special education teachers shall have qualifications approved by the commissioner of education. The annual salary of special education teachers shall be the monthly base salary, plus increments, multiplied by 10, 11, or 12, as applicable.

(j) The minimum monthly base pay and increments for teaching experience for special education counselors and supervisors engaged in a 10, 11, or 12 months special education program approved by the

commissioner of education shall be the same as that of a counselor or supervisor as provided in Subchapter B of this chapter; provided that such counselors and supervisors shall have qualifications approved by the commissioner of education. The annual salary of special education counselors and supervisors shall be the monthly base salary, plus increments, multiplied by 10, 11, or 12, as applicable.

(k) The salary costs of special education teacher units, other professional and paraprofessional units authorized in Subsections (c), (d), and (e) of this section, and operating costs as provided in Subsection (h), computed as other costs of the Foundation School Program for local fund assignment purposes, shall be paid from the Foundation Program School Fund. Provided further, that any school district may supplement any part of the comprehensive special education program it operates or participates in with funds or sources available to it from local sources, public and/or private.

(l) Under rules and regulations of the State Board of Education, eligible school districts may contract with nonprofit community mental health and/or mental retardation centers, public or private, or any other nonprofit organization, institution, or agency approved by the State Board of Education, for the provision of services to exceptional children as defined by this section who reside with their parents or guardians.

[Text of Section 16.16, subsec. (m), as amended by Acts 1975, 64th Leg., p. 1823, ch. 559, § 1]

(m) Under rules and regulations of the State Board of Education, eligible school districts and regional education service centers may contract with nonprofit community mental health and/or mental retardation centers, public or private, or any other nonprofit organization, institution, or agency approved by the State Board of Education, for the provision of services to exceptional children as defined by this section, who reside with their parents or guardians.

(n) The legislature shall set a limit on the amount of funds that may be expended under the provisions of this section each year in the General Appropriations Act. Should the amount of funds required to fully fund the provisions of this section pursuant to the rules and regulations of the State Board of Education exceed the amount set by the legislature, the commissioner, with the approval of the board, shall make such adjustments as are necessary to reduce the total cost of the special education program to the limit set by the legislature.

[Text of subsecs. (p) and (q) of Section 16.16, as added by Acts 1975, 64th Leg., p. 2381, ch. 734, § 9]

(p) The State Board of Education shall adopt such policies and procedures for the administration of the

comprehensive special education program for exceptional children in Texas as might be necessary to assure that:

(1) in the event that comprehensive special education services cannot be provided to all exceptional children, handicapped children throughout the State of Texas will be served first;

(2) the priority in services to handicapped children will be determined according to the severity of the handicaps of the children eligible for special education services; and

(3) sufficiently detailed records are kept and reports received to allow meaningful evaluation of the effectiveness of the policies and procedures adopted pursuant to this subsection.

(q) Special services extended to children who are handicapped by a hearing or visual impairment, or by both hearing and visual impairments, shall be provided by qualified staff certified by reputable public or private nonprofit organizations in the fields of work for the blind or work for the deaf as having the professional credentials and competencies required for certification within those fields.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1.]

Chapters 559 and 734 amended Section 16.16 without reference to revision of this Chapter 16 by Acts 1975, 64th Leg., ch. 334. Chapter 734 rewrote subd. (b)(2), repealed subd. (b)(3) and added subsecs. (p) and (q); chapter 559 amended subsec. (m) of Section 16.16 by inserting "and regional education service centers".

§ 16.161. Responsiveness to Special Needs of Blind and Deaf Children

[Text of Section 16.161, as added by Acts 1975, 64th Leg., p. 2399, ch. 734, § 25]

In addition to the meaning of certain terms defined in the foregoing Section 16.16 of this code, when comprehensive special education services are required for children with serious visual or hearing handicaps or a combination of such handicaps, the following terms, in addition to continuing to have their usual defined meaning to the extent not inconsistent with the language of this chapter, shall have the following meanings:

(1) "Exceptional children" includes children from date of birth through age 22, inclusive;

(2) "Special services" includes parental counseling and training, competent orientation and mobility training, and express authority to provide nonacademic services either directly or through contract or working arrangements with other organizations, either within or without the classroom.

[Added by Acts 1975, 64th Leg., p. 2399, ch. 734, § 25, eff. June 21, 1975.]

Acts 1975, 64th Leg., ch. 734, § 25, added this Section 16.161 without reference to revision of this Chapter 16 by Acts 1975, 64th Leg., ch. 334.

[Sections 16.105 to 16.150 reserved for expansion]

SUBCHAPTER D. CURRENT OPERATING COST COMPONENT

§ 16.151. Operating Cost Allotment

Each school district shall be allotted \$90 for each student in average daily attendance during the 1975-1976 school year and \$95 for each student in average daily attendance each school year thereafter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.152. Use of Operating Allotment

A school district may use its operating cost allotment for current operating expenses other than professional salaries.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER E. CATEGORICAL PROGRAM AID COMPONENT

§ 16.176. Support for Educationally Disadvantaged Pupils

(a) In this section "educationally disadvantaged pupils" are pupils who are eligible for federal compensatory education aid under the provisions of Title I of the Federal Elementary and Secondary Education Act.¹ The commissioner of education with the approval of the State Board of Education shall review the standards established for educationally disadvantaged pupils and adjust the standards if they perpetuate inequities or become obsolete.

(b) Each school district which receives federal compensatory education aid is eligible to receive an allotment of \$40 for each educationally disadvantaged pupil enrolled in its public schools.

(c) Beginning with the 1976-1977 school year, a district must submit to the Central Education Agency a coordinated plan for the use of federal and state compensatory education funds.

(d) If the total amount of compensatory education aid required by this section exceeds \$25,400,000 per year, each district's allotment shall be reduced proportionately until the amount of aid allocated equals \$25,400,000 per year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

¹20 U.S.C.A. § 236 et seq.

§ 16.177. Driver Education

(a) The Central Education Agency shall develop a program of organized instruction in driver education and traffic safety for public school students who are 15 years of age or older.

(b) With the approval of the State Board of Education, the commissioner of education shall establish standards for the certification of professional and

paraprofessional personnel who conduct the programs in the public schools.

(c) Beginning with the 1975-1976 school year, a school district is eligible to receive annually funds to finance a driver education program in an amount not to exceed \$25 multiplied by 20 percent of its high school enrollment in grades 10-12, but in no instance shall the allotment made to the district exceed \$25 multiplied by the number of students actually enrolled in driver education during the school year for which the funds were provided.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

[Sections 16.178 to 16.200 reserved for expansion]

SUBCHAPTER F. TRANSPORTATION COMPONENT

§ 16.201. Transportation Services

Transportation services shall be provided and allotments therefor shall be determined according to the provisions of this subchapter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.202. Public School Transportation System

(a) The county school boards, subject to approval by the state commissioner of education, are authorized to establish and operate an economical public school transportation system within their respective counties.

(b) In establishing and operating such transportation systems, the county school boards shall:

(1) requisition buses and supplies from the state board of control as provided for in this subchapter;

(2) prior to June 1 of each year, with the commissioner's approval, establish school bus routes in their respective counties for the succeeding school year;

(3) employ school bus drivers certified in accordance with standards and qualifications promulgated jointly by the Central Education Agency and the Texas Department of Public Safety as required by law; and

(4) be responsible for the maintenance and operation of school buses.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.203. County and District Transportation Funds

(a) State warrants for transportation, payable to the county school transportation fund in each county, shall be for the total amount of transportation funds for which the county is eligible under the provisions of this subchapter.

(b) When requested by the board of trustees of an independent school district, the county school board shall authorize an independent district to:

(1) employ its school bus drivers;

(2) be responsible for the maintenance and operation of its school buses; and

(3) receive transportation payments directly from the state.

(c) When the county superintendent reports the authorization to the state commissioner of education, state warrants for transportation funds for which the district is eligible shall be made payable to the district transportation fund, which is hereby created.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.204. Use of Buses for Extracurricular Activities, etc.

The county school boards and the state commissioner of education shall promulgate regulations in regard to the use of school buses, for other than transporting eligible children to and from school. Under rules and regulations of the State Board of Education, the appropriate district allocation in the county transportation fund, when approved by the county school board, or the district transportation fund, when approved by the board of trustees of the independent school district operating its own transportation system, may be used for school bus transportation of its pupils and necessary personnel on extracurricular activities and field trips sponsored by the respective district.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.205. Approved School Bus Routes

School buses shall be operated to and from school on approved school bus routes and no variations shall be made therefrom. The penalty for varying from authorized routes and for unauthorized use of buses shall be the withholding of transportation funds from the offending county or school district. In the event the violation is committed by a district which receives no Foundation School Program funds, the penalty provisions of Section 4.02 of this code shall be applied.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.206. Calculation of Allotment

(a) The total annual regular transportation cost allotment for each district or county shall be based on the rules and formulas of this section.

(b) A typical bus route is defined as being from 45 to 55 miles of daily travel and composed of 60 percent surfaced roads and 40 percent dirt roads, over which 15 or more pupils who live two or more miles from school are transported.

(c) Allowable total base costs of maintenance, operation, salaries, depreciation, etc., for each bus shall be:

72 capacity bus	\$5,323 per year
60-71 capacity bus	5,128 per year
49-59 capacity bus	4,933 per year
42-48 capacity bus	4,738 per year
30-41 capacity bus	4,543 per year
20-29 capacity bus	4,348 per year
15-19 capacity bus	3,568 per year
1-14 capacity bus	150 per pupil per year

(d) The capacity of a bus means the number of eligible children being transported who live two or more miles from school along the approved route served by the bus. A bus that makes two or more routes or serves two or more schools shall be considered as having a capacity equal to the largest number of eligible children on the bus at any one time.

(e) For each one percent increase of dirt road above 40 percent, one-half of one percent shall be added to the allowable total cost.

(f) For each five-mile (or major fraction thereof) increase in daily bus travel above 55 miles, one percent shall be added to the total cost of operation. For each five miles (or major fraction thereof) less than 45 miles daily travel, one percent shall be deducted from the total cost of operation.

(g) The state commissioner of education may grant not to exceed \$75 per pupil per year for private or commercial transportation for eligible pupils from isolated areas. The need for this type of transportation grant shall be determined on an individual basis and the amount granted shall not exceed the actual cost. The grants shall be made only in extreme hardship cases, and no grants shall be made if the pupils live within two miles of an approved school bus route or city public transportation service.

(h) The cost of transporting vocational education students from one campus to another inside a district or from a sending district to an area vocational school or to an approved post-secondary institution under a contract for instruction approved by the Central Education Agency shall be reimbursed based on the number of actual miles traveled times the district's official extracurricular travel per mile rate as set by their local board of trustees and approved by the Central Education Agency.

(i) A school district that provides special transportation services for exceptional students who would be unable to attend classes without the service is entitled to funds equal to the actual cost of the transportation not exceeding \$260 for each exceptional student transported.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.207. Routes and Systems: Evaluation and Approval

(a) All bus routes and transportation systems shall be reviewed by the state commissioner of education and he shall be responsible for establishing criteria for evaluating the several transportation systems of this state, but all the criteria shall be subject to approval by the State Board of Education.

(b) The commissioner shall evaluate all transportation systems as rapidly as possible.

(c) No new bus routes or extensions shall be approved prior to the survey of the transportation system of the district or county requesting them.

(d) Extension of a city's boundaries for city purposes only, after June 8, 1949, so as to include within the city boundaries part of a school district into which public transportation lines or facilities are then operated shall not affect the district's eligibility for transportation aid. Rather, all such districts shall be entitled to receive transportation aid under the provisions of this chapter, if otherwise qualified, to the same extent as if no part thereof had been annexed by the city and its public transportation lines had not operated therein.

(e) In approving a transportation system for a district or county, consideration shall be given to providing transportation for only those pupils who live two or more miles from the school they attend, but no consideration shall be given to providing transportation for pupils transferred from one district to another when their grades are taught in their home district unless transferred as provided by law and transportation has been approved by the county school board as provided by law.

(f) There shall be no duplication of bus routes and services within sending districts by buses operated by two school districts and/or counties except on approval by the state commissioner of education. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.208. Use of Transportation Funds for Other Purposes

No funds paid to the several transportation units for the operation of transportation systems in this state shall be expended for any other purpose.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.209. Rules of Commissioner

The commissioner of education shall formulate rules and regulations, subject to approval by the State Board of Education for enforcing the provisions of this subchapter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.210. Appeals

Appeals to the commissioner of education and to the State Board of Education may be had from policy decisions of the county school boards affecting transportation.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.211. Purchase of Vehicles

(a) Motor vehicles used for the purpose of transporting school children, including school buses, their chassis and/or bodies purchased through the state board of control, shall be paid for by the state board of control as set out in applicable laws. The legislature may appropriate out of any money in the state treasury not otherwise appropriated a sum not exceeding \$250,000, or as much thereof as necessary, for the state board of control to be used for such purposes.

(b) Any sum appropriated shall be known as the school bus revolving fund. When motor vehicles and school buses are delivered to the various schools coming within the provisions of this chapter, the governing bodies of those schools shall reimburse the state board of control for the money expended for such school buses including their chassis and/or bodies and the money shall be deposited by the state board of control in the school bus revolving fund. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.212. Contract With Public Transportation Company

(a) As an alternative to maintaining and operating a complete public school transportation system under this subchapter, and if the respective governing board is able to obtain an economically advantageous contract, a county school board for its transportation system or a board of trustees of an independent school district which has been authorized to be responsible for the maintenance and operation of its school buses may contract with public transportation companies for all or any part of its public school transportation.

(b) A contract is economically advantageous if the cost of the service contracted for is less than the projected cost of the same service as otherwise provided in this subchapter.

(c) The state commissioner of education, subject to the approval of the State Board of Education, shall make rules for the administration of this section.

(d) Contracts for public school transportation may include provisions for transporting students to and from approved school activities.

(e) On approval of the contract by the State Board of Education, the contract price for the serv-

ice shall be included in the annual transportation cost allotment for the respective county or district. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.63. Contract With Public Transportation Company

[Text of Section 16.63 as amended by Acts 1975, 64th Leg., p. 1862, ch. 583, § 1]

(a) As an alternative to maintaining and operating a complete public school transportation system under this subchapter, and if the respective governing board is able to obtain an economically advantageous contract, a county school board for its transportation system or a board of trustees of an independent school district which has been authorized to be responsible for the maintenance and operation of its school buses may contract with public transportation companies for all or any part of its public school transportation.

(b) A contract is economically advantageous if the cost of the service contracted for is equal to or less than the total cost to the school district for providing its own complete bus service. The total cost to the school district is the state transportation cost allotment plus the supplementary funds necessarily provided by the local school district to provide complete transportation services.

(c) This section in no way prohibits the local school board from supplementing the state transportation cost allotment with local funds necessary to provide complete transportation services.

(d) The state commissioner of education, subject to the approval of the State Board of Education, shall make rules for the administration of this section.

(e) Contracts for alternative public school transportation may include provisions for transporting students to and from approved school activities.

(f) Upon approval of the contract by the State Board of Education, the portion of the annual transportation allotment which is to be used to finance the contract for alternative transportation services shall be included in the annual transportation cost allotment for the respective county or district.

[Amended by Acts 1975, 64th Leg., p. 1862, ch. 583, § 1, eff. Sept. 1, 1975.]

Chapter 583 amended Section 16.63 without reference to revision of this Chapter 16 by Acts 1975, ch. 334.

[Sections 16.213 to 16.250 reserved for expansion]

SUBCHAPTER G. FINANCING THE PROGRAM**§ 16.251. Financing; General Rule**

(a) The sum of the approved minimum salaries for personnel, current operating expenses, categorical program aid, and transportation services for each

district, computed in accordance with the provisions of this chapter, constitute the total cost of the Foundation School Program.

(b) The program shall be financed by:

- (1) ad valorem tax revenue generated by an equalized local school district effort;
- (2) state and county available school funds distributed in accordance with law; and
- (3) state funds appropriated for the purposes of public school education and allocated to each district in an amount sufficient to finance the cost of each district's Foundation School Program not covered by other funds specified in this subsection.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.252. Local Share of Program Cost

(a) A school district's share of its guaranteed entitlement under the Foundation School Program is determined by multiplying the total taxable value of property in the district by an index rate of 30 cents per \$100 valuation for the 1975-1976 school year and 35 cents per \$100 valuation for each school year thereafter. Provided that for the 1975-1976 school year, the local fund assignment of any school district shall not exceed 100 percent of the maintenance tax revenue collected in that district in 1974-1975; and provided further that for the 1976-1977 school year, the local fund assignment of any school district shall not exceed 150 percent of the maintenance tax revenue collected in that district in 1975-1976. Provided further that for the 1975-1976 school year no district's local fund assignment shall exceed an amount equal to its local fund assignment for the 1974-1975 school year multiplied by two, and for the 1976-1977 school year no district's local fund assignment shall exceed an amount equal to its local fund assignment for the 1974-1975 school year multiplied by three.

(b) A district's share of the program cost for the 1975-1976 and 1976-1977 school years is based on the value of the district's property for the 1974 tax year as reported in the "Official Compilation of 1974 School District Market Value Data," Office of the Governor, State of Texas. The commissioner may adjust the values reported in the official compilation to correct apparent discrepancies and may reduce the local share of a district in which local natural or economic disaster has dramatically reduced the value of the property since 1974. The commissioner's decision is final. For succeeding school years, a district's share is based on the value of its property for the tax year commencing in the school year two years before the school year for which the share is calculated. However, the commissioner may reduce the local share of a district in which local natural or economic disaster has dramatically reduced the value of taxable property in the intervening two-year period.

(c) A school district need not raise its total local share of its program cost.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.253. Excess of Local Funds Over Amount Assigned

Local maintenance funds in excess of the amount assigned to a district may be expended for any lawful school purpose or carried over to the next school year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.254. Distribution of Foundation School Fund

(a) The commissioner of education shall determine annually:

- (1) the amount of money necessary to operate a Foundation School Program in each school district;
- (2) the amount of local funds assigned to each school district for the support of the program; and
- (3) the amount of state and county available school funds distributed to each school district.

(b) The commissioner of education shall then grant to each school district from the Foundation School Program appropriation the amount of funds necessary to provide the difference between Subdivision (1) and the sum of Subdivisions (2) and (3) of Subsection (a) of this section.

(c) The commissioner shall approve warrants to each school district equaling the amount of its grant. Warrants for all money expended according to the provisions of this chapter shall be approved and transmitted to treasurers or depositories of school districts in the same manner as warrants for state apportionment are transmitted.

(d) Notwithstanding the provisions of Subsection (b) of this section, for the 1975-1976 and 1976-1977 school years no school district shall receive less state aid per student in average daily attendance than 104 percent of the amount it received per student in average daily attendance under the Foundation School Program for the 1974-1975 school year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.255. Falsification of Records; Report

(a) When, in the opinion of the director of school audits of the Central Education Agency, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of this chapter, whereby the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education and the state auditor.

(b) In the event of overallocation of state funds, as determined by the State Board of Education or the state auditor by reference to the director's report, the Central Education Agency shall, by withholding from subsequent allocations of state funds, recover from the district an amount, or amounts, equal to the overallocation.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.256. Duties of Tax Assessors

(a) Each school district tax assessor shall report to the commissioner the full taxable value of property in the district each year. The tax assessor shall also report the assessed value and assessment level utilized for tax purposes of all property in the district.

(b) The reports shall be made on forms developed by the commissioner with the approval of the governor. The commissioner shall specify the time at which the reports are to be submitted.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

[Sections 16.257 to 16.300 reserved for expansion]

SUBCHAPTER H. EQUALIZATION AID FOR PROGRAM ENRICHMENT

§ 16.301. District Eligibility

A school district with a local fund assignment per student in average daily attendance which is less than 125 percent of the total statewide local fund assignment per student in average daily attendance in the state is eligible for state equalization aid for the enrichment of its educational program beyond the level guaranteed under the Foundation School Program. The amount of state equalization aid shall not exceed \$70 per student in average daily attendance.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.302. Determination of Equalization Aid Entitlement

The amount of state equalization aid to which a district is entitled is determined by the formula:

$$SEA = \left(1 - \frac{DLFA/ADA}{(SLFA/ADA) \times 1.25} \right) \times ADA \times \$70$$

where

"SEA" is the state equalization aid guaranteed to the district;

"DLFA/ADA" is the district's local fund assignment divided by the number of students in average daily attendance in the district;

1 West's Tex.Stats. & Codes '75 Supp.—4

"SLFA/ADA" is the total statewide local fund assignment divided by the number of students in average daily attendance in the state; and

"ADA" is the number of students in average daily attendance in the district.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.303. Required Local Effort

(a) In order to receive the full amount of equalization aid available to a district, the district must raise local funds in an amount which exceeds its local fund assignment by the difference between the amount derived by multiplying the number of students in average daily attendance in the district by \$70 and the amount of equalization guaranteed by the state.

(b) If the district chooses to raise local funds in an amount less than that required to receive the full state equalization entitlement, the amount of state aid shall be reduced in proportion to the amount of local funds actually raised by the district.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.304. Payment of State Aid; Limitation

(a) The state's equalization aid for program enrichment shall be paid from the Foundation School Fund pursuant to regulations of the State Board of Education.

(b) If the amount of state aid required by this subchapter exceeds \$50 million per year for the 1975-1976 or 1976-1977 school year, the amount of state equalization aid guaranteed to each district shall be reduced proportionately until the total amount of funds required equals \$50 million. Each district's required local share shall also be reduced in proportion to the amount by which the state's share is reduced.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

[Sections 16.305 to 16.400 reserved for expansion]

CHAPTER 17. COUNTY ADMINISTRATION

SUBCHAPTER G. TERMINATING STATE FISCAL SUPPORT FOR COUNTY SCHOOL ADMINISTRATION [NEW]

Section

- 17.94. Termination of State Fiscal Support.
- 17.95. Abolition of Certain County School Administrative Offices.
- 17.96. Transfer of Certain Powers and Duties.
- 17.97. Transfer of Records and Funds.
- 17.98. Composition, Powers, and Duties of County Administrations Established by Contract Among School Districts.
- 17.99. Reclassification of Certain School Districts.

SUBCHAPTER C. COUNTY SUPERINTENDENT

§ 17.64. Abolition of Office

(a) Upon a petition of 10 percent of the qualified voters who cast a vote in the governor's race at the preceding general election in counties of less than 100,000 population according to the last federal census; or upon a petition of 20 percent of the qualified voters who cast a vote in the governor's race at the preceding general election in counties of 100,000 or more population according to the last federal census, the county judge shall within 90 days of the receipt of such petition call an election to determine by majority vote whether the office of county superintendent (or ex officio county superintendent and the county school board in counties having an ex officio county superintendent) shall be abolished. At such an election all ballots shall have printed to provide for voting for or against the proposition:

"The abolishment of the office of county superintendent" or

"the abolishment of the office of an ex officio county superintendent and the county school board" (as the case may be).

[See Compact Edition, Volume 1 for text of (b) to (e)]

(f) If the county school superintendent of a county which contains one or more common school districts fails to qualify for office after having been duly elected or, having qualified, resigns or dies during his term of office, the county board of school trustees and the commissioners court by joint resolution may either fill the vacancy created or may declare the office to be abolished. If the office is abolished pursuant to this subsection, the county judge shall serve as ex officio county superintendent and shall receive a salary not exceeding \$2,600 per year. The county board of school trustees may employ an assistant county superintendent and other staff to assist the county judge, but the total cost for salaries for the assistant and staff may not exceed \$15,000 per year from state funds. The board may provide for office expenses not exceeding \$1,080 per year. The commissioners court may supplement the salaries authorized in this subsection with county funds.

[Amended by Acts 1975, 64th Leg., p. 1342, ch. 501, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1354, ch. 511, § 1, eff. June 19, 1975.]

SUBCHAPTER F. SOCIAL SECURITY FOR EMPLOYEES

§ 17.91. Authority of Governing Board

The county school trustees or county board of education, as the case may be, of each county in this state may enter into all necessary agreements with the Employees Retirement System of Texas to provide for coverage under the Old Age and Survivors Insurance provisions of the Federal Social Security Act¹ of all persons who qualify under applicable federal regulations and whose salaries, wages or other compensation are paid from the county administration fund, the county transportation fund, or any other fund or funds administered by such governing board. With reference to these agreements, the county governing board shall have the same authority as that of counties, municipalities, and other political subdivisions with respect to participation of employees in the Federal Old Age and Survivors Insurance program.

[Amended by Acts 1975, 64th Leg., p. 966, ch. 366, § 1(c), eff. Sept. 1, 1975.]

¹42 U.S.C.A. § 401 et seq.

SUBCHAPTER G. TERMINATING STATE FISCAL SUPPORT FOR COUNTY SCHOOL ADMINISTRATION [NEW].

§ 17.94. Termination of State Fiscal Support

After December 31, 1978, no state funds shall be used to support the offices of county school superintendent or ex officio county school superintendent or a board of county school trustees or a county school board in counties with no common school districts, rural high school districts, or independent districts with less than one hundred fifty (150) ADA, but the offices and boards may be supported by ad valorem tax revenue generated in accordance with the provisions of Chapter 18 of this code,¹ or by funds provided by the school districts in accordance with the provisions of a voluntary contract as provided in Section 17.98 of this Chapter.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

¹Section 18.01 et seq.

§ 17.95. Abolition of Certain County School Administrative Offices

On December 31, 1978, all offices of county school superintendent and ex officio county school superintendent and all county boards of school trustees and county school boards in counties with no common school districts, rural high school districts, or independent districts with less than one hundred fifty (150) ADA which are not supported by ad valorem tax revenue generated under the provisions of Chapter 18 of this code¹ or by voluntary local contract in accordance with Section 17.98 are abolished.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

¹Section 18.01 et seq.

§ 17.96. Transfer of Certain Powers and Duties

(a) The powers and duties of abolished offices of county school superintendent and ex officio county superintendents and of abolished county boards of

school trustees and county school boards vest in the officials designated in the following subsections of this section, and the officials are not entitled to additional compensation for performing the duties.

(b) The powers and duties of an abolished office of county school superintendent or ex officio county school superintendent relating to the approval of or recommendations concerning the operation of a school district in the county vest in the governing board of the district.

(c) The powers and duties of an abolished office of county school superintendent or ex officio county school superintendent relating to cooperative agreements between districts for the employment of special service teachers, counselors, supervisors, or other personnel vest in the governing board of the regional education service center embracing the county.

(d) The authority to annually prorate the available county school fund, if any, among the several districts in the county vests in the county judge, and he shall certify to the Central Education Agency the amount prorated to each district.

(e) The powers and duties of abolished offices of county school trustees or county school boards concerning annexation of school districts, detachment of territory from school districts, or alteration of school district boundaries vest in the commissioners court of the county.

(f) The powers and duties of abolished offices of county school trustees or county school boards relating to the administration or operation of schools in the county vest in the governing boards of the districts concerned.

(g) All powers and duties of the abolished offices and boards not otherwise vested by this section vest in the county judge.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

§ 17.97. Transfer of Records and Funds

(a) In all counties in which the county school administrative offices are abolished pursuant to Section 17.95 of this subchapter, all unused county administration budget funds remaining at the time the offices are abolished shall revert back to their source.

(b) All records of school districts maintained by county administrative offices that are abolished pursuant to Section 17.95 of this subchapter shall be transferred to the respective school districts concerned except for original financial records, which shall be retained by the county treasurer and made available for examination or for reproduction at district expense where needed.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

§ 17.98. Composition, Powers, and Duties of County Administrations Established by Contract Among School Districts

Funding for the offices of county school superintendent or ex officio county school superintendent or a board of county school trustees or a county school board may be provided by a voluntary contract among the independent school districts of a county, with such powers and duties as such contract shall provide.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

§ 17.99. Reclassification of Certain School Districts

On September 1, 1978, all common school districts located in a county and in counties with no common school districts, rural high school districts, or independent districts with less than one hundred fifty (150) ADA that do not support county school administration from ad valorem tax revenue generated pursuant to the provisions of Chapter 18 of this code¹ shall be reclassified as independent school districts by the Central Education Agency, and thereafter the districts shall be governed by the provisions of law applicable to independent school districts. Members of the governing boards of a common school district reclassified as an independent school district shall continue to serve as trustees of the district until their respective terms of office expire. Each district shall continue to be governed by the same number of trustees elected for the same terms of office in effect immediately preceding the district's reclassification.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

¹ Section 18.01 et seq.

CHAPTER 19. CREATION, CONSOLIDATION, AND ABOLITION OF SCHOOL DISTRICTS

SUBCHAPTER H. CONSOLIDATION OF SCHOOL DISTRICTS

Section

19.246. Dormant School Districts [NEW].

19.247. Territory Not in School District [NEW].

SUBCHAPTER G. CONVERSION OF COMMON SCHOOL DISTRICT TO INDEPENDENT SCHOOL DISTRICT

§ 19.201. Qualifications

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

(b) In order to become an independent school district under the terms of Sections 19.202–19.205 of this code, the common school district must:

(1) have 165 inhabitants or more;

(2) have an assessed property valuation of not less than \$3,000,000; and

(3) not include within its bounds any municipally incorporated town or village which has assumed control of the public free schools within its limits.

[Amended by Acts 1975, 64th Leg., p. 1311, ch. 493, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER H. CONSOLIDATION OF SCHOOL DISTRICTS

§ 19.246. Dormant School Districts

(a) The county school boards of all counties of the state shall consolidate by order of the board each dormant school district within the county with an adjoining district or districts.

(b) The term "dormant school district" means any school district that fails to operate a school in the district each school year.

(c) The governing board of the district with which a dormant school district is consolidated shall continue to be the governing board for the new district.

(d) In each case, the consolidation order of the county school board shall define by legal boundary description the territory of the new district as so enlarged and shall be recorded in the minutes of the county school board as provided by law.

(e) Elections shall be held when required by law in such consolidated districts for the assumption of outstanding bonds, if any, for the levying of taxes therefor, and for the levying of a local maintenance tax.

(f) If a county-line district is or becomes dormant, the consolidation provisions of this section shall apply to all counties affected to the extent of territory in each.

[Added by Acts 1975, 64th Leg., p. 895, ch. 334, § 3, eff. Sept. 1, 1975.]

§ 19.247. Territory Not in School District

(a) All property subject to school district taxation in the state must be included within the limits of a school district and a proper and proportionate tax paid thereon for school purposes. Therefore, at any time it may be determined there is territory located in a county but not within the described limits of a school district, the county school board shall add the territory to an adjoining district or districts.

(b) In each case, the order of consolidation shall define by legal boundary description the territory of the new district and shall be recorded in the minutes of the county school board as provided by law. [Added by Acts 1975, 64th Leg., p. 895, ch. 334, § 3, eff. Sept. 1, 1975.]

[Sections 19.248 to 19.260 reserved for expansion]

CHAPTER 20. SCHOOL DISTRICT FUNDS

SUBCHAPTER A. SCHOOL DISTRICT TAX BONDS AND MAINTENANCE TAXES

§ 20.03. Assessment of Property

In common school districts the appraised value of taxable property shall be the same as that used for state and county purposes; but the property may be assessed at a percentage of appraised value other than that used for state and county purposes if that action has been authorized at an election held for that purpose. In all other school districts such value may be appraised and assessed on any basis authorized or permitted by any applicable law.

[Amended by Acts 1975, 64th Leg., p. 1308, ch. 491, § 1, eff. Sept. 1, 1975.]

CHAPTER 21. PROVISIONS GENERALLY APPLICABLE TO SCHOOL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Section

21.008. Quarter System [NEW].

SUBCHAPTER B. ADMISSION AND ATTENDANCE

21.0311. Tuition for Certain Children From Other States [NEW].

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

21.913. Duties of Public School Principals [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.008. Quarter System

(a) Beginning with the 1975-1976 school year, each school district shall operate on the basis of a quarter system, with its schools being in operation during at least three three-month quarters during each school year and providing 180 days of instruction for students and 10 days of inservice education and preparation for teachers.

(b) The Central Education Agency shall prepare a curriculum based on the operation of the schools on a quarter basis. The curriculum shall be so structured that material formerly covered in two semesters is covered in three three-month quarters.

(c) Each school district shall receive student attendance credit under the Foundation School Program for the attendance of a student for any three quarters during any one school year.

(d) A school district may choose to operate all or some of its schools for all four quarters of the school year. This choice shall be approved or disapproved by the district's school board in a regularly scheduled open meeting. If a district so chooses, no credit for student attendance under the Foundation School Program may be given to the district for the attendance of any one student enrolled for more than three

quarters during any one school year. The attendance of a student for a fourth quarter must be financed either by the student on a tuition basis or by the district from its own funds, at the option of the district.

(e) A district that operated its schools during all four quarters of the school year shall decide which students are to attend school during each quarter. Schedules shall be so arranged that all members of a family attending the schools of the district may attend the same three quarters.

(f) A district that operates its schools during all four quarters of a school year may not require a teacher to teach more than three quarters plus the number of days provided by law for inservice education and preparation during any one school year. A teacher or other school employee who elects to work for four quarters during a school year shall receive a minimum salary which is increased proportionately in compliance with the state compensation plan.

(g) A district operating its school during all four quarters of the school year may not require a student to attend more than three quarters.

[Added by Acts 1975, 64th Leg., p. 894, ch. 334, § 2, eff. Sept. 1, 1975.]

[Sections 21.009 to 21.030 reserved for expansion]

SUBCHAPTER B. ADMISSION AND ATTENDANCE

§ 21.031. Admission

(a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.

(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

[Amended by Acts 1975, 64th Leg., p. 896, ch. 334, § 4, eff. Sept. 1, 1975.]

§ 21.0311. Tuition for Certain Children From Other States

(a) Notwithstanding any other provision of this code, a child who resides at a child-caring institution and whose maintenance expenses are paid in whole or in part by another state may not be admitted to a public school unless the child-caring institution pays tuition for the child equal to the actual cost of educating a child enrolled in a similar educational program in the district.

(b) The State Board of Education shall establish formulas governing the calculation of tuition rates. All tuition charges shall be submitted to the commissioner of education for approval.

(c) The attendance of the child shall not be counted for purposes of allocating state funds to the district.

[Added by Acts 1975, 64th Leg., p. 1345, ch. 504, § 1, eff. Sept. 1, 1975.]

§ 21.033. Exemptions

The following classes of children are exempt from the requirements of compulsory attendance:

(1) any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship;

(2) any child who has a physical or mental handicap that:

(A) is not of a temporary and readily remediable nature, and

(B) according to the great weight and preponderance of adequate diagnostic and evaluative information of a current nature, consisting of both specialty medical examinations and pertinent specialty assessments by qualified personnel regularly engaged in the provision of special education and related services to handicapped individuals, renders the child's attendance in regular classrooms or in special educational facilities supported with tax funds useless or inconsistent with the child's best interests;

(3) any child who has a physical or mental condition of a temporary and remediable nature which renders such child's attendance unfeasible and who holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from such remedial treatment;

(4) any child more than 17 years of age who has satisfactorily completed the work of the ninth grade and who presents to the chief administrator of the school which such child would otherwise attend satisfactory evidence showing

that his services are needed in support of a parent or other person standing in a parental relation to the child; and

(5) any child expelled in accordance with the requirements of law.

[Amended by Acts 1975, 64th Leg., p. 2378, ch. 734, § 2, eff. June 21, 1975.]

§ 21.035. Violations of Attendance Requirements
[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) A person who is a member of the Jewish faith shall be excused from attending school on the days that Rosh Hashanah and Yom Kippur are observed, but shall be counted as if he attended school for purposes of calculating the average daily attendance of students in the school district.

[Amended by Acts 1975, 64th Leg., p. 1902, ch. 610, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER L. BILINGUAL EDUCATION

§ 21.453. Establishment of Bilingual Programs
[See Compact Edition, Volume 1 for text of (a)]

(b) Each school district which has an enrollment of 20 or more children of limited English-speaking ability in any language classification in the same grade level during the preceding scholastic year, and which does not have a program of bilingual instruction which accomplishes the state policy of facilitating integration into the regular school curriculum as set out in Section 21.451 of this article, shall institute a program of bilingual instruction for the children in each language classification in kindergarten, first grade, and second grade by the 1975-76 school year and also in the third grade by the 1976-77 school year. Bilingual instruction may be offered in the fourth and fifth grades for students who have not progressed sufficiently to participate in the regular school curriculum. Any bilingual program beyond the fifth grade shall be at the expense of the respective local school district. The board may establish a program with respect to a language classification with less than 20 children.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 6, eff. Sept. 1, 1975.]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 21.913. Duties of Public School Principals

(a) Public school principals, who shall hold valid administrative certificates, shall be responsible for:

(1) assuming administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline, and the planning, operation, supervision, and evaluation of the educational program of the membership area in which he is assigned;

(2) submitting recommendations to the superintendent concerning assignment, evaluation, promotion, and dismissal of all personnel assigned to the membership center; and

(3) performing any other duties assigned by the superintendent pursuant to school board policy.

(b) Nothing herein shall be construed as a limitation on the powers, responsibilities, and obligations of the school board as now prescribed by law.

[Added by Acts 1975, 64th Leg., p. 896, ch. 334, § 5, eff. Sept. 1, 1975.]

CHAPTER 22. COMMON SCHOOL DISTRICTS

§ 22.11. Taxation

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

(b) All property appraised for school purposes in a common or common consolidated school district shall be appraised at the same value as that property is appraised for state and county purposes, but the property may be assessed at a percentage of appraised value other than that used for state and county purposes if that action has been authorized at an election held for that purpose.

[See Compact Edition, Volume 1 for text of (c) to (h)]

[Amended by Acts 1975, 64th Leg., p. 1308, ch. 491, § 2, eff. Sept. 1, 1975.]

CHAPTER 25. RURAL HIGH SCHOOL DISTRICTS

§ 25.07. Assessment and Collection of Taxes

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

(b) The board of trustees of a rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of the district and the assessment shall be equalized by a board of equalization composed of three members, legally qualified voters residing in the district, appointed by the board of trustees, in which event:

(1) The tax assessor so appointed shall make a complete list of all assessments made by him and when the list is approved, shall submit it to the county tax collector not later than September 1 of each year, and the tax assessor shall receive compensation for his services as the trustees of the district may allow;

(2) The board of equalization shall have the same powers and be subject to the same restrictions as apply to such boards in independent school districts; and

(3) The county tax assessor-collector shall collect the taxes and shall deposit the funds so

collected in the county depository to the credit of the rural high school district, and he shall be compensated at the rate of one-half of one percent for his services for collecting the taxes.

(c) If a rural high school district has an assessed valuation in excess of \$4,000,000 or an average daily attendance of more than 550 students during the preceding year, the board of trustees of the rural high school district may, by majority vote, appoint a collector of taxes for the district who shall perform the duties ordinarily required of a county tax collector who collects taxes for a common school district. He shall receive compensation for his services as the trustees of the district may allow. He shall give bond to be executed by a surety company authorized to do business in the State of Texas, in an amount sufficient adequately to protect the funds of the school district in the hands of the collector. 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 \$50,000, whichever is smaller, to be determined by the governing body in such school district. The bond shall be payable to and approved by the president of the board of trustees and conditioned that he will faithfully discharge his duties and will pay over to the depository for the rural high school district all funds coming into his hands by virtue of his office. Any premium on the bond shall be payable out of funds of the district.

(d) If a rural high school district is situated in more than one county or subject to the jurisdiction of a county having a population of 350,000 or more, according to the last preceding federal census, the board of trustees of the rural high school district may, by majority vote, choose to have the taxes for the district assessed and collected by an assessor-collector appointed by the board and to have the taxes equalized by the board of equalization of the district. In the event the board so chooses, the following regulations shall apply:

(1) The assessor-collector appointed by the board shall assess the taxable property within the limits of the district in the time and manner provided by the general law applicable to taxation within the district, insofar as the law is applicable, and collect the taxes;

(2) The assessor-collector shall receive such compensation for his services as the board of trustees may allow;

(3) The assessor-collector shall give bond, fulfilling the qualifications that the bond shall be:

(A) executed by a surety company authorized to do business in the State of Texas;

(B) in an amount determined by the board of trustees to be sufficient adequately to protect the funds of the rural high school district;

(C) payable to the president of the board of trustees of the rural high school district and approved by the board of trustees; and

(D) conditioned that the assessor-collector will faithfully discharge his duties and will deposit in the county depository to the credit of the rural high school district all funds coming into his hands by virtue of his office; and

(4) The board of trustees may also appoint one or more deputy tax assessor-collectors for the district who shall receive for their services such compensation as the board may allow.

[See *Compact Edition, Volume 1 for text of (e)*]

[Amended by Acts 1975, 64th Leg., p. 946, ch. 354, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1309, ch. 492, § 1, eff. Sept. 1, 1975.]

CHAPTER 26. REHABILITATION DISTRICTS FOR HANDICAPPED PERSONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 26.01. Definitions

As used in this chapter:

(1) "Handicapped person" or "handicapped scholastic" means an individual who has been defined as such by presently existing federal or state legislation. The definition of a handicapped person or handicapped scholastic is inclusive of all generic handicapping conditions such as orthopedically handicapped, health impaired, blind or visually impaired, deaf or auditorially impaired, socially maladjusted or emotionally disturbed, mentally retarded, and language or learning disabled. The specific operational definition, if not defined by state or federal legislation, shall be applicable to any current operational definition as set forth by the federal government or state agencies.

(2) "Special services" required for the instruction of or program for exceptional children means special teaching in the public school curriculum within or without the regular classroom; corrective teaching such as lipreading, speech correction, sight conservation; corrective health habits; transportation; special seats, books, instructional media, and supplies; professional counseling with students and parents; supervision of professional services and pupil evaluation services; and established teaching techniques for children with language or learning disabilities.

(3) "Nonhandicapped scholastic" means a scholastic who is eligible for public school educa-

tion under state law and who is not officially labeled as being handicapped.

[See Compact Edition, Volume 1 for text of (4) to (7)]

(8) The term "alternative school" refers to a school setting for scholastics who cannot adequately be trained or educated in existing public school programs and who generally would not continue their education in the traditional academic school situation. The curriculum and the alternative school setting stress training for the world of work and coping behavior in order to successfully survive in our complex society.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, §§ 1 and 2, eff. Sept. 1, 1975.]

SUBCHAPTER B. CREATION OF DISTRICT

§ 26.11. Purpose

Rehabilitation districts may be created to provide education, training, special services, and guidance to handicapped persons or handicapped scholastics peculiar to their condition and needs, to develop their full capacity for usefulness to themselves and society, and to prevent them from becoming or remaining, in whole or in part, dependent on public or private welfare or charity.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, § 3, eff. Sept. 1, 1975.]

SUBCHAPTER D. POWERS AND DUTIES

§ 26.65. Administrative and Instructional Personnel

(a) To provide for the continuance of additional programs of instruction and training for handicapped persons between the ages of 6 and 21, inclusive, the District shall be eligible for and allotted administrative units, special service personnel, exceptional child teacher units, vocational education units, and other special education personnel, to the extent herein provided for independent school districts, directly through the Foundation Program of the Central Education Agency. The district shall be eligible to receive state funds for the purpose of educating any handicapped or nonhandicapped scholastic between the ages of 14 and 21, inclusive, who is in need of an alternative school setting. The district is eligible for state funding of educational programs for the handicapped and nonhandicapped scholastics in the form of personnel or resources as provided by current state legislation concerning the distribution of state funds to public schools.

(b) The basis for establishing, operating, and the formula to be used for determining allocation of said administrative units, instructional units, exceptional child teacher units, vocational education units, and other special education personnel, shall be as re-

quired by the Central Education Agency of independent school districts. The district's allocation of principal units, special service units, and supervisor and counselor units shall be computed on eligible exceptional children teacher units in the same manner as other independent school districts' allocation of these units are computed on eligible classroom teacher units, except that the district's allocation shall be limited, computed upon, and restricted to include only children between the ages of 14 and 21, both inclusive. However, no local fund assignment shall be charged to a rehabilitation district.

(c) The cost of approved professional units authorized including the per unit operational cost provided by law shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation Program purposes.

(d) Nothing in this Act is intended to permit double funding of any rehabilitation district by the Central Education Agency, and if and to the extent that any section is so construed, to that extent said section shall be inoperative.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, § 3, eff. Sept. 1, 1975.]

§ 26.71. Employment of Trainees

Rehabilitation districts shall cooperate with the Texas Rehabilitation Commission and the Texas Employment Commission and all other state agencies in training, education, and finding employment for their employable trainees.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, § 3, eff. Sept. 1, 1975.]

CHAPTER 31. TECHNICAL-VOCATIONAL EDUCATION ACT OF 1969

SUBCHAPTER A. GENERAL PROVISIONS

§ 31.02. Purpose

The purpose of this chapter is to provide the necessary legal basis to establish a state educational system which will develop trained personnel in the area of technical and vocational skills, and to accommodate the social and economic needs of the people of the State of Texas. Further, it is the purpose of this chapter to comply in all respects with the Vocational Education Act of 1963, as amended, and related state and federal acts, including those advisory functions therein specified. It is further the purpose of this chapter to establish as a part of the total educational system of the State of Texas, one council responsible for the development of a program to train manpower, through education, to further industrial and economic development in the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 2160, ch. 694, § 1, eff. Sept. 1, 1975.]

§ 31.03. Definitions

In this chapter:

[See *Compact Edition, Volume 1 for text of (1) to (7)*]

(8) "Planning" as pertaining to the role of the advisory council means putting forth alternative actions for policy makers and administrators.

(9) "Manpower training" means training for all existing and future jobs.

[Amended by Acts 1975, 64th Leg., p. 2160, ch. 694, § 2, eff. Sept. 1, 1975.]

SUBCHAPTER B. ADVISORY COUNCIL—CREATION; ADMINISTRATIVE PROVISIONS

§ 31.12. Membership

(a) The council consists of 24 members appointed by the State Board of Education after recommendation by the governor and subject to confirmation by the Senate.

(b) The membership will be constituted as follows:

(1) one member familiar with vocational needs and the problems of management in the state;

(2) one member familiar with vocational needs and the problems of labor in the state;

(3) two members representing state industrial and economic development agencies;

(4) one member actively engaged in the administration of community or junior college vocational-technical education;

(5) one member actively engaged in technical training institutes;

(6) one member familiar with the administration of state and local technical-vocational education programs;

(7) one member having special knowledge, experience, or qualifications with respect to the administration of state and local technical-vocational education programs but who is not involved directly in the administration of such programs;

(8) one member who represents technical-vocational education at the secondary school level;

(9) one member, representative of local education agencies and school boards;

(10) one member who is familiar with the programs of teachers' training for technical-vocational teachers in the post secondary institutions;

(11) one member who is familiar with post secondary baccalaureate technological degree programs;

(12) one member representative of the manpower services councils of the state;

(13) one member representative of those school systems with large concentrations of academically, socially, economically, or culturally disadvantaged students;

(14) one member having special knowledge, experience, or qualifications with respect to the special educational needs of the physically or mentally handicapped persons;

(15) one member having special knowledge, experience, or qualifications with respect to the locally administered manpower programs sponsored by organizations having voting representatives of the socio-economically disadvantaged in their policy-making bodies;

(16) four members representing a cross section of industrial, business, professional, agricultural, and health service occupations;

(17) one member representing the general public;

(18) one member representing proprietary vocational-technical schools of the state;

(19) one member who is a present or recent vocational education student who is not otherwise qualified for membership; and

(20) one member representing the State Employment Service having special knowledge, experience, or qualifications with respect to career development, job placement, job development, or job adjustment.

[Amended by Acts 1975, 64th Leg., p. 2160, ch. 694, § 3, eff. Sept. 1, 1975.]

Sections 6 and 7 of the 1975 amendatory act provided:

"Sec. 6. All members of the Advisory Council for Technical-Vocational Education holding office on the effective date of this Act shall serve for the remainder of their respective terms of office. The governor shall recommend and the State Board of Education shall appoint three new members with the qualifications specified in Subdivisions (18), (19), and (20), of Subsection (b), Section 31.12, Texas Education Code, as amended. The board shall designate one of the new members for a term expiring August 31, 1977, one for a term expiring on August 31, 1979, and one for a term expiring on August 31, 1981."

"Sec. 7. This Act takes effect September 1, 1975."

SUBCHAPTER C. POWERS AND DUTIES

§ 31.33. Duties

The council shall be the advisory council to the State Board for Vocational Education and shall:

(1) recommend and evaluate the role and scope of secondary institutions, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities in a comprehensive plan for developing manpower education and training in the State of Texas;

(2) recommend the appropriate subjects to be taught at each level of training and in each of the above types of institutions;

(3) recommend a state plan designating the method and the criteria to be utilized in establishing area technical schools which will be consistent with the Vocational Educational Act of

1963, as amended,¹ the Manpower Development and Training Act of 1962, as amended,² and other federal statutes;

(4) recommend and evaluate a list of courses offered by these types of institutions eligible to be funded by the legislature or through the allocation of federal funds. These courses shall be freely transferable among the public institutions in the State of Texas, with credit for such courses to be given on the same basis as if they had been taken at the receiving institutions;

(5) recommend to the governor and the legislature methods of funding existing programs and propose methods for funding new programs;

(6) suggest and evaluate pilot projects and present recommendations to the governor and the legislature for implementing cooperative programs among the several types of institutions named hereinabove, which will provide a more effective and efficient method of supplying business and industry with trained manpower;

(7) recommend the establishment of the responsibility of public schools, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities in adult basic education, adult technical education, and adult vocational education;

(8) recommend, encourage, and evaluate cooperative programs between educational institutions and industry, and, with the assistance of industry, assist in the development of new curricula and instructional materials as may be required for new and emerging occupational categories as may be prescribed by industry;

(9) provide up-to-date information on employment opportunities in the Texas economy to persons trained in these institutions through cooperation with the Texas Employment Commission and other appropriate research agencies at both the state and national levels;

(10) recommend a state plan for the development of a comprehensive manpower program in conjunction with state and federal statutes;

(11) recommend the state plan, training institutions, and means of coordination of manpower training as provided in state and federal statutes;

(12) recommend research projects as may be necessary to implement and improve a statewide system of technical, vocational, and manpower training from funds provided by appropriations from the United States Congress or private gifts, grants, or awards;

(13) recommend and evaluate a program of teacher certification for instructors of occupational training courses;

(14) recommend and evaluate a statewide plan for the development of a comprehensive program of apprenticeship training; and

[Text of subd. (15) added by Acts 1975, 64th Leg., p. 2161, ch. 694, § 4]

(15) support actions and activities to encourage and strengthen local and regional vocational advisory councils in carrying out their responsibilities.

[Text of subds. (15), (16) added by Acts 1975, 64th Leg., p. 2379, ch. 734, § 4]

(15) recommend methods through which increased numbers of physically and mentally handicapped individuals may effectively benefit from programs of vocational education offered at secondary institutions, the Texas School for the Blind and the Texas School for the Deaf, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities; and

(16) recommend and evaluate innovative programs to assure that physically or mentally handicapped individuals who cannot readily participate in programs of vocational education offered at secondary institutions, the Texas School for the Blind and the Texas School for the Deaf, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities derive vocational education benefits from sums appropriated for vocational education by the legislature, by extending vocational education programs through nonprofit facilities operated other than on campus settings.

[Amended by Acts 1975, 64th Leg., p. 2161, ch. 694, § 4, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2379, ch. 734, § 4, eff. June 21, 1975.]

¹ See 20 U.S.C.A. § 1241 et seq.
² 42 U.S.C.A. § 2571 et seq. (repealed; see, now, 29 U.S.C.A. § 801 et seq.)

§ 31.34. Studies; Reports

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) The council shall make a report to the governor annually and to the legislature not later than December 1 prior to the regular session of the legislature, setting forth the numbers of physically and mentally handicapped individuals deriving benefits from vocational education programs within the State of Texas during the period covered by the report, indicating the severity of the handicaps of the individuals involved, reflecting the types of vocational education being received, specifying the amounts of state and federal vocational education funds expended, evaluating the impact of such vocational education services on the lives of the handicapped individuals involved, and describing the cooperation received from other state boards and agencies pursuant to Section 31.36 of this code.

[Amended by Acts 1975, 64th Leg., p. 2380, ch. 734, § 5, eff. June 21, 1975.]

§ 31.39. Status of Recommendations

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) Each state board, commission, council, or agency which develops policy or administers programs of vocational, technical, or adult education or manpower training shall receive the reports and recommendations of the advisory council and shall respond in accordance with procedures outlined in this section. [Amended by Acts 1975, 64th Leg., p. 2162, ch. 694, § 5, eff. Sept. 1, 1975.]

§ 31.40. Allocation of State and Federal Funds

(a) The State Board for Vocational Education shall have the authority to allocate, as provided herein, funds appropriated by the legislature and funds of the United States government received by the State of Texas under the Vocational Education Act of 1963, as amended,¹ and the Manpower Development and Training Act of 1962, as amended,² or other such federal statutes, as may come under its jurisdiction. Only institutions and programs approved by the State Board of Education or the Coordinating Board, Texas College and University System, will be eligible for the distribution of such funds; such program approvals shall include all those previously approved including industrial arts.

(b) Of the state funds appropriated for the support of vocational education programs within the State of Texas, there is hereby allocated for specific and identifiable use in behalf of individuals with handicapping conditions of such severity as to render such individuals eligible for vocational rehabilitation services, a percentage of the appropriation of state funds which corresponds to the percentage of the federal appropriation for vocational education required by federal law to be expended in behalf of handicapped individuals.

[Amended by Acts 1975, 64th Leg., p. 2380, ch. 734, § 6, eff. June 21, 1975.]

¹ See 20 U.S.C.A. § 1241 et seq.

² 42 U.S.C.A. § 2571 et seq. (repealed; see now, 29 U.S.C.A. § 801 et seq.)

TITLE 3. HIGHER EDUCATION

SUBTITLE A. HIGHER EDUCATION IN GENERAL

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO HIGHER EDUCATION

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Section
51.906. Sequential Education Planning for Nursing Education
[NEW].

SUBCHAPTER A. CONTROL OF FUNDS BY CERTAIN INSTITUTIONS

§ 51.001. Institutions to which Applicable

Subject to Section 51.008 of this code, the provisions of this subchapter apply to:

- (1) each institution and branch of The University of Texas System;
- (2) each institution, agency, and service of The Texas A & M University System;
- (3) Texas A & I University;
- (4) Texas Tech University;
- (5) East Texas State University;
- (6) North Texas State University;
- (7) Sam Houston State University;
- (8) Stephen F. Austin State University;
- (9) Southwest Texas State University;
- (10) Sul Ross State University;
- (11) West Texas State University;
- (12) Texas Eastern University; and
- (13) each public junior college to the extent possible.

[Amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2, eff. Sept. 1, 1975.]

§ 51.005. Reports

(a) True and full accounts shall be kept by the governing board and by the employees of the institution of all funds collected from all sources and of all sums paid out and the persons to whom and the purposes for which the sums are paid. The governing board shall annually, between September 1 and January 1, print a complete report of all the sums collected, all expenditures, and all sums remaining on hand. The report shall show the true condition of all funds as of the August 31 preceding as well as the collections and expenditures for the preceding year.

(b) The governing board shall furnish copies of the report to the governor, state treasurer, comptroller of public accounts, state auditor, and attorney general. Each member of the House Appropriations Committee, the Senate Finance Committee, and the house and senate committees on education of each regular session of the legislature shall be furnished a copy of the report within a week after the selection of each committee.

[Amended by Acts 1975, 64th Leg., p. 568, ch. 227, § 1, eff. May 20, 1975.]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 51.905. State-Owned Museum Buildings

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

(b) Repealed by Acts 1975, 64th Leg., p. 1251, ch. 474, § 1, eff. Sept. 1, 1975.

[See Compact Edition, Volume 1 for text of (c) and (d)]

[Amended by Acts 1975, 64th Leg., p. 1251, ch. 474, § 1, eff. Sept. 1, 1975.]

§ 51.906. Sequential Education Planning for Nursing Education

The governing board of each state-supported institution of higher education which provides a nursing education program shall plan and incorporate into the program standards and sequential procedures which will recognize and grant credit for actual educational and clinical experiences in the nursing field which are equivalent to regular course content. The board may require students to pass examinations demonstrating competence based on educational and clinical experiences before granting academic credit.

[Added by Acts 1975, 64th Leg., p. 1912, ch. 615, § 1, eff. Sept. 1, 1975.]

CHAPTER 52. STUDENT LOAN PROGRAM

SUBCHAPTER C. STUDENT LOANS

Section

52.40. Cancellation of Certain Loan Repayments [NEW].

SUBCHAPTER C. STUDENT LOANS

§ 52.40. Cancellation of Certain Loan Repayments

(a) The board may cancel the repayment of a loan received by a student who earns a professional doctor of medicine degree or a doctorate of psychology degree and who is employed by the Texas Youth Council, State Department of Public Welfare, Texas Department of Corrections, or Department of Mental Health and Mental Retardation prior to the date on which repayment of the loan is to commence.

(b) A person who wishes to apply for a loan cancellation shall enter into a contract with the board which contains the following provisions:

(1) No payment is due from the person as long as he is employed by one of the designated state agencies.

(2) Half of the total amount of the loan plus interest due is to be cancelled after two years of service with a designated state agency, and the remainder is to be cancelled after two additional years of service.

(3) Repayment of the loan and interest is to commence immediately if the person leaves the designated state agency before the expiration of two years; repayment of one-half of the loan and interest is to commence immediately if the

person leaves the designated state agency after completing two years service; upon completion of four years service, the loan, principal and interest, shall be fully cancelled.

(4) Interest continues to accrue until the loan is cancelled or repaid.

(c) The legislature shall appropriate to the Texas Opportunity Plan Fund an amount equal to the loans and interest cancelled pursuant to the provisions of this section.

(d) The board shall publicize the availability of the loan cancellation procedures provided in this section at all institutions of higher education which offer graduate programs in medicine or psychology.

[Added by Acts 1975, 64th Leg., p. 1344, ch. 503, § 1, eff. Sept. 1, 1975.]

[Sections 52.41 to 52.50 reserved for expansion]

CHAPTER 53. HIGHER EDUCATION AUTHORITIES

SUBCHAPTER C. POWERS AND DUTIES

Section

53.47. Bonds for the Purchase of Student Loan Notes [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 53.47. Bonds for the Purchase of Student Loan Notes

(a) An authority heretofore created may, upon approval of the city or cities which created the same, issue revenue bonds to obtain funds to purchase student loan notes which are guaranteed under the provisions of the Higher Education Act of 1965 (Public Law 89-329).¹ Revenue bonds issued for such purpose shall be issued in accordance with and with the effect provided in this chapter, except Section 53.36 shall not apply, as said chapter has been modified by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), and by Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes). Such bonds shall be payable from and secured by a pledge of revenues derived from or by reason of the ownership of student loan notes and investment income after deduction of such expenses or operating the loan program as may be specified by the bond resolution or trust indenture.

(b) The authority, acting through a bank with trust powers, may cause bond proceeds to be expended to purchase for its account student loan notes executed by students who (1) are residents of this state or (2) who have been admitted to attend an accredited institution within this state. An accredited institution shall mean an institution which has

been recognized by a recognized accrediting agency, as defined by Section 61.003(12) of the Texas Education Code, and is a public or private institution of higher learning which is not organized for profit.

(c) The authority shall contract with a nonprofit corporation, organized under the laws of this state, whereby such corporation will provide the reports and other information required for continued participation in the federally guaranteed loan program provided by the Higher Education Act of 1965 (Public Law 89-329). The custody of student loan notes, purchased by the bank on behalf of the authority, shall be held by a bank with trust powers located within this state.

(d) The authority, as a municipal corporation of the state, is charged with a portion of the responsibility of the state to provide educational opportunities in keeping with all applicable state and federal laws. Nothing in this section shall be construed as a prohibition against establishing policies to limit the purchase of notes to notes executed by students attending school in a certain geographical area or by students who are residents of the area.

(e) In lieu of establishing an authority under the provisions of this chapter, the governing body of a home-rule city or cities may request a nonprofit corporation heretofore organized to exercise the powers enumerated and provided in this section for and on its behalf. If the corporation agrees to exercise such powers, the directors of such corporation shall thereafter be appointed by and be subject to removal by the governing body of the home-rule city or cities, and except as herein provided, Sections 53.14, 53.15, 53.31, 53.32, 53.38, and 53.41 through 53.43 of the Texas Education Code shall apply to and govern such corporation, its procedures, and bonds. [Added by Acts 1975, 64th Leg., p. 963, ch. 365, § 1, eff. June 19, 1975.]

¹ 20 U.S.C.A. § 1001 et seq.

CHAPTER 54. TUITION AND FEES

SUBCHAPTER C. TUITION SCHOLARSHIPS [REPEALED]

54.101, 54.102. Repealed.

SUBCHAPTER D. EXEMPTIONS FROM TUITION

54.202. Repealed.

54.206. Repealed.

54.210. Senior Citizens [NEW].

SUBCHAPTER E. OTHER FEES AND DEPOSITS

54.504. Medical Service Fees [NEW].

SUBCHAPTER B. TUITION RATES

§ 54.051. Tuition Rates

(a) The governing board of each institution of higher education shall cause to be collected from

students registering at the institution tuition or registration fees at the rates prescribed in this section.

(b) Tuition for resident students, except as otherwise hereinafter provided, is \$4 per semester credit hour, but the total of such charge shall be not less than \$50 per semester or 12-week summer session, and not less than \$25 per 6-week summer term.

(c) Tuition for nonresident students, except as otherwise hereinafter provided, is \$40 per semester credit hour.

(d) Resident or nonresident students registered for thesis or dissertation credit only, in those instances where such credit is the final credit hour requirement for the degree in progress, shall pay a sum proportionately less than herein prescribed but not more than \$50.

(e) Tuition for resident students registered in a medical or dental branch, school or college is \$400 per academic year of 12 months.

(f) Tuition for nonresident students registered in a medical or dental branch, school or college is \$1,200 per academic year of 12 months.

(g) Resident or nonresident students registered for a course or courses in art, architecture, drama, speech, or music, where individual coaching or instruction is the usual method of instruction, shall pay a fee in addition to the regular tuition, said fee to be designated by the governing board of such institution; but in no event shall such fees be more per course per semester of four and one-half months or per summer session than \$75.

(h) Tuition for students who are citizens of any country other than the United States of America is the same as tuition required of other nonresident students. However, the governing board of an institution of higher education may set a lower fee for a foreign student, based on financial need, as authorized by rules and policies of the Coordinating Board, Texas College and University System. The lower fee in any case shall be not less than \$14 per semester credit hour, and the total of such charge shall be not less than \$200 per semester or 12-week summer session, and not less than \$100 per 6-week summer term. However, if a student is a citizen of a country that charges citizens of the United States tuition at publicly funded colleges and universities in an amount which is equal to or less than \$200 per semester or 12-week summer session or comparable period, or \$100 per 6-week summer term or comparable period, as determined by the Coordinating Board, Texas College and University System, the student shall be charged \$14 per semester credit hour, but not less than \$200 per semester or 12-week summer session nor less than \$100 per six-week summer term.

(i) Tuition for students who are citizens of any country other than the United States of America registered in a medical or dental branch, school or college is the same as tuition required of other nonresident students. However, the governing board of an institution of higher education may set a lower fee for a foreign student, based on financial need, as authorized by rules and policies for the Coordinating Board, Texas College and University System. The lower fee in any case may not be less than \$800 per academic year of 12 months. However, if a student is a citizen of a country that charges citizens of the United States tuition at a publicly funded medical or dental branch, school, or college in an amount which is equal to or less than \$800 per academic year of 12 months or comparable period, as determined by the Coordinating Board, Texas College and University System, the student shall be charged \$800 per academic year of 12 months.

(j) Tuition for nonresident students registered in a public junior college is as provided in Subsection (b), Section 130.003 of the Texas Education Code.

(k) Tuition for students registered in a school of nursing as a nursing student is \$50 per semester and per 12-week summer session.

(l) Tuition for students registered in a school of nursing as a nursing student for less than 12 semester credit hours of work or for less than a full semester credit hour or term hour load during a summer session shall pay an amount proportionately less than the amount provided in Subsection (k) of this section, but not less than \$20.

(m) Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975.

(n) Notwithstanding the preceding provisions of this section, any nonresident student who is enrolled for the spring semester of 1971 in an institution covered by this section may continue to enroll at the same institution at the same tuition rate that was effective at the time of his original enrollment until one of the following conditions first occurs:

(1) he receives the degree at the degree level (i. e., the baccalaureate, master's, or doctoral degree) toward which he is working during the spring semester of 1971; or

(2) he voluntarily withdraws from the institution or the institution involuntarily withdraws the student for disciplinary reasons or for failing to meet the academic standards of the institution; or

(3) the termination of the spring semester of 1975.

(o) A teaching assistant, research assistant, or other student employee of any institution covered by this section is entitled to register himself, his spouse,

and their children in a state institution of higher education by paying the tuition fees and other fees or charges required for Texas residents, without regard to the length of time he has resided in Texas; provided that said student employee is employed at least one-half time in a position which relates to his degree program under rules and regulations established by the employer institution. This exemption shall continue for students employed two consecutive semesters through the summer session following such employment if the institution is unable to provide employment and, as determined under standards established by the institution, if the employee has satisfactorily completed his employment.

(p) A student who holds a competitive scholarship of at least \$200 for the academic year or summer for which he is enrolled and who is either a nonresident or a citizen of a country other than the United States of America is entitled to pay the fees and charges required of Texas residents without regard to the length of time he has resided in Texas, provided that he must compete with other students, including Texas residents, for the scholarship and that the scholarship must be awarded by a scholarship committee officially recognized by the administration of the institution of higher education.

[Amended by Acts 1975, 64th Leg., p. 1358, ch. 515, §§ 1 and 2, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975.]

Section 4 of ch. 515 provided:

"Sec. 4. The provisions of this Act apply only to foreign students who enter state colleges and universities for the first time after the effective date of this Act."

§ 54.060. Resident of Bordering State: Tuition

The nonresident tuition fee prescribed in this chapter does not apply to a nonresident student who is a resident of a state situated adjacent to Texas and who registers in any Texas public junior college situated in a county immediately adjacent to the state in which the nonresident student resides. The nonresident junior college student described in this section shall pay an amount equivalent to the amount charged a Texas student registered at a similar school in the state in which the nonresident student resides. The nonresident student described in this section shall pay equivalent fees and charges to those charged Texas students registered at a similar institution in the state in which the nonresident student resides, when such student registers at a Texas public senior upper level (those institutions offering only junior, senior, and graduate level programs) institution of higher education located within the Texas public junior college district from which the nonresident student has graduated or completed 45 semester credit hours.

[Amended by Acts 1975, 64th Leg., p. 280, ch. 122, § 1, eff. May 5, 1975.]

SUBCHAPTER C. TUITION SCHOLARSHIPS
[REPEALED]

§§ 54.101, 54.102. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

SUBCHAPTER D. EXEMPTIONS FROM TUITION

§ 54.202. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

§ 54.204. Children of Disabled Firemen and Peace Officers

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

(b) The governing board of each institution of higher education shall exempt from the payment of all dues, fees, and charges any person whose parent is an eligible employee who has suffered an injury, resulting in death or disability, sustained in the line of duty according to the regulations and criteria then in effect governing the department or agency in which he was employed. The exemption does not apply to general property deposits or to fees or charges for lodging, board, or clothing.

[See Compact Edition, Volume 1 for text of (c) to (h)]

[Amended by Acts 1975, 64th Leg., p. 1386, ch. 534, § 1, eff. Sept. 1, 1975.]

§ 54.206. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

§ 54.210. Senior Citizens

(a) In this section, "senior citizen" means a person 65 years of age or older.

(b) The governing board of a state-supported institution of higher education may allow a senior citizen to audit any course offered by the institution without the payment of a fee if space is available. [Added by Acts 1975, 64th Leg., p. 265, ch. 111, § 1, eff. Sept. 1, 1975.]

[Sections 54.211 to 54.500 reserved for expansion]

SUBCHAPTER E. OTHER FEES AND DEPOSITS

§ 54.504. Medical Service Fees

(a) The governing board of an institution of higher education may levy and collect from each student registered at the institution medical service fees not to exceed \$15 for each regular semester or each 12 weeks summer session, and not to exceed \$7.50 for each six weeks term of the summer session or any fractional part thereof. Such medical service fees, when levied and collected, shall not be expended for any purpose other than providing medical services

for the students of such institutions of higher learning.

(b) Such fees shall, if levied, be in addition to any other fees authorized by law to be levied and collected by such governing boards.

(c) Prior to the levy of a medical services fee at any institution of higher education under the provisions of this section, the governing board shall provide for receiving recommendations from the students, faculty, and administration of such institution as to the type and scope of medical services to be provided.

[Added by Acts 1975, 64th Leg., p. 323, ch. 135, § 1, eff. Sept. 1, 1975.]

CHAPTER 55. FINANCING PERMANENT IMPROVEMENTS

SUBCHAPTER B. REVENUE BONDS AND FACILITIES

§ 55.16. Rentals, Rates, Charges, and Fees

Each board shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board; provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and shall not exceed \$6 per semester hour, except that those schools charging more than \$6 per semester hour as of May 1, 1975, shall not exceed the amount being charged as of that date, and except that the legislature may specifically authorize individual boards to levy fees in excess of the \$6 limit set herein. The board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; and further provided that nothing in this section shall affect, limit, or impair any pledge, covenant, or option made or reserved by the board with respect to any revenue bonds outstanding as of the 1975 amendment to this section, issued by the board pursuant to this chapter; and provided that hereafter if bonds are issued pursuant to Section 55.17 of this code, to be secured by a pledge of a limited or unlimited use fee, and if, at the time of authorizing the issuance of the bonds, (1) the estimated maximum amount per semester hour of such pledged use fee (based on then current enrollment and conditions) during any future semester necessary to provide for the payment of the

principal of and interest on the bonds when due, together with (2) the aggregate amount of all use fees which were levied on a semester hour basis for the then current semester to pay the principal of and interest on all previously issued bonds, do not exceed \$6 per semester hour, then such limited or unlimited use fee shall be levied and collected when and to the extent required by the resolution authorizing the issuance of the bonds in any amount required to provide for the payment of the principal of and interest on the bonds, regardless of any other provision of this section or the limitations contained herein.

[Amended by Acts 1975, 64th Leg., p. 1245, ch. 469, § 1, eff. June 19, 1975.]

CHAPTER 56. STUDENT FINANCIAL ASSISTANCE GRANTS [NEW]

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 56.001. Short Title.
- 56.002. Declaration of Policy.
- 56.003. Definitions.

SUBCHAPTER B. TEXAS ASSISTANCE GRANTS

- 56.010. Short Title.
- 56.011. Purpose.
- 56.012. Administrative Authority for the Program.
- 56.013. Rules Governing Eligibility of Postsecondary Institutions.
- 56.014. Rules Governing Eligibility of Students.
- 56.015. Awarding of Grants and Their Limitations.
- 56.016. Adoption of Regulations Governing the Program.

SUBCHAPTER C. TEXAS PUBLIC EDUCATIONAL GRANTS

- 56.031. Short Title.
- 56.032. Purpose.
- 56.033. Source of Program Funding.
- 56.034. Guidelines for Determining Eligibility and Awarding Grants.
- 56.035. Type of Grants to be Awarded and Restrictions.
- 56.036. Transfer of Grant Funds for Use as Matching Funds.
- 56.037. Priorities in Awarding Matching Funds.
- 56.038. Restrictions and Return of Transferred Funds.

SUBCHAPTER A. GENERAL PROVISIONS

§ 56.001. Short Title

This Chapter may be cited as the Student Financial Assistance Act of 1975.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.002. Declaration of Policy

The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school finds and declares that postsecondary education for those who desire such

an education and are properly qualified therefor is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of his capabilities and only when financial barriers to his economic, social, and educational goals are removed. It is, therefore, the policy of the legislature and the purpose of this Chapter to establish financial assistance programs to enable qualified students to receive a postsecondary education.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.003. Definitions

In this Chapter:

- (1) "Institution of higher education" has the same meaning as is assigned to it by Section 61.003 of this code.
- (2) "Governing board" has the same meaning as is assigned to it by Section 61.003 of this code.
- (3) "Postsecondary educational institution" means any institution, public or private, which provides courses of instruction beyond that offered in secondary schools.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

[Sections 56.004 to 56.009 reserved for expansion]

SUBCHAPTER B. TEXAS ASSISTANCE GRANTS

§ 56.010. Short Title

The grant program authorized by this subchapter shall be cited as the Texas Assistance Grants Program, and individual grants awarded pursuant to this program shall be cited as Texas Assistance Grants.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.011. Purpose

The purpose of this subchapter is to provide a program to supply grants of money enabling students to attend postsecondary educational institutions, public or private, of their choice in Texas.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.012. Administrative Authority for the Program

The Coordinating Board, Texas College and University System, is authorized to provide Texas Assistance Grants to students enrolled in any approved postsecondary educational institution, based on stu-

dent financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.013. Rules Governing Eligibility of Postsecondary Institutions

(a) The coordinating board shall approve for participation in the Texas Assistance Grants Program only such colleges, universities, associations, agencies, institutions, and facilities as are located within the state, which meet program standards and accreditation as determined by the board.

(b) The coordinating board shall make such regulations as may be necessary to insure compliance with the Civil Rights Act of 1964, Title VI (Public Law 88-352), as amended, and in regard to nondiscrimination in admissions or employment.

(c) Any public postsecondary educational institution receiving any benefit under the provisions of this subchapter, either directly or indirectly, shall be subject to all present or future laws enacted by the legislature.

(d)(1) Postsecondary institutions which request approval for eligibility under this section and are denied such approval shall be provided written reasons for such denial by the coordinating board.

(2) The coordinating board shall adopt reasonable regulations allowing an institution to appeal denial of eligibility.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.014. Rules Governing Eligibility of Students

To be eligible for a grant under this subchapter, a person must

(a) be a resident of Texas as defined by the coordinating board, provided, however, the person must meet, at a minimum, the resident requirements as defined by law for Texas resident tuition in fully state-supported institutions of higher education; or be a permanent resident of the United States who is otherwise qualified for an educational grant under this subchapter; no more than 10 percent of the funds awarded to eligible students enrolled at any approved institutions may be allocated to out-of-state students;

(b) be enrolled in an approved postsecondary educational institution in other than a theology or religious degree program;

(c) not be the recipient of an athletic scholarship during the period for which the grant is to be awarded;

(d) establish financial need in accordance with procedures and regulations of the coordinating board; and

(e) have complied with other requirements adopted by the coordinating board under this subchapter.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.015. Awarding of Grants and Their Limitations

(a) On receipt of a student application, enrollment report, and certification of the amount of financial need from an approved institution, the coordinating board shall certify the amount of the Texas Assistance Grant based on financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature nor

(1) the student's demonstrated financial need as determined by the coordinating board; or

(2) \$1,000 during any one fiscal year.

(b) The proper amount of the Texas Assistance Grant shall be paid to the student through the postsecondary educational institution in which the student is enrolled.

(c)(1) If a student's grant application is denied, the coordinating board shall provide the student with written notification of the reasons for such denial.

(2) The coordinating board shall adopt reasonable regulations allowing a student to appeal denial of the grant.

(d) Financial need shall be the only consideration in establishing guidelines to determine a student's eligibility for a grant except that returning students who are on scholastic probation or all students on disciplinary probation who have been placed on such probation by their respective institutions may be deemed ineligible by the coordinating board.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.016. Adoption of Regulations Governing the Program

(a) The coordinating board may make reasonable regulations consistent with the purposes and policies of this subchapter to enforce the requirements, conditions, and limitations expressed in this Act.

(b) The coordinating board shall make such regulations as may be necessary to comply with the provisions of Article I, Section 7; Article III, Section 51, and other parts of the Texas Constitution.

(c) The coordinating board shall provide copies of regulations proposed for its adoption to all eligible institutions one month prior to the meeting at which the proposals shall be acted upon.

(d) The coordinating board shall distribute copies of all regulations adopted pursuant to this Act to each eligible institution.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

[Section 56.017 to 56.030 reserved for expansion]

SUBCHAPTER C. TEXAS PUBLIC EDUCATIONAL GRANTS

§ 56.031. Short Title

The grant program authorized by this subsection shall be cited as the Texas Public Educational Grants Program and individual grants awarded pursuant to this program shall be cited as Texas Public Educational Grants.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.032. Purpose

The purpose of this subchapter is to provide a program to supply grants of money to students attending institutions of higher education in Texas whose educational costs are not met in whole or in part from other sources and to provide institutions of higher education with funds to supplement and add flexibility to existing financial aid programs.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.033. Source of Program Funding

The governing boards of institutions of higher education shall cause to be set aside for use as Texas Public Educational Grants twenty-five cents out of each hourly charge in Subsection (b), \$1.50 out of each hourly charge in Subsection (c) of Section 54.051 of this code, as amended, and six percent of hourly tuition charges for vocational-technical courses at public community and junior colleges.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.034. Guidelines for Determining Eligibility and Awarding Grants

(a) The governing boards of institutions of higher education shall establish guidelines to determine eligibility for awarding Texas Public Educational Grants subject to the limitations of this section.

(b) Financial need shall be the only consideration in establishing guidelines to determine a student's eligibility for a grant except that returning students who are on scholastic probation or all students on disciplinary probation may be deemed ineligible at the governing board's discretion.

(c) Guidelines adopted shall be submitted to the coordinating board, which is authorized to review and reject guidelines it determines to be contrary to the purposes of this section.

(1) In reviewing guidelines, the coordinating board shall give consideration to differing needs of each institution and desirability of this program being used to aid students who may have demonstrable financial need but be ineligible for other aid programs.

(2) If the coordinating board rejects guidelines adopted by a governing board, it shall provide a written explanation of such rejection and promulgate regulations allowing governing boards to appeal such rejection.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.035. Type of Grants to be Awarded and Restrictions

(a) Texas Public Educational Grants shall not be awarded for any specific purpose other than meeting all or part of a student's demonstrated financial need.

(b) No more than 10 percent of total grant funds awarded by institutions of higher education in a fiscal year under this subchapter may be allocated to out-of-state students.

(c) No funds may be awarded to alien students nor any money set aside from tuition revenues of alien students for use in this program.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.036. Transfer of Grant Funds for Use as Matching Funds

Each institution of higher education is authorized to transfer any or all of the funds set aside for the Texas Public Educational Grant Program to the coordinating board to be used for matching federal or other grant funds for awarding to students attending that institution. Said scholarship fund transferred to the coordinating board and all matching funds may be expended by the coordinating board for awarding scholarships as provided herein and in the general appropriation acts of the legislature.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.037. Priorities in Awarding Matching Funds

In awarding matching funds to be used in conjunction with Texas Public Educational Grants, the coordinating board shall give first priority to those institutions and students showing the highest amount of financial need.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.038. Restrictions and Return of Transferred Funds

The coordinating board may not use funds transferred to it pursuant to this subchapter from one institution to award grants to students of a different institution. Should matching funds be unavailable for an institution, all funds transferred from that institution to the coordinating board shall be returned to that institution.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

SUBTITLE B. STATE COORDINATION OF HIGHER EDUCATION

CHAPTER 61. COORDINATING BOARD, TEXAS COLLEGE AND UNIVERSITY SYSTEM

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

Section

61.072. Regulation of Foreign Student Tuition [NEW].

SUBCHAPTER D. CONTRACTS WITH BAYLOR COLLEGE OF MEDICINE AND BAYLOR UNIVERSITY COLLEGE OF DENTISTRY

61.096. Restrictions: Medical School Admissions Policies [NEW]

SUBCHAPTER G. REGULATION OF PRIVATE DEGREE-GRANTING INSTITUTIONS OF HIGHER EDUCATION [NEW]

- 61.301. Purpose.
- 61.302. Definitions.
- 61.303. Exemptions.
- 61.304. Requisite Authority to Grant Degrees and Offer Courses.
- 61.305. Application for Certificate of Authority.
- 61.306. Issuance of Certificate.
- 61.307. Amendments to Applications.
- 61.308. Renewal of Certificate.
- 61.309. Revocation of Certificate of Authority.
- 61.310. Appeal.
- 61.311. Rules and Regulations.
- 61.312. Honorary Degrees.
- 61.313. Use of the Term "College" or "University".
- 61.314. Advisory Council on Private Degree-Granting Institutions of Higher Education.
- 61.315. Agents and Records.
- 61.316. Duty of Prosecuting Attorney.
- 61.317. Penalties.

SUBCHAPTER H. REGULATION OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION ESTABLISHED OUTSIDE THE BOUNDARIES OF THE STATE OF TEXAS [NEW]

- 61.401. Definitions.
- 61.402. Requisite Approval.
- 61.403. Rules and Regulations.
- 61.404. Procedures in Case of Violation.
- 61.405. Advisory Committees.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 61.051. Coordination of Institutions of Public Higher Education

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The board shall classify and prescribe the role and scope for each public institution of higher education in Texas, shall make such changes in classification or role and scope of each institution as it deems necessary, and shall hear applications from the institutions for changes in classification or role and scope. The board shall make recommendation to the legislature with respect to maximum enrollment limits for each public institution of higher education in the State of Texas and may recommend to the legislature maximum enrollment limits for any department, school, degree program, or certificate program at any such institution.

(e) The board shall review periodically all degree and certificate programs offered by the institutions of higher education to assure that they meet the present and future needs of the state. The board shall also order the initiation, consolidation, or elimination of degree or certificate programs where that action is in the best interest of the institutions themselves or the general requirements of the State of Texas, or when that action offers hope of achieving excellence by a concentration of available resources. No new department, school, degree program, or certificate program may be added at any institution of higher education except with specific prior approval of the board. Once approved, no department, school, degree program, or certificate program at any institution of higher education may be expanded to include subject matter courses that are outside of approved degree and certificate programs except with specific prior approval of the board.

(f) The board shall encourage and develop in cooperation with the State Board of Vocational Education new certificate programs in technical and vocational education in institutions of higher education as the needs of technology and industry may demand and shall recommend the elimination of certificate programs for which a need no longer exists. The board may contract with the State Board of Education (State Board of Vocational Education) so that the coordinating board may assume the leadership role and administrative responsibilities of the State Board for Vocational Education for state level administration of technical-vocational education programs in Texas public community colleges, public technical institutes, and other eligible public postsecondary institutions.

[See Compact Edition, Volume 1 for text of (g) to (i)]

(j) No off-campus courses for credit may be offered by any public college or university without specific prior approval of the board. The board shall establish regulations for the coordination of credit and noncredit activities of adult and continuing education by public colleges and universities.

[Amended by Acts 1975, 64th Leg., p. 2055, ch. 676, §§ 1, 2, eff. June 20, 1975.]

Section 5 of the 1975 Act provided:
 "Sec. 5. The coordinating board shall have all the previously listed powers in this Act in connection with The University of Texas System and The Texas A & M University System."

§ 61.058. Construction Funds and Development of Physical Plants

To assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments, the board shall:

(1) determine formulas for space utilization in all educational and general buildings and facilities at institutions of higher education;

(2) devise and promulgate methods to assure maximum daily and year-round use of educational and general buildings and facilities, including but not limited to maximum scheduling of day and night classes and maximum summer school enrollment;

(3) consider plans for selective standards of admission when institutions of higher education approach capacity enrollment;

(4) require, and assist the public senior colleges and universities, medical and dental units, and other agencies of higher education in developing, long-range plans for campus development;

(5) endorse, or delay until the next succeeding session of the legislature has the opportunity to approve or disapprove, the proposed purchase of any real property by an institution of higher education, except a public junior college;

(6) develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use;

(7) ascertain that the standards and specifications for new construction, repair, and rehabilitation of all buildings and facilities are in accordance with Chapter 324, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 678(g) Vernon's Texas Civil Statutes); and

(8) approve or disapprove all new construction and repair and rehabilitation of all buildings and facilities at institutions of higher education financed from any source other than ad valorem tax receipts of the public junior colleges, provided that:

(A) the board's consideration and determination shall be limited to the purpose for which the new or remodeled buildings are to be used and their gross dimensions to assure conformity with approved space uti-

lization standards and the institution's approved programs and role and scope;

(B) the requirement of approval for new construction financed from other than appropriated funds applies only to projects the total cost of which is in excess of \$100,000;

(C) the requirement of approval for major repair and rehabilitation of buildings and facilities applies only to projects the total cost of which is in excess of \$25,000; and

(D) the requirement of approval or disapproval by the board does not apply to any new construction or major repair and rehabilitation project that is specifically approved by the legislature.

[Amended by Acts 1975, 64th Leg., p. 2056, ch. 676, § 3, eff. June 20, 1975.]

§ 61.066. Studies and Recommendations; Reports

(a) The board shall make studies and recommendations directed toward the achievement of excellence or toward improved effectiveness and efficiency in any phase of higher education in Texas and shall report on their studies and recommendations to the governor and the legislature. The officials of the institutions of higher education shall comply with requests for reports or information made by the board or the commissioner. To assure that the institutions of higher education timely file various reports with the appropriate agencies, the board shall receive and distribute the reports required by statute to be filed with the governor, the Legislative Budget Board, the state auditor, the state library, and any other state agency.

(b) The board shall prepare biennial reports with reference to new programs in higher education as well as restructuring existing programs to meet the changing needs of the populace of the state. This will include but will not be limited to projected student enrollments at the various institutions, the areas of study which they will enter, and the projected demand for the various professional activities. In addition, the board shall make specific recommendations regarding the physical needs at each campus with the physical, mental, and educational needs of the student population in mind. In order to insure adequate time available for study of the reports, they shall be distributed to the appropriate offices as required by statute no later than the end of the fiscal year prior to the convening of the legislature.

[Amended by Acts 1975, 64th Leg., p. 252, ch. 101, § 1, eff. Sept. 1, 1975.]

§ 61.072. Regulation of Foreign Student Tuition

The board shall adopt rules and policies to be followed by the governing boards of institutions of higher education in fixing foreign student tuition fees pursuant to Subsections (h) and (i), Section 54.051, of this code.

[Added by Acts 1975, 64th Leg., p. 1359, ch. 515, § 3, eff. June 19, 1975.]

[Sections 61.073 to 61.090 reserved for expansion]

SUBCHAPTER D. CONTRACTS WITH BAYLOR
COLLEGE OF MEDICINE AND BAYLOR
UNIVERSITY COLLEGE OF DENTISTRY

§ 61.096. Restrictions: Medical School Admission Policies

As a restriction of the authority granted to the Coordinating Board by Sections 61.092 and 61.093 of this Code, no contract shall be entered into with the Baylor College of Medicine until the Baylor College of Medicine promulgates appropriate rules and regulations pertaining to the admission of students to medical schools under its jurisdiction which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students, and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the State while enrolled as a medical school student.

[Added by Acts 1975, 64th Leg., p. 2407, ch. 740, § 1, eff. Sept. 1, 1975.]

Section 5 of the 1975 Act provided:

"Sec. 5. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the applications thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth."

[Sections 61.097 to 61.200 reserved for expansion]

SUBCHAPTER G. REGULATION OF PRIVATE
DEGREE-GRANTING INSTITUTIONS OF
HIGHER EDUCATION [NEW]

§ 61.301. Purpose

It is the policy and purpose of the State of Texas to prevent deception of the public resulting from the conferring and use of fraudulent or substandard college and university degrees; it is also the purpose of this subchapter to regulate the use of academic terminology in naming or otherwise designating educational institutions, the advertising, solicitation or representation by educational institutions or their agents, and the maintenance and preservation of essential academic records. Because degrees and equivalent indicators of educational attainment are used by employers in judging the training of prospective employees, by public and private professional groups in determining qualifications for admission to and continuance of practice, and by the general public in assessing the competence of persons engaged in a wide range of activities necessary to the general welfare, regulation by law of the evidences of college and university educational attainment is in the public interest. To the same end the protection of legitimate institutions and of those holding degrees from them is also in the public interest. [Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.302. Definitions

In this subchapter:

(1) "Degree" means any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate, bachelor's, master's, doctor's, and their equivalents, which signifies, purports to, or is generally taken to signify satisfactory completion of the requirements of all or part of a program of study leading to an associate, bachelor's, master's, or doctor's degree or its equivalent.

(2) "Private institution of higher education" or "institution" means an educational institution which:

(A) is not an institution of higher education as defined by Section 61.003(7) of this code;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person or by correspondence leading to a degree or providing credits alleged to be applicable to a degree.

(3) "Agent" means a person employed by or representing a private institution of higher education who solicits students for enrollment in the institution.

(4) "Commissioner" means the Commissioner of Higher Education.

(5) "Board" means the Coordinating Board, Texas College and University System.

(6) "Person" means any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(7) "Program of study" means any course or grouping of courses which are alleged to entitle a student to a degree or to credits alleged to be applicable to a degree.

(8) "Recognized accrediting agency" means an agency as defined by Sec. 61.003(12) of this code.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.303. Exemptions

(a) The provisions of this subchapter do not in any way apply to:

(1) an institution which:

(A) is fully accredited by a recognized accrediting agency, or

(B) is a candidate for accreditation by a recognized accrediting agency on the effective date of this Act, so long as the institution maintains candidacy status or subsequently is fully accredited.

(2) an institution whose graduates are subject to licensure by an agency of the State of Texas prior to their engaging in professions directly related to their course of study.

(b) The exemptions provided by Subsection (a)(1) apply only to the extent that an institution is accredited, and if an institution offers to award a degree for which it is not accredited, the exemption does not apply.

(c) An exempt institution or person may be issued a certificate of authorization to grant degrees.

(d) An exempt institution or person would continue in that status only so long as it maintained accreditation standards acceptable to the board.

(e) The board shall provide for due process and procedures for revoking the exemption status of an institution or person.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.304. Requisite Authority to Grant Degrees and Offer Courses

After the effective date of this subchapter, no person may grant or award a degree on behalf of a private institution of higher education or enroll students for courses unless the institution has been issued a certificate of authority to grant the degree by the board in accordance with the provisions of

this subchapter. No person may represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified and approved by the board. The board is empowered to specify and regulate the manner, condition, and language used by an institution or person or agents thereof in making known that the person or institution holds a certificate of authority and the interpretation of the significance of such certificate.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.305. Application for Certificate of Authority

(a) A private institution of higher education may apply to the board for a certificate of authority to grant a degree in a specified program of study on application forms provided by the board.

(b) The application form shall contain the name and address of the institution; purpose of the institution; names of the sponsors or owners of the institution; regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution; the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board; the names of members of the faculty who will, in fact, teach in the program of study, with the highest degree held by each; a full description of the degree or degrees to be awarded and the course or courses of study prerequisite thereto; a description of the facilities and equipment utilized by the institution; and any additional information which the board may request.

(c) The application must be accompanied by an initial fee of \$250.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.306. Issuance of Certificate

(a) The board may issue a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if it finds that the applicant meets the standards established by the board for certification.

(b) A certificate of authority to grant a degree or degrees is valid for a period of two years from the date of issuance.

(c) An institution in operation on the effective date of this subchapter which has submitted a complete application for a certificate which has not been evaluated or acted on by the board shall be issued a provisional certificate which shall be valid for purposes of compliance with this subchapter until the

board has completed its evaluation and has issued or denied a regular certificate.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.307. Amendments to Applications

(a) The chief administrative officers of each institution which has been issued a certificate of authority shall immediately notify the board of any change in administrative personnel, faculty, or facilities at the institution or any other changes of a nature specified by the board.

(b) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by current certificate may file an application for amendment of the certificate with the board. The application shall be accompanied by a fee of \$75 to cover the cost of program evaluation. If the board finds that the new program of study meets the required standards, the board may amend the institution's certificate accordingly.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.308. Renewal of Certificate

(a) A private institution of higher education which desires to renew its certificate of authority shall apply to the board at least 60 days prior to the expiration of the current certificate.

(b) The application for renewal shall be made on forms provided by the board and shall be accompanied by a renewal fee of \$150.

(c) The board shall renew the certificate if it finds that the institution has maintained all requisite standards and has complied with all rules and regulations promulgated by the board.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.309. Revocation of Certificate of Authority

The board may revoke a certificate of authority to grant degrees at any time if it finds that:

(1) any statement contained in an application for a certificate is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, and programs of study on the basis of which the certificate was issued;

(3) advertising utilized on behalf of the institution is deceptive or misleading; or

(4) the institution has violated any rule or regulation promulgated by the board under the authority of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.310. Appeal

An institution whose application for an original, amended, or renewal certificate of authority to grant degrees is denied or whose certificate is revoked by the board is entitled to written notice of the reasons assigned by the board for the denial or revocation and may request a hearing before the board. The hearing shall be held within 120 days after written request is made to the board. If after the hearing the board upholds its previous denial or revocation, the institution may challenge the board's action in a suit filed within 30 days in the district court of Travis County. The trial shall be de novo as that term is used in appeals from a justice of the peace court to a county court.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.311. Rules and Regulations

(a) The board shall promulgate standards, rules, and regulations governing the issuance of certificates of authority.

(b) The board may delegate to the commissioner such authority and responsibility conferred on the board by this subchapter as the board deems appropriate for the effective administration of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.312. Honorary Degrees

No person may award an honorary degree on behalf of a private institution of higher education subject to the provisions of this subchapter unless the institution has been issued a certificate of authority to award such a degree. The honorary degree shall plainly state on its face that it is honorary.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.313. Use of the Term "College" or "University"

No person may use the term "college" or "university" in the official name or title of a private institution of higher education established after the effective date of this subchapter and subject to its provisions unless the institution has been issued a certificate of authority to grant a degree or degrees.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.314. Advisory Council on Private Degree-Granting Institutions of Higher Education

(a) The board shall appoint an advisory council on private degree-granting institutions of higher education consisting of six members with experience in

the field of higher education and representative of private institutions of higher education in the State of Texas which are exempt from the provisions of this subchapter. Council members serve for terms of two years from the date of their appointment and are entitled to reimbursement for actual expenses incurred in carrying out the work of the council.

(b) The council shall advise the board on standards and procedures to be used in carrying out the provisions of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.315. Agents and Records

The authorized or certified institutions may be required to furnish a list of their agents to the board, and to maintain records of students enrolled, credits awarded, and degrees awarded in a manner specified by the board.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.316. Duty of Prosecuting Attorney

The board shall report any information concerning possible violation of this subchapter to the appropriate prosecuting attorney of the county in which the activity is occurring or has occurred, and he shall make necessary investigations. The appropriate prosecuting attorney shall immediately prosecute or bring suit to enjoin any violation of this subchapter which he discovers.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.317. Penalties

(a) Any person who confers or offers to confer a degree on behalf of a private institution of higher education subject to the provisions of this subchapter which has not been issued a certificate of authority to grant degrees is guilty of a misdemeanor and upon conviction is subject to a fine of not less than \$1,000 nor more than \$5,000. Each degree conferred without authority constitutes a separate offense.

(b) Any person who establishes a private institution of higher education after the effective date of this subchapter and uses the term "college" or "university" in the official name of the institution without first having been issued a certificate of authority to grant degrees for the institution is guilty of a misdemeanor and upon conviction is subject to a fine of not less than \$1,000 nor more than \$3,000.

(c) Any agent who solicits students for enrollment in a private institution of higher education subject to the provisions of this subchapter without a certificate of registration is guilty of a misdemeanor and on conviction is subject to a fine of not less than \$500 nor more than \$1,000.

(d) Any operations which are found after due process to be in fraudulent violation of this Act shall be terminated.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

SUBCHAPTER H. REGULATION OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION ESTABLISHED OUTSIDE THE BOUNDARIES OF THE STATE OF TEXAS [NEW]

§ 61.401. Definitions

In this subchapter:

(1) "Public institution of higher education" includes any senior college, university, community college, technical institute, or junior college or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(2) "Coordinating Board" means the Coordinating Board, Texas College and University System.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.402. Requisite Approval

Public institutions of higher education established outside the boundaries of the State of Texas must have the approval of the coordinating board before offering a course or a grouping of courses within the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.403. Rules and Regulations

The coordinating board shall prepare rules and regulations which, when properly followed, may qualify a public institution of higher education established outside the boundaries of the State of Texas to offer a course or a grouping of courses within the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.404. Procedures in Case of Violation

If the coordinating board obtains evidence that a public institution of higher education established outside the boundaries of the State of Texas is in apparent violation of this subchapter or of rules and regulations adopted pursuant to this subchapter, the coordinating board shall take appropriate action to terminate its operation within the boundaries of the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.405. Advisory Committees

The coordinating board may appoint such advisory committees as deemed useful for the effective administration of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

SUBTITLE C. THE UNIVERSITY OF TEXAS SYSTEM

CHAPTER 65. ADMINISTRATION OF THE UNIVERSITY OF TEXAS SYSTEM

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

Section

65.41. Medical School Admission Policies [NEW].

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 65.41. Medical School Admission Policies

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to medical schools which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the state while enrolled as a medical school student. [Added by Acts 1975, 64th Leg., p. 2408, ch. 740, § 3, eff. Sept. 1, 1975.]

CHAPTER 66. PERMANENT UNIVERSITY FUND

SUBCHAPTER D. BOARD FOR LEASE OF UNIVERSITY LANDS

§ 66.64. Placing Oil and Gas on Market; Public Auction; Advertisement

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

(b) The sale of the oil and gas shall be made at public auction held in Austin, or any other location designated by the board, at any hour between 10 a. m. and 5 p. m.

[See Compact Edition, Volume 1 for text of (c)]
[Amended by Acts 1975, 64th Leg., p. 234, ch. 88, § 1, eff. April 30, 1975.]

CHAPTER 67. THE UNIVERSITY OF TEXAS AT AUSTIN

SUBCHAPTER C. THE UNIVERSITY OF TEXAS McDONALD OBSERVATORY AT MOUNT LOCKE

Section

67.53. Visitor Center [NEW].

SUBCHAPTER C. THE UNIVERSITY OF TEXAS McDONALD OBSERVATORY AT MOUNT LOCKE

§ 67.53. Visitor Center

The board may negotiate and contract with the Texas Highway Department and any other agency, department, or political subdivision of the state or any individual for the construction, maintenance, and operation of a visitor center and related facilities at McDonald Observatory at Mount Locke.

[Added by Acts 1975, 64th Leg., p. 370, ch. 161, § 1, eff. May 8, 1975.]

SUBTITLE D. THE TEXAS A & M UNIVERSITY SYSTEM

CHAPTER 85. ADMINISTRATION OF THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

§ 85.01. Definitions

In this chapter:

(1) "System" or "university system" means The Texas A & M University System.

(2) "Board" means the board of regents of The Texas A & M University System.

[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 1, eff. Sept. 1, 1975.]

Section 6 of the 1973 amendatory act provided: "Wherever the phrase 'board of directors' appears in other statutes, the phrase 'board of regents' shall not affect any previous authorization and obligation thereunder and, such new name for the governing board shall be substituted."

[Sections 85.02 to 85.10 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 85.11. Board of Regents

The government of the university system is vested in a board of nine regents appointed by the governor with the advice and consent of the senate.

[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 2, eff. Sept. 1, 1975.]

§ 85.13. Certificate of Appointment

The secretary of state shall forward a certificate to each regent within 10 days after his appointment, notifying him of the fact of his appointment. If any person so appointed and notified fails for 10 days to give notice to the governor of his acceptance, his appointment shall be deemed void and his place shall be filled as in the case of a vacancy.

[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 3, eff. Sept. 1, 1975.]

§ 85.14. Chairman of Board

The board shall elect from its members a chairman of the board, who shall call the board together for the transaction of business whenever he deems it expedient.

[Amended by Acts 1975, 64th Leg., p. 599, ch. 247, § 4, eff. Sept. 1, 1975.]

§ 85.15. Expenses of Regents

The regents shall serve without compensation but are entitled to reimbursement for actual expenses incurred in attending board meetings and in transacting the official business of the board.

[Amended by Acts 1975, 64th Leg., p. 599, ch. 247, § 5, eff. Sept. 1, 1975.]

CHAPTER 87. OTHER ACADEMIC INSTITUTIONS IN THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER B. PRAIRIE VIEW A & M UNIVERSITY

Section

87.103. Certain Land in Waller County Under Control of Board [NEW].

SUBCHAPTER B. PRAIRIE VIEW A & M UNIVERSITY

§ 87.103. Certain Land in Waller County Under Control of Board

(a) The 110 acres, more or less, of land in Waller County near Prairie View A & M University, but not adjoining its campus, conveyed as a gift to the Governor of the State of Texas when the site for then Prairie View Normal and Industrial College was purchased, is placed under the control and supervision of the Board of Directors of The Texas A & M University System for the use and benefit of Prairie View A & M University.

(b) The land is described in the deed of record in Record Book 3, pages 496, 497, and 498 of the records of the County Clerk of Waller County as being 110 acres of land off a 320-acre survey patented to the heirs of Solomon Smith No. 276, Vol. 11, the said 110 acres lying on the south side of said 320-acre survey and adjoining the Law Survey and is described by metes and bounds in Decree of Partition in District

Court of Austin County in Matters Probate between Helen M. Kirby and the estate of Jared E. Kirby, deceased.

(c) The board of directors is authorized to lease the land for oil, gas, sulphur, and other mineral development under existing law applicable to other lands under its control and supervision and to apply the proceeds from such lease to the use and benefit of Prairie View A & M University.

[Added by Acts 1975, 64th Leg., p. 570, ch. 229, § 1, eff. May 20, 1975.]

[Sections 87.104 to 87.200 reserved for expansion]

CHAPTER 88. AGENCIES AND SERVICES OF THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER B. THE TEXAS FOREST SERVICE

§ 88.103. Enforcement; Appointment of Peace Officers

The state forester may appoint not to exceed 12 employees of the Texas Forest Service who are certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be peace officers to serve as peace officers under his direction in executing the enforcement duties of that agency. The appointments must be approved by the board which shall commission the appointees as peace officers. Any officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers in the performance of his duties. The officer shall take the oath required of peace officers and shall execute a good and sufficient bond in the sum of \$5,000, payable to the governor and his successors in office, with two or more good and sufficient personal sureties or with one corporate surety authorized to do business in Texas, conditioned that he will fairly, impartially, and faithfully perform all the duties that may be required of him by law. The bond may be sued on in the name of any person injured until the whole amount of the bond is recovered.

[Amended by Acts 1975, 64th Leg., p. 1840, ch. 570, § 1, eff. June 19, 1975.]

SUBTITLE E. THE TEXAS STATE UNIVERSITY SYSTEM

CHAPTER 95. ADMINISTRATION OF THE TEXAS STATE UNIVERSITY SYSTEM

SUBCHAPTER A. ADMINISTRATION PROVISIONS

§ 95.01. Board of Regents

The organization, control, and management of the state university system is vested in the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.03. Board Meetings

The board shall meet each year at Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the state university system. The board shall also meet at other times and places deemed necessary for the welfare of the colleges by a majority of the members.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.04. Per Diem; Expenses

Each member of the board shall receive \$10 per day for the time spent attending the meetings of the board, in addition to reimbursement for traveling expenses. Payment shall be made out of the appropriation for the support and maintenance of the state university system as the board may direct. [Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

§ 95.21. General Responsibilities of Board

The board is responsible for the general control and management of the universities in the system and may erect, equip, and repair buildings; purchase libraries, furniture, apparatus, fuel, and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers, and other employees; and fix the salaries of the persons employed. The president of each member institution shall nominate annually to the board the professors, teachers, officials, and assistants who, in his opinion, will promote the best interests of the institution.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.22. Inspection of Universities

The board shall visit each university under its control and management at least once during each scholastic year, inspect its work, and gather information which will enable the board to perform its duties intelligently and effectively.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.24. Admission; Diplomas and Certificates

The board may determine the conditions on which students may be admitted to the universities, the grades of certificates issued, the conditions for the award of certificates and diplomas, and the authority by which certificates and diplomas are signed. [Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.25. Teaching Certificates

Diplomas and teachers certificates of each of the system universities authorize the holders to teach in the public schools.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.26. Incidental Fees

The board may fix the rate of incidental fees to be paid by students attending the universities and may make rules for the collection of the fees and for the disbursement of the funds collected.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.27. Annual Report to Governor

The board shall make an annual report to the governor showing the general condition of the affairs of each university in the system and making recommendations for its future management and welfare.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.28. Disbursement of Funds

All appropriations made by the legislature for the support and maintenance of the system universities, for the purchase of land or buildings for the universities, for the erection or repair of buildings, for the purchase of apparatus, libraries, or equipment of any kind, or for any other improvement of any kind shall be disbursed under the direction and authority of the board. The board may formulate rules for the general control and management of the universities, for the auditing and approving of accounts, and for the issuance of vouchers and warrants which are necessary for the efficient administration of the universities.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.29. Financial Statements and Recommendations

The board shall file in each house of the legislature at each of its regular biennial sessions a statement of the receipts and expenditures of each of the system universities, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, and other items of expense. The board shall also file its recommendations for appropriations for the universities.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.30. Eminent Domain

The board has the power of eminent domain to acquire for the use of the system universities the lands necessary and proper for carrying out their

purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended.¹ The taking of the land is for the use of the state. The board shall not be required to deposit a bond or the amount equal to the award of damages by the commissioners as provided in Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925, as amended.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

¹Civil Statutes, Art. 3264 et seq.

§ 95.31. Acquisition of Land; Procedures

(a) The board may acquire land needed for the proper operation of a system university in the county in which the university is located. The acquisition may be by purchase or by condemnation.

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

(c) When the value of the land has been ascertained and the court is satisfied with the valuation, the court shall enter a decree vesting the title of the land in the state for the use and benefit of the university for whose benefit the land is needed. No decree shall be entered until the value of the land as ascertained, together with all reasonable cost and expense of the owner in attending the proceeding, is paid to him or into court for his benefit and subject to his order. The costs and expenses, including reasonable attorneys' fees, shall be ascertained by the court in which the proceeding is held.

[Amended by Acts 1975, 64th Leg., p. 1161, ch. 434, § 4, eff. June 19, 1975.]

§ 95.32. Dormitories

(a) The board may enter into contracts with persons, firms, or corporations for the erection of dormitories at a university; and may purchase or lease lands and other appurtenances for the construction of the dormitories, provided that the state incurs no liability for the buildings or the sites.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 1162, ch. 434, § 5, eff. June 19, 1975.]

CHAPTER 96. INSTITUTIONS OF THE TEXAS STATE UNIVERSITY SYSTEM

SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

Section

96.42. Student Fees for Bus Service [NEW].

SUBCHAPTER A. SUL ROSS STATE UNIVERSITY

§ 96.01. Sul Ross State University

Sul Ross State University is a coeducational institution of higher education located in the city of

Alpine. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER B. ANGELO STATE UNIVERSITY

§ 96.21. Angelo State University

Angelo State University is a coeducational institution of higher education located in the city of San Angelo. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

§ 96.41. Southwest Texas State University

Southwest Texas State University is a coeducational institution of higher education located in the city of San Marcos. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 96.42. Student Fees for Bus Service

(a) The board of regents may charge each student enrolled at the institution a fee not exceeding \$10 per semester or \$5 per six-week summer term to be used to finance bus service for students attending the institution. However, no fee may be levied unless the fee is approved by a majority vote of those students participating in a general election called for that purpose.

(b) The board may increase the fee authorized in Subsection (a) of this section by an amount not to exceed \$1 per student during any one academic year. The board may not increase this fee to exceed \$10 per semester or \$5 per six-week summer term.

(c) The fee for student bus service shall not be counted in determining the maximum student service fees which may be charged pursuant to the provisions of Section 54.503 of this code.

[Added by Acts 1975, 64th Leg., p. 1233, ch. 458, § 1, eff. Sept. 1, 1975.]

[Sections 96.43 to 96.60 reserved for expansion]

SUBCHAPTER D. SAM HOUSTON STATE UNIVERSITY

§ 96.61. Sam Houston State University

Sam Houston State University is a coeducational institution of higher education located in the city of

Huntsville. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBTITLE F. OTHER COLLEGES AND UNIVERSITIES

CHAPTER 100. EAST TEXAS STATE UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section

100.37. Student Union Fees [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 100.37. Student Union Fees

(a) The board may levy a regular fixed student fee not to exceed \$15 per student for each semester of the long session and not to exceed \$7.50 per student for each term of the summer school, or any fractional part thereof, as may in their discretion be just and necessary for the sole purpose of financing, constructing, operating, maintaining, and improving the Union Center Building. The amount of the fee may be changed at any time within the limits specified in order that sufficient funds to support the Union Center Building may be raised, but any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose. The fees herein authorized to be levied should be in addition to any use fee and service fee now or hereafter levied in accordance with law. No state funds may be expended for use of the Union Center Building.

(b) The business manager of East Texas State University shall collect the fees provided for in this section and shall credit the money received from the fees to an account known as the Union Center Building Account.

(c) The money collected and placed in the Union Center Building Account shall be used for the purpose of financing, constructing, operating, maintaining, and improving the Union Center Building and shall be placed under the control of and subject to the order of the board of directors of the Union Center Building, which board of directors shall annually submit a complete itemized budget to be accompanied by a full and complete report of all activities conducted during the year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving it, and shall then levy the student fees under the provisions of this section in such amount as will be sufficient to meet the

budgetary needs of the Union Center Building, within the statutory limits herein fixed.

[Added by Acts 1975, 64th Leg., p. 1916, ch. 619, § 1, eff. Sept. 1, 1975.]

CHAPTER 103. MIDWESTERN STATE UNIVERSITY

§ 103.01. Midwestern State University

Midwestern State University is a coeducational institution of higher learning located in the city of Wichita Falls.

[Amended by Acts 1975, 64th Leg., p. 1841, ch. 571, §§ 2 and 3, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act provided:

"The name of Midwestern University is hereby changed to Midwestern State University. All references to Midwestern University in any law shall hereafter refer to Midwestern State University."

"Section 2 thereof changed the title of Chapter 103 from "Midwestern University" and § 3 provided: "This Act shall take effect September 1, 1975."

CHAPTER 105. NORTH TEXAS STATE UNIVERSITY

SUBCHAPTER E. TEXAS COLLEGE OF OSTEOPATHIC MEDICINE [NEW]

Section

- 105.71. Establishment of College of Osteopathic Medicine.
- 105.72. Location.
- 105.73. Rules and Regulations; Courses.
- 105.74. Chief Executive Officer.
- 105.75. Teaching Hospital; Facilities.
- 105.76. Joint Appointments.
- 105.77. Agreements with Other Entities.
- 105.78. Gifts and Grants.
- 105.79. Supervision by Coordinating Board.
- 105.80. Medical School Admission Policies [NEW]

SUBCHAPTER E. TEXAS COLLEGE OF OSTEOPATHIC MEDICINE [NEW]

§ 105.71. Establishment of College of Osteopathic Medicine

(a) There is hereby created a college of osteopathic medicine in the city of Fort Worth to be known as the Texas College of Osteopathic Medicine, a separate institution and not a department, school, or branch of North Texas State University, but under the direction, management, and control of the Board of Regents of North Texas State University.

(b) The board shall have the same powers of direction, management, and control over the college of osteopathic medicine that it exercises over the North Texas State University, but the board shall act separately and independently on all matters affecting the college of osteopathic medicine as a separate institution.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.72. Location

The board shall select a site for the college in Tarrant County. The site shall consist of land that shall be provided for such purpose without cost to the State of Texas.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.73. Rules and Regulations; Courses

(a) The board may make rules and regulations for the direction, control, and management of the medical school which are necessary for it to be a medical school of the highest quality.

(b) The board, with the approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to the customary degrees and certificates granted by osteopathic medical schools.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.74. Chief Executive Officer

The chief executive officer of the university shall serve as chief executive officer of the college of osteopathic medicine.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.75. Teaching Hospital; Facilities

(a) A complete teaching hospital for the medical school shall be furnished at no cost or expense to the state.

(b) The board shall make provision for adequate physical facilities for use by the medical school in its teaching and research programs.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.76. Joint Appointments

The board of regents is specifically authorized to make joint appointments in the university and the Texas College of Osteopathic Medicine under its governance; the salary of any such person who receives such joint appointment to be apportioned to the appointing institution on the basis of services rendered.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.77. Agreements with Other Entities

After approval of the Coordinating Board, Texas College and University System, the board of regents may execute and carry out affiliation or coordinating agreements with any other entity, school, or institution in Texas to provide clinical, postgraduate, including internship and residency, or other levels of medical educational work for the medical school.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.78. Gifts and Grants

The board may accept and administer grants and gifts from the federal government, and from any foundation, trust fund, corporation, or any individual or organization for the use and benefit of the medical school.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.79. Supervision by Coordinating Board

The medical school is subject to the continuing supervision of and to the rules and regulations of the Coordinating Board, Texas College and University System, in accordance with the provisions of Chapter 61 of this code.¹

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

¹ Section 61.001 et seq.

§ 105.80. Medical School Admission Policies

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to the medical school which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the state while enrolled as a medical school student.

[Added by Acts 1975, 64th Leg., p. 2408, ch. 740, § 2, eff. Sept. 1, 1975.]

CHAPTER 109. TEXAS TECH UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

- Section 109.48. Utilities Easements [NEW]
- 109.48. Management of Lands [NEW].
- 109.49. Sale of Crops [NEW].
- 109.50. Student Fees for University Center [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 109.48. Utilities Easements

[Text as added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1.]

On terms, conditions, stipulations, and compensation as determined by the board, the board may convey, dedicate, or use any other appropriate method of conveyance to grant, convey, or dedicate rights, title, rights-of-way, or easements involving or in connection with the furnishing or providing of electricity, water, sewage disposal, natural gas, telephone, telegraph, or other utility service on, over, or through the campus of Texas Tech University in Lubbock County. The chairman of the board may execute and deliver conveyances or dedications on behalf of Texas Tech University.

[Added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1, eff. May 8, 1975.]

For text as added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1, see Section 109.48, post.

§ 109.48. Management of Lands

[Text as added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1.]

The board has the sole and exclusive management and control of lands set aside and appropriated to or acquired by the institutions under its governance. The board may lease and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the institutions. No grazing lease shall be made for a period of more than five years. [Added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1, see Section 109.48, ante.

§ 109.49. Sale of Crops

Proceeds from the sale, barter, or exchange of crops resulting from any agricultural activities at the institution shall be applied to defray the expenses of conducting the agricultural activities. [Added by Acts 1975, 64th Leg., p. 362, ch. 154, § 1, eff. May 8, 1975.]

§ 109.50. Student Fees for University Center

(a) The board may levy a regular fixed student fee not to exceed \$10 per student for each semester of the long session and not to exceed \$5 per student for each term of the summer session, or any fractional part thereof, as may in their discretion be just and necessary for the sole purpose of operating, maintaining, and improving the University Center. The amount of the fee may be changed at any time within the limits specified in order to provide sufficient funds to support the center, but any increase in

the initial fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(b) The director of accounting and finance of the university shall collect the fees provided for in Subsection (a) of this section and shall credit the money received from the fees to an account known as the University Center account.

(c) The funds in the University Center account shall be used for the purpose of operating, maintaining, and improving the center and shall be placed under the control of and subject to the order of the board of directors of the University Center. The board of directors shall annually submit a complete and itemized budget accompanied by a full and complete report of all activities conducted during the year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving it, and shall then levy the student fees in an amount sufficient to meet the budgetary needs of the center within the limits set in Subsection (a) of this section. [Added by Acts 1975, 64th Leg., p. 461, ch. 196, § 1, eff. May 13, 1975.]

[Sections 109.51 to 109.60 reserved for expansion]

CHAPTER 110. TEXAS TECH UNIVERSITY
SCHOOL OF MEDICINE AT LUBBOCK

Section

110.11. Utilities Easements [NEW].

110.11. Management of Lands [NEW].

110.11. Medical School Admission Policies [NEW].

§ 110.11. Utilities Easements

[Text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2]

On terms, conditions, or stipulations, and compensation as determined by the board, the board may convey, dedicate, or use any other appropriate method of conveyance to grant, convey, or dedicate rights, title, rights-of-way, or easements involving or in connection with the furnishing or providing of electricity, water, sewage disposal, natural gas, telephone, telegraph, or other utility service on, over, or through the campus or properties of Texas Tech University School of Medicine in Lubbock or Potter County to Texas Tech University School of Medicine facilities or activities in those counties. The chairman of the board may execute and deliver conveyances or dedications on behalf of Texas Tech University School of Medicine.

[Added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2, eff. May 8, 1975.]

For text as added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2 and Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, see Sections 110.11, post.

§ 110.11. Management of Lands

[Text as added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2]

The board has the sole and exclusive management and control of lands set aside and appropriated to or acquired by the institutions under its governance. The board may lease and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the institutions. No grazing lease shall be made for a period of more than five years. [Added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2 and Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, see Sections 110.11, ante and post.

§ 110.11. Medical School Admission Policies

[Text as added by Acts 1975, 64th Leg., p. 2409, ch. 740, § 4]

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to the medical school which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the State while enrolled as a medical school student. [Added by Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2 and Acts 1975, 64th Leg., p. 1249, ch. 471, § 2, see Sections 110.11, ante.

CHAPTER 113. TEXAS EASTERN UNIVERSITY [NEW]

Acts 1975, 64th Leg., p. 813, ch. 317, § 3, provided:

"The title of Chapter 113 of the Texas Education Code is changed from TYLER STATE COLLEGE to TEXAS EASTERN UNIVERSITY."

SUBCHAPTER A. GENERAL PROVISIONS

§ 113.01. Texas Eastern University

There is created and established in the city of Tyler a coeducational institution of higher education to be known as Texas Eastern University. The college shall be organized to accept only junior-, senior-, and graduate-level students.

[Amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 amendatory act provided: "The name of Tyler State College is hereby changed to Texas Eastern University. All references to and appropriations for Tyler State College apply to Texas Eastern University."

§ 113.03. Applicability of General Laws

Texas Eastern University is subject to the obligations and entitled to the benefits of all general laws of Texas applicable to all other state institutions of higher education, including Chapter 55 of this code,¹ except where the general laws are in conflict with this chapter, and in the event of conflict this chapter prevails to the extent of the conflict.

[Amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2, eff. Sept. 1, 1975.]

¹Section 55.01 et seq.

SUBTITLE G. NON-BACCALAUREATE SYSTEM

CHAPTER 130. JUNIOR COLLEGE DISTRICTS

SUBCHAPTER E. BOARDS OF TRUSTEES OF JUNIOR COLLEGE DISTRICTS

§ 130.082. Governing Board of Junior College of Other than Independent School District

[See Compact Edition, Volume 1 for text of (a) to (h)]

(i) The governing board of a countywide junior or community college district that contains a city with a population of more than 800,000 residents may set the date for an election held under the provisions of this section on any day in April by a resolution adopted not less than 90 days before the date selected; provided, however, that such election may not be held on the same date as the election of the governing board of any independent school district in such county unless the election date of all independent school districts in such county is on such date. The elections in each trustee district may be conducted jointly with the elections held in April in a city or school district in the trustee district. When a runoff election is necessary, the board may order the election for a date to coincide with the date of the runoff election for city officials, if the city is

holding a runoff election; otherwise, the board shall set the date of the runoff election for not later than three weeks following the regular election. When members of the board and municipal officers are to be elected on the same day, the governing bodies of the district and the city shall enter into an agreement governing the conduct of the joint election in accordance with the provisions of Article 978b, Revised Civil Statutes of Texas, 1925, as amended. [Amended by Acts 1975, 64th Leg., p. 2035, ch. 673, § 1, eff. June 20, 1975.]

§ 130.086. Branch Campuses

(a) The board of trustees of a junior college district may establish and operate branch campuses, centers, or extension facilities, without regard to the geographical bounds of the junior college district, provided that each branch campus, center, or extension facility and each course or program offered in such locations is subject to the prior and continuing approval of the Coordinating Board, Texas College and University System.

(b) Such branch campuses, centers, or extension facilities shall be within the role and scope of the junior college as determined by the Coordinating Board, Texas College and University System.

[See *Compact Edition, Volume 1 for text of (c)*]

(d) Before any course may be offered by a junior college within the district of another operating public junior college, it must be established that the second public junior college is not capable of or is unable to offer the course. If the course is to be offered in a county which has a population of more than 97,500 persons, according to the last preceding federal census, and which has no state-supported senior college or university within its boundaries, it must also be established that any other college or university in the county is not able and willing to offer the course. After the need is established and the course is not locally available, then the first junior college may offer the course when approval is granted by the Coordinating Board, Texas College and University System, under the provisions of Subsection (a).

[See *Compact Edition, Volume 1 for text of (e)*]

(f) Out-of-district branch campuses, centers, or extension facilities of junior colleges existing prior to September 1, 1971, shall be reviewed by the Coordinating Board, Texas College and University System, to determine their feasibility and desirability with respect to the junior college and the population of the geographical area served by the branch campus, center, or extension facility.

[Amended by Acts 1975, 64th Leg., p. 2035, ch. 673, § 2, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2109, ch. 689, §§ 1 to 4, June 20, 1975.]

TABLE OF
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TO EDUCATION

Certain special laws relating to education, many of which were classified to Title 49, Education-Public, of the Civil Statutes, have not been repealed and are not carried into the Education Code. They have been dropped from the Civil Statutes as special laws.

The tabulation below lists these special laws from the 64th Legislature, numerically by article number classification to Vernon's Texas Civil Statutes (where so classified), followed by the subject matter and the original and amendatory citations to the General and Special Laws of Texas.

Civ.St.Art.	Laws Citation	Subject Matter
		COUNTY SUPERINTENDENT
		Abolition of office and transfer of duties
2688i-2	1967, ch. 493	—Counties of 95,000 to 97,500
	1975, ch. 652	
—	1975, ch. 107	—Medina County
—	1975, ch. 267	—Crosby County
—	1975, ch. 706	—La Salle County
—	1975, ch. 710	—Gonzales and Travis Counties
—	1975, ch. 728	—Jack County
—	1975, ch. 741	—Cameron, Nueces, Tyler, Marion and Cass Counties
		INDEPENDENT SCHOOL DISTRICTS
2774b	1951, ch. 339	—City of 900,000 or more and 200,000 scholastics
	1965, ch. 312	
	1975, ch. 717	
		TAXES AND TAXATION
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—	1975, ch. 541	—Collin County

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FAMILY CODE

TITLE 1. HUSBAND AND WIFE

SUBTITLE A. THE MARRIAGE RELATIONSHIP

CHAPTER 1. ENTERING THE MARRIAGE RELATIONSHIP

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

Section

1.86. Duplicate License [NEW].

SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

§ 1.05. Absent Applicant

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) The affidavit of an absent applicant must include:

(1) the absent applicant's full name (including the maiden surname, if applicable), address, date of birth, place of birth (including city, county, and state), citizenship, and social security number, if any;

(2) a declaration that the absent applicant has not been divorced within the last 30 days;

(3) a declaration that the absent applicant is not presently married (unless to the other applicant and they wish to marry again);

(4) a declaration that the other applicant is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole or half blood;

(5) a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;

(6) the approximate date on which the marriage is to occur;

(7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) if the absent applicant will be unable to attend the ceremony, the appointment of any adult, except the other applicant, to act as proxy

for the purpose of participating in the ceremony.

[Amended by Acts 1975, 64th Leg., p. 619, ch. 254, § 1, Sept. 1, 1975.]

Section 13 of the 1975 Act read: "This Act takes effect September 1, 1975."

§ 1.07. Issuance of License

(a) The county clerk may not issue a license to the applicants if:

(1) either applicant fails to provide information as required by Sections 1.02 and 1.05 of the code;

(2) either applicant fails to submit proof of age and identity;

(3) either applicant is under 14 years of age and has not received a court order under Section 1.53 of this code;

(4) either applicant is 14 years of age or older but under 18 years of age and has received neither parental consent nor a court order under Section 1.53 of this code;

(5) either applicant fails to comply with the requirements of Subchapter B of this chapter;

(6) either applicant checks "false" in response to a statement in the application, except as provided in Subsection (b) of this section, or fails to make a required declaration in an affidavit required of an absent applicant; or

(7) either applicant indicates that he or she has been divorced by a decree of a court of this state within the last 30 days.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 2, eff. Sept. 1, 1975.]

SUBCHAPTER C. UNDERAGE APPLICANTS

§ 1.51. Age Requirements: General Rules

Except with parental consent as prescribed by Section 1.52 of this code or with a court order as prescribed by Section 1.53 of this code, the county clerk shall not issue a marriage license if either applicant is under 18 years of age.

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 3, eff. Sept. 1, 1975.]

§ 1.52. Underage Applicant: Parental Consent

(a) If the applicant is 14 years of age or older but under 18 years of age, the county clerk shall issue

the license if parental consent is given as prescribed by this section.

[See Compact Edition, Volume 1 for text of (b) to (e)]

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 4, eff. Sept. 1, 1975.]

§ 1.53. Underage Applicant: Court Order

(a) A person who is under 18 years of age may petition in his own name in a district court for an order granting permission to marry. In all suits filed under this section, the trial judge may advance the cause if he determines that the best interest of the applicant would be served by an early hearing.

(b) The petition must be filed in the county where a parent resides if a managing conservator or a guardian of the person has not been appointed. If a managing conservator or a guardian of the person has been appointed, the petition must be filed in the county where the managing conservator or the guardian of the person resides. If no person authorized to consent to marriage for the child resides in this state, the petition must be filed in the county where the child lives.

(c) The petition shall include a statement of the reasons the child desires to marry, whether each parent is living or dead, the name and residence address of each living parent, and whether or not a managing conservator or a guardian of the person has been appointed for the child.

(d) Process shall be served as in other civil cases on each living parent of the child, or if a managing conservator or a guardian of the person has been appointed, on the managing conservator or guardian of the person. Citation may be given by publication as in other civil cases, except that notice shall be published one time only.

(e) The court shall appoint a guardian ad litem to represent the child in the proceeding and to speak for or against the petition in the manner he believes to be in the best interest of the child. The court shall prescribe a fee to be paid by the child for the services of the guardian ad litem; and the fee shall be collected as are other costs of the proceeding.

(f) If, after a hearing, the court, sitting without a jury, believes marriage to be in the best interest of the child, it shall make an order granting the child permission to marry.

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 5, eff. Sept. 1, 1975.]

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

§ 1.86. Duplicate License

(a) On the application and proof of identity of a person whose marriage is recorded in the records of

the county clerk, the county clerk shall issue a duplicate marriage license completed with information as contained in the records.

(b) On the application and proof of identity of both persons to whom a marriage license was issued but not recorded as required by Section 1.85 of this code, the county clerk shall issue a duplicate license if each person applying submits to the clerk an affidavit stating:

(1) that the persons to whom the original license was issued were married to each other by a person authorized to conduct marriage ceremonies before the expiration date of the original license;

(2) the name of the person who conducted the ceremony; and

(3) the date on which the marriage ceremony occurred.

[Added by Acts 1975, 64th Leg., p. 621, ch. 254, § 6, eff. Sept. 1, 1975.]

[Sections 1.87 to 1.90 reserved for expansion]

CHAPTER 2. VALIDITY OF MARRIAGE

SUBCHAPTER B. VOID MARRIAGES

§ 2.21. Consanguinity

(a) A person may not marry:

(1) an ancestor or descendant, by blood or adoption;

(2) a brother or sister, of the whole or half blood or by adoption;

(3) a parent's brother or sister, of the whole or half blood; or

(4) a son or daughter of a brother or sister of the whole or half blood or by adoption.

(b) A marriage entered into in violation of this section is void.

[Amended by Acts 1975, 64th Leg., p. 1184, ch. 442, § 1, eff. June 19, 1975.]

SUBCHAPTER C. VOIDABLE MARRIAGES

§ 2.41. Underage

(a) The licensed or informal marriage of a person under 14 years of age, unless a court order has been obtained as provided in Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the 14th birthday of

the underage party, or it is barred. A suit by a parent, managing conservator, or guardian of the person may be brought at any time before the party is 14 years of age, but thereafter must be brought within 90 days after the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

(b) The licensed or informal marriage of a person 14 years of age or older but under 18 years of age, without parental consent as provided in Section 1.52 or 1.92 of this code or without a court order as provided by Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party, or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the date of the marriage, or it is barred. A suit by a parent, managing conservator, or guardian of the person must be brought within 90 days after the date the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

[See Compact Edition, Volume 1 for text of (c)]
[Amended by Acts 1975, 64th Leg., p. 621, ch. 254, § 7, eff. Sept. 1, 1975.]

CHAPTER 3. DISSOLUTION OF MARRIAGE

SUBCHAPTER B. JURISDICTION AND VENUE: RESIDENCE QUALIFICATIONS

Section

3.26. Acquiring Jurisdiction over Nonresident Respondent [NEW].

SUBCHAPTER C. SUIT

3.521. Citation by Publication [NEW].

SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

§ 3.26. Acquiring Jurisdiction over Nonresident Respondent

(a) If the petitioner is a resident or a domiciliary of this state at the commencement of a suit for divorce, annulment, or to declare a marriage void, the court may exercise personal jurisdiction over the respondent, or the respondent's personal representative, although the respondent is not a resident or a domiciliary of this state if:

(1) this state is the last state in which marital cohabitation between petitioner and the respondent occurred and the suit is commenced within two years after the date on which cohabitation ended; or

(2) notwithstanding Subdivision (1) above, there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction.

(b) A court acquiring jurisdiction under this section also acquires jurisdiction in a suit affecting the parent-child relation if Section 11.051 of this code is applicable.

[Added by Acts 1975, 64th Leg., p. 622, ch. 254, § 8, eff. Sept. 1, 1975.]

[Sections 3.27 to 3.50 reserved for expansion]

SUBCHAPTER C. SUIT

§ 3.521. Citation by Publication

(a) Citation in a suit for divorce or annulment or to declare a marriage void may be given by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court ____ Judicial District, ____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the ____ day of _____, against _____, Respondent(s), and the said suit being number ____ on the docket of said Court, and entitled 'In the Matter of Marriage of _____ and _____,' the nature of which suit is a request to _____ (statement of relief sought).

"The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property which will be binding on you.

“Issued and given under my hand and seal of said Court at _____, Texas, this the ___ day of _____, _____.

.....
Clerk of the District Court of _____ County, Texas

By _____, Deputy.”

(c) The form authorized in this section and the form authorized by Section 11.09 of this code may be combined in appropriate situations.

(d) Where no parent-child relationship exists, service by publication may be completed by posting the citation at the courthouse door for a period of seven days in the county where the suit is filed.

(e) Where the petitioner or his or her attorney of record shall make oath that no children presently under 18 years of age were born or adopted by the parties and that no appreciable amount of property was accumulated by the parties during the marriage, the court may dispense with the appointment of an attorney ad litem; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof.

[Added by Acts 1975, 64th Leg., p. 622, ch. 254, § 9, eff. Sept. 1, 1975.]

§ 3.54. Counseling

(a) After a petition for divorce is filed, the court may, in its discretion, direct the parties to counsel with a person or persons named by the court, who shall submit a written report to the court before the hearing on the petition.

(b) In his report, the counselor shall give only his opinion as to whether there exists a reasonable expectation of reconciliation of the parties, and if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling, and the report shall not be admitted as evidence in the suit. Copies of the report shall be furnished to the parties.

(c) If the court is of the opinion that there exists a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to any person or persons named by the court for further counseling for a period of time fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court deems desirable. The court shall consider the circumstances of the parties, including the needs of the parties' family, and the availability of counseling services, in making its order. At the expiration of the period of time specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties

have complied with the court's order. Thereafter, the court shall proceed as in divorce suits generally.

(d) No person who has counseled parties to a suit for divorce under this section is competent to testify in any action involving the parties or their children. The files, records, and other work-products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any action involving the parties or their children.

(e) The expenses of counseling may be taxed as costs against either or both parties.

[See Compact Edition, Volume 1 for text of (f) and (g)]

[Amended by Acts 1975, 64th Leg., p. 623, ch. 254, § 10, eff. Sept. 1, 1975.]

§ 3.61. Jury

In a suit for divorce or annulment or to declare a marriage void, either party, except as provided in Section 2.41 of this code, may demand a jury trial. [Amended by Acts 1975, 64th Leg., p. 624, ch. 254, § 11, eff. Sept. 1, 1975.]

CHAPTER 4. RIGHTS, DUTIES, POWERS, AND LIABILITIES OF SPOUSES

Section 4.05. Action of Alienation of Affection and Criminal Conversation not Authorized [NEW].

§ 4.05. Action of Alienation of Affection and Criminal Conversation not Authorized

A right of action by one spouse against a third party for criminal conversation is not authorized in this state.

[Added by Acts 1975, 64th Leg., p. 1942, ch. 637, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided: "This Act does not apply to litigation pending before the effective date of this Act."

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 5. MARITAL PROPERTY

SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY

Section 5.23. [Repealed].

§ 5.23. Repealed by Acts 1975, 64th Leg., p. 624, ch. 254, § 12, eff. Sept. 1, 1975

TITLE 2. PARENT AND CHILD

SUBTITLE A. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 11. GENERAL PROVISIONS

Section 11.051. Acquiring Jurisdiction Over Nonresident [NEW].
11.071. Identification of Court of Continuing Jurisdiction [NEW].

§ 11.01. Definitions

As used in this subtitle and Subtitle C of this title,¹ unless the context requires a different definition:

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

(2) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle.

[See *Compact Edition, Volume 1 for text of (3) to (7)*]

(8) "Illegitimate child" means a child who is not and has never been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated by a court decree.

[Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, §§ 1 & 2, eff. Sept. 1, 1975.]

¹ Section 31.01 et seq.
Section 58 of the 1975 amendatory act provided: "This Act takes effect September 1, 1975."

§ 11.04. Venue

[See *Compact Edition, Volume 1 for text of (a) and (b)*]

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, or if a custodian for the child has been appointed by order of a court before January 1, 1974, the child resides in the county where the managing conservator or custodian resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and neither a managing conservator nor a guardian of the person has been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) neither a managing conservator nor a guardian of the person has been appointed or (B) the whereabouts of the managing conservator or the guardian of the person is unknown or (C) the person whose residence determines the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having care and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

[Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, § 3, eff. Sept. 1, 1975.]

§ 11.05. Continuing Jurisdiction

(a) Except as provided in Subsections (b), (c), and (d) of this section, when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing jurisdiction of all matters provided for under this subtitle in connection with the child, and no other court has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 of this code.

[See *Compact Edition, Volume 1 for text of (b)*]

(c) A court shall have jurisdiction over a suit affecting the parent-child relationship if it has been, correctly or incorrectly, informed by the State Department of Public Welfare that the child has not been the subject of a suit affecting the parent-child relationship and the petition states that no other court has continuing jurisdiction over the child.

(d)(1) In a suit in which a determination of paternity is sought, except as provided in paragraph (2), the jurisdiction of the court terminates when an order dismissing with prejudice a suit under Chapter 13¹ becomes final, or when an order under Subsection (b), Section 13.08, declaring that the alleged father is not the father of the child becomes final, or when an order denying voluntary legitimation under Section 13.10 becomes final.

(2) The jurisdiction of the court does not terminate if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship prior to the commencement of the suit to determine paternity.

[Amended by Acts 1975, 64th Leg., p. 1254, ch. 476, §§ 4 to 6, eff. Sept. 1, 1975.]

¹ Section 13.01 et seq.

§ 11.051. Acquiring Jurisdiction Over Nonresident

In a suit affecting the parent-child relationship, the court may exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

(1) the child was conceived in this state and the person on whom service is required is a parent or an alleged or probable father of the child;

(2) the child resides in this state, as defined by Section 11.04 of this code, as a result of the acts or directives or with the approval of the person on whom service is required;

(3) the person on whom service is required has resided with the child in this state; or

(4) notwithstanding Subdivisions (1), (2), or (3) above, there is any basis consistent with the constitutions of this state or the United States for the exercise of the personal jurisdiction.

[Added by Acts 1975, 64th Leg., p. 1255, ch. 476, § 7, eff. Sept. 1, 1975.]

§ 11.06. Transfer of Proceedings

[See Compact Edition, Volume 1 for text of (a) to (f)]

(g) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete files in all matters affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship. If the transferring court retains jurisdiction of another child who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

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

[Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 8, eff. Sept. 1, 1975.]

§ 11.07. Commencement of Suit and Petition for Further Remedy

(a) A suit affecting the parent-child relationship shall be commenced by the filing of a petition as provided in this chapter.

(b) Except in a motion to modify as provided in Section 14.08 of this code, a request for further action concerning a child who is the subject of a suit affecting the parent-child relationship and who is under the jurisdiction of a court with continuing jurisdiction shall be initiated by the filing of a petition as provided in this chapter.

(c) On the receipt of a petition requesting further action concerning the child in the court of continuing jurisdiction, the clerk shall file the petition and all other papers relating to the request for further action in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding.

[Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 9, eff. Sept. 1, 1975.]

§ 11.071. Identification of Court of Continuing Jurisdiction

(a) The petitioner or the court shall request from the State Department of Public Welfare identification of the court that last had jurisdiction of the child in a suit affecting the parent-child relationship unless:

(1) the petition alleges that no court has continuing jurisdiction of the child, and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit, petition for further remedy, or motion to modify has been filed has acquired and retains continuing jurisdiction of the child as the result of a prior proceeding, and the issue is not disputed by the pleadings.

(b) The department shall, on the written request of the court, an attorney, or any party, identify the court that last had jurisdiction of the child in a suit affecting the parent-child relationship and give the docket number of the suit, or state that the child has not been the subject of a suit affecting the parent-child relationship. The child shall be identified in the request by name, birthdate, and place of birth. The department shall transmit this information within 10 days after the day the request is received.

(c) If a request for information from the department relating to the identity of the court having continuing jurisdiction of the child has been made pursuant to Subsection (a), no final order, except an order of dismissal, shall be entered until the information is filed with the court. If a final order is entered in the absence of the filing of the information from the department, the order is voidable on a showing that a court other than the court that entered the order had continuing jurisdiction.

(d) If the court in which a petition in a suit affecting the parent-child relationship is filed determines that another court has continuing jurisdiction of the child, the court in which the petition is filed shall dismiss the suit without prejudice.

[Added by Acts 1975, 64th Leg., p. 1255, ch. 476, § 10, eff. Sept. 1, 1975.]

§ 11.08. Contents of Petition

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

(b) The petition must include:

(1) a statement that the court in which the petition is filed has continuing jurisdiction or that no court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any, or the child's custodian, if any, appointed by an order of the

court before January 1, 1974, or by order of a court of another state or nation;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any, having access to the child under an order of the court;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the name and place of residence of the alleged father or probable father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made; and

(11) any other information required by other provisions of this subtitle.

(c) The petition and other matters in a suit in which a determination of paternity is sought, if the petitioner is a person other than the alleged father of the child, are confidential, and the district clerk and employees of the clerk may not disclose to any person other than the court, the department, or a party to the suit any matter concerning the suit. This subsection does not apply if and when the suit is set for trial under Subsection (b) of Section 13.05 of this code.

[Amended by Acts 1975, 64th Leg., p. 1256, ch. 476, §§ 11 & 12, Sept. 1, 1975.]

§ 11.09. Citation and Notice

(a) Except as provided in Subsection (b) of this section, the following persons are entitled to service of citation on the filing of a petition in a suit affecting the parent-child relationship:

- (1) the managing conservator, if any;
- (2) possessory conservators, if any;
- (3) persons, if any, having access to the child under an order of the court;
- (4) persons, if any, required by law or by order of a court to provide for the support of a child;
- (5) the guardian of the person of the child, if any;
- (6) the guardian of the estate of the child, if any;
- (7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Section 15.03(c)(2) of this code;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the alleged father or probable father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father or probable father as provided in Section 15.041 of this code or unless the petition states that the identity of the father is unknown; and

(9) in a suit to determine the paternity of a child, the alleged father, unless the alleged father is a petitioner.

(b) Service of citation may be given to any other person who has or who may assert an interest in the child and may be given to the unknown father of an illegitimate child.

(c)(i) Except in a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition in a suit affecting the parent-child relationship or notice of a hearing shall be issued and served as in other civil cases except that citation or notice may be given by registered or certified mail, return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.

(ii) In a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition or notice of a hearing shall be issued and served as in other civil cases.

(d) Citation may be given by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown. The notice shall be published one time. If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern." One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(e) Notice by publication shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (names of persons to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____ Judicial District, _____ County, Texas, at the

Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the _____ day of _____, 19____, against _____, Respondent(s), and said suit being number _____ on the docket of said Court, and entitled 'In the interest of _____, a child,' the nature of which suit is a request to (statement of relief sought, e. g., 'terminate the parent-child relationship'). Said child was born the _____ day of _____, 19____, in (place of birth).

"The court has authority in this suit to enter any judgment or decree in the child's interest which will be binding upon you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's adoption.

"Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, 19____.

.....
 Clerk of the District Court of
 County, Texas.

By _____, Deputy."

[Amended by Acts 1975, 64th Leg., p. 1257, ch. 476, § 13, eff. Sept. 1, 1975.]

§ 11.10. Guardian Ad Litem

(a) In any suit in which termination of the parent-child relationship is sought, the court shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner or unless an attorney ad litem has been appointed for the child or unless the court finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party. In any other suit under this subtitle, the court may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

(b) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under the provisions of Section 11.09 of this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.

(c) The court may appoint an attorney for any party in a case in which it deems representation necessary to protect the interests of the child who is the subject matter of the suit.

[Amended by Acts 1975, 64th Leg., p. 1258, ch. 476, § 14, eff. Sept. 1, 1975.]

§ 11.11. Temporary Orders

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) In a suit under this subtitle the court may dispense with the necessity of a bond in connection with temporary orders in behalf of the child.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 15, eff. Sept. 1, 1975.]

§ 11.12. Social Study

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

(b) The social study may be made by any state agency, including the State Department of Public Welfare, or any private agency, or any person appointed by the court. If an authorized agency is the managing conservator, the social study shall be made by the authorized agency. The social study shall be made according to criteria established by the court.

(c) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The report shall be made a part of the record of the suit; however, the disclosure of its contents to the jury is subject to the rules of evidence.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 16, eff. Sept. 1, 1975.]

§ 11.13. Jury

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

(b) The court may not enter a decree that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of access to the child, support of the child, and the rights, privileges, duties, and powers of conservators, on which issues the verdict, if any, is advisory only.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 17, eff. Sept. 1, 1975.]

§ 11.14. Hearing

[See Compact Edition, Volume 1 for text of (a) to (g)]

(h) Repealed by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.]

§ 11.16. Copies of Decree

Copies of a decree of termination or adoption issued under Section 15.05 or Section 16.08 of this code are not required to be mailed to parties as provided in Rules 119a and 239a, Texas Rules of Civil Procedure.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 19, eff. Sept. 1, 1975.]

§ 11.17. Central Record File

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

(b) On entry of a decree of adoption or on the termination of jurisdiction of a court as provided in Section 11.05(d) of this code, the clerk of the court at petitioner's request shall transmit to the department a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. The clerk of the court, on entry of a decree of adoption, shall send to the department a certified copy of the petition and decree of adoption. The clerk may not transmit to the department pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void. When the department receives the complete file or petition and decree of adoption, it shall close the records concerning that child; and except for statistical purposes, it shall not disclose any information concerning the prior proceedings affecting the child. Except as provided in Subsection (d) of this section, any subsequent inquiries concerning the child shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. On the receipt of additional records concerning a child who has been the subject of a suit affecting the parent-child relationship in which the records have been closed as required in this section, a new file shall be made and maintained as other records required by this section.

(c) The department may charge a reasonable fee to cover the cost of determining and sending information concerning the identity of courts with continuing jurisdiction. The receipts shall be deposited in any financial institution as determined by the commissioner of welfare and withdrawn as necessary for the sole purpose of operating and maintaining the central record file.

(d) The records concerning a child maintained by the district clerk after entry of a decree of adoption, and all the records required to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this subtitle or on an order of the court which issued the decree or of a district court of Travis County for good cause.

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

(f) The court, on the motion of a party or on the court's own motion, may order the sealing of the file, the minutes of the court, or both, in a proceeding in which adoption or termination was sought. This subsection does not relieve the clerk from the duty to transmit files or petitions and decrees of adoption to the department as required by Subsection (b) of this section.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, §§ 20, 21, eff. Sept. 1, 1975.]

CHAPTER 12. THE PARENT-CHILD RELATIONSHIP

§ 12.02. Relation of Child to Father

(a) A child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother.

(b) A child is the legitimate child of his father if at any time his mother and father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

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

[Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 22, eff. Sept. 1, 1975.]

§ 12.04. Rights, Privileges, Duties, and Powers of Parent

Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;

(4) the duty to manage the estate of the child, except when a guardian of the estate has been appointed;

(5) the right to the services and earnings of the child;

(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

(9) the right to inherit from and through the child; and

(10) any other right, privilege, duty, or power existing between a parent and child by virtue of law.

[Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 23, eff. Sept. 1, 1975.]

CHAPTER 13. DETERMINATION OF PATERNITY

Former Chapter 13, Voluntary Legitimation, consisting of Sections 13.01 to 13.06, was revised and amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, to read, Determination of Paternity, Sections 13.01 to 13.43. The provisions of former Chapter 13 are now found in Subchapters B and C herein, Sections 13.21 to 13.24, 13.42 and 13.43.

SUBCHAPTER A. PATERNITY SUIT [NEW].

- Section
- 13.01. Time Limitation of Suit.
- 13.02. Pretrial Proceedings: Blood Tests.
- 13.03. Pretrial Proceedings: Appointment of Experts.
- 13.04. Pretrial Proceedings: Conference.
- 13.05. Pretrial Proceedings: Effect of Blood Tests.
- 13.06. Evidence at Trial.
- 13.07. Settlement.
- 13.08. Decree.
- 13.09. Effect of Decree Establishing Paternity.

SUBCHAPTER B. VOLUNTARY LEGITIMATION [NEW].

- 13.21. Voluntary Legitimation.
- 13.22. Statement of Paternity.
- 13.23. Effect of Statement of Paternity.
- 13.24. Validation of Prior Statements.

SUBCHAPTER C. GENERAL PROVISIONS [NEW].

- 13.41. Venue.
- 13.42. Conservatorship, Support, Fees, and Payments.
- 13.43. Birth Certificate.

SUBCHAPTER A. PATERNITY SUIT

§ 13.01. Time Limitation of Suit

A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's natural father by proof of paternity must be brought before the child is one year old, or the suit is barred.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.02. Pretrial Proceedings: Blood Tests

(a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to blood tests. If the appearance is before the birth of the child, the court shall order the blood tests made as soon as medically practical after the birth.

(b) An order issued under this section is enforceable by contempt, except that if the petitioner is the mother or the alleged father and refuses to submit to the blood test, the court shall dismiss the suit. If the respondent is the mother or the alleged father and refuses to submit to the blood test, the fact of refusal may be introduced as evidence as provided in Section 13.06(d) of this code.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.03. Pretrial Proceedings: Appointment of Experts

(a) The court may appoint two or more experts qualified as examiners of blood types to make the blood tests. The court may determine the number and qualifications of the experts and shall prescribe the arrangements for conducting the tests.

(b) The court may fix reasonable fees for the court-appointed examiners and may require the fees to be paid by any or all of the parties or by the State Department of Public Welfare in the amounts and in the manner directed, or the court may tax all or part or none of the fees as costs in the suit.

(c) A party may employ other qualified examiners of blood tests. The court may order blood samples made available to these examiners if requested.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.04. Pretrial Proceedings: Conference

(a) After completion of the blood tests, the court shall order all parties to appear, either in person or by counsel, at a pretrial conference. The court shall call its appointed examiners to testify in person or by deposition about their tests and findings. A party may call other qualified examiners of blood tests to testify.

(b) Witnesses called by the court are the court's witnesses, and witnesses called by a party are that party's witnesses. The court and the parties may examine and cross-examine all witnesses.

(c) All evidence presented at the pretrial conference is a part of the record of the case.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.05. Pretrial Proceedings: Effect of Blood Tests

(a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court finds that the blood tests fail to show by clear and convincing evidence the alleged father is not the father of the child, the court shall set the suit for trial.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.06. Evidence at Trial

(a) Unless otherwise permitted by the court on a showing of good cause, a party may call to testify on the results of the blood tests only those experts who testified at the pretrial conference.

(b) A witness called by a party at the trial is that party's witness.

(c) If the blood tests show the possibility of the alleged father's paternity, the court may admit this evidence if offered at the trial.

(d) Evidence of a refusal by the respondent to submit to a blood test is admissible to show only that the alleged father is not precluded from being the father of the child.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.07. Settlement

The child must be a party to a settlement agreement with the alleged father. The child shall be represented in the settlement agreement by a guardian ad litem appointed by the court. The court must approve any settlement agreement, dismissal, or nonsuit.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.08. Decree

(a) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is the father of the child, the court shall issue an order designating the alleged father as the father of the child.

(b) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is not the father of the child, the court shall issue an order declaring this finding.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.09. Effect of Decree Establishing Paternity

The effect of a decree designating the alleged father as the father of the child is to create the parent-child relationship between the father and the child as if the child were born to the father and mother during marriage.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

[Sections 13.10 to 13.20 reserved for expansion]

SUBCHAPTER B. VOLUNTARY LEGITIMATION

§ 13.21. Voluntary Legitimation

(a) If a statement of paternity has been executed by the father of an illegitimate child, the father or mother of the child or the State Department of Public Welfare may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

(b) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

(1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;

(2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and

(3) the mother or the managing conservator, if any, has consented to the decree.

(c) The requirement of consent of the mother is satisfied if she is the petitioner. If the entry of the decree is in the best interest of the child, the court may consent to the legitimation of the child in lieu of the consent of the mother or managing conservator.

(d) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.¹

(e) A suit under this section may be instituted at any time.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

¹ Section 15.01 et seq.

§ 13.22. Statement of Paternity

The statement of paternity authorized to be used in Section 13.21 of this code must be executed by the father of the child as an affidavit and witnessed by two credible adults. The affidavit must clearly state that the father acknowledges the child as his child, that he and the mother, who is named in the affidavit, were not married to each other at the time of conception of the child or at any subsequent time, and that the child is not the legitimate child of another man. The statement must be executed before a person authorized to administer oaths under the laws of this state.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.23. Effect of Statement of Paternity

(a) A statement of paternity executed as provided in Section 13.22 of this code is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.

(b) If the father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under Section 13.21 of this code, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to enter a decree establishing his paternity of the child.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.24. Validation of Prior Statements

A statement acknowledging paternity or an obligation to support a child which was signed by the father before January 1, 1974, is valid and binding

even though the statement is not executed as provided in Section 13.22 of this code and is not filed with the State Department of Public Welfare or with the court.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

[Sections 13.25 to 13.40 reserved for expansion]

SUBCHAPTER C. GENERAL PROVISIONS

§ 13.41. Venue

(a) If the alleged father is not the petitioner, the suit shall be brought in the county where the alleged father resides, except that if the alleged father is not a resident or domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the mother resides.

(b) If the alleged father is the petitioner, the suit shall be brought in the county where the mother resides, except that if the mother is not a domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the child resides.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.42. Conservatorship, Support, Fees, and Payments

(a) In a suit in which a determination of paternity is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child; except that no alleged father denying paternity may be required to make any payment for the support of the child until paternity is established.

(b) In addition to the payment authorized by Section 14.05 of this code, the court may award reasonable attorney's fees incurred in the suit.

(c) A payment ordered under Subsection (b) of this section is enforceable as provided in Section 14.09 of this code.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.43. Birth Certificate

On a determination of paternity, the clerk of the court, unless directed otherwise by the court, shall transmit a copy of the decree to the State Registrar of Vital Statistics. The decree shall state the name of the child. The registrar shall substitute for the original a new birth certificate based on the decree in accordance with the provisions of the laws which permit the correction or substitution of birth certificates for adopted children or children legitimated by the subsequent marriage of their parents and in

accordance with the rules and regulations promulgated by the State Department of Health.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

CHAPTER 14. CONSERVATORSHIP, POSSESSION AND SUPPORT OF CHILDREN

§ 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator

(a) Except as provided in Subsection (d) of this section, a parent appointed managing conservator of the child retains all the rights, privileges, duties, and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) The appointment of a managing conservator does not create, rescind, or otherwise alter a right to inherit as established by law or as modified under Chapter 15 of this code.¹

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, §§ 25 and 26, eff. Sept. 1, 1975.]

¹ Section 15.01 et seq.

§ 14.03. Possession of and Access to Child

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The court may grant reasonable access rights to either the maternal or paternal grandparents of the child and issue any necessary orders to enforce the decree.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 27, eff. Sept. 1, 1975.]

§ 14.07. Best Interest of Child

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) In a nonjury trial the court may interview the child in chambers to ascertain the child's wishes as to his conservator. The court may permit counsel to be present at the interview. On the motion of a party or on the court's own motion, the court shall cause a record of the interview to be made and to be made part of the record in the case.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 28, eff. Sept. 1, 1975.]

§ 14.08. Modification of Order

(a) A court order or the portion of a decree that provides for the support of a child or the appointment of a conservator or that sets the terms and

conditions of conservatorship for support for, or access to a child may be modified only by the filing of a motion in the court having jurisdiction of the suit affecting the parent-child relationship. Any party affected by the order or the portion of the decree to be modified may file the motion.

(b) Each party whose rights, privileges, duties, or powers may be affected by the motion is entitled to at least 30 days' notice of a hearing on the motion to modify.

(c) After a hearing, the court may modify an order or portion of a decree that:

(1) designates a managing conservator if the circumstances of the child or parent have so materially and substantially changed since the entry of the order or decree to be modified that the retention of the present managing conservator would be injurious to the welfare of the child and that the appointment of the new managing conservator would be a positive improvement for the child; or

(2) provides for the support of a child, sets the terms and conditions for access to or possession of a child, or prescribes the relative rights, privileges, duties, and powers of conservators if the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since the entry of the order or decree; except that an order providing for the support of a child may be modified only as to obligations accruing subsequent to the motion to modify.

(d) If the motion is filed for the purpose of changing the designation of the managing conservator and is filed within one year after the date of issuance of the order or decree to be modified, there shall be attached to the motion an affidavit executed by the person making the motion. The affidavit must contain at least one of the following allegations along with the supportive facts:

(1) that the child's present environment may endanger his physical health or significantly impair his emotional development; or

(2) that the managing conservator is the person seeking the modification or consents to the modification, and the modification is in the best interest of the child.

(e) On the filing of a motion to which the provisions of Subsection (d) of this section apply, the court shall deny the motion and refuse to schedule a hearing unless the court determines, on the basis of the affidavit, that adequate facts to support an allegation listed in Subdivision (1) or (2) of Subsection (d) of this section are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, a time and place for the hearing shall be set.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 29, eff. Sept. 1, 1975.]

§ 14.10. Habeas Corpus

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) If the right to possession of a child is not governed by a court order, the court in a habeas corpus proceeding involving the right of possession of the child shall compel return of the child to the relator if, and only if, it finds that the relator has a superior right to possession of the child by virtue of the rights, privileges, duties, and powers of a parent as set forth in Section 12.04 of this code.

(f) The court shall disregard any motion for temporary or permanent adjudication relating to the possession of the child in a habeas corpus proceeding brought under Subsection (e) of this section unless at the time of the hearing an action is pending under this chapter, in which case the court may proceed to issue any temporary order as provided by Section 11.11 of this code.

[Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 30, eff. Sept. 1, 1975.]

CHAPTER 15. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Section

15.021. Filing of Petition to Terminate Before Birth [NEW].

15.041. Affidavit of Waiver of Interest in Child [NEW].

§ 15.02. Involuntary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.

[Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 31, eff. Sept. 1, 1975.]

§ 15.021. Filing of Petition to Terminate Before Birth

A petition in a suit affecting the parent-child relationship which requests the termination of the parent-child relationship with respect to either or both parents may be filed before the birth of the child and after the first trimester of the mother's pregnancy. If the petition is filed before the birth of the child, no hearing on the termination may be held nor may orders other than temporary orders be issued until the child is at least five days old. If the petition is filed before the birth of the child, the term "unborn child" shall be substituted for the name of the child in all records and documents

required by this title that are filed before the birth of the child. After the birth of the child, the name of the child shall be entered in the record and used in subsequent proceedings other than an adoption. [Added by Acts 1975, 64th Leg., p. 1267, ch. 476, § 32, eff. Sept. 1, 1975.]

§ 15.03. Affidavit of Relinquishment of Parental Rights

(a) An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before any person authorized to take oaths.

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

(c) The affidavit may contain:

(1) a designation of any qualified person, the State Department of Public Welfare, or any authorized agency as managing conservator of the child;

(2) a waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02(1)(K) of this code, or in a suit to terminate joined with a petition for adoption under Section 16.03(b) of this code; and

(3) a consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

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

[Amended by Acts 1975, 64th Leg., p. 1267, ch. 476, § 33, eff. Sept. 1, 1975.]

§ 15.04. Affidavit of Status of Child

(a) If the child is not the legitimate child of the father, an affidavit shall be executed by the mother, whether or not a minor, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must state:

(1) that the mother is not and has not been married to the father of the child;

(2) that the mother and father have not attempted to marry under the laws of this state or another state or nation;

(3) that paternity has not been established under the laws of any state or nation; and

(4) one of the following, as applicable:

(A) the father is unknown and no probable father is known;

(B) the name of the father, but the affiant does not know the whereabouts of the father;

(C) the father has executed a statement of paternity under Section 13.22 of this code and an affidavit of relinquishment of parental rights under Section 15.03 of this

code and both affidavits have been filed with the court;

(D) the name and whereabouts of the father; or

(E) the name of any probable father of the child.

(c) The affidavit of status of child may be executed at any time after the first trimester of the pregnancy of the mother.

[Amended by Acts 1975, 64th Leg., p. 1268, ch. 476, § 34, eff. Sept. 1, 1975.]

§ 15.041. Affidavit of Waiver of Interest in Child

(a) A person may execute an affidavit disclaiming any interest in a child and waiving notice or the service of citation in any suit to be filed affecting the parent-child relationship with respect to the child.

(b) The affidavit shall be signed by the person, whether or not a minor, witnessed by two credible persons, and verified before a person authorized to take oaths. The affidavit may be executed before the birth of the child.

(c) The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

(d) An affidavit of waiver of interest in a child may be used in any proceeding in which the affiant attempts to establish an interest in the child. The affidavit may not be used in any proceeding brought by another person to establish the affiant's paternity of the child.

[Added by Acts 1975, 64th Leg., p. 1268, ch. 476, § 35, eff. Sept. 1, 1975.]

§ 15.07. Effect of Decree

A decree terminating the parent-child relationship divests the parent and the child of all legal rights, privileges, duties, and powers, with respect to each other, except that the child retains the right to inherit from and through its divested parent unless the court otherwise provides.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 36, eff. Sept. 1, 1975.]

CHAPTER 16. ADOPTION

SUBCHAPTER A. ADOPTION OF CHILDREN

Section

16.031. Social Study: Time for Hearing [NEW].

SUBCHAPTER A. ADOPTION OF CHILDREN

§ 16.02. Who May Adopt

Any adult is eligible to adopt a child who may be adopted.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 37, eff. Sept. 1, 1975.]

§ 16.03. Prerequisites to Petition

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

(b) Except as provided in Subsection (c) of this section, no petition for adoption of a child may be considered unless there has been a decree terminating the parent-child relationship as to each living parent of the child or unless the termination proceeding is joined with the proceeding for adoption.

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

(d) If an affidavit of relinquishment of parental rights contains a consent that the State Department of Public Welfare or an authorized agency may place the child for adoption and appoints the department or agency managing conservator of the child, no further consent by the parent is required and the adoption decree shall terminate all rights of the parent without further termination proceedings.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, §§ 38 to 40, eff. Sept. 1, 1975.]

Former subsec. (d) was repealed by § 39 of the 1975 Act.

§ 16.031. Social Study: Time for Hearing

(a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order the making of a social study as provided in Section 11.12 of this code and shall set a date for its filing.

(b) The court shall set the date for the hearing on the adoption at a time not later than 60 days, nor earlier than 40 days, after the date on which the investigator is appointed. For good cause shown, the court may set the hearing at any time that provides adequate time for filing the report of the study.

[Added by Acts 1975, 64th Leg., p. 1269, ch. 476, § 41, eff. Sept. 1, 1975.]

§ 16.08. Decree

(a) If the court is satisfied that the requirements for adoption have been met and the adoption is in the best interest of the child, the court shall make a decree granting the adoption, reciting the findings pertaining to the court's jurisdiction.

(b) If a request for termination of the parent-child relationship has been joined with the petition for adoption, the court shall also enter in its decree a termination of the parent-child relationship. The court must make separate findings that the termination is in the best interests of the child and that the adoption is in the best interests of the child.

(c) The name of the child may be changed in the decree if requested.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 42, eff. Sept. 1, 1975.]

SUBCHAPTER B. ADOPTION OF ADULTS

§ 16.55. Effect of Adoption Decree

On entry of the decree of adoption, the adopted adult is the son or daughter of the adoptive parents for all purposes, and of the natural parents for inheritance purposes only. However, the natural parents may not inherit from or through the adopted adult.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 43, eff. Sept. 1, 1975.]

CHAPTER 17. SUIT FOR PROTECTION OF CHILD IN EMERGENCY

§ 17.01. Taking Possession in Emergency

An authorized representative of the State Department of Public Welfare, a law-enforcement officer, or a juvenile probation officer may take possession of a child to protect him from an immediate danger to his health or physical safety and deliver him to any court having jurisdiction of suits under this subtitle, whether or not the court has continuing jurisdiction under Section 11.05 of this code. The child shall be delivered immediately to the court.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 44, eff. Sept. 1, 1975.]

§ 17.05. Duration of Order

(a) An order issued under Section 17.04 of this code expires at the end of the 10-day period following the date of the order, on the restoration of the child to the possession of its parent, guardian, or conservator, or on the issuance of ex parte temporary orders in a suit affecting the parent-child relationship under this subtitle, whichever occurs first.

(b) If the child is not restored to the possession of its parent, guardian, or conservator, the court shall:

- (1) order such restoration of possession; or
- (2) direct the filing of a suit affecting the parent-child relationship in the appropriate court with regard to continuing jurisdiction.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 45, eff. Sept. 1, 1975.]

CHAPTER 21. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Section

21.07. Declaration of Reciprocity: Other Nations [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.03. Definitions

In this chapter, unless the context requires a different definition:

(1) "State" includes any state, territory, or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted and includes a foreign nation or a state of a nation declared to have a similar reciprocal law as provided in Section 21.07 of this code.

[See Compact Edition, Volume 1 for text of (2) to (14)]

(15) "Prosecuting attorney" means the criminal district attorney, an attorney designated by the court, or the county attorney, or the district attorney where there is no criminal district attorney, attorney designated by the court, or county attorney.

[See Compact Edition, Volume 1 for text of (16)]

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, §§ 46 and 47, eff. Sept. 1, 1975.]

§ 21.07. Declaration of Reciprocity: Other Nations

(a) If the attorney general finds that reciprocal provisions are available in a foreign nation or the state of a foreign nation for the enforcement of support orders issued in this state, the attorney general may declare the foreign nation or a state of a foreign nation to be a reciprocating state for the purpose of this chapter.

(b) A declaration made under Subsection (a) of this section may be revoked by the attorney general.

(c) A declaration by the attorney general made under Subsection (a) of this section may be reviewed by the court in an action under this title.

[Added by Acts 1975, 64th Leg., p. 1270, ch. 476, § 48, eff. Sept. 1, 1975.]

[Sections 21.08 to 21.10 reserved for expansion]

SUBCHAPTER C. CIVIL ENFORCEMENT

§ 21.39. Enforcement Power of Court

In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:

(1) to require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) to require the defendant to make payments at specified intervals to the district clerk or probation department of the court;

(3) to punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in

any other suit or proceeding cognizable by the court; and

(4) to order the defendant (obligor) to pay as court costs a reasonable fee to any attorney or to the prosecuting attorney's office who represents the petitioner in any enforcement proceeding.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 49, eff. Sept. 1, 1975.]

CHAPTER 31. REMOVAL OF DISABILITIES OF MINORITY

§ 31.01. Petition

(a) A minor who is a resident of this state and is at least 17 years of age, or is at least 16 years of age, living separate and apart from his parents, managing conservator, or guardian and is self-supporting and managing his own financial affairs, may petition to have his disabilities of minority removed for limited purposes or for general purposes.

(b) A minor who is not a resident of this state and is at least 17 years of age may petition to have his disabilities of minority removed for a limited purpose or for general purposes if he is an adult under the laws of the state of his residence.

(c) A minor may institute suit under this section in his own name and need not be represented by next friend.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 50, eff. Sept. 1, 1975.]

§ 31.02. Requisites of Petition

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) The petition must be verified by a parent of the petitioner, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by the person so appointed. If the person who is to verify the petition is unavailable or his whereabouts are unknown, the guardian ad litem shall verify the petition after his appointment.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 51, eff. Sept. 1, 1975.]

CHAPTER 34. REPORT OF CHILD ABUSE

Section

34.07. Failure to Report; Penalty [NEW].

34.08. Confidentiality [NEW].

§ 34.02. Contents of Report: to Whom Made

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violat-

ed the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

- (1) the State Department of Public Welfare;
- (2) the agency designated by the court to be responsible for the protection of children; or
- (3) any local or state law enforcement agency.

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

(c) All reports received by any local or state law enforcement agency shall be referred to the State Department of Public Welfare or to the agency designated by the court to be responsible for the protection of children.

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

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 52, eff. Sept. 1, 1975.]

§ 34.05. Investigation and Report of Receiving Agency

(a) The State Department of Public Welfare or the agency designated by the court to be responsible for the protection of children shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the child.

(b) In the investigation the department or agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other children in the home;
- (4) an evaluation of the parents or persons responsible for the care of the child;
- (5) the adequacy of the home environment;
- (6) the relationship of the child to the parents or persons responsible for the care of the child;
- (7) all other pertinent data.

[See Compact Edition, Volume 1 for text of (c) and (d)]

(e) The agency designated by the court to be responsible for the protection of children or the department shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency if sufficient grounds for the institution of a suit affecting the parent-child relationship are found.

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

[Amended by Acts 1975, 64th Leg., p. 1272, ch. 476, § 53, eff. Sept. 1, 1975.]

§ 34.07. Failure to Report; Penalty

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 34.02 of this code.

(b) An offense under this section is a Class B misdemeanor.

[Added by Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

§ 34.08. Confidentiality

The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

[Added by Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

CHAPTER 35. CONSENT TO MEDICAL TREATMENT

Section

35.04: Examination of Abused or Neglected Children [NEW].

§ 35.04. Examination of Abused or Neglected Children

(a) Except as provided in Subsection (b) of this section, a licensed physician or dentist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent for the child or his parents. The examination may include X-rays, blood tests, and penetration of tissue necessary to accomplish these tests.

(b) Unless consent is obtained as otherwise allowed by law, a physician or dentist may not examine a child:

- (1) who is 16 years old or over and refuses to consent; or
- (2) if consent is refused by an order of a court.

(c) A physician or dentist examining a child under the authority of this section is not liable for damages except those damages resulting from his negligence.

[Added by Acts 1975, 64th Leg., p. 1273, ch. 476, § 55, eff. Sept. 1, 1975.]

TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION

CHAPTER 51. GENERAL PROVISIONS

§ 51.02. Definitions.

In this title:

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

(2) "Parent" means the mother, the father whether or not the child is legitimate, or an adoptive parent, but does not include a parent whose parental rights have been terminated.

[See Compact Edition, Volume 1 for text of (3) to (10)]

[Amended by Acts 1975, 64th Leg., p. 2152, ch. 693, § 1, eff. Sept. 1, 1975.]

Section 27 of the 1975 amendatory act provided: "This Act takes effect on September 1, 1975."

§ 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is conduct, other than a traffic offense, that violates:

- (1) a penal law of this state punishable by imprisonment or by confinement in jail; or
- (2) a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code, including an order prohibiting conduct referred to in Subsection (b)(4) of this section.

(b) Conduct indicating a need for supervision is:

- (1) conduct, other than a traffic offense, that on three or more occasions violates either of the following:
 - (A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
 - (B) the penal ordinances of any political subdivision of this state;
- (2) the unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school;
- (3) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return; or
- (4) conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense).

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

(d) For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:

- (1) illness of the child;
- (2) illness or death in the family of the child;
- (3) quarantine of the child and family;
- (4) weather or road conditions making travel dangerous;
- (5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or
- (6) circumstances found reasonable and proper.

[Amended by Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 2 to 4, eff. Sept. 1, 1975.]

§ 51.04. Jurisdiction

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time he engaged in the conduct, and the juvenile court has exclusive original jurisdiction over proceedings under this title.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) A court may not be designated as the juvenile court unless its presiding judge:

- (1) is an attorney licensed to practice law in this state; or,
- (2) if in a county with 50,000 or fewer inhabitants, is a nonlawyer who has served as the judge of a county court in this state for at least four years. However, if a nonlawyer is the juvenile judge he may not preside over an adjudication, disposition, or certification hearing; or,
- (3) if the judge in (2) above has successfully completed 60 or more hours from an accredited school of law.

[See Compact Edition, Volume 1 for text of (e) and (f)]

(g) The juvenile board, or if there is no juvenile board, the juvenile court, may appoint a referee to conduct hearings under this title and in accordance with Section 54.10 of this code. The referee shall be an attorney licensed to practice law in this state. Payment of any referee services shall be provided from county funds.

[Amended by Acts 1975, 64th Leg., p. 1357, ch. 514, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 5 to 7, eff. Sept. 1, 1975.]

§ 51.05. Court Sessions and Facilities

(a) The juvenile court shall be deemed in session at all times. Suitable quarters shall be provided by the commissioners court of each county for the hear-

ing of cases and for the use of the judge, the probation officer, and other employees of the court.

(b) The juvenile court and the juvenile board shall report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and may make recommendations for their improvement.

[Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 8, eff. Sept. 1, 1975.]

§ 51.09. Waiver of Rights

(a) Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

- (1) the waiver is made by the child and the attorney for the child;
- (2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;
- (3) the waiver is voluntary; and
- (4) the waiver is made in writing or in court proceedings that are recorded.

(b) Notwithstanding any of the provisions of Subsection (a) of this section, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

- (1) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning that:

(A) he may remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;

(B) he has the right to have an attorney present to advise him either prior to any questioning or during the questioning;

(C) if he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state;

(D) he has the right to terminate the interview at any time;

(E) if he is 15 years of age or older at the time of the violation of a penal law of the grade of felony the juvenile court may waive its jurisdiction and he may be tried as an adult; and

(F) the statement must be signed in the presence of a magistrate by the child with

no law enforcement officer or prosecuting attorney present. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily. If such a statement is taken, the magistrate shall sign a written statement verifying the foregoing requisites have been met.

The child must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement and sign the statement in the presence of a magistrate who must certify that he has examined the child independent of any law enforcement officer or prosecuting attorney and determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights.

(2) it be made orally and the child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

(3) the statement was *res gestae* of the delinquent conduct or the conduct indicating a need for supervision or of the arrest.

[Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 9, eff. Sept. 1, 1975.]

§ 51.12. Place and Conditions of Detention

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) In each county, the judge of the juvenile court and the members of the juvenile board, if there is one, shall personally inspect the detention facilities at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities that they are suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of Subsection (a) of this section;

(2) the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defining "safe and suitable jails," if the detention facility is a county jail; and

(3) recognized professional standards for the detention of children.

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

(e) If there is no certified place of detention in the county in which the petition is filed, the designated place of detention may be in another county.

[Amended by Acts 1975, 64th Leg., p. 2155, ch. 693, §§ 10 and 11, eff. Sept. 1, 1975.]

§ 51.15. Fingerprints and Photographs

(a) No child may be fingerprinted without the consent of the juvenile court except as provided in Subsection (f) of this section. However, if a child 15 years of age or older is referred to the juvenile court for a felony, his fingerprints may be taken and filed by a law-enforcement officer investigating the case.

[See Compact Edition, Volume 1 for text of (b) to (g)]

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 12, eff. Sept. 1, 1975.]

§ 51.16. Sealing of Files and Records

[See Compact Edition, Volume 1 for text of (a) to (g)]

(h) A person whose files and records have been sealed under this Act is not required in any proceeding or in any application for employment, information, or licensing to state that he has been the subject of a proceeding under this Act; and any statement that he has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 13, eff. Sept. 1, 1975.]

CHAPTER 54. JUDICIAL PROCEEDINGS

Section

54.041. Order Prohibiting Harmful Contacts [NEW].

54.10. Hearings Before Referee [NEW].

§ 54.01. Detention Hearing

(a) If the child is not released under Section 53.02 of this code, a detention hearing without a jury shall be held promptly, but not later than the second working day after he is taken into custody; provided, however, that when a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody.

[See Compact Edition, Volume 1 for text of (b) to (l)]

(m) The detention hearing required in this section may be held in the county of the designated place of detention where the child is being held even though the designated place of detention is outside the county of residence of the child or the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, §§ 14 and 15, eff. Sept. 1, 1975.]

§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

[See Compact Edition, Volume 1 for text of (a) to (i)]

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

- (1) the person is 18 years of age or older;
- (2) the person was 15 years of age or older and under 17 years of age at the time he is alleged to have committed a felony;
- (3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted; and
- (4) the juvenile court finds from a preponderance of the evidence that after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:
 - (A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or
 - (B) the person could not be found.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of this section.

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) of this section.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 16, eff. Sept. 1, 1975.]

§ 54.03. Adjudication Hearing

[See *Compact Edition, Volume 1 for text of (a) and (b)*]

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code. Jury verdicts under this title must be unanimous.

[See *Compact Edition, Volume 1 for text of (d) to (h)*]

[Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, § 17, eff. Sept. 1, 1975.]

§ 54.041. Order Prohibiting Harmful Contacts

When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice to all persons affected and on hearing, may enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision. [Added by Acts 1975, 64th Leg., p. 2157, ch. 693, § 18, eff. Sept. 1, 1975.]

§ 54.10. Hearings Before Referee

(a) The hearing provided in Sections 54.01, 54.03, and 54.04 of this code may be held by a referee appointed in accordance with Section 51.04(g) of this code provided:

- (1) the parties have been informed by the referee that they are entitled to have the hearing before the juvenile court judge or in the case of a detention hearing provided for in Section 54.01 of this code, a substitute judge as authorized by Section 51.04(f) of this code; or
- (2) the child and the attorney for the child have in accordance with the requirements of Section 51.09 of this code waived the right to have the hearing before the juvenile court judge or substitute judge.

(b) At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge. The juvenile court judge shall adopt, modify, or reject the referee's recommendations within 24 hours. In the same case of a detention hearing as authorized by Section 54.01 of this code, the failure of the juvenile court to act within 24 hours results in release of the child by operation of law and a recommendation that the child be released operates to secure his immediate release subject to the power of the juvenile court judge to modify or reject that recommendation.

[Added by Acts 1975, 64th Leg., p. 2157, ch. 693, § 19, eff. Sept. 1, 1975.]

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS, RETARDATION, DISEASE, OR DEFECT

§ 55.02. Mentally Ill Child

[See *Compact Edition, Volume 1 for text of (a) and (b)*]

(c) If the juvenile court enters an order of temporary hospitalization of the child, the child shall be cared for, treated, and released in conformity to the Texas Mental Health Code except:

- (1) a juvenile court order of temporary hospitalization of a child automatically expires when the child becomes 18 years of age;
- (2) the head of a mental hospital shall notify the juvenile court that ordered temporary hospitalization at least 10 days prior to discharge of the child; and
- (3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

[See *Compact Edition, Volume 1 for text of (d)*]

(e) If the child is discharged from the mental hospital before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of temporary hospitalization had been made.

[Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, §§ 20 and 21, eff. Sept. 1, 1975.]

§ 55.03. Mentally Retarded Child

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) If the child is discharged from the facility for the care and treatment of mentally retarded persons before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of commitment had been made.

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 22, eff. Sept. 1, 1975.]

§ 55.04. Mental Disease or Defect Excluding Fitness to Proceed

[See Compact Edition, Volume 1 for text of (a) to (f)]

(g) Repealed by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975.

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

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975.]

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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER A. PURPOSE AND POLICY

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SUBCHAPTER B. PROPERTY OF THE STATE

- 1.011. Property of the State.
- 1.012. Private Fresh Water.

SUBCHAPTER C. DEFINITIONS

- 1.101. Hunt and Catch Defined.

SUBCHAPTER A. PURPOSE AND POLICY

§ 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 488, Acts of the 58th Legislature, 1963 (Article 5429b—1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent parks and wildlife law more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 1.002. Construction of Code

The Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 1.003 to 1.010 reserved for expansion]

SUBCHAPTER B. PROPERTY OF THE STATE

§ 1.011. Property of the State

(a) All wild animals, fur-bearing animals, wild birds, and wild fowl inside the borders of this state are the property of the people of this state.

(b) All fish and other aquatic animal life contained in the freshwater rivers, creeks, and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this state are the property of the people of this state.

(c) All the beds and bottoms and the products of the beds and bottoms of the public rivers, bayous,

lagoons, creeks, lakes, bays, and inlets in this state and of that part of the Gulf of Mexico within the jurisdiction of this state are the property of this state. The state may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters.

(d) The Parks and Wildlife Department shall regulate the taking and conservation of fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 1.012. Private Fresh Water

Any freshwater lake, river, creek, or bayou in this state contained in any survey of private land may not be sold but shall remain open to the public. If the Parks and Wildlife Department stocks the water with fish, it is authorized to protect the fish under rules as it may prescribe.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 1.013 to 1.100 reserved for expansion]

SUBCHAPTER C. DEFINITIONS

§ 1.101. Hunt and Catch Defined

In this code:

- (1) "Hunt" means seek or pursue with intent to take or kill and includes take, kill, and an attempt to take or kill.
- (2) "Catch" means take or kill and includes an attempt to take or kill.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 2. PARKS AND WILDLIFE DEPARTMENT

CHAPTER 11. PARKS AND WILDLIFE DEPARTMENT

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- Section 11.001. Definitions.

SUBCHAPTER B. ORGANIZATION OF DEPARTMENT

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- 11.012. Commission.
- 11.013. Terms.
- 11.014. Chairman, Vice-Chairman.
- 11.015. Meetings, Quorum.
- 11.016. Expenses, Per Diem.
- 11.017. Executive Director.
- 11.018. Employees.
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SUBCHAPTER C. SPECIAL FUNDS

- 11.031. Special Game and Fish Fund.
- 11.032. Special Game and Fish Fund: Sources.
- 11.033. Use of Special Game and Fish Fund.
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- 11.035. State Parks Fund.
- 11.036. Special Boat Fund.
- 11.037. State Land and Water Conservation Fund.
- 11.038. Operating Fund.
- 11.039. Revolving Petty Cash Fund.
- 11.040. Mistaken Deposit.
- 11.041. Transfer of Property.

SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Definitions

In this code:

- (1) "Commission" means the Parks and Wildlife Commission.
- (2) "Department" means the Parks and Wildlife Department.
- (3) "Director" means the executive director of the Parks and Wildlife Department.
- (4) "Chairman" means the chairman of the Parks and Wildlife Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 11.002 to 11.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF DEPARTMENT

§ 11.011. Parks and Wildlife Department

The Parks and Wildlife Department is established as an agency of the state. It is under the policy direction of the Parks and Wildlife Commission. [Acts 1975, 64th Leg., p. 1405, ch. 541, § 1, eff. Sept. 1, 1975.]

§ 11.012. Commission

(a) The commission consists of six members appointed by the governor with the advice and consent of two-thirds of the members of the senate present and voting.

(b) If the senate is not in session, the governor shall appoint the members and issue commissions to them as provided by law, and their appointment shall be submitted to the next session of the senate for its advice and consent in the manner that appointments to fill vacancies under the constitution are submitted to the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.013. Terms

The members of the commission hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has

qualified. The terms expire on January 31 of odd-numbered years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.014. Chairman, Vice-Chairman

(a) The governor shall designate biennially one of the six members as chairman of the commission for a term of two years expiring on January 31 of the succeeding odd-numbered year.

(b) The commission shall elect biennially a vice-chairman from among its members for a term of two years expiring on January 31 of the succeeding odd-numbered year.

(c) A vacancy in the office of chairman or vice-chairman is filled for the unexpired portion of the term in the same manner as the original appointment or election.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.015. Meetings, Quorum

The commission may meet as often as is necessary but shall meet at least once during each quarter of the year. Four members constitute a quorum.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.016. Expenses, Per Diem

Members of the commission are entitled to reimbursement for their actual expenses incurred in attending meetings and to the per diem as provided in the general appropriations act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.017. Executive Director

The commission may appoint an executive director who is the chief executive officer of the department and performs its administrative duties. The director serves at the will of the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.018. Employees

The director may appoint heads of divisions, game management officers, park managers, and other employees authorized by appropriations and necessary for administering the duties and services of the department. These employees serve at the will of the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.019. Employees as Peace Officers

(a) The director may commission as peace officers any of the employees provided for in the general appropriations act.

(b) Employees commissioned under this section have the powers, privileges, and immunities of peace

officers while on state parks or on state historical sites or in fresh pursuit of those violating the law in a state park or historical site.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 11.020 to 11.030 reserved for expansion]

SUBCHAPTER C. SPECIAL FUNDS

§ 11.031. Special Game and Fish Fund

There is in the state treasury a special fund called the "special game and fish fund."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.032. Special Game and Fish Fund: Sources

The department shall deposit to the credit of the special game and fish fund all revenue, less allowable costs, from the following sources:

- (1) all types of fishing and shrimping licenses;
- (2) all types of hunting licenses;
- (3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;
- (4) sale of marl, sand, gravel, shell, and mud-shell;
- (5) oyster bed rentals and permits;
- (6) federal funds received for research and development of commercial fisheries and state funds appropriated for this purpose;
- (7) sale of property, less advertising costs, purchased from this fund or a special fund that is now part of this fund;
- (8) fines and penalties collected for violations of a law pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, shrimp, oysters, game birds and animals, fur-bearing animals, and any other wildlife resources of this state;
- (9) the sale of rough fish by the department;
- (10) fees for importation permits;
- (11) fish farm licenses; and
- (12) any other source provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.033. Use of Special Game and Fish Fund

The special game and fish fund may be used for the following purposes only:

- (1) enforcement of fish, shrimp, and oyster laws, game laws, and laws pertaining to sand, shell, and gravel;
- (2) dissemination of information pertaining to marine life, wild animal life, wildlife values, and wildlife management;

(3) scientific investigation and survey of marine life for the better protection and conservation of marine life;

(4) establishment and maintenance of fish hatcheries, fish sanctuaries, tidal water fish passes, game preserves, wildlife management areas, and public hunting grounds;

(5) propagation and distribution of marine life, game animals, and wild birds;

(6) protection of wild birds, fish, and game;

(7) purchase, repair, and operation of boats and dredges;

(8) research and management of the fish and game resources of this state;

(9) salaries of employees and other expenses necessary to carry out the duties of the department under laws relating to fish, shrimp, oysters, game, and sand, shell, and gravel;

(10) expansion and development of additional opportunities of hunting and fishing in state-owned land and water;

(11) removing rough fish from public water; and

(12) any other use provided for by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.034. Special Game and Fish Fund Expenditures

All expenditures of the department from the special game and fish fund must be approved by the director. The comptroller shall draw a warrant on the state treasury from the special game and fish fund for the amount of the expenditure in favor of the person claiming the expenditure.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.035. State Parks Fund

(a) There is in the state treasury a special fund called the "state parks fund."

(b) The department shall deposit to the credit of the state parks fund all revenue, less allowable costs, received from the following sources:

(1) grants or operation of concessions in state parks or fishing piers;

(2) publications on state parks, state historic sites, or state scientific areas;

(3) fines or penalties received from violations of regulations governing parks issued pursuant to Subchapter B, Chapter 13, of this code; and

(4) any other source provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.036. Special Boat Fund

(a) There is in the state treasury a special fund called the "special boat fund."

(b) The department shall deposit to the credit of the special boat fund all revenue, less any allowable costs, received from the following sources:

- (1) motorboat registration fees;
- (2) motorboat manufacturer or dealer registration fees;
- (3) fines or penalties imposed by a court for violation of water safety laws contained in Chapter 31 of this code; and
- (4) any other source prescribed by law.

(c) The special boat fund may be used for the following purposes:

- (1) administration of the water safety laws as set out in Chapter 31 of this code;
- (2) purchasing all necessary forms and supplies, including reimbursement of the department for any material produced by its existing facilities or work performed by other divisions of the department;
- (3) purchase, construction, and maintenance of boat ramps on or near public waters as provided in Chapter 31 of this code; and
- (4) any other purpose provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.037. State Land and Water Conservation Fund

(a) There is in the state treasury a special fund called the "state land and water conservation fund."

(b) The department shall deposit in the state land and water conservation fund all revenue received from the federal government or any other source for the purpose of administering programs authorized under Sections 13.301 through 13.311 of this code.

(c) The state land and water conservation fund may be used for paying the cost of planning, acquisition, operation, and development of outdoor recreation resources of the state and the administrative expenses incident to the projects or programs authorized under Sections 13.301 through 13.311 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.038. Operating Fund

(a) There is a fund in the state treasury called the "parks and wildlife operating fund."

(b) The commission may transfer any funds appropriated to the department for personal services, travel, consumable supplies and materials, current operating expenses, and capital outlay, as these terms are used in the comptroller's object classification codes of the general appropriations act. All expenditures by the department from this fund shall be made only for the purposes for which appropriations are made in the general appropriations act.

(c) The parks and wildlife operating fund shall be used for the purposes specified by law and nothing may be done by any officer or employee of the department or commission to divert or jeopardize the fund or any portion of the fund, including any federal aid the department receives or administers. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.039. Revolving Petty Cash Fund

(a) The department may establish a revolving petty cash fund out of existing funds on deposit in the state treasury. The balance of this fund may not exceed \$2,500.

(b) The purpose of this fund is to make refunds of cash receipts, subject to the approval of the state auditor. The account must be maintained at a bank in Austin.

(c) With the prior approval of the commission, the director may designate a bonded employee of the department to sign checks drawn on this fund. The fund shall be reimbursed by warrants drawn and approved by the comptroller out of those funds in the state treasury in which the refunded receipts were originally deposited.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.040. Mistaken Deposit

(a) Any funds deposited in the state treasury by the department by mistake of fact or mistake of law shall be refunded by warrant issued against the fund in the state treasury into which the money was deposited. Refunds necessary to make the proper correction shall be appropriated by the general appropriations act.

(b) The comptroller may require written evidence from the director of the department to indicate the reason for the mistake of fact or law before issuing the refund warrant authorized in Subsection (a) of this section.

(c) This section does not apply to any funds that have been deposited under a written contract or to any funds on deposit as of June 8, 1971, which are the subject of litigation in any of the courts of this state or the United States.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.041. Transfer of Property

(a) The commission may transfer tangible property, other than money or real estate held for limited purposes, from one division of the department to another division.

(b) If the property to be transferred was acquired with funds the use of which is limited by law or dedicated in any other manner, and the prospective use of the property is different from the use allowed by law, the department shall transfer from available funds to the fund from which the property was acquired the value of the property at the time of the transfer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 12. POWERS AND DUTIES CONCERNING WILDLIFE

SUBCHAPTER A. GENERAL POWERS AND DUTIES

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SUBCHAPTER A. GENERAL POWERS AND DUTIES

§ 12.001. General Duties.

(a) The department shall administer the laws relating to game, fish, oysters, and marine life, as set out in this code.

(b) The department may:

(1) collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department;

(2) inspect all products required to be taxed by the laws relating to game, fish, oysters, and marine life and verify the weights and measures of the products;

(3) examine on request all streams, lakes, and ponds for the purpose of stocking with fish best suited to the locations;

(4) manage the propagation and distribution of fish in state fish hatcheries; and

(5) manage the propagation and distribution of birds and game in state reservations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.002. Report to Governor

(a) The department shall report to the governor on August 31 of each year, or as soon after that date as practicable, but not later than October 1 of each year, showing the condition of the fish and oyster industry.

The report shall contain:

(1) a statement of the amount of special taxes collected;

(2) the number of licenses issued and the amount of license fees collected;

(3) the number and class of all boats engaged in the fish and oyster trade;

(4) the number, place, and acreage of private oyster beds and the amount of rents received for private oyster beds;

(5) all other amounts collected and disbursed by the department;

(6) a statement of all stock furnished, to whom the stock was furnished, the cost of the stock, the streams, lakes, or ponds stocked, the number and kind of fish used in each, and the condition of the plants; and

(7) any other observations or pertinent data.

(b) The governor shall order a sufficient number of copies of the report to be printed and filed in the secretary of state's office for free distribution.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.003. Records

(a) The department shall keep a record containing the following information:

(1) the amount of all special taxes collected;

(2) a list of all licenses issued and the amount of license fees collected;

(3) a list of all certificates issued for location of private oyster beds, the date of the certificate and application, when and how the applications were executed, and the manner in which the bottoms were examined and the amount of rent collected for the location;

(4) all stock fish furnished, to whom the fish were furnished, and the cost of the stock fish;

(5) all streams, lakes, or ponds stocked and the number and kinds of fish stocked in each; and

(6) all collections and disbursements of the department.

(b) The department shall keep an account with each person, firm, or corporation holding certificates for the location of private oyster beds, showing the amounts received as rents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.004. List of Fees and Fines

(a) The department shall maintain a complete list of all license fees and fines collected. The list shall be maintained in Austin and is a public record.

(b) The department shall file at the end of each calendar month a written report with the comptroller showing fines, licenses, and other fees collected, their disposition, and any other necessary information.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.005. Funds in Lieu of Taxes

(a) The department shall expend funds to counties and school districts for assessments in lieu of property taxes on wildlife management areas purchased from federal funds or grants authorized by the Pittman-Robertson Act or Dingell-Johnson Act.

(b) No general revenue funds may be expended in lieu of taxes for wildlife management areas; however, special funds may be expended for this purpose provided reimbursement or matching from the federal government is available at a federal ratio of two to one or better.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.006. Publications on Wildlife Values and Management

(a) The department may inform the public about wildlife values and management.

(b) Any book, bulletin, or magazine published under this section may be sold for a price not to exceed the cost of publication and mailing. Money received from the sale of these publications shall be sent to the department at its office in Austin not later than 10 days following the date of collection. The money shall be deposited in the state treasury to the credit of the special game and fish fund.

(c) Under the terms of the same bond and authority, any person authorized to issue hunting and fishing licenses may sell subscriptions to any monthly publication prepared and published by the depart-

ment under this section. The seller may retain 10 percent of each subscription payment as his fee for collecting and send the balance of the subscription fee to the department.

(d) The amount of money collected for each subscription to any monthly publication shall be recorded on a prenumbered form bearing the name, complete address, and length of the subscription period. The prenumbered form shall be issued and accounted for in the same manner as hunting licenses. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.007. Cautioning Sportsmen

The department shall caution sportsmen and other persons of the danger from fire in the woods, marshes, or prairies of the state and request sportsmen and other persons to extinguish all fires left burning and to give notice, whenever possible, of fires ranging beyond control so that they may be controlled and extinguished.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.008. Leasing of Grazing Rights: Sale of Products

(a) The department may lease grazing rights on any land acquired by, and for the use of, the department as game preserves, game sanctuaries, and game management areas. The department may harvest and sell, or sell in place, any timber, hay, or other product grown on land of the department when the product is found to be in excess of wildlife management needs.

(b) The state board of control shall execute any sale or lease under this section under the general law governing the sale of state property; however, the department shall determine the quantity of products, or grazing lease, to be offered for sale or lease.

(c) All revenue derived from a sale or lease under this section shall be deposited in the state treasury to the credit of the special game and fish fund. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.009. Seafood Consumption Program

(a) The department shall develop and administer a market promotion program to foster and expand the sale and consumption of seafood by the public. The department may use its own personnel or contract for personnel and use only state funds or state funds in conjunction with federal or private funds.

(b) Forty percent of the funds collected from commercial fisherman's license fees, 20 percent of wholesale fish dealers' license fees and wholesale truck dealers' fish license fees, and 50 percent of shrimp house operators' license fees shall be used by the

department in carrying out the program required by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.010. Noxious Vegetation Program

The department may contract or use the services of department personnel for the eradication of noxious vegetation from the water of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.011. Teaching Equipment

On request of a state-supported institution of higher education engaged in teaching and research related to marine science and oceanography, the department may transfer to the institution fish nets, seines, motors, boats, and other marine equipment confiscated under the authority of the game and fish laws to be used in the teaching and research programs of the institution.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.012. Fire Hazard

(a) If the state forester determines that the continuation of any hunting season is likely to cause a serious forest fire hazard in Red River, Titus, Camp, Harrison, Gregg, Henderson, Van Zandt, Anderson, Nacogdoches, Angelina, San Augustine, Sabine, Trinity, Walker, Montgomery, Polk, Liberty, Tyler, Hardin, Jasper, Newton, Grimes, or San Jacinto counties, he shall immediately notify the department of the local conditions and recommended that any hunting season then open be closed temporarily.

(b) The department shall report to the governor on the local conditions which contribute to the danger of a fire hazard.

(c) If the governor finds that an extreme fire hazard exists, he shall proclaim a closed season to remain in effect in the county until the danger abates. The governor may revoke the proclamation at any time revocation is in the best interests of the people.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.013. Power to Take Wildlife

The department may take, transport, release, and manage any of the wildlife and fish in this state for investigation, propagation, distribution, or scientific purposes. It is a defense in any prosecution of an employee of the department for a violation of any law for the protection of wildlife or fish that the employee was acting within the scope of this authority.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.014. [Blank]

§ 12.015. Noxious Aquatic Plants

(a) In this section, "noxious aquatic plant" means a plant that thrives in water, marshes, or swamps and that:

- (1) is harmful or potentially harmful to human life;
- (2) may impede navigation; or
- (3) may diminish the quality of water-oriented recreational areas.

(b) The department shall:

- (1) identify noxious aquatic plants;
- (2) publish a list of the names of noxious aquatic plants identified by the department; and
- (3) make rules and regulations necessary to carry out this section.

(c) The department may issue permits for the importation, sale, transport, or release of noxious aquatic plants identified by the department if the department finds that the proposed use of the noxious aquatic plants by the permit applicant will not pose a danger to persons, wildlife resources, or water resources.

(d) No person may intentionally or knowingly import or intentionally or knowingly sell, transport, or release in this state a noxious aquatic plant identified by the department unless the person has an unexpired written permit issued by the department authorizing the importation, sale, transportation, or release.

(e) A person who violates Subsection (d) of this section or who violates a regulation of the department made under this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1219, ch. 456, § 17, eff. Sept. 1, 1975.]

[Sections 12.016 to 12.100 reserved for expansion]

SUBCHAPTER B. ENFORCEMENT POWERS

§ 12.101. Duty to Enforce Law

The department shall enforce all state laws relating to the protection and preservation of wild game, wild birds, and fish and other marine life.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.102. Power to Arrest

(a) An authorized employee of the department has the same authority as a sheriff to arrest, serve criminal process, and require aid in serving criminal process in connection with violations of the laws relating to game, fish, and birds. The department may receive the same fees as are provided by law for sheriffs in misdemeanor cases.

(b) An authorized employee of the department may arrest without a warrant any person found in the act of violating any law relating to game, birds, or fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.103. Entering Land

To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray. No action may be sustained against an employee of the department to prevent his entering on land or water when acting in his official capacity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.104. Right to Search

An authorized employee of the department may search a game bag, vehicle, or other receptacle if he has reason to believe that the game bag, vehicle, or receptacle contains game unlawfully killed or taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.105. Suits

(a) The department may file complaints in the name of the State of Texas to recover fines and penalties for violations of the laws relating to game, birds, and fish.

(b) The department may file a complaint and commence proceedings against an individual for violation of the laws relating to game, birds, and fish without the approval of the county attorney of the county in which the proceedings are brought. The department is not required to furnish security for costs for proceedings under this subsection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.106. Notice to Appear

(a) Any peace officer of this state or a political subdivision of this state or an authorized employee of the department who arrests a person for a violation of a game, fish, or park law of this state or of a regulation of the commission may deliver to the alleged violator a written notice to appear before the justice court having jurisdiction of the offense not later than 15 days after the date of the alleged violation.

(b) On signing the written notice to appear and thereby promising to appear as provided in the notice, the alleged violator shall be released.

(c) Failure to appear within the time specified in the written notice is a misdemeanor punishable by a fine of not less than \$10 nor more than \$200, and a

warrant for the arrest of the alleged violator may be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.107. Remission of Fines

(a) A justice of the peace, clerk of any court, or any other officer of the state who receives a fine imposed by a court for a violation of any law relating to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters, and other wildlife shall send the fine to the department within 10 days after the date of collection. A statement containing the docket number of the case, the name of the person fined, and the section of the law violated must accompany the remission of the fine.

(b) The amount of the fine to be remitted to the department is 80 percent in county court cases and 85 percent in justice court cases.

(c) The fees set out in Articles 950 and 951, Code of Criminal Procedure, 1925, shall be deducted from fines imposed for violations of laws relating to wild game, birds, fish, oysters, and other wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.108. Expenses

In making an arrest, summoning a witness, and serving a process, the department is entitled to the same fee and mileage allowance as a sheriff. The fee is charged and collected in the same manner as sheriff's fees.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.109. Confiscated Marine Life

(a) When an enforcement officer of the department believes that a person has unlawful possession of any fish, oysters, shrimp, or other marine life, he shall seize and sell the marine life and dispose of the proceeds as provided in this section. If the person is in possession of a greater quantity of marine life than is authorized by law, all such marine life shall be deemed to have been taken in contravention of the law and shall be seized by the arresting officer. The officer shall give to the person a receipt for all marine life seized.

(b) The confiscated marine life shall be sold to the highest of three bidders. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund No. 900 pending the outcome of the action taken against the person charged with illegal possession.

(c) Unless the person is found guilty, all the proceeds shall be paid to the owner of the marine life.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(k), eff. Sept. 1, 1975.]

§ 12.110. Disposition of Confiscated Game

(a) The department shall donate any wild game animal, bird, or fowl which is unlawfully killed, taken, shipped, held in storage, or found in a public eating place to a charitable institution, hospital, or needy widow or orphan.

(b) The expense of any cold storage that may be necessary for an unlawfully possessed game bird, fowl, or animal shall be assessed against the violator on his conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.111. Violation by Employee

An employee of the department who violates any provision of this code relating to game, fish, and oysters which the employee is authorized to enforce is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.112. Forfeiture of Licenses

(a) The licenses issued under Chapters 42 and 46 of this code (general hunting and fishing licenses) are not subject to forfeiture for a violation of a game or fish law or a regulation of the department.

(b) No other license issued by the department is subject to forfeiture unless forfeiture is expressly provided for and then only by the jury, or the judge in the absence of a jury, in the same manner as other penalties are assessed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.113. Coastal Survey Charts Admissible

In any prosecution under this code, United States Coastal Survey Charts are admissible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 13. POWERS AND DUTIES CONCERNING PARKS AND OTHER RECREATIONAL AREAS

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SUBCHAPTER A. GENERAL POWERS AND DUTIES

§ 13.001. Control by Department

Except as otherwise provided by law, all recreational and historic areas designated as state parks are under the control and custody of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.002. Comprehensive State Plan

The department may:

- (1) prepare, maintain, and revise a statewide comprehensive plan for the development of the outdoor recreation resources of this state;
- (2) develop, operate, and maintain outdoor areas and facilities of the state; and

(3) acquire land, water, and interests in land and water for outdoor recreation areas and facilities.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.003. Gifts and Improvements of Park Sites

The department may receive gifts of state park sites and may improve and equip parks sites or contract for their improvement and equipment.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.004. Financing of Park Programs

(a) The operation, maintenance, and improvement of state parks shall be financed from the general revenue fund, the state parks fund, other funds that may be authorized by law, and donations, grants, and gifts received by the department for these purposes.

(b) No donation, grant, or gift accruing to the state or received by the department for the purpose of operating, maintaining, improving, or developing state parks may be used for any purpose other than the operation, maintenance, or developing of state parks.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.005. Acquisition of Historical Structures and Sites

(a) The department may acquire by purchase, gift, or other manner a structure or site:

(1) where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;

(3) embodying the distinguishing characteristics of an architectural type which is inherently valuable for study of a period, style, or method of construction;

(4) that contributes significantly to the understanding of aboriginal man in the nation or state; or

(5) that is of significant geologic interest relating to prehistoric animal or plant life.

(b) The department shall restore and maintain each structure or site acquired under this section for the benefit of the general public. The department may enter into interagency contracts for this purpose.

(c) The department shall use money appropriated in the general appropriations act for restoring and maintaining the structures or sites acquired under this section.

(d) The department shall prescribe and collect a nominal fee for admission to structures and sites acquired under this section. The admission fees shall be used to pay for the restoration and maintenance of structures and sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.006. Lease of Park Lands

(a) The department may lease for park purposes any land and improvements it holds to any city, county, special district, or other political subdivision. The leased area may not be referred to as a state park, and no state funds may be used to operate or maintain a park leased under this section.

(b) The conditions and duration of the lease agreement are determined by the agreement of the department and the governing body of the political subdivision.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.007. Investigation Expenses

A locality may pay the expenses of a representative of the department for a trip to the locality to determine the suitability of a site for a state park. If the expenses of the representative are paid by the locality, state funds may not be used for the expenses of the trip.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.008. Solicitation, Receipt, and Transfer of Land

(a) The department may solicit and receive donations of land for state park purposes and may refuse donations of land not acceptable for park purposes.

(b) If title to a site has vested in the state for park purposes and the site is deemed unsuitable for a state park by the department, the department may transfer the title:

(1) to another state department or institution requesting the site;

(2) to the donor of the land if the donor requests the return of the site;

(3) to the United States if it has undertaken the development of the site for park purposes; or

(4) on a declaration that the site is unsuitable for park purposes, to the grantor if the deed to the department contains a reversion clause providing that title reverts to the grantor when the site is not used for park purposes.

(c) A two-thirds vote of the commission is necessary for action taken under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.009. Land Exchange

(a) The director with the approval of the commission may execute a deed exchanging real property or an interest in real property either as all or partial consideration for other real property or interest in real property to be used by the department for a state park, historic site, scientific area, or game management area.

(b) All state land exchanged under this section shall be for other land adjoining the same park, historic site, scientific area, or game management area and shall contain no improvements made by the state other than fences.

(c) The state shall receive a good and marketable title to all land exchanged under this section. The title to land received in the exchange must be approved by the attorney general.

(d) All land to be received in the exchange must be appraised and if the land to be received is of greater value, as determined by an independent and competent appraisal, than the state land exchanged, the department may use funds available for land acquisitions as a partial consideration for the exchange.

(e) All transactions for the exchange of land under this section must have the prior written approval of the governor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.010. Historic Locations

The department may locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas. Fitting markers may be erected; however, no expense may be incurred in the name of the state for this project.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.011. Natural Features

(a) The commission may locate and designate outstanding natural features and formations located in this state. It may erect or contract to have erected suitable markers or monuments to call the features and formations to the public's attention.

(b) The commission may accept title to a suitable site for a marker or monument from private individuals, associations, or corporations by gift. Sites may also be acquired by purchase with appropriated funds.

(c) The commission may adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites.

(d) All other agencies shall cooperate with the department to aid in the location of sites. The department may accept jurisdiction over suitable

sites located on state land by an interagency transfer of jurisdiction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.012. Roadside Parks

An area under the control of the department which is more suitable for use as a roadside park than any other type of park may be transferred to the State Highway Department for roadside park purposes if the land meets the specifications of the State Highway Department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.013. Construction of Roads by State Highway Department

(a) The department may contract with the State Highway Commission for the construction and paving of roads in and adjacent to state parks.

(b) Agreements under this section must be made in conformity with the Interagency Cooperation Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.014. Roads and Trails to Certain Park Sites

(a) The department shall acquire, construct, and maintain roads and trails from public roads to park sites located on and accessible to the waters of Buchanan and Inks lakes in Burnet, Lampasas, Llano, San Saba, Travis, and Williamson counties. The park sites may be state parks or land owned by the Lower Colorado River Authority dedicated to public use for park purposes.

(b) The department may acquire the rights-of-way for the roads and trails by purchase or gift or by exercise of the power of eminent domain.

(c) The State Highway Commission shall cooperate with the department and the department shall cooperate and match funds with any state or federal governmental agency and shall sponsor any state or federal project.

(d) The department may make contracts to carry out the provisions of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.015. Concessions

(a) The department may operate or grant contracts to operate concessions in state parks or on causeways, beach drives, or other improvements in connection with state park sites. The department may make regulations governing the granting or operating of concessions.

(b) The department shall deposit any revenue received from the contracts or operations authorized by this section in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.016. Prison Labor

(a) The department may use the labor of trusty state convicts on or in connection with state parks.

(b) Convicts working in connection with a state park remain under the control of the Texas Board of Corrections and are considered as serving their terms in the penitentiary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.017. Publications on Parks

(a) The department may disseminate information to the public on state parks, state historic sites, and state scientific areas. The department may sell the publications but only at state parks, historic sites, scientific areas, the state departmental headquarters, and regional and district offices.

(b) No publication authorized by this section may be published and sold at regular periodic intervals. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.018. State Parklands Passport

(a) A person who is 65 years old or over may apply to the department for a state parklands passport.

(b) The department shall issue a passport to each qualified applicant. The passport shall be issued on a form designed and provided by the department.

(c) The holder of a state parklands passport is entitled to enter any state park without payment of an entrance or admission fee. When a fee is charged by the department for entrance of a vehicle into a state park, the vehicle of the holder of a state parklands passport is exempt from the fee when the holder is present.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 13.019 to 13.100 reserved for expansion]

SUBCHAPTER B. REGULATIONS GOVERNING
PARKS AND OTHER RECREATIONAL AREAS

§ 13.101. Authorization

The commission may promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1206, ch. 456, § 4(a), eff. Sept. 1, 1975.]

¹ West's Tex.Stats. & Codes '75 Supp.—9

§ 13.102. Scope of Regulations

The regulations may govern:

(1) the conservation, preservation, and use of state property whether natural features or constructed facilities;

(2) the abusive, disruptive, or destructive conduct of persons;

(3) the activities of park users including camping, swimming, boating, fishing, or other recreational activities;

(4) the disposal of garbage, sewage, or refuse;

(5) the possession of pets or animals;

(6) the regulation of traffic and parking; and

(7) conduct which endangers the health or safety of park users or their property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.103. Hearing on Regulation

(a) Prior to the adoption of a regulation, the commission must hold a hearing on the regulation, at which time interested persons are entitled to express their views on the proposed regulation.

(b) The hearing may be held only within the two-week period beginning one week after the final publication of the notice.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.104. Publication of Notice

(a) Except as provided in Subsection (b) of this section, notice of the hearing to consider the proposed regulation must be published in at least three newspapers of general circulation in this state.

(b) If the proposed regulation applies to one park only, notice must be published on two consecutive weeks in the county where the park is located.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.105. Contents of Notice

The notice must contain:

(1) the time, date, and place of the hearing on the proposed regulation;

(2) a statement of the proposed regulation; and

(3) a statement that interested persons may obtain additional copies of the proposed regulation from the department prior to the hearing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.106. Posting of Regulations

All specific or general regulations applying to a state park, historic site, scientific area, or fort must

be posted in a conspicuous place at the park, site, or fort. A copy of the regulations shall be made available on request to persons using the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.107. Adoption of Penalties

The commission may adopt the following penalties for violations of regulations issued under this subchapter:

- (1) a fine not to exceed \$25 for a first conviction;
- (2) a fine not to exceed \$50 for a second conviction of a violation of the same regulation by the same person within a six-month period;
- (3) a fine not to exceed \$200 for a third or subsequent conviction of a violation of the same regulation by the same person within a one-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.108. Removal From Park

(a) Any person directly or indirectly responsible for disruptive, destructive, or violent conduct which endangers property or the health, safety, or lives of persons or animals may be removed from a park, historic site, scientific area, or fort for a period not to exceed 48 hours.

(b) Prior to removal under this section, the person must be given notice of the provisions of this section and an opportunity to correct the conduct justifying removal.

(c) A court of competent jurisdiction may enjoin a person from reentry to the park, scientific area, site, or fort, on cause shown, for any period set by the court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.109. Enforcement of Regulations

Regulations adopted under this subchapter may be enforced by any peace officer, including those employees of the department commissioned as peace officers under Section 11.019 of this code. A notice to appear may be issued by a peace officer for violation of a regulation on a form prescribed by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.110. Effect of Regulations

No regulation adopted under this subchapter may amend or repeal any penal law of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.111. Portion of Fine to be Retained by County

The justice or county court imposing a fine for a violation of this subchapter may retain 15 percent of the amount of the fine collected to be deposited in the county treasury in the same manner as court costs.

[Acts 1975, 64th Leg., p. 1206, ch. 456, § 4(b), eff. Sept. 1, 1975.]

[Sections 13.112 to 13.200 reserved for expansion]

SUBCHAPTER C. REGULATIONS GOVERNING AREAS ADJACENT TO STATE PARKS

§ 13.201. Authorization

The commission may make regulations prohibiting the use of firearms or certain types of firearms on state property adjacent to state parks and within 200 yards of the boundary of the state park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.202. Application Limited

The regulations of the commission under Section 13.201 of this code apply only to state parks located within one mile of coastal water of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.203. Notice of Regulation; Hearing

(a) Before making a regulation under Section 13.201 of this code, the commission shall publish notice of the proposed regulation in a newspaper of general circulation in the county in which the regulation is to apply. The notice must contain the text of the proposed regulation and give the date, time, and location of the hearing on the regulation.

(b) The commission shall hold a hearing on the proposed regulation and shall hear persons who wish to speak for or against the regulation. The hearing may be held in Austin.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.204. Effective Date of Regulation

A regulation made under Section 13.201 of this code takes effect 30 days after final action by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.205. Penalty

A person who violates a regulation made by the commission under Section 13.201 of this code is guilty of a misdemeanor and on conviction is punish-

able by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 13.206 to 13.300 reserved for expansion]

SUBCHAPTER D. PARTICIPATION IN FEDERAL PROGRAMS

§ 13.301. Programs for the Development of Historic Sites and Structures

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program involving the planning, acquisition, and development of historic sites and structures.

(b) The department may contract with the United States or its agencies to plan, acquire, and develop historic sites and structures in this state in conformity with any federal act concerning the development of historic sites and structures.

(c) The department shall keep financial and other records relating to programs under this section and shall furnish appropriate officials and agencies of the United States and of this state all reports and information reasonably necessary for the administration of the programs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.302. Programs for the Development of Outdoor Recreation Resources

The department is the state agency to cooperate with the federal government in the administration of federal assistance programs for the planning, acquisition, operation, and development of the outdoor recreation resources of the state, including acquisition of land and water and interests in land and water. The department shall cooperate with the federal government in the administration of the provisions of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.303. Cooperation With Other Agencies

The department shall cooperate with departments of the federal government and other departments of state and local government, including as a part of the state plan, water districts, river authorities, and special districts in outdoor recreation. The department shall issue rules and regulations to cooperate in the enforcement and administration of federal acts and rules and regulations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.304. Additional Powers of Counties and Special Districts

Counties, river authorities, water districts, and other political subdivisions organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, may:

- (1) acquire land for public recreation;
- (2) construct facilities for public use on land acquired for public recreation;
- (3) provide for the operation, maintenance, and supervision of the public recreation areas;
- (4) execute agreements with other local, state, or federal agencies for planning, construction, maintenance, and operation of public recreation facilities and necessary access roads; and
- (5) maintain adequate sanitary standards on the land and water areas that are part of or adjacent to public recreation areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.305. Condemnation Proceedings

(a) The department may institute condemnation proceedings according to the laws of this state to acquire land for programs developing outdoor recreation resources under Section 13.302 of this code.

(b) Costs incurred in the exercise of eminent domain under this section for the relocation, raising, lowering, rerouting, or change in grade, or alteration in the construction of any electric transmission, telegraph, or telephone line, railroad, conduit, pole, property, facility, or pipeline are the sole expense of the department.

(c) "Sole expense" means the actual cost of the lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.306. Application for Participation in Federal Programs

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal outdoor recreation program.

(b) The department may contract with the United States or any appropriate federal agency to plan, acquire, and develop outdoor recreation resources of the state in conformity with the Land and Water Conservation Fund Act of 1965 or any other federal act to develop outdoor recreation resources of the state.

(c) The department shall keep financial and other records relating to the programs under this section

and shall furnish to appropriate officials and agencies of the United States and of this state reports and information reasonably necessary for the administration of the programs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.307. Coordination of Activities

To obtain the benefits of outdoor recreation programs under this subchapter, the department shall coordinate its activities with and represent the interests of all agencies and political subdivisions of the state as a part of a state plan. The state plan shall include cities, counties, water districts, river authorities, and special districts in outdoor recreation having interests in the planning, development, acquisition, operation, and maintenance of outdoor recreation resources and facilities.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.308. Availability of State Funds

(a) The department may not make a commitment or an agreement to participate in an outdoor recreation program under this subchapter until sufficient funds are available to meet the state's share of the cost of the project.

(b) An outdoor recreation area or facility acquired or developed by the department under this subchapter shall be publicly maintained to the extent necessary to insure its proper operation and maintenance. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.309. Availability of Local Funds

The department may agree with the United States or any appropriate agency to plan, acquire, operate, and develop projects involving participating federal aid funds on behalf of any political subdivision of this state if the political subdivision certifies to the department that:

(1) sufficient funds are available to meet its share, if any, of the cost of the project; and

(2) the acquired or developed areas will be operated and maintained at the expense of the subdivision for public outdoor recreation use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.310. Receipt and Expenditure of Funds

(a) The department may receive and spend federal money allocated to the state for any project established to develop outdoor recreation resources under this subchapter and for administrative and other expenses incident to the administration of these projects.

(b) The department may receive and expend funds from the state, a county, a city, or any other

source for the development of outdoor recreation resources under this subchapter.

(c) The department shall deposit all funds received for the development of outdoor recreation resources in the state treasury to the credit of the state land and water conservation fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.311. Project Priority

The department may make rules and regulations governing the priority of projects submitted under an outdoor recreation plan under this subchapter and within the limitations of the appropriations made for these purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.312. Administration Expense

The department may employ necessary personnel, as determined by the director, and expend amounts necessary to administer efficiently the outdoor recreation programs under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.313. Fish and Wildlife Restoration Projects

The department may conduct and establish cooperative fish and wildlife restoration projects under the provisions of Public Law No. 415, Acts of the 75th Congress, and Public Law No. 681, Acts of the 81st Congress, as amended.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 3. PARKS

CHAPTER 21. TEXAS PARK DEVELOPMENT FUND

SUBCHAPTER A. TEXAS PARK DEVELOPMENT BONDS

- Section
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- 21.002. Description of Bonds.
- 21.003. Sale Price.
- 21.004. Interest Rate.
- 21.005. Form, Denomination, Place of Payment.
- 21.006. Maturity.
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- 21.008. Registered and Bearer Bonds.
- 21.009. Notice of Bond Sale.
- 21.010. Competitive Bids.
- 21.011. Security for Bids.
- 21.012. Approval of Bonds; Registration.
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- 21.014. Facsimile Signatures and Seals.
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21.110. Investment of Funds.
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SUBCHAPTER A. TEXAS PARK DEVELOPMENT BONDS

§ 21.001. Issuance of Park Development Bonds

The department, by resolution of the commission, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed \$75 million pursuant to the provisions of Article III, Section 49-e, of the Texas Constitution. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.002. Description of Bonds

The bonds are called State of Texas Park Development Bonds and shall be issued on a parity. The department may issue them in one or several installments and shall date the bonds of each issue. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.003. Sale Price

The department may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with the accrued interest from their date of issuance. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.004. Interest Rate

The department shall determine the rate of interest of an installment or series of bonds and shall determine whether interest is payable annually or semiannually. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.005. Form, Denomination, Place of Payment

The department shall determine:

- (1) the form of the bonds, including the form of any interest coupons to be attached;
- (2) the denominations of the bonds; and
- (3) the places for payment of principal and interest.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.006. Maturity

The bonds of each issue mature, serially or otherwise, not more than 40 years from their date. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.007. Redemption Before Maturity

In the resolution providing for the issuance of bonds, the department may determine the price, terms, and conditions for redemption of bonds before maturity. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.008. Registered and Bearer Bonds

The resolution may provide for the registration of bonds as to ownership, successive conversion and reconversion from bearer to registered bonds, and successive conversion and reconversion from registered to bearer bonds. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.009. Notice of Bond Sale

(a) After determining to sell a series of bonds, the department shall publish notice of the sale at least one time not less than 10 days before the date of the sale. The notice shall be published in one or more recognized financial publications of general circulation published in the state and one or more recognized financial publications of general circulation published outside the state.

(b) The department may publish notice of the sale more than once and in more than one publication. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.010. Competitive Bids

The bonds shall be sold only after competitive bidding to the highest and best bidder. The department may reject any or all bids. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.011. Security for Bids

The department shall require every bidder, except administrators of state funds, to include with their bid an exchange or cashier's check for an amount the department considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bid. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.012. Approval of Bonds; Registration

Before delivering bonds to the purchasers, the department shall submit the bonds and the records pertaining to them for approval by the attorney

general. When approval is obtained, the bonds shall be registered in the office of the comptroller of public accounts.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.013. Execution of Bonds

(a) The bonds shall be executed on behalf of the department as general obligations of the state as provided in this section.

(b) The bonds shall be signed by the chairman and the director, and the seal of the department shall be impressed on them.

(c) The bonds shall be signed by the governor and attested by the secretary of state, and the state seal shall be impressed on them.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.014. Facsimile Signatures and Seals

In the resolution authorizing the issuance of an installment or series of bonds, the commission may prescribe the extent to which facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the chairman and the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.015. Signature of Former Officer

If an officer whose signature or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before the delivery of the bond, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.016. Bonds Incontestable, Valid, and Binding

(a) After approval by the attorney general, registration by the comptroller, and delivery to the purchaser, the bonds are incontestable and constitute general obligations of the state.

(b) After approval by the attorney general and registration by the comptroller, the bonds shall be held to be valid and binding obligations of the state in any action, suit, or other proceeding in which their validity is questioned.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.017. Evidence of Validity

In an action to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general and a certificate of

registration by the comptroller, or certified copies of these certificates, shall be received in evidence as proof of the validity of the bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.018. Payment by Treasurer

The state treasurer shall pay or cause to be paid the principal on bonds as they mature and the interest as it becomes payable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.019. Duties Enforceable

The performance of the official duties of the comptroller and the treasurer may be enforced by mandamus or other appropriate proceeding.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.020. Refunding Bonds

The commission may provide by resolution for the issuance of refunding bonds. The department may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter, including interest accrued on outstanding bonds, or the department may exchange refunding bonds for outstanding bonds, including accrued interest. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the department with respect to refunding bonds are governed by the provisions of this chapter relating to the original bonds, to the extent they are applicable and by refunding statutes of general application not in conflict with the provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.021. Bonds Negotiable Instruments

The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.022. Bonds Not Taxable

Bonds issued under this chapter, income from the bonds, and profit made on their sale are free from taxation within this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.023. Authorized Investments

Bonds issued under this chapter are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;

- (4) building and loan and savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.024. Security for Deposit of Funds

Bonds issued under this chapter, when accompanied by all appurtenant unmatured coupons, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or other political subdivision or agency of the state, at the par value of the bonds. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.025. Mutilated, Lost, or Destroyed Bonds

The department may provide for the replacement of a mutilated, lost, or destroyed bond.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 21.026 to 21.100 reserved for expansion]

SUBCHAPTER B. FUNDING PROVISIONS

§ 21.101. Texas Park Development Fund

(a) The Texas Park Development Fund, referred to as the "development fund," is created pursuant to the provisions of Article III, Section 49-e, of the Texas Constitution.

(b) Proceeds derived from the sale of Texas Park Development Bonds shall be deposited in the development fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.102. Use of Development Fund

The department may use the development fund only for:

- (1) acquiring state park sites from the United States or any of its agencies, agencies of the state, or any other person;
- (2) improving, developing, beautifying, and equipping acquired park sites; and
- (3) paying expenses incurred in issuing bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.103. Acquiring Park Sites

(a) Except as provided in Subsection (b) of this section, the department may acquire park sites, including property already devoted to public use, by purchase, condemnation, or other manner.

(b) No real property of the state or a political subdivision of the state may be acquired without its consent.

(c) The department shall exercise the power of eminent domain in the manner prescribed by general law, including the provisions of Section 13.305 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.104. Contracts Authorized

The department may contract with any state or federal agency or with any other person to accomplish the functions prescribed by Subdivisions (1) and (2) of Section 22.102 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.105. Interest and Sinking Fund

The Texas park development bonds interest and sinking fund, referred to as the "interest and sinking fund," is created to be used exclusively for:

- (1) paying the principal of Texas Park Development Bonds as they mature;
- (2) paying the interest on the bonds as it comes due; and
- (3) paying exchange and collection charges in connection with the bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.106. Credits to Interest and Sinking Fund

(a) Accrued interest received in the sale of bonds, net income received from entrance or gate fees to state park sites, and income from investments of the development fund and the interest and sinking fund shall be credited to the interest and sinking fund.

(b) In the resolution authorizing a series of bonds, the commission may appropriate from the proceeds of the sale of bonds an amount which, together with accrued interest received, is sufficient to pay interest coupons coming due during the fiscal year in which the bonds are sold and to establish appropriate reserves.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.107. Additional Transfers

(a) If the amount credited to the sinking and interest fund at the end of the fiscal year is insufficient to pay the interest coming due and the principal maturing on bonds for the next fiscal year, the

state treasurer shall transfer from the first money coming into the treasury, not otherwise appropriated by the constitution, an amount stipulated in the certification of the director as is necessary to pay the interest and principal on the bonds.

(b) The director shall certify the amount required to be stipulated by Subsection (a) of this section as of August 15 of each fiscal year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.108. Interest and Sinking Fund: Final Transfer

After all bonds have been paid, the balance of the interest and sinking fund shall be transferred to the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.109. Transfers Required

The state comptroller shall make any transfer required by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.110. Investment of Funds

(a) The department may invest the development fund and, in making the investments, is governed by the provisions of Chapter 401, Acts of the 60th Legislature, Regular Session, 1967.

(b) The department may invest the interest and sinking fund only in direct obligations of the United States or in obligations the principal and interest of which are guaranteed by the United States.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.111. Entry Fees to Parks

(a) The department, wherever feasible and so long as any of the bonds are outstanding, shall charge and collect an entrance fee to state park sites.

(b) Income derived from the fees required by this section, less expenses incurred in collecting the fees, shall be deposited in a special fund with the state treasurer. The amounts deposited are net income.

(c) If any state park site includes a public beach on the seaward shore of the Gulf of Mexico, extending from the line of mean low tide to the line of vegetation, over which the public has acquired a right of use or easement to or over the area by prescription or dedication or has retained a right by virtue of continuous right in the public, no entrance or gate fee may be charged to persons desiring to enter or to leave the public beach area, so long as the persons do not enter any other portion of the park for which an entrance or gate fee is charged.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1211, ch. 456, § 11, eff. Sept. 1, 1975.]

CHAPTER 22. STATE PARKS

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- 22.002. Fannin State Park Advisory Commission.
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SUBCHAPTER A. FANNIN STATE
BATTLEGROUND

§ 22.001. Jurisdiction

Fannin State Battleground is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.002. Fannin State Park Advisory Commission

(a) The Fannin State Park Advisory Commission is composed of three residents of the state appointed by the governor.

(b) Members serve terms of six years each, with the term of one member expiring each odd-numbered year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.003. Meetings

The Fannin State Park Advisory Commission shall meet quarterly to review the policies and operation of the battleground and to advise the department on the proper historical development of the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.004. Powers of Advisory Commission

The Fannin State Park Advisory Commission may accept, in the name of the state, all bequests, gifts, and grants of money or property made to the battleground and use the bequests for the purposes specified by the grantor, if any.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.005. Data

All data collected by the advisory commission is the property of the state and shall be used to depict the story of Texas history and independence at the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.006. Concession Account

A Fannin State concession account may be established in the state treasury according to the rules and procedures established by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.007 to 22.010 reserved for expansion]

SUBCHAPTER B. SAN JACINTO BATTLEGROUND

§ 22.011. Jurisdiction

The San Jacinto Battleground is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.012. San Jacinto Historical Advisory Board

(a) The San Jacinto Historical Advisory Board is composed of:

(1) the chairman of the Battleship Texas Commission;

(2) the president of the San Jacinto Museum of History Association; and

(3) three members of the public.

(b) The three members of the public are appointed by the governor for terms of six years each, with the term of one member expiring each odd-numbered year.

(c) One or more of the three members of the public may be selected from the San Jacinto Chapter, Daughters of the Republic of Texas. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.013. Meetings

The San Jacinto Historical Advisory Board shall meet quarterly to review the policies and operations of the San Jacinto Battleground and to advise the department on the proper historical development of the battleground. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.014. Powers of the Board

The board may accept, in the name of the state, all bequests, gifts, and grants of money or property made to the battleground and use the bequests for the purposes specified by the grantor, if any. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.015. Data

All data collected by the board is the property of the state and shall be used to depict the story of Texas history and independence at the battleground. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.016. San Jacinto Museum of History Association

The San Jacinto Museum of History Association, a nonprofit historical association organized for the purposes of operating the San Jacinto Memorial Building and Tower and establishing a museum, retains ownership of property and historical data held in the name of the association and may acquire museum accessions by gift, grant, or purchase from association funds. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.017 to 22.020 reserved for expansion]

SUBCHAPTER C. PALO DURO CANYON STATE PARK

§ 22.021. Jurisdiction

(a) The Palo Duro Canyon State Park is under the jurisdiction of the department.
 (b) The original boundaries of the park include the land located in Armstrong and Randall counties and described in the deed executed by Fred A. Emery and wife to Texas State Parks Board, July 28, 1933, and recorded in Volume 69, pages 347 through 350, of the deed records of Randall County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.022. Powers of Department

- (a) The department may:
- (1) fix entrance fees for admission to the park;
 - (2) fix charges to be collected from patrons of the park;
 - (3) execute grazing leases covering all or part of the park land;
 - (4) grant concessions in the park;
 - (5) make improvements in the park; and
 - (6) execute any other contracts necessary to carry out the provisions of this subchapter.

(b) Improvements may include the construction of dams to impound water to form a lake or lakes for recreational and other conservation purposes within the park. Before constructing any dam or lake, the commission must obtain permits required by law from the Texas Water Rights Commission. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.023. Disposition of Income

The department shall use the income derived from leases, royalties, and operation of the park necessary for maintaining, improving, and operating the park. One-half of the balance of the unexpended income may be used by the department on other state parks, and the remaining one-half and any other unexpended balance shall be transferred to the general revenue fund at the end of each biennium. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.024. Issuance of Bonds

The department may issue bonds necessary for the construction of improvements in the park. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.025. Interest on Bonds

Interest on the bonds may not exceed six percent per year, computed with relation to the absolute maturity of the bonds in accordance with standard bond interest tables currently in use by insurance companies and investment houses, excluding from the computation the amount of any premium to be paid on redemption of any bonds prior to maturity. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.026. Maturity of Bonds

The bonds may mature, serially or otherwise, not more than 40 years from the date of their issuance. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.027. Redemption Before Maturity

The department may fix the price, terms, and conditions for redemption of the bonds before maturity in the authorizing proceedings.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.028. Sale of Bonds

The bonds may be sold, at public or private sale, at a price and under terms determined by the department to be the most advantageous terms reasonably obtainable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.029. Pledge of Income

The department may irrevocably pledge the rents, revenues, and income from the improvements financed by the bonds and from any other revenue-producing facilities or properties of the park, including the fees collected for admission to the park, to the payment of the interest on and the principal of the bonds and may enter into agreements regarding the imposition of charges and the collection, pledge, and disposition of revenue.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.030. Right to Issue Additional Bonds

In pledging the rents, revenues, and income, the department may expressly reserve the right to issue additional bonds on a parity with or subordinate to the bonds then being issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.031. Additional Security for Bonds

(a) If, after reasonable effort, the department is unable to sell the bonds, the bonds may be additionally secured by a deed of trust lien on the land and property comprising the park, or any part of it, after the department has obtained written approval of the governor.

(b) The governor may not give his approval under this section until he has obtained the advice and consent of the Legislative Budget Board.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.032. Form of Bonds

The department may prescribe the form, conditions, and details of the bonds in accordance with the provisions of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.033. Refunding of Bonds

(a) A bond issued by the department under a law of this state which is payable from any part of the revenues of a revenue-producing facility or property of Palo Duro Canyon State Park may be refunded or refinanced by the department under this subchapter.

(b) The provisions of this subchapter are applicable to a refunding bond.

(c) In the same authorizing proceedings, the department may refund or refinance any bond issued under this subchapter and combine all refunding bonds and any new bonds to be issued into one or more issues or series and may provide for the subsequent issuance of additional parity bonds under terms and conditions set out in the authorizing proceedings.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.034. Employment of Personnel

The department may employ engineers, attorneys, and fiscal agents or financial advisors necessary in the issuance or refunding of bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.035. Approval by Attorney General

(a) The bonds and all records relating to their issuance must be submitted to the attorney general for examination prior to delivery.

(b) The attorney general shall approve the bonds if he finds that they have been issued in accordance with the constitution and this subchapter and that they will be binding special obligations of the department.

(c) Bonds approved by the attorney general must be registered by the comptroller of public accounts.

(d) After approval and registration, the bonds are incontestable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.036. Payment of Interest and Expenses

The department may set aside amounts from the proceeds of the sale of a bond issue for:

(1) the payment of interest anticipated to accrue during the construction period;

(2) a deposit into the reserve for the interest and sinking fund to the extent prescribed in the authorizing proceedings; and

(3) payment of attorney's fees, engineer's fees, and expenses of the issuance and sale of bonds, including the fees of fiscal agents or financial advisors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.037. Legal Investments

(a) Bonds issued under this subchapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(b) The bonds are eligible to secure the deposit of the public funds of the state, cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(c) The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.038. Negotiable Instruments

Bonds issued under this subchapter are negotiable instruments under the laws of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.039. Debt Against the State

Nothing in this subchapter creates a debt against the state or binds the state in any way except as to the mortgage of the land and property comprising the Palo Duro Canyon State Park and as to the pledge of the rents, revenue, and income from the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.040 to 22.050 reserved for expansion]

SUBCHAPTER D. JIM HOGG MEMORIAL PARK

§ 22.051. Jurisdiction

(a) The Jim Hogg Memorial Park is under the jurisdiction of the department.

(b) The original boundaries of the park include approximately 180 acres, formerly a part of the General Joseph L. Hogg homestead in Cherokee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.052. Historical Improvements

To the extent possible, the department shall maintain a replica of the original Hogg home and the grounds adjacent to the residence.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.053. Improvements

The department may repair or construct facilities for recreational and park purposes at the park and may work in conjunction with other governmental agencies for this purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.054. Sale and Use of Timber

(a) The department may use timber cut from the land in the park to repair or construct improvements.

(b) The department may sell timber from the land in the park to finance the construction or repair of improvements.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.055. Sale of Iron Ore

(a) The department may sell iron ore in place located in the park. The department may grant all rights necessary for the development of the iron ore to the purchasers of the iron ore.

(b) The chairman of the commission, on behalf of the department, may execute and deliver the necessary instruments to convey the iron ore in place to the purchasers.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.056. Competitive Bids

(a) Timber and iron ore may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service for the sale of timber and of the department for the sale of iron ore. The department must approve the contract for sale of timber.

(b) The Texas Forest Service shall keep on file the bids for timber sale. The bids are public records. Copies of the bids shall be given to the department.

(c) The department shall keep on file the bids for the sale of iron ore. The bids are public records.

(d) The Texas Forest Service may reject any or all bids for timber sale and readvertise for new bids. The department may reject any or all bids for iron ore sale and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.057. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of timber. The department shall advertise for the sale of iron ore.

(b) The sale must be advertised for two weeks in at least one weekly newspaper published and circulated in Cherokee County.

(c) The advertisement must contain the necessary information pertaining to the sale and the time and place for receiving bids.

(d) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.058. Regulations

The department shall adopt regulations, forms, and contracts for the sale of iron ore and protection of the income produced from the sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.059. Disposition of Funds

Money received from the sale of timber or iron ore from the land in the park shall be placed in the state treasury to the credit of the Jim Hogg State Park building fund. The fund shall be used by the department for the improvement of the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.060 to 22.070 reserved for expansion]

SUBCHAPTER E. HUNTSVILLE STATE PARK

§ 22.071. Improvements

(a) The department may construct and repair improvements to be used for recreational and park purposes in Huntsville State Park, including dams to impound water and form reservoirs or lakes.

(b) The department may cooperate with other governmental agencies in making the improvements.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.072. Permit for Dam

A dam may not be constructed until a permit has been obtained from the Texas Water Rights Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.073. Sale and Use of Timber

(a) The department may use timber cut from land in the park to repair or construct improvements.

(b) The department may sell timber from land in the park to finance the construction or repair of improvements and dams.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service.

(d) The amount of timber sold may not exceed \$250,000.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.074. Competitive Bids

(a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records. Copies of the bids shall be furnished to the department.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.075. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Walker County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.076. Disposition of Funds

Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of the Huntsville State Park building fund to be used by the department for purposes authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.077 to 22.080 reserved for expansion]

SUBCHAPTER F. GOLIAD STATE PARK

§ 22.081. Jurisdiction

Goliad State Park, including the General Ignacio Zaragoza Birthplace and the Mission of San Rosario, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.082. General Ignacio Zaragoza Birthplace

(a) The department may care for and protect the birthplace of General Ignacio Zaragoza and shall designate the site as the General Ignacio Zaragoza Birthplace.

(b) The site originally accepted by the state includes approximately two acres, described as lots 4, 5, 6, 11, 12, 13, 14, 15, and 16 in Block X, La Bahia Townsite, in Goliad County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.083. Mission of San Rosario

(a) The department shall care for the grounds of the Mission of San Rosario as a suitable and appropriate memorial and shall enclose the mission grounds with an appropriate and substantial park fence.

(b) The original boundaries of the mission consist of the surface title of 4.77 acres of land in the County of Goliad, Texas, said 4.77 acres of land, more or less, being the following described parcel of land:

BEGINNING at a concrete monument in the Southeast Right-of-Way line of State Highway No. 12, same being a R/W marker for said Highway, and being 50 ft. at right angles from the center line of said Highway, and marked Sta. 914/00;

THENCE South 39 deg. 36 min. West, with right-of-way fence, 295.9 ft. to a concrete monument for corner of this present survey;

THENCE South 56 deg. 02 min. East, at 148.0 ft. an iron pipe, at 350.0 ft. a concrete monument for corner of this present survey;

THENCE South 32 deg. 08 min. East, at 69.9 ft. an iron pipe, at 193.3 ft. a tack in cedar post at 241.4 ft. a concrete monument for corner of this present survey;

THENCE North 83 deg. 35 min. East, 193.4 ft. to a concrete monument for corner of this present survey;

THENCE North 17 deg. 46 min. East, at 109.7 ft. an iron pipe, at 227.3 ft. a concrete monument for corner of this present survey;

THENCE North 43 deg. 17 min. West, at 116.8 ft. an iron pipe, at 240.5 ft. a concrete monument for corner of this present survey;

THENCE North 57 deg. 21 min. West, at 193.3 ft. an iron pipe, at 356.3 ft. a concrete monument for corner of this present survey; same being a highway R/W marker for said Highway for extra width in R/W and also marked Sta. 914/00;

THENCE North 49 deg. 55 min. West, with Highway R/W line, 34.9 ft. to the place of beginning;

Containing Four and 77/100 (4.77) acres of land and all being out of Maria de Jesus de Leon Survey, Abstract 21, Goliad County, Texas.

Said 4.77 acres of land, more or less, being the land conveyed to the County of Goliad by William J. O'Connor on July 15, 1935, as shown by deed of such date duly recorded in Volume 77, Page 565, of the Deed Records of Goliad County, Texas, on July 17, 1935, and to which reference is here made for all pertinent purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.084. Improvements

The department may construct, maintain, and repair historical and recreational structures and facilities in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.085. Reversion of Title; Mineral Reservation

(a) If the state ceases to use the General Ignacio Zaragoza Birthplace or the Mission of San Rosario as park land, all right, title, and interest shall revert to Goliad County.

(b) All minerals under the land accepted as the Mission of San Rosario are excepted from any conveyance to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.086 to 22.090 reserved for expansion]

SUBCHAPTER G. MISSION SAN FRANCISCO DE LOS TEJAS STATE PARK

§ 22.091. Facilities; Park Site

(a) The department may construct and repair facilities for recreational and other appropriate purposes at Mission San Francisco de los Tejas State Park.

(b) The original boundaries of the park include portions of Hardy Ware Survey, Abstract 1240, situated on the N side of Highway No. 21, about 21 miles NE from the City of Crockett, and being the same tracts of land conveyed to the State of Texas for the use and benefit of the Agricultural and Mechanical College of Texas, more particularly described by the following deeds, to-wit:

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated October 16, 1939, recorded in Book 200, page 533, Deed Records of Houston County, Texas;

Deed from Southern Pine Lumber Company, dated September 20, 1935, recorded in Book 170, page 367, Deed Records of Houston County, Texas;

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated February 1, 1935, recorded in Book 166, page 141, Deed Records of Houston County, Texas;

Deed from C. H. Callaway, Trustee, dated January 3, 1935, recorded in Volume 164, page 543, Deed Records of Houston County, Texas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.092. Timber Sale

(a) The department may sell timber from land in the park and may use timber of the park to repair or construct improvements in the park.

(b) Timber may be cut for salvage purposes only or under good forestry practices with the advice of the Texas Forest Service.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.093. Competitive Bids

(a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.094. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Houston County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.095. Disposition of Funds

Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of a special fund known as the Mission San Francisco de los Tejas State Park building fund to be used by the department for purposes authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.096 to 22.100 reserved for expansion]

SUBCHAPTER H. PORT ISABEL LIGHTHOUSE STATE HISTORICAL MONUMENT AND PARK

§ 22.101. Jurisdiction

The Port Isabel Lighthouse is a state historical monument and park and is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.102. Powers of Department

The department may rehabilitate, maintain, and preserve the property of the park, and may collect entrance fees for admission to the park or operate it on a concession basis under the provisions of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.103 to 22.110 reserved for expansion]

SUBCHAPTER I. HUECO TANKS STATE PARK

§ 22.111. Control

The department has control of Hueco Tanks State Park and shall improve, preserve, restore, and protect the land and property in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.112. Acceptance of Gifts

The department may accept gifts for constructing, building, advertising, or creating the park, including gifts for public exhibition that relate to the history of the park or the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.113. Title to Park

The title of the land known as Hueco Tanks in El Paso County is in the name of the state and is subject to limitations, conditions, and exceptions made by the former owners and approved by the department or the department's predecessor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.114 to 22.120 reserved for expansion]

SUBCHAPTER J. STEPHEN F. AUSTIN STATE PARK

§ 22.121. Jurisdiction

Stephen F. Austin State Park is under the jurisdiction of the department. The department shall improve, preserve, and protect the land in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.122 to 22.150 reserved for expansion]

SUBCHAPTER K. NIMITZ STATE PARK

§ 22.151. Jurisdiction

The Nimitz State Park, located near Fredericksburg in Gillespie County, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.152. Powers of Department

The department may:

- (1) accept gifts for the construction, building, or advertising of the park;
- (2) accept gifts for exhibition dealing with the history or life of Fleet Admiral Chester W. Nimitz;
- (3) advertise the affairs of the park;
- (4) make rules and regulations for administration of the park;
- (5) hire personnel necessary to carry out its duties;
- (6) grant concessions; and
- (7) operate and maintain the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.153 to 22.160 reserved for expansion]

SUBCHAPTER L. EISENHOWER STATE PARK

§ 22.161. Jurisdiction

The Eisenhower State Park, located near Lake Texoma in Grayson County, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.162. Powers of Department

The department may:

- (1) accept gifts for the construction, building, or advertising of the park;
- (2) accept gifts for exhibition dealing with the history or life of Dwight D. Eisenhower;
- (3) advertise the affairs of the park;
- (4) make rules and regulations for administration of the park;
- (5) hire personnel necessary to carry out its duties;
- (6) grant concessions; and
- (7) operate and maintain the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.163. Definitions

As used in this subchapter:

(1) "Impacted property" means that real property located in Grayson County adjacent to or near the western end of Eisenhower State Park that is described as:

(A) Lots 54-79 in "Elm Ridge Homesite Area" as described on a survey and plat of this area by B. & B. Engineering Co. in May, 1958, recorded in Plat Book 1, Page 73, Deed Records, Grayson County, Texas; and

(B) the East one-half and the West one-half of a 60.49 acre tract being part of the survey patented to Alan Carter, Abstract No. 231, dated June 22, 1851, and also being part of the J. A. Sadler 380 acre tract except the 316.05 acres thereof described in a deed to the United States of America, recorded in Volume 432, Page 389, Deed Records, Grayson County, Texas.

(2) "Owner" means the owner or a lessee of impacted property.

(3) "Guest" means a business or personal guest or an employee of an owner of impacted property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.164. Right to Use Roads

(a) Owners, their family members, and their guests may use the roads of the park without charge for egress from or ingress to the impacted property when traveling between the impacted property and points east of the park.

(b) Owners, their family members, and their guests may use throughout the year whatever road is maintained by the department for travel by automobiles between the eastern and western points of the park and may enter the park at the points at which they were able to enter the park and its roads prior to November 1, 1968, or other reasonably located points the department may direct by regulation. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.165. Permits

(a) The department may require owners, their family members, and their guests to obtain permits for entrance into and use of park roads under this subchapter.

(b) Permits shall be issued automatically on presentation of proper identification.

(c) Permits are valid for at least one year and shall be automatically renewed for owners and their family members.

(d) Permits for guests of owners shall be valid for the period of time requested by the owner.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.166 to 22.170 reserved for expansion]

SUBCHAPTER M. GOVERNOR JAMES STEPHEN HOGG MEMORIAL SHRINE

§ 22.171. Governor Hogg Memorial

The Governor James Stephen Hogg Memorial Shrine, located near Quitman, Wood County, is established.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.172 to 22.180 reserved for expansion]

SUBCHAPTER N. ACQUISITION OF CERTAIN STATE PARKS

§ 22.181. Spanish Missions

(a) The department may acquire the following Spanish Mission sites, located in Milam County:

- (1) Nuestra Senora de la Candelaria;
- (2) San Francisco Xavier de los Dolores; and
- (3) San Ildefonso.

(b) The department may acquire the sites with available or appropriated funds or may accept gifts for acquisition, construction, or restoration of the sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.182. Texas State Railroad

(a) Except as provided in Subsection (b) of this section, the department may operate any part of the Texas State Railroad as a part of the state parks system for park and recreational purposes. All revenues collected from leases or concessions shall be deposited in the state treasury to the credit of the state parks fund.

(b) The board of managers of the Texas State Railroad shall exercise control and management of the right-of-way and trackage of the Texas State Railroad from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, and exercise the powers, duties, and authority over this right-of-way and trackage that are granted to them by Chapter 58, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6550(a), Vernon's Texas Civil Statutes).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.183. Hubbard Lake

(a) The department may create, develop, operate, and maintain a state park on the land donated by the West Central Texas Municipal Water District located on Hubbard Lake in Stephens County.

(b) The department may accept additional gifts of any adjoining land or interest in land donated by the West Central Texas Water Municipal District to enlarge the park created by Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.184. Fishing Piers

(a) The department may repair and maintain the old causeway across Copano Bay on Highway 35 in Aransas County and the old causeway across Lavaca Bay on Highway 35 in Calhoun County as public fishing piers and recreation areas.

(b) The department and the state highway department may solicit and receive gifts of labor and materials for the construction and improvement of the fishing piers.

(c) The department may grant concessions to persons allowing the concessioners to charge for use of the piers and approaches.

(d) All revenue received under this section shall be deposited in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 23. NATIONAL PARKS, SEASHORES, AND FORESTS

SUBCHAPTER A. BIG BEND NATIONAL PARK

- Section
23.001. Limited Jurisdiction Retained.
23.002. Park Residents May Vote.

SUBCHAPTER B. PADRE ISLAND NATIONAL SEASHORE

- 23.011. Limited Jurisdiction Retained.
23.012. Seashore Residents May Vote.
23.013. Regulations of Railroad Commission.
23.014. Reversion to State.
23.015. Consent for Acquisition of Navigation District Land.
23.016. Roads.

SUBCHAPTER C. GUADALUPE MOUNTAINS NATIONAL PARK

- 23.031. Limited Jurisdiction Retained.
23.032. Park Residents May Vote.
23.033. Reconveyance of Title.
23.034. Mineral Rights in Park.

SUBCHAPTER D. DAVY CROCKETT NATIONAL FOREST

- 23.041. Agreements for Wildlife Management.
23.042. Wildlife Defined.
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SUBCHAPTER E. SABINE NATIONAL FOREST

- 23.051. Agreements for Wildlife Management.
- 23.052. Wildlife Defined.
- 23.053. Hunting and Fishing Regulations.
- 23.054. Penalty.

SUBCHAPTER A. BIG BEND NATIONAL PARK

§ 23.001. Limited Jurisdiction Retained

The state retains jurisdiction in the Big Bend National Park, concurrently with the United States, as though cession had not occurred, for:

- (1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and
- (2) the assessment and collection of taxes on the sales of products and commodities and on franchises and property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.002. Park Residents May Vote

A person residing in Big Bend National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.003 to 23.010 reserved for expansion]

SUBCHAPTER B. PADRE ISLAND NATIONAL SEASHORE

§ 23.011. Limited Jurisdiction Retained

The state retains jurisdiction in the Padre Island National Seashore, concurrently with the United States, as though cession had not occurred, for:

- (1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and
- (2) the assessment and collection of taxes on the sales and use, or the gross receipts from the sales, of products and commodities and on franchises, properties, and incomes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.012. Seashore Residents May Vote

A person residing in the Padre Island National Seashore may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.013. Regulations of Railroad Commission

(a) The Railroad Commission shall send by certified mail to the Secretary of Interior of the United States a copy of each proposed rule or regulation affecting mineral rights reserved in deeds conveying land in the Padre Island National Seashore to the United States.

(b) The Department of Interior has 30 days from the day a copy of a proposed rule or regulation is received to send to the Railroad Commission its objections or exceptions. An objection or exception must be sent by certified mail. Thereupon, a rule or regulation, with amendments, if any, promulgated by the Railroad Commission, takes effect.

(c) The development and recovery of minerals in the Padre Island National Seashore shall be carried out in a manner that does not unreasonably interfere with the use of the land for park purposes. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.014. Reversion to State

(a) Any deed executed by the state to the United States for the creation of Padre Island National Seashore becomes null and void on the initiation by any elected or appointed agent, officer, or employee of the United States, or by any agency or department of the United States, of a suit at law or in equity in any federal court to enlarge or expand the title, right, or interest granted by the deed. When a deed becomes void under this subsection, the land immediately reverts to the state.

(b) Unless reversion is waived by the legislature during the biennium following the happening of a condition of reversion, all state-owned land conveyed to the United States for the creation of the Padre Island National Seashore reverts to the state and to the fund to which it belonged before conveyance if:

- (1) the United States fails to acquire two-thirds of all privately owned land in the area described by Section 1, Chapter 38, Acts of the 58th Legislature, 1963, within 10 years after the date that the state-owned land was acquired; or
- (2) the United States fails to use as a national seashore the privately owned land it has acquired.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.015. Consent for Acquisition of Navigation District Land

The Willacy County Navigation District may consent to the acquisition of surface land for inclusion in Padre Island National Seashore. Interests in surface estates, spoil banks, easements, and rights-of-way controlled by the district in the Padre Island

National Seashore shall be used for public purposes only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.016. Roads

The Secretary of Interior is requested to provide roads from the north boundary of Padre Island National Seashore and from the Port Mansfield cut to the access highways from the mainland.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.017 to 23.030 reserved for expansion]

SUBCHAPTER C. GUADALUPE MOUNTAINS NATIONAL PARK

§ 23.031. Limited Jurisdiction Retained

The state retains jurisdiction in the Guadalupe Mountains National Park, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on sales and use, or the gross receipts from the sales, of products and commodities and on franchises, properties, and incomes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.032. Park Residents May Vote

A person residing in the Guadalupe Mountains National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.033. Reconveyance of Title

If any of the land described by the drawing entitled "Proposed Guadalupe Mountains National Park, Texas," numbered SA-GM-7100C, dated February, 1965, and on file in the offices of the National Park Service and the Secretary of State of Texas ceases to be used for the Guadalupe Mountains National Park, the state may require a reconveyance, without consideration, of the mineral rights conveyed for the creation of the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.034. Mineral Rights in Park

(a) The state reserves a preferential right, without consideration to the United States, to lease all mineral rights and interests that were conveyed by the state for the establishment of the Guadalupe Mountains National Park if:

(1) Congress declares by an act that the national welfare or an emergency requires the development and production of minerals in the park; and

(2) Congress authorizes the Secretary of Interior of the U. S. to lease park land for drilling, mining, developing, or producing minerals.

(b) If oil, gas, or other minerals are discovered and produced in commercial quantities from land outside the park sufficient to cause drainage of minerals from in the park and the Secretary of Interior participates in a communitization agreement or takes other action to protect the rights of the United States, the state retains its right to its proper share of the proceeds of the agreement or action. The state's proper share is not less than all bonuses, rentals, and royalties attributable to mineral rights conveyed to the United States for the establishment of Guadalupe Mountains National Park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.035 to 23.040 reserved for expansion]

SUBCHAPTER D. DAVY CROCKETT NATIONAL FOREST

§ 23.041. Agreements for Wildlife Management

(a) The department may agree with the proper agency of the United States for the protection and management of wildlife resources and for restocking desirable species of wildlife in portions of the Davy Crockett National Forest, in Houston and Trinity counties, that can be designated by a natural boundary. A natural boundary may be a road, lake, stream, canyon, rock, bluff, island, or other natural feature.

(b) No agreement under this section may cover more than 40,000 acres at any one time during any five-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.042. Wildlife Defined

In this subchapter, "wildlife" means all kinds of birds, animals, and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.043. Hunting and Fishing Regulations

The commission may promulgate regulations applicable to the Davy Crockett National Forest, in Houston and Trinity counties, to:

- (1) prohibit hunting and fishing for periods of time as necessary to protect wildlife;
- (2) provide open seasons for hunting and fishing;
- (3) provide limitations on the number, size, kind, and sex of wildlife that may be taken; and
- (4) prescribe the conditions under which wildlife may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.044. Penalty

A person who violates any rule or regulation of the commission adopted under this subchapter or who hunts or fishes in the Davy Crockett National Forest at any time other than the open season is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.045 to 23.050 reserved for expansion]

SUBCHAPTER E. SABINE NATIONAL FOREST

§ 23.051. Agreements for Wildlife Management

The department may agree with the proper agency of the United States for the protection and management of wildlife resources and for restocking desirable species of wildlife in the parts of the Sabine National Forest, in Sabine and San Augustine counties, that are fenced.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.052. Wildlife Defined

In this subchapter, "wildlife" means all kinds of animals, birds, and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.053. Hunting and Fishing Regulations

The commission may promulgate regulations applicable to the Sabine National Forest, in Sabine and San Augustine counties, to:

- (1) prohibit hunting and fishing for periods of time as necessary to protect wildlife;
- (2) provide open seasons for hunting and fishing;

(3) provide limitations on the number, size, kind, and sex of wildlife that may be taken; and

(4) prescribe the conditions under which wildlife may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.054. Penalty

A person who violates any regulation of the commission adopted under this subchapter or who hunts or fishes in the Sabine National Forest at any time other than during the open season is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**TITLE 4. WATER SAFETY
CHAPTER 31. WATER SAFETY**

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- Section 31.001. Title.
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- 31.021. Required Numbering.
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- 31.023. Boats Numbered Under Federal or Other State Law.
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SUBCHAPTER F. WATER FACILITIES

- 31.141. Boat Ramps.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 31.001. Title

This chapter may be cited as the Water Safety Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.002. State Policy

It is the duty of this state to promote recreational water safety for persons and property in and connected with the use of all recreational water facilities in the state, to promote safety in the operation and equipment of facilities, and to promote uniformity of laws relating to water safety.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.003. Definitions

In this chapter:

(1) "Boat" means a vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.

(2) "Vessel" means any watercraft, other than a seaplane on water, used or capable of being used for transportation on water.

(3) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(4) "Owner" means the person who rightfully claims lawful possession of a vessel by virtue of the legal title or an equitable interest.

(5) "Water of this state" means any public water within the territorial limits of this state.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) "Dealer" means a person engaged in the business of selling motorboats.

(8) "Boat livery" means a business establishment engaged in renting or hiring out motorboats for profit.

(9) "Undocumented motorboat" means a vessel that is not required to have, and does not have, a valid marine document issued by the Bureau of Customs of the United States government or its successor.

(10) "Reasonable time" means 15 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 1286, ch. 481, § 1, eff. Jan. 1, 1976

Acts 1975, 64th Leg., p. 1286, ch. 481, § 1, purports to amend § 2a of Civil Statutes, Art. 9206 [now, this section] by amending subsecs. (3) and (9) and adding subsecs. (14) to (16), effective Jan. 1, 1976, without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). As so amended and added these subsecs. read:

"(3) 'Motorboat' means any vessel propelled or designed to be propelled by machinery, whether or not such machinery is permanently or temporarily affixed or is the principal source of propulsion."

"(9) 'Dealer' means a person, firm, or corporation customarily engaged in the business of buying, selling, or exchanging motorboats or outboard motors at an established or permanent place of business in this State and that at each such place there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products."

"(14) 'Manufacturer' means any person engaged in the business of manufacturing new and unused motorboats and outboard motors for the purpose of sale or trade."

"(15) 'New' means every motorboat or outboard motor after its manufacture and before

its sale or other transfer to a person not a manufacturer or dealer.

"(16) 'Outboard motor' means any self-contained internal-combustion propulsion system, excluding fuel supply, which is used to propel a vessel and which is detachable as a unit from the vessel."

§ 31.004. Application of Chapter

The provisions of this chapter apply to all public water of this state and to all watercraft navigated or moving on the public water. Privately owned water is not subject to the provisions of this chapter. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.005. Contracts With Federal Government

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program relating to water safety, including:

- (1) the acquisition, maintenance, and operating costs of facilities;
- (2) purchase of equipment and supplies;
- (3) personnel salaries; and
- (4) other federally approved reimbursable expenses, including personnel training costs, public boat safety and education costs, and general administrative and enforcement costs.

(b) The department may contract with the United States in order to comply with all necessary requirements for the receipt of funds made available under any federal legislation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.006 to 31.020 reserved for expansion]

SUBCHAPTER B. IDENTIFICATION OF MOTOR-BOATS; REQUIRED NUMBERING

§ 31.021. Required Numbering

(a) Each undocumented motorboat on the water of this state shall be numbered in accordance with the provisions of this chapter unless specifically exempted. The numbering system shall be in accord with the Federal Boating Act of 1958 and subsequent federal legislation.

(b) No person may operate or give permission for the operation of any motorboat on the water of this state unless the motorboat is numbered as required by this chapter, unless the certificate of number awarded to the motorboat is in full force and effect, and unless the identifying number set forth in the certificate is properly displayed on each side of the bow of the motorboat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.022. Exemptions From Required Numbering

(a) A motorboat is not required to be numbered under the provisions of this chapter if it is:

- (1) operated within this state for a period not exceeding 90 consecutive days and is covered by a number in full force and effect which has been awarded under federal law or a federally approved numbering system of another state;
- (2) from a country other than the United States temporarily using the water of this state;
- (3) owned by the United States, a state, or a subdivision of a state; or
- (4) a ship's lifeboat.

(b) The department may exempt from numbering a class of motorboats if it finds that the numbering of the motorboats of that class will not materially aid in their identification. The department may also exempt a motorboat if it finds that it belongs to a class of motorboats that would be exempt from numbering under a numbering system of an agency of the federal government if it were subject to federal law.

(c) All canoes, punts, rowboats, sailboats, and rubber rafts when paddled, poled, oared, or windblown are exempt from the numbering provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.023. Boats Numbered Under Federal or Other State Law.

The owner of any vessel or motorboat for which a current certificate of number has been awarded under any federal law or a federally approved numbering system of another state shall, if the motorboat or vessel is operated on the water of this state in excess of 90 days, make application for a certificate of number in the manner prescribed in this chapter for residents of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.024. Application for Number

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the department on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by the fee prescribed in Section 31.026 of this code.

(b) On receipt of the application in approved form, the department shall enter it on the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner.

(c) The application form, the form of the certificate of number, and the manner of renewal shall be prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.025. Renewal of Certificates of Number

An application for the renewal of each certificate of number shall be prepared by the department and mailed to the owner of the vessel during the period of the last 90 days before the expiration date of the certificate. The same number shall be issued on renewal. Applications not received during the 90-day period shall be treated in the same manner as original applications.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.026. Fees

(a) Each application for an original or renewal certificate of number for a motorboat shall be accompanied by a two-year fee determined by the following classification schedule:

Class	Description of Boat	Fee
Class A	less than 16 feet in length	\$ 6.00
Class 1	16 feet or over and less than 26 feet in length	\$ 9.00
Class 2	26 feet or over and less than 40 feet in length	\$12.00
Class 3	40 feet or more in length	\$15.00

(b) The fee for a boat less than 16 feet in length owned by a boat livery and used for rental purposes is \$3.00 for each original and renewal application for a certificate of number.

(c) Owners of newly purchased motorboats or other motorboats not previously operated in this state shall pay the full registration fee.

(d) In order to establish a two-year staggered registration period, fees for currently registered motorboats may be less than the full fee specified in Subsection (a) of this section if the expiration date established by the department is prior to March 21, 1974.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.027. Applicability of Fees to Commercial Boats

The registration fees required by this chapter are inapplicable to boats licensed by the state for commercial fishing or shrimping in the salt water of the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.028. Certificate of Number

The certificate of number shall be pocket-size. The certificate or a facsimile of it shall be carried on board the vessel at all times. It does not have to be on the person of the operator if prior to trial the operator can produce for examination a valid certificate of number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.029. Term of Certificate of Number

Every certificate of number awarded pursuant to this chapter shall continue in full force and effect for a period of two years unless sooner terminated or discontinued in accordance with the provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.030. Duplicate Certificates

If a certificate of number becomes lost, mutilated, or illegible, the owner of the motorboat for which the certificate was issued may obtain a duplicate on application to the department and the payment of a fee of \$1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.031. Numbering Pattern

(a) The numbering pattern used consists of the prefix "TX" followed by a combination of exactly four numerals and further followed by a suffix of two letters. The group of numerals appearing between the letters shall be separated from the letters by hyphens or equivalent spaces.

(b) All basic numbers of each series shall begin with 1000. TX-1000-AA through TX-9999-AA will be allotted to dealers and manufacturers. TX-1000-AB through TX-9999-ZZ will be allotted to all other boat owners and livery operators.

(c) The letters "G", "I", "O", and "Q" shall be omitted from all letter sequences.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.032. Numbering on Bow

The owner shall paint on or attach to each side of the motorboat or vessel near the bow the identification number and a validation decal in the manner prescribed by the department. The number shall read from left to right and shall be of block characters of good proportion of not less than three inches in height. The numbers shall be of a color which will contrast with the hull material of the vessel and so maintained as to be clearly visible and legible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.033. Unauthorized Numbers Prohibited

(a) No person may paint, attach, or otherwise display on either side of the bow of a motorboat a number other than the number awarded to the motorboat or granted reciprocity under this chapter.

(b) No person may deface or alter the certificate of number or the number assigned to and appearing on the bow of a boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.034. Issuance of Numbers; Agents for Department

(a) The department may award a certificate of number directly or may authorize any person to act as its agent for awarding certificates. An authorized agent may be assigned a block or blocks of numbers and certificates that, on award in conformity with this chapter and with rules and regulations of the department, are valid as if awarded directly by the department.

(b) An authorized agent shall execute a faithful performance bond of not less than \$1,000 in favor of the State of Texas.

(c) An agent is entitled to a fee for his services not to exceed 10 percent of the fee for each certificate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.035. Rules and Regulations; Copies

Copies of all rules and regulations formulated under this chapter shall be furnished without cost with each certificate of number issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.036. Proof of Ownership

(a) A certified statement on an application for number is the minimum requirement for proof of ownership of a vessel.

(b) Liens of all kinds, including reservations or transfers of title to secure debts or claims, are disregarded in determining ownership of a vessel. A lienholder who acquires possession and title by virtue of a default in the terms of the lien instrument, or any person who acquires ownership through an action as an lienholder, may apply for a number and shall attach a notarized affidavit of repossession to his application.

(c) A person who acquires ownership of a vessel by inheritance, devise, or bequest may apply for a certificate of number and shall include a notarized affidavit of heirship with his application and prescribed fee.

(d) A person who acquires ownership of a vessel by bankruptcy proceedings, through receivership, or

by any other involuntary divestiture of ownership may apply for a certificate of number and shall include a copy of the court order authorizing the action with his application and prescribed fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 1286, ch. 481, § 2, eff. Jan. 1, 1976

Acts 1975, 64th Leg., p. 1286, ch. 481, § 2, purports to amend § 5 of Civil Statutes, Art. 9206 [now, this section and Section 31.042], effective Jan. 1, 1976, without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). As so amended, § 5 reads:

"Sec. 5. (a) Ownership of a motorboat or an outboard motor shall be evidenced by a certificate of title issued by the Department or, if the vessel or outboard motor is new, by manufacturer's or importer's certificate on a form prescribed by the Department. Ownership of any vessel other than a motorboat or an outboard motor of any horsepower may but need not be evidenced by a certificate of title or, if new, by a manufacturer's or importer's certificate. A separate certificate of title or manufacturer's or importer's certificate shall be secured for a motorboat and an outboard motor.

"(b) No person may sell, assign, transfer, or otherwise dispose of an interest in a motorboat or outboard motor without either (1) delivering to the transferee a certificate of title in the name of the transferor properly endorsed to show the transfer, or (2) if the transferee is not a manufacturer or dealer and the vessel or outboard motor is new, delivering to the Department a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners, or (3) if the transferee is a manufacturer or dealer and the vessel or outboard motor is new, delivering to the transferee a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners, or (4) if the motorboat or outboard motor is not covered by a certificate of title or manufacturer's or importer's certificate, delivering to the Department (if the transferor is a manufacturer or dealer) or to the transferee (if the transferor is not a manufacturer or dealer) sufficient evidence of title and other information so that a certificate of title will be issued thereto to the transferee. No person shall acquire an interest in a motorboat or outboard motor until a certificate of title to the motorboat or outboard motor has been issued in the name of such person, or if such person is a dealer or manufacturer and the motorboat or outboard motor is new, until the

manufacturer's or importer's certificate is properly endorsed showing the signature of the manufacturer and all intervening owners.

"(c) Except as provided in Subsection (f) of this Section 5, all liens, encumbrances, and security interests in a motorboat or outboard motor created after the effective date of this Act shall (i) be noted on the certificate of title pertaining to such motorboat or outboard motor, (ii) take priority according to the order of time in which they are noted on the certificate of title, and (iii) be valid as against other general creditors of the owner of the motorboat or outboard motor, subsequent purchasers thereof, and holders of unnoted or subsequent liens or security interests thereon.

"(d) Application for a certificate of title shall be made to the Department on forms it prescribes showing, among other items, the name and address of the owner, a description of the motorboat or outboard motor (including, as appropriate, its manufacturer, make, model, year, length, construction material, manufacturer's or builder's number, hull identification number (HIN), motor number, outdrive number, horsepower), name and address of purchaser and date of purchase, name and address of any security interest owner, and such other information as the Department may prescribe to reflect the ownership of the motorboat or outboard motor, a security interest thereon, or to further describe the above items. The application shall be accompanied by the fee provided herein and by such evidence as the Department shall reasonably require to establish that the applicant or other person is entitled to a certificate of title or a noted security interest. Such evidence may include a certificate of title issued by another state or jurisdiction, manufacturer's or importer's certificate, bill of sale, assignment, contract, promissory note, security agreement, invoice, bill of lading, affidavit, probate or heirship proceedings or information, judgment of a court of competent jurisdiction, or other documents. Every manufacturer or dealer selling or exchanging a motorboat or outboard motor to a person not a manufacturer or dealer shall make application for a certificate of title in the name of the purchaser or transferee. In all other cases the purchaser shall make the application for a certificate of title. The application shall be made within 20 days after the date of sale of the motorboat or outboard motor. If a dealer acquires a used vessel or outboard motor covered by a certificate of title, the dealer need not secure a certificate of title in his name but may apply for a certificate of title in the name of the person, other than another dealer, to whom he

subsequently sells or otherwise transfers the motorboat or outboard motor, submitting the certificate of title with an appropriate assignment endorsement.

"(e) The certificate of title issued by the Department shall contain the name and address of the owner of the motorboat or outboard motor, the owner of any security interest therein, a description of the motorboat or outboard motor, and be in the form prescribed by the Department. If there is no lien on the motorboat or outboard motor, the original certificate of title, marked 'Original,' shall be delivered to the owner and a copy retained by the Department. If there is a lien, the original certificate shall be sent to the first lien holder and the duplicate original, marked 'Duplicate Original,' shall be delivered to the owner and a copy retained by the Department. Title may be transferred only by surrender of the original certificate of title properly endorsed to show the transfer.

"(f) The manufacturer's or importer's certificate shall describe the motorboat or outboard motor per Subsection (d) above, certify to the manufacture or other origin of the motorboat or outboard motor, be signed by the manufacturer or the equivalent thereof, and show thereon the endorsement of the original and each subsequent transferee up to and including the applicant for the certificate of title. No lien, encumbrance, or security agreement shall be shown thereon. Any security interest or other lien may be perfected as provided by Chapter 9 of the Business and Commerce Code as long as the motorboat or outboard motor is new.

"(g) The provisions of Subsections (d), (e), and (f) shall likewise apply to those vessels on which a certificate may but is not required to be issued.

"(h) The Department shall by regulation provide for the replacement of lost, stolen, or mutilated certificates.

"(i) A certificate of title shall be required as proof of ownership of a motorboat on an application for a number as required by this Act unless a certificate of title has not otherwise been required by the terms of this section; in which event a certified statement of ownership will be sufficient to secure a number. A certificate of number may be cancelled and the identification number voided by the Department even though such action occurs before the expiration date on the certificate, and such certificate is not surrendered to this Department. Certain causes for cancellation of certificates and voiding of numbers include but are not limited to the following:

"(1) Surrender of certificate for cancellation;

"(2) Issuance of a new number for the same boat;

"(3) Issuance of a marine document by the Bureau of Customs for the same vessel;

"(4) False or fraudulent certification in an application for number;

"(5) Failure to pay the prescribed fee; and

"(6) The dismantling, destruction, or change in the form or character of a motorboat or outboard motor so that it does not fit the definition thereof or is not correctly described in the certificate.

"(j) The provisions of this Section 5 shall not apply to vessels with a valid marine document issued by the Bureau of Customs of the United States or any federal agency successor thereto, nor to any outboard motor of less than 12 horsepower as determined by the manufacturer's rating, nor to any motorboat 14 feet in length or less.

"(k) The fee for the issuance of a certificate of title or the notation of a security interest or other lien or encumbrance shall be treated as fees collected pursuant to Section 27 of this Act and shall be \$2.00 until September 1, 1977, and \$1.50 then and thereafter."

§ 31.037. Change in Ownership Interest; Notice to Department

(a) The owner of a motorboat numbered in this state shall notify the department within a reasonable time of the transfer of all or any part of his interest in the motorboat, other than the creation of a security interest, or of the destruction or abandonment of the motorboat. The notice shall be accompanied by a surrender of the certificate of number.

(b) If the boat is destroyed or abandoned, the department shall cancel the certificate and enter the cancellation in its records.

(c) The purchaser of a motorboat shall present evidence of his ownership to the department within a reasonable time along with his name, address, and the number of the motorboat and shall at the same time pay to the department a fee of \$1. On receipt of the application and fee the department shall transfer the certificate of number issued for the motorboat to the new owner. Unless the application is made and fee paid within a reasonable time the motorboat is without a certificate of number, and it is unlawful for any person to operate the motorboat until the certificate is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.038. Change of Address; Notice to Department

(a) The holder of a certificate of number shall notify the department within a reasonable time if his address no longer conforms to the address appearing on the certificate and shall inform the department of his new address.

(b) The department may provide in its regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of the outstanding certificate to show the new address of the holder. Changes of address shall be noted on the records of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.039. Public Records

All ownership records of the department made or kept under this chapter are public records.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.040. Boat Liveries

(a) The owner or operator of a boat livery shall obtain a certificate of number for all vessels capable of being used as motorboats that are used to rent or let for hire.

(b) To receive certificates of number, the owner of a boat livery shall apply directly to the department on application forms provided by the department. The application must state that the applicant is a boat livery within the meaning of this chapter, and the facts stated in the application must be sworn before an officer authorized to administer oaths.

(c) The owner of a boat livery shall keep a record of the name and address of the persons hiring any vessel designed or operated as a motorboat, the vessel's certificate of number, the time and date of departure, and the expected time of return. The record shall be kept for six months.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.041. Dealer's and Manufacturer's Number

(a) A dealer or manufacturer of motorboats in this state may obtain a dealer's and manufacturer's number for motorboats he wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each boat. The number shall be attached to any motorboat that he sends temporarily on the water.

(b) The application for a number must state that the applicant is a dealer or manufacturer within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. The two-year fee for a

dealer's and manufacturer's number is \$25. No number may be issued until the provisions of this section have been satisfied.

(c) A dealer or manufacturer holding a dealer's and manufacturer's number may issue a reasonable temporary facsimile of the number which may be used by any authorized person. A person purchasing a motorboat may use the dealer's number for a period not to exceed 15 days prior to filing an application for a certificate of number. The form of the facsimile and the manner of display shall be prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.042. Cancellation of Certificates of Number; Grounds

(a) A certificate of number may be cancelled and the identification number voided by the department even though the action occurs before the expiration date on the certificate and even though the certificate is not surrendered to the department.

(b) Causes for cancellation of certificates and voiding of numbers are:

- (1) surrender of the certificate for cancellation;
- (2) issuance of a new number for the same boat;
- (3) issuance of a marine document by the Bureau of Customs for the same vessel;
- (4) false or fraudulent certification in an application for number; and
- (5) failure to pay the prescribed fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amended by Acts 1975, 64th Leg., p. 1286, ch. 481, § 2, eff. Jan. 1, 1976

Acts 1975, 64th Leg., p. 1286, ch. 481, § 2, purports to amend § 5 of Civil Statutes, Art. 9206 [now, Section 31.036 and this section], effective Jan. 1, 1976, without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). For text of § 5 as so amended see Section 31.036.

§ 31.043. Manufacturer's Serial Number

(a) All boats manufactured for sale in Texas shall carry a manufacturer's serial number clearly imprinted on the structure of the boat or displayed on a plate permanently attached to the boat.

(b) The owner of a vessel not required to carry a manufacturer's serial number may file an application for a serial number with the department on forms approved by it. The application must be signed by the owner of the vessel and must be

accompanied by a fee of \$1. On receipt of the application in approved form, the department shall enter the information on the records of its office and shall issue to the applicant a serial number.

(c) No person may wilfully destroy, remove, alter, cover, or deface the manufacturer's serial number or plate bearing the serial number or the serial number issued by the department. No person may possess a boat with a serial number that has been altered, defaced, mutilated, or removed. A person who has a boat with an altered or missing serial number shall file a sworn statement with the department describing the boat, proving legal ownership, and, if known, stating the reason for the destruction, removal, or defacement of the serial number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.044 to 31.060 reserved for expansion]

SUBCHAPTER C. REQUIRED EQUIPMENT

§ 31.061. Uniformity of Equipment Regulations; State Policy

It is the policy of the state that all equipment rules and regulations enacted under the authority granted in this chapter be uniform and consistent with the equipment provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.062. Operation of Vessels Without Required Equipment Prohibited

No person may operate or give permission for the operation of a vessel that is not provided with the equipment required by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.063. Classes of Motorboats

Motorboats subject to the provisions of this chapter are divided into four classes according to length as follows:

- Class A. Less than 16 feet in length.
- Class 1. 16 feet or over and less than 26 feet in length.
- Class 2. 26 feet or over and less than 40 feet in length.
- Class 3. Forty feet in length or over.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.064. Lights

(a) A vessel or motorboat when not at dock must have and exhibit at least one bright light, lantern, or flashlight from sunset to sunrise in all weather. A vessel or motorboat when underway between sunset

and sunrise in all weather must have and exhibit the lights prescribed below for boats of its class. No other lights that may be mistaken for those prescribed may be exhibited.

(b) Each class A and class 1 motorboat must have the following lights:

(1) a bright white light aft to show all around the horizon; and

(2) a combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(c) Each class 2 and class 3 motorboat must have the following lights and light screens:

(1) a bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light 10 points on each side of the vessel, namely from right ahead to 2 points abaft the beam on either side;

(2) a bright white light aft to show all around the horizon and higher than the white light forward;

(3) a green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side;

(4) a red light on the port side so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side; and

(5) inboard screens fitted on the starboard and port side lights of sufficient length and so set as to prevent the side lights from being seen across the bow.

(d) Each class A and class 1 motorboat when propelled by sail alone must have the combined lantern but not the white light aft prescribed in Subsection (b) of this section.

(e) Each class 2 and class 3 motorboat when propelled by sail alone must have the colored side lights, suitably screened, but not the white lights prescribed in Subsection (c) of this section.

(f) Motorboats of all classes when propelled by sail alone must have ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert a collision.

(g) A white light required by this section must be visible at a distance of at least two miles. A colored light required by this section must be visible at a distance of at least one mile. In this section, "visi-

ble" means visible on dark nights with clear atmosphere.

(h) A motorboat propelled by sail and machinery must have the lights required by this section for motorboats propelled by machinery alone.

(i) A motorboat may have and exhibit the lights required by the Regulations for Preventing Collisions at Sea, 1948, Act of October 11, 1951 (65 Stat. 406-420), as amended, instead of the lights specified by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.065. Whistles; Bells

(a) A motorboat of class 1, 2; or 3 must have an efficient whistle or other sound-producing mechanical appliance.

(b) A motorboat of class 2 or 3 must have an efficient bell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.066. Life Preserving Devices

(a) A motorboat must have at least one life preserver, life belt, ring buoy, or other device of the sort prescribed by the regulations of the commandant of the Coast Guard for each person on board, so placed as to be readily accessible.

(b) A motorboat carrying passengers for hire must have a readily accessible life preserver of the sort prescribed by the regulations of the commandant of the Coast Guard for each person on board.

(c) The operator of a class A or class 1 motorboat, while underway, shall require every passenger 12 years of age or under to wear a life preserver of the sort prescribed by the regulations of the commandant of the Coast Guard. A life belt or ring buoy does not satisfy this requirement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.067. Fire Extinguishers

(a) A motorboat must have the number, size, and type of fire extinguishers prescribed by the commandant of the Coast Guard.

(b) The fire extinguishers must be capable of promptly and effectively extinguishing burning gasoline. They must be kept in condition for immediate and effective use at all times and must be placed so as to be readily accessible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.068. Flame Arrestors; Backfire Traps

A motorboat must have the carburetor or carburetors of every engine using gasoline as fuel, except outboard motors, equipped with an efficient flame

arrestor, backfire trap, or other similar device prescribed by the regulations of the commandant of the Coast Guard.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.069. Ventilators

Each motorboat and vessel, except an open boat, using as fuel any liquid of a volatile nature must have the equipment prescribed by the commandant of the Coast Guard designed to ventilate properly and efficiently the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.070. Exhaust Water Manifold; Muffler

A motorboat operating on the water of this state must have an exhaust water manifold or a factory-type muffler installed on the engine.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.071. Rearview Mirrors

(a) A vessel used to tow a person or persons on water skis or an aquaplane or similar device on the water of this state must have a rearview mirror of a size no less than four inches from bottom to top or across from one side to the other. The mirror must be mounted firmly so as to give the boat operator a full and complete view beyond the rear of the boat at all times.

(b) Subsection (a) of this section does not apply to motorboats or vessels used in water ski tournaments, competitions, exhibitions, or trials.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.072. Racing Boats; Equipment Exemptions

(a) A motorboat designed and intended solely for racing need not have a whistle or other sound-producing mechanical appliance or a bell as required by Section 31.065 of this code or a fire extinguisher as required by Section 31.067 of this code while competing in a race or while engaged in navigation that is incidental to tuning up for a race conducted in accordance with the provisions of this chapter.

(b) A racing craft engaged in a race sanctioned by the governing board of any public water of this state need not have an exhaust water manifold or factory-type muffler installed on the engine as required by Section 31.070 of this code if written permission is granted by the governing board of the water body.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.073. Canoes, Punts, Rowboats, Sailboats, and Rubber Rafts; Equipment Exemptions

All canoes, punts, rowboats, sailboats, and rubber rafts when paddled, poled, oared, or windblown are exempt from all the required safety equipment except the following:

(1) one Coast Guard approved lifesaving device for each person aboard; and

(2) the lights prescribed for class A vessels in Section 31.064 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.074 to 31.090 reserved for expansion]

SUBCHAPTER D. BOATING REGULATIONS

§ 31.091. Uniformity of Boating Regulations

In the interest of uniformity, it is the policy of the State of Texas that the basic authority for the enactment of boating regulations is reserved to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.092. Local Regulations

(a) The governing body of an incorporated city or town, with respect to public water within its corporate limits and all lakes owned by it, may designate by ordinance certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(b) The commissioners court of a county, with respect to public water within the territorial limits of the county that is outside of the limits of an incorporated city or town or a political subdivision designated in Subsection (c) of this section and that are not lakes owned by an incorporated city or town, may enter an order on its books designating certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(c) The governing board of a political subdivision of the state created pursuant to Article XVI, Section 59, of the Texas Constitution, for the purpose of conserving and developing the public water of the state, with respect to public water impounded within lakes and reservoirs owned or operated by the political subdivision, may designate by resolution or other appropriate order certain areas as bathing, fishing, swimming, or otherwise restricted areas and may

make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(d) A copy of all rules and regulations adopted under this section shall be summarily filed with the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.093. Rules of the Road

The United States Coast Guard Inland Rules apply to all public water of this state to the extent they are applicable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.094. Reckless or Negligent Operation

No person may operate any motorboat or vessel or manipulate any water skis, aquaplane, or similar device in a wilfully or wantonly reckless or negligent manner that endangers the life, limb, or property of any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.095. Excessive Speed

No person may operate any boat at a rate of speed greater than is reasonable and prudent, having due regard for the conditions and hazards, actual and potential, then existing, including weather and density of traffic, or greater than will permit him, in the exercise of reasonable care, to bring the boat to a stop within the assured clear distance ahead.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.096. Reckless Operation and Excessive Speed

(a) No person may operate a vessel or manipulate water skis, an aquaplane, or a similar device on the water of this state in wilful or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner that endangers, or is likely to endanger, a person or property.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.097. Operation of Vessel While Intoxicated

(a) No person may operate a vessel or manipulate water skis, an aquaplane, or a similar device in a careless or imprudent manner while he is intoxicated or under the influence of intoxicating liquor or while he is under the influence of a narcotic drug, barbiturate, or marijuana.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$500 or by confinement in the county jail for not more than six months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.098. Hazardous Wake or Wash

No person may operate a motorboat so as to create a hazardous wake or wash.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.099. Circular Course Around Fisherman or Swimmer

(a) No person may operate a motorboat in a circular course around any other boat any occupant of which is engaged in fishing or around any person swimming.

(b) No swimmer or diver may come within 200 yards of a sight-seeing or excursion boat except for maintenance purposes or unless within an enclosed area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.100. Interference With Markers or Ramps

(a) No person may moor or attach a boat to a buoy, beacon, light marker, stake, flag, or other aid to safe operation placed upon the public water of this state by or under the authority of the United States or the State of Texas. No person may move, remove, displace, tamper with, damage, or destroy the markers or aids to safe operation.

(b) No person may moor or attach a vessel to a state-owned boat launching ramp except in connection with the launching or retrieving of a boat from the water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.101. Obstructing Passage

(a) No person may anchor a boat in the traveled portion of a river or channel so as to prevent, impede, or interfere with the safe passage of any other boat through the same area.

(b) No person may anchor a vessel near a state-owned boat ramp so as to prevent, impede, or interfere with the use of the boat ramp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.102. Operating Boats in Restricted Areas

No person may operate a boat within a water area that has been clearly marked, by buoys or some other distinguishing device, as a bathing, fishing, swimming, or otherwise restricted area by the

department or by a political subdivision of the state. This section does not apply to a patrol or rescue craft or in the case of an emergency.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.103. Water Skis, Aquaplanes, etc.: Time and Manner of Operation

(a) No person may operate a vessel on any water of this state towing a person or persons on water skis, surfboards, or similar devices and no person may engage in water-skiing, surfboarding or similar activity at any time between the hours from one hour after sunset to one hour before sunrise. This subsection does not apply to motorboats or vessels used in water ski tournaments, competitions, or exhibitions or trials therefor if adequate lighting is provided.

(b) All motorboats having in tow or otherwise assisting in towing a person on water skis, aquaplanes, or similar contrivances shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(c) A person being towed on water skis, aquaplanes, or similar devices by a vessel is considered an occupant of the vessel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.104. Accidents: Duty of Operators

The operator of a vessel involved in a collision, accident, or casualty shall:

(1) render to other persons affected such assistance as may be practicable and necessary in order to save them from or minimize any danger insofar as he can do so without serious danger to his own vessel, crew, and passengers; and

(2) give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 108, ch. 48, § 1

Acts 1975, 64th Leg., p. 108, ch. 48, § 1, purports to amend Civil Statutes, Art. 9206, § 24, by adding a subsec. (g), without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). As so added, subsec. (g) reads:

"(g) A person who intentionally or knowingly violates or fails to comply with the provisions of Subsection (a), Section 21 of this Act [now, this section] is guilty of a misdemeanor and on con-

viction is punishable by confinement in jail for a term not to exceed one year, or by a fine not to exceed \$2,000, or by both."

§ 31.105. Accident Reports

(a) The operator of a vessel involved in a collision, accident, or other casualty that results in death or injury to a person or damage to property in excess of \$50 shall file with the department on or before the expiration of 30 days after the incident a full description of the collision, accident, or casualty in accordance with regulations established by the department.

(b) The accident reports are confidential and are inadmissible in court as evidence.

(c) On request made by an authorized official or agency of the United States, any information available to the department under Subsection (a) of this section shall be sent to the official or agency.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.106 to 31.120 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

§ 31.121. Enforcement Officers

(a) All peace officers of this state and its political subdivisions and game management officers are enforcement officers for the purposes of this chapter.

(b) The enforcement officers may enforce the provisions of this chapter by arresting and taking into custody any person who commits any act or offense prohibited by this chapter or who violates any provision of this chapter.

(c) Game management officers may assist in the search for and rescue of victims of water-oriented accidents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.122. Water Safety Vessels: Lights

Only the department and police water safety vessels may use rotating blue beacon lights.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.123. Required Response to Police Water Safety Vessel

The operator of a boat underway, on sighting a rotating blue beacon light, shall reduce power immediately and bring his boat to a no-wake speed and subsequent stop until the intention of the water safety vessel is understood.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.124. Inspection of Vessels

(a) In order to enforce the provisions of this chapter, an enforcement officer may stop and board any vessel subject to this chapter and may inspect the boat to determine compliance with applicable provisions.

(b) An officer boarding a vessel shall first identify himself by presenting proper credentials.

(c) The operator of a vessel required by this chapter to hold a certificate of number aboard the vessel shall show the certificate to the officer on demand, and failure to do so constitutes a violation of this chapter.

(d) No person operating a boat on the water of this state may refuse to obey the directions of an enforcement officer when the officer is acting under the provisions of this chapter.

(e) The safety of the vessel shall always be the paramount consideration of an arresting officer.

(f) If an enforcement officer determines that a vessel and its associated equipment is being used in violation of this chapter or of any regulation or standard issued thereunder so as to create an especially hazardous condition, he may direct the operator to return to mooring, and the vessel may not be used until the condition creating the violation is corrected.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.125. Violations; Notice to Appear

(a) An enforcement officer who arrests a person for a violation of this chapter may deliver to the alleged violator a written notice to appear within 15 days after the date of the violation before the justice court having jurisdiction of the offense.

(b) The person arrested shall sign the notice to appear promising to make his appearance in accordance with the requirements set forth in the notice. After signing the notice the person may be released. Failure to appear before the court in the county having jurisdiction constitutes a violation of the chapter. A warrant for the arrest of the person failing to appear may be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.126. Venue

(a) Venue for an alleged violation or offense under the provisions of this chapter is in the justice court or county court having jurisdiction where the violation or offense was committed.

(b) For an offense under the provisions of this chapter, there is a presumption that the offense was committed in the justice precinct and county where the dam containing the body of water is located.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.127. General Penalty

A person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, for which no other penalty is applicable is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.128. Disposition of Fines

(a) A justice of the peace, or a clerk of any court, or any other officer of this state receiving any fine imposed by a court for a violation of this chapter shall send the fine to the department within 10 days after receipt and shall note the docket number of the case, the name of the person fined, and the section or article of the law under which the conviction was secured.

(b) In justice court cases, the amount to be remitted to the fund shall be 85 percent of the fine. In county court cases the amount to be remitted to the fund shall be 80 percent of the fine. All costs of the court shall be retained by the court having jurisdiction of the offense and deposited as other fees in the proper county fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.129. Violation of Sewage Disposal Regulations

(a) A person who violates or fails to comply with a regulation of the Water Quality Board under Section 21.097, Water Code, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. A separate offense is committed each day a violation continues.

(b) The enforcement provisions of this subchapter apply to violations punishable by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.130 to 31.140 reserved for expansion]

SUBCHAPTER F. WATER FACILITIES

§ 31.141. Boat Ramps

(a) The department may construct and maintain boat ramps and access roads by the use of existing or additional services or facilities of the department.

(b) On the completion of the work, the department shall prepare and send vouchers to the comptroller of public accounts payable to the department or to any person, firm, or corporation for reimbursement for the work, and the comptroller shall issue

warrants on the special boat fund to reimburse the department or any person, firm, or corporation for the work performed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.142. Buoys and Markers

The department may provide for a standardized buoy-marking program for the inland water of the state. The department may purchase and provide the controlling agency of the water bodies with buoys and markers from funds remaining in the special boat fund in excess of the cost of administering this chapter.

TITLE 5. WILDLIFE CONSERVATION

SUBTITLE A. HUNTING AND FISHING LICENSES

CHAPTER 41. RECIPROCAL HUNTING AND FISHING PRIVILEGES

Section

- 41.001. Reciprocal Hunting and Fishing.
- 41.002. Reciprocal Hunting and Fishing: Louisiana.
- 41.003. Reciprocal License Agreements: Border States.
- 41.004. Reciprocal Agreements Proclaimed.
- 41.005. Termination of Reciprocal License Agreement.
- 41.006. Regulations for Reciprocal License Agreements.
- 41.007. Violation of Rule or Regulation.
- 41.008. Reciprocal License Agreements: Any Other State.

§ 41.001. Reciprocal Hunting and Fishing

(a) A nonresident who is 17 years old or older and under 66 years old may hunt and fish in this state without a Texas license if he has in his immediate possession a valid hunting or fishing license issued to him by the state of his residence and if the state of his residence likewise allows hunting and fishing by Texas residents who have Texas licenses.

(b) A nonresident who may hunt and fish in this state under this section is subject to all laws relating to the taking of wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.002. Reciprocal Hunting and Fishing: Louisiana

(a) A Louisiana resident may hunt and fish for sport in Jefferson, Orange, and Shelby counties if he holds a valid Louisiana license and if the State of Louisiana allows a reciprocal privilege to Texas residents of Jefferson, Orange, and Shelby counties to hunt and fish in Louisiana parishes adjacent to those counties.

(b) A Louisiana resident may hunt and fish for sport on the water of Sabine River and Sabine Lake that form a common boundary between Texas and Louisiana if he holds a valid Louisiana license and if

the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas licenses. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.003. Reciprocal License Agreements: Border States

(a) The director shall negotiate for the commission with the proper representatives of each state having a common border with Texas to allow reciprocal fishing and migratory waterfowl hunting on rivers and lakes on the common boundary between Texas and the border state.

(b) An agreement must provide that residents of the border state who have a commercial or sport fishing license or a hunting license issued by the border state may fish or hunt migratory waterfowl on rivers and lakes of the common border, and Texas residents holding Texas licenses are extended equal privileges.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.004. Reciprocal Agreements Proclaimed

The commission may approve any agreement under Section 41.003 of this code by proclamation. A proclamation becomes effective 30 days after the day it is issued or 30 days after the agreement has been lawfully accepted by the bordering state, whichever is later.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.005. Termination of Reciprocal License Agreement

An agreement under Section 41.003 of this code may be terminated by the commission at any time after 90 days from the day notice of the termination is given to each border state that is a party to the agreement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.006. Regulations for Reciprocal License Agreements

(a) The commission may make regulations conforming to an agreement under Section 41.003 of this code for the conservation of fish and wildlife.

(b) A regulation may be adopted only at a meeting of the commission in Austin, and any interested person is entitled to be heard at the meeting.

(c) Regulations adopted by the commission or issued by the director, when authorized by the commission to issue regulations, take effect 30 days after their adoption or issuance.

(d) After adoption of a regulation, a copy shall be numbered and filed in the office of the commission. Other copies shall be filed with the secretary of

state, sent to the county clerk and county attorney in each county affected by the regulation, sent to the appropriate agency in the border state to which the agreement applies, and sent to each employee of the department who performs duties in a county affected by the regulation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.007. Violation of Rule or Regulation

(a) Any person who violates a regulation of the commission under Section 41.006 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

(b) Each freshwater fish and migratory waterfowl taken in violation of a regulation of the commission under Section 41.006 of this code is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.008. Reciprocal License Agreements: Any Other State

The department may agree with any other state to license sport hunting and fishing by residents of the other state at the same fee as Texas residents are licensed if the other state licenses Texas residents at the same fee as residents of the other state are licensed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 42. GENERAL HUNTING LICENSE

- Section
- 42.001. Definitions.
- 42.002. Resident License Required.
- 42.003. Exception: Resident Hunting on Own Land.
- 42.004. Exception: Residents of Certain Age.
- 42.005. Nonresident License Required.
- 42.006. Exception: Migratory Birds.
- 42.007. Exception: Migratory Waterfowl.
- 42.008. Qualifications for Migratory Waterfowl License.
- 42.009. Exception: Certain Armed Services Members.
- 42.010. Issuance and Form of Licenses.
- 42.011. Issuance of License by Agents.
- 42.012. Resident License Fee.
- 42.013. Resident-Exempt License Fee.
- 42.014. Nonresident License Fee.
- 42.015. Migratory Bird License Fee.
- 42.016. Migratory Waterfowl License Fee.
- 42.017. Duplicate License.
- 42.018. Tag to be Attached to Deer.
- 42.019. Possession of Certain Parts of Deer.
- 42.020. Deer Tags: Prohibited Acts.
- 42.021. Bag Limits and Season Not Affected.
- 42.022. One License for Each Year.
- 42.023. Hunting Under License of Another.
- 42.024. Exhibiting License.
- 42.025. Penalty.

§ 42.001. Definitions

In this chapter:

(1) "Resident" means an individual, other than an alien, who has been a resident of this state for more than six months immediately before applying for a hunting license.

(2) "Alien" means an individual who is not a citizen of the United States and who has not declared his intention to become a citizen.

(3) "Nonresident" means an individual who is not a resident.

(4) "Carcass" means the dead body of a deer minus the offal and inedible organs, or the trunk with the limbs and head attached, with or without the hide.

(5) "Final destination" means the permanent residence of the hunter, the permanent residence of any other person receiving a deer carcass or any part of a deer carcass, or a commercial processing plant after the carcass has been finally processed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.002. Resident License Required

(a) No resident may hunt wild turkey or deer in this state without first having acquired a current resident hunting license.

(b) No resident may hunt any wild bird or animal outside the county of his residence without first having acquired a resident hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.003. Exception: Resident Hunting on Own Land

(a) A resident may hunt on land on which he resides for any wild bird, except turkey, and any wild animal, except deer, without a resident hunting license.

(b) A resident may hunt on land on which he resides for turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.004. Exception: Residents of Certain Age

(a) A resident who is under 17 years old or who is 65 years old or older may hunt any wild bird, except turkey, and any wild animal, except deer, without a resident hunting license.

(b) A resident who is under 17 years old or who is 65 years old or older may hunt wild turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.005. Nonresident License Required

No nonresident may hunt any wild bird or animal in this state without first having acquired a nonresident hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.006. Exception: Migratory Birds

(a) A nonresident may hunt migratory birds without a nonresident hunting license if he has acquired a valid migratory bird hunting license.

(b) A migratory bird hunting license is valid for a period of five consecutive days only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.007. Exception: Migratory Waterfowl

A nonresident may hunt migratory waterfowl without a nonresident hunting license if he qualifies for and has received a migratory waterfowl hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.008. Qualifications for Migratory Waterfowl License

A nonresident residing in a state or nation that allows a resident of this state to purchase a reciprocal migratory waterfowl hunting license at the same fee qualifies to acquire a migratory waterfowl hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.009. Exception: Certain Armed Services Members

(a) A nonresident who is a member of the armed services may hunt any wild bird or animal in this state without a nonresident hunting license if he qualifies for and has received a resident hunting license.

(b) A member of the armed services on active duty for more than 30 days at a federal facility or installation in this state qualifies to acquire a resident hunting license.

(c) Adequate proof of length of duty assignment may be required from each license applicant, and the validity of the license is contingent on the applicant's proof, either by certification on the license or by use of a separate form issued by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.010. Issuance and Form of Licenses

(a) The department shall prescribe the form of and issue the licenses authorized by this chapter.

(b) Each license authorizing deer hunting must have attached the number of deer tags equal to the

number of deer allowed by law to be killed during the year for which the license is issued.

(c) A resident exemption hunting license shall be printed to show clearly on its face that it is an exemption license and shall be signed by the licensee.

(d) No person may issue or receive a license authorized by this chapter except on the form provided by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.011. Issuance of License by Agents

The department may authorize the issuance of licenses by agents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.012. Resident License Fee

The fee for a resident hunting license is \$5.25, 25 cents of which may be retained by an authorized agent issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.013. Resident-Exempt License Fee

The fee for a resident-exempt hunting license is 25 cents, 15 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.014. Nonresident License Fee.

The fee for a nonresident hunting license is \$37.50, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.015. Migratory Bird License Fee

The fee for a migratory bird hunting license is \$10.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.016. Migratory Waterfowl License Fee

The fee for a migratory waterfowl hunting license is \$10.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.017. Duplicate License

(a) If a person licensed to hunt under the provisions of this chapter loses the license or if the license is destroyed, the person may apply to the department for and receive a duplicate license.

(b) The application for a duplicate license is in the form of an affidavit and must contain a statement of fact concerning the loss or destruction of the license and a statement of the number of deer, if any, killed under the authority of the lost or destroyed license.

(c) A duplicate license entitling the holder to hunt deer shall have attached the number of deer tags allowed on the lost or destroyed license less the number of deer killed under the authority of the lost or destroyed license.

(d) The fee for a duplicate license is 50 cents, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.018. Tag to be Attached to Deer

(a) No person may possess the carcass of a wild deer at any time before the carcass has been finally processed and delivered to the final destination unless there is attached to the carcass a properly executed tag provided by the department and issued to the person who killed the deer.

(b) A tag is properly executed when it is filled out to show the date and place the deer to which the tag is attached was killed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.019. Possession of Certain Parts of Deer

(a) No person may possess the carcass of a wild deer with the head removed unless the carcass has been finally processed and delivered to the final destination.

(b) No person, other than the person who killed the deer, may receive or possess any part of a deer without a legible hunter's document attached to the carcass or part of the deer.

(c) A hunter's document is an instrument signed and executed by the person who killed the deer and must contain:

- (1) the name and address of the person who killed the deer;
- (2) the number of the hunting license of the person who killed the deer;
- (3) the date on which the deer was killed; and
- (4) the name of the ranch and the county where the deer was killed.

(d) A hunter's document shall remain with any part of the deer until it is finally processed and delivered to the final destination.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.020. Deer Tags: Prohibited Acts

(a) No person may use more deer tags during a license year than are originally authorized by the hunting license for the year.

(b) No person may use the same deer tag on more than one deer.

(c) No person may use a deer tag not issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.021. Bag Limits and Season Not Affected

The provisions of this chapter do not authorize any person to exceed any bag limit or to hunt deer during a closed season, and the attachment of deer tags as provided by this chapter is not prima facie evidence that the deer was lawfully killed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.022. One License for Each Year

(a) No person may acquire or possess more than one hunting license during a license year.

(b) This section does not apply to the acquisition and possession of a duplicate hunting license acquired as provided in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.023. Hunting Under License of Another

No person may hunt under a license issued to another or permit another to hunt under a license issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.024. Exhibiting License

No person required by the provisions of this chapter to have a hunting license may fail or refuse to show the license to an officer on demand.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.025. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 43. SPECIAL LICENSES AND PERMITS

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SUBCHAPTER A. HUNTING BOAT LICENSE

§ 43.001. Hunting Boat License Required

No person owning or navigating a sailboat or powerboat may accommodate on board the boat for pay another person engaged in hunting unless the owner or navigator has acquired a hunting boat license from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.002. Application for Hunting Boat License

The application for a hunting boat license must include:

- (1) the name of the vessel;
- (2) a statement describing the accommodations for passengers;
- (3) the number of crew members; and
- (4) a certification signed by the applicant on forms provided by the department and stating that the applicant will not violate any provision of this code with respect to hunting, that the applicant will attempt to prevent any person he accommodates on the vessel from violating any provision of this code with respect to hunting, and that the applicant will refuse to accommodate on the vessel any hunter who does not possess a hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.003. Hunting Boat License Fee

The fee for a hunting boat license is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.004. License Period

A license issued under this subchapter is valid for one year only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.005. Penalties

(a) A person who violates Section 43.001 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

(b) The hunting boat license of a person convicted of a violation of Section 43.001 of this code may be cancelled. A person whose license is cancelled under this section may not receive another hunting boat license for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.006 to 43.010 reserved for expansion]

SUBCHAPTER B. WHITE-WINGED DOVE STAMPS

§ 43.011. White-Winged Dove Stamp Required

No person may hunt white-winged dove in this state unless he has in his possession a white-winged dove stamp issued to him by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.012. Issuance of Stamp

(a) The department or its agent may issue a white-winged dove stamp to any person on the payment to the department of \$3.

(b) The stamp shall be issued in the form prescribed by the department and must be signed on its face by the person using the stamp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.013. Hunting License Required Also

The acquisition of a white-winged dove stamp does not authorize a person to hunt white-winged dove without having acquired a hunting license as provided in Chapter 42 of this code or authorize the hunting of white-winged dove at any time or by any means not otherwise authorized by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.014. Disposition of Stamp Fees

(a) Ten cents of the fee collected under this subchapter may be retained by the agent of the department, other than a department employee, as his collection fee.

(b) After deduction of the collection fee, if allowed, the receipts from stamp sales shall be sent to the department.

(c) The department shall deposit the stamp sale receipts in the state treasury in special game and fish fund no. 9. One-half of these receipts may be spent only for research and management for the protection of white-winged dove and the other one-half may be spent only for the acquisition, lease, or development of white-winged dove habitat in the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1208, ch. 456, § 7, eff. Sept. 1, 1975.]

§ 43.015. Refusal to Show Stamp

A person hunting white-winged dove who refuses on demand of any game management officer or peace officer to show a white-winged dove stamp is presumed to be in violation of Section 43.011 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.016. Penalty

A person who violates Section 43.011 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.017 to 43.020 reserved for expansion]

SUBCHAPTER C. PERMITS FOR SCIENTIFIC, ZOOLOGICAL, AND PROPAGATION PURPOSES

§ 43.021. Protected Wildlife

In this subchapter, "protected wildlife" means all animals, birds, fish, and other aquatic life the taking, possession, or propagation of which is regulated by law or by the department and includes endangered species.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.022. Permit Authorized

The department may issue a permit to a qualified person to take protected wildlife for propagation purposes, zoological gardens, aquariums, and scientific purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.023. Permit is Defense

In any prosecution for the unlawful taking or transporting of wildlife, the possession of a permit issued under this subchapter to the accused is a complete defense if the conduct was authorized under the terms of the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.024. Restrictions on Permits

(a) No permit may be issued for the taking or transportation of any endangered fish or wildlife the possession, taking, or transportation of which is prohibited by federal law.

(b) The department may refuse to grant a permit for the taking or transportation of endangered fish or wildlife from their natural habitat for propagation for commercial purposes if the fish or wildlife may be legally obtained from a source in this state other than from their natural habitat.

(c) No permit may be issued for the taking of migratory birds unless the applicant has obtained a federal permit for the taking of migratory birds.

(d) No permit may be issued for the taking of alligators or marine animals for display in an aquarium unless the aquarium is a public or commercial organization or enterprise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.025. Application

(a) The application for a permit shall be made under oath and must state the species of protected wildlife to be taken or transported and the purpose of collection or transportation.

(b) The application must be endorsed by two recognized specialists in the biological field concerned who are residents of the United States and have known the applicant for at least five years; except that endorsement is not required for an application for a permit to take alligators or marine life for aquarium purposes.

(c) The department must find that an applicant for a permit to take alligators or marine life for aquarium purposes is qualified to carry out capture in a scientific manner without cruelty.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.026. Conditions of Permit; Expiration

(a) The department shall issue the permits under any conditions determined to be appropriate, including specifying the number and species of wildlife that may be taken.

(b) A permit expires on the last day of the year of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.027. Regulations

The department may make regulations governing the taking and possession of protected wildlife indigenous to the state for the scientific purposes, zoological gardens, and propagation purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.028. Cancellation of Permit

The department may cancel a permit for any violation of the department's regulations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.029. Reports

The holder of a permit shall file with the department before January 11 of the year after the expiration of the permit a report showing the number and species of wildlife taken under the permit and their disposition. The report shall also give the results of any research conducted under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.030. Penalty

A person who violates the conditions of a permit or a regulation of the department issued under this subchapter, or who fails to file a full and complete report as required by Section 43.029 of this code, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.031 to 43.040 reserved for expansion]

SUBCHAPTER D. PRESERVE AND RESORT LICENSES

§ 43.041. Definitions

In this subchapter:

(1) "Shooting preserve" means the aggregate amount of land owned by one individual, partnership, firm, or corporation in a county and leased for hunting purposes. If an individual, partnership, firm, or corporation owns a single tract of land located partially in one county and partially in another county, the individual, partnership, firm, or corporation may not be required to have a separate shooting preserve license for that portion of the land located in the second county, unless the individual, partnership, firm, or corporation owns other land leased for hunting purposes in the second county. If an individual, partnership, firm, or corporation owns a single tract of land located partially in one county and partially in another

county and the individual, partnership, firm, or corporation is not required to have two licenses, the aggregate acreage of the tract shall be used for determining the amount of the license fee required by this subchapter.

(2) "Shooting resort" means a tract of land of not less than 600 nor more than 2,000 contiguous acres on which pen-raised fowls or imported game birds are released to provide hunting for members or guests.

(3) "Shooting club" means an association of persons or a legal entity that owns or operates a shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.042. License Required

No person who is the manager or owner of a shooting preserve or shooting resort may receive as a guest of the shooting resort or shooting preserve for pay another person engaged in hunting unless the owner or manager has acquired a license from the department or an authorized agent of the department authorized the receiving of guests.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.043. Issuance of License

The department shall issue one license for each shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.044. License Fees

(a) The fees for shooting preserve licenses are:

- (1) \$10 if the area of the shooting preserve is less than 500 acres;
- (2) \$25 if the area of the shooting preserve is 500 acres or more but less than 1,000 acres; and
- (3) \$40 if the area of the shooting preserve is 1,000 acres or more.

(b) The fee for a shooting resort license is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.045. Duration of License

A shooting preserve license and a shooting resort license are valid for the period from September 1 of one year through August 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.046. Form and Execution of License

(a) The department shall furnish license forms to agents who are authorized to issue hunting and fishing licenses.

(b) The license must:

- (1) be numbered serially with stubs attached;
- (2) be clearly marked as a shooting preserve license or a shooting resort license;
- (3) have printed across the face of the license the year for which it is issued;
- (4) show the expiration date of the license; and
- (5) bear the seal of the department.

(c) The license shall be executed by filling in the name and address of the licensee, the name of the shooting preserve or shooting resort, the character of game found in the area to which the license applies, and the signature of the employee of the department or issuing agent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.047. Name of Preserve or Resort

The holder of a shooting preserve or shooting resort license shall file with the department the name of the shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.048. Affidavit Required

The holder of a shooting preserve or shooting resort license shall certify by his signature on forms provided by the department that the licensee will:

- (1) not violate any of the provisions of this subchapter;
- (2) endeavor to prevent any guest of the shooting preserve or shooting resort from violating any of the provisions of this subchapter; and
- (3) not receive guests who do not have valid hunting licenses.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.049. Nonresident Hunting License for Shooting Resort

(a) A nonresident may acquire a shooting resort hunting license from the department entitling the nonresident to take wild birds from a shooting resort only.

(b) A nonresident shooting resort hunting license is valid from October 1 of one year to April 1 of the following year.

(c) The fee for a nonresident shooting resort hunting license is \$5, of which fee 25 cents may be retained as a collection fee by the agent issuing the license but not by an employee of the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.050. Shooting Resort Identified

(a) The owner or manager of a shooting resort shall mark the boundaries of the shooting resort with metal signs. The signs shall be placed at each entrance to the resort and around the perimeter of the resort at a distance of not more than 1,000 feet apart.

(b) The size of the sign must be at least 18 inches by 24 inches.

(c) The signs must bear the words "Shooting resort licensed by the Parks and Wildlife Department—Hunting by permit only." The lettering of the words must be large enough so that they may be read under ordinary conditions from a distance of 200 feet.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.051. Season

The open season on a shooting resort for the taking of game birds, pen-raised fowl, and imported game birds that have been stocked by the owner is from October 1 of one year through April 1 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.052. Banding Game Birds

Each game bird killed on a shooting resort shall be banded with a band showing the permit number of the owner of the resort. The band must remain on the bird after it is killed and processed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.053. Releasing of Fowl Required

The operator of a shooting resort shall release at least 500 quail or at least 500 pheasant or chukar annually for each 600 acres of land licensed as a shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.054. Cancellation of License

(a) If the manager of a shooting resort or shooting preserve fails or refuses to comply with any provision of this subchapter, the department or its

authorized agent may cancel the license granted under this subchapter without refunding the license fee.

(b) A person whose license is cancelled under this section may not receive another license for one year after the cancellation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.055. Penalty

A manager of a shooting resort or shooting preserve who violates any provision of this subchapter or who fails to comply with any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or by confinement in the county jail for not more than 90 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.056. Cancellation of License

(a) If the manager of a shooting club, shooting resort, shooting preserve, or land leased for hunting fails or refuses to comply with any provision of this subchapter, the department or its authorized agent may cancel the license granted under this subchapter without refunding the license fee.

(b) A person whose license is cancelled under this section may not receive another license for one year after the cancellation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.057. Penalty

A manager of a shooting club, shooting resort, shooting preserve, or land leased for hunting who violates any provision of this subchapter or who fails to comply with any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or by confinement in the county jail for not more than 90 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.058 to 43.060 reserved for expansion]

SUBCHAPTER E. PERMIT FOR CAPTURE OF INDIGENOUS GAME

§ 43.061. Indigenous Mammals and Birds

(a) No person may capture or transport any game mammal or game bird captured from the wild that is indigenous to this state unless he has obtained a permit from the department.

(b) The department may issue permits for trapping and transporting game mammals or game birds from the wild that are indigenous to this state as a means of better wildlife management by making adjustments in the game population.

(c) This section does not apply to any game animals or game birds that are privately owned or privately raised.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.062 to 43.070 reserved for expansion]

SUBCHAPTER F. PRIVATE BIRD SHOOTING AREAS

§ 43.071. Definitions

In this subchapter:

(1) "Private bird shooting area" means an area on which the hunting or taking of privately owned game birds is authorized.

(2) "Licensee" means a person holding a private bird shooting area license.

(3) "Guest" means a person other than a licensee who is authorized by a license to hunt or take birds in a private bird shooting area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.072. Application for License

(a) Any person, including the holder of a shooting resort license, may apply to the department for a private bird shooting area license.

(b) The applicant shall certify by his signature on forms provided by the department stating that he will not violate any of the provisions of this subchapter and will endeavor to prevent guests from committing violations.

(c) The private bird shooting area license fee is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.073. Size of Area; Markings

(a) A private bird shooting area may consist of not more than 300 contiguous acres.

(b) A private bird shooting area shall be distinguished from any other club, shooting resort, shooting preserve, or leased premises for hunting purposes by clearly marking its boundaries with wood or metal markers bearing the words, "Private Bird Shooting Area, Licensed by the Texas Parks and Wildlife Department." The lettering on these markers shall be large enough to permit reading under ordinary conditions at 200 feet.

(c) Markers shall be placed to identify clearly the boundaries of each area and each entrance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.074. Taking of Game Birds Authorized

(a) A licensee or a guest may take privately owned game birds or pen-reared game birds in a private bird shooting area during the private bird shooting area season.

(b) The private bird shooting area season begins January 1 and extends through December 31 of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.075. Game Birds in Captivity; Banding

(a) A licensee may hold game birds in captivity for use in the private bird shooting area.

(b) All privately owned game birds and pen-reared game birds released on a private bird shooting area shall be banded.

(c) The band shall remain on each bird killed until it is finally processed.

(d) Each band must show the permit number of the licensee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.076. License Form

No person may issue or accept a private bird shooting area license except on the form prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.077. Penalty

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.078. Hunting License Required

Nothing in this subchapter authorizes any person to hunt game birds without having a hunting license required by Chapter 42 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.079 to 43.100 reserved for expansion]

SUBCHAPTER G. PREDATOR CONTROL
FROM AIRCRAFT

§ 43.101. **Applicability of Subchapter**

This subchapter applies only to the following counties: Andrews, Archer, Armstrong, Atascosa, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brewster, Briscoe, Brown, Burnet, Caldwell, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gray, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamb, Lampasas, LaSalle, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McMullen, Martin, Mason, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Robertson, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Uvalde, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Yoakum, Young, Zavala. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1222, ch. 456, § 23, eff. Sept. 1, 1975.]

§ 43.102. **Permit Authorized**

Under Public Law 92-159, Section (b)(1) (85 Stat. 480, 16 U.S.C. 742j-1), the department may issue permits for predator animal control by the use of aircraft in this state. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.103. **Definition**

"Predator animals" means coyotes, bobcats, red foxes, and crossbreeds between coyotes and dogs but does not include birds or fowl. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.104. **Grounds to Issue Permit**

The department may issue the permit to any person if the department finds that predator animal control by the use of aircraft is necessary to protect or to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.105. **Application for Permit**

An applicant for a permit under this subchapter shall file with the application one or more affidavits, containing facts as well as opinion, stating the kind and number of predator animals that are requested to be taken by the use of aircraft, a list of the counties from which the animals are requested to be taken, and the reasons why the permit should be issued. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.106. **Form and Period of Validity of Permit; Renewal**

The department shall prescribe the form and manner of issuance of the permit. No permit issued under this subchapter is valid for more than one year, but the department may renew a permit on a showing that renewal is necessary. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.107. **Reports Required**

The holder of a permit under this subchapter shall file with the department within 30 days following the end of each calendar quarter a report showing:

- (1) the name and address of the permit holder;
- (2) the number and a description of the predator animals taken under the permit, and the number and description of the predator animals authorized to be taken under the permit;
- (3) a description of the area to which the permit is applicable; and
- (4) any other relevant information the department may require.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.108. **Reports by Department**

The department shall report annually to the Secretary of the Interior of the United States as required by federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.109. **Regulations**

The commission may make regulations governing predator animal control by aircraft under this subchapter. The commission shall give notice and hold hearings on all proposed regulations under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.110. **Permit Fee**

The commission shall set an annual fee for the taking of predator animals by the use of aircraft. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.111. **Penalty**

A person who violates any provision of this subchapter or any person in an aircraft who shoots any animals or birds other than predator animals with a gun, rifle, or any other device capable of injuring or killing a wild animal or bird is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.112 to 43.150 reserved for expansion]

SUBCHAPTER H. PERMITS TO CONTROL PROTECTED SPECIES

§ 43.151. **Damage to Crops or Domestic Animals**

(a) A person whose crops or domestic animals are being damaged or destroyed by a wild bird or animal protected by this code and who desires to kill the protected bird or animal shall give written notice of the facts to the county judge of the county in which the damage occurs.
 (b) The county judge, on receiving the notice, shall immediately cause a substantial copy of the notice to be posted in the county courthouse and shall notify the department of the location of the property where the damage is occurring, the type of crops or animals being damaged, and the name of the applicant. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.152. **Department Inspection**

On receiving notice from a county judge, the department shall inspect the property and determine if damage is occurring as alleged in the notice. If the damage is occurring, the department shall make recommendations to the person as are feasible and appropriate for controlling the damage. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.153. **Application for Permit**

(a) A person whose crops or domestic animals are being damaged may file with the department an application for a permit to kill protected wild birds or animals.
 (b) The application must be in writing and be sworn to by the applicant and must contain:
 (1) a statement of facts relating to the damage; and

(2) an agreement by the applicant to comply with the provisions of this subchapter relating to the disposition of game.

(c) The application must be accompanied by:

- (1) a statement signed by the employee of the department who made the investigation that damage is being done and control measures have been recommended;
- (2) a statement by the applicant that he has taken all measures recommended by the department for the prevention of damage; and
- (3) a certification of the county judge that the application is true.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.154. **Permit**

(a) On receipt of an application, the department may issue a permit for the killing of wild birds and wild animals without regard to the closed season, bag limit, or prohibition against night hunting.

(b) The department shall deliver the permit, if issued, to the county judge that sent the notice of damage. The permit may not be delivered earlier than 24 hours after the notice from the county judge was received by the department.

(c) A permit must specify:

- (1) the period of time during which it is valid;
- (2) the area in which it applies;
- (3) the kind of birds and animals authorized to be killed; and
- (4) the persons permitted to kill the noxious birds or animals.

(d) No permit authorizing the killing of migratory game birds protected by the Federal Migratory Bird Treaty Act may be issued unless the applicant has received a permit from the United States Department of Interior, Fish and Wildlife Service. No permit may be issued for the taking of birds or animals protected under Chapter 68 of this code (Endangered Species).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.155. **Deer**

(a) The holder of a permit issued under this subchapter who kills a deer under the authority of the permit shall give the location of the deer carcass to the game management officer or other department employee assigned to the area covered by the permit.

(b) The officer or other department employee notified shall dispose of the carcass by donating it to a charitable institution or hospital or to needy persons. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.156. Cancellation of Permit

The department may cancel a permit if the holder violates a term or condition of the permit, the holder exceeds the authority granted in the permit, or the permit does not accomplish its intended purposes. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.157. Violations; Penalty

(a) No permittee may fail to notify a game management officer or other department employee of the killing of a deer as required by Section 43.155 of this code.

(b) No permittee may dispose of a deer carcass killed under the permit or allow the deer to be disposed of except as allowed under Section 43.155 of this code.

(c) No permittee may violate a term or condition of the permit.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$500.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER I. ARCHERY STAMPS**§ 43.201. Archery Stamp Required**

(a) No person may hunt wild deer, bear, turkey, or javelina (collared peccary) during an open archery season provided by law or by the proclamations of the commission and during which season only longbows and arrows may be used unless the person has first acquired from the department or from an authorized agent of the department an archery hunting stamp.

(b) The stamp shall be issued in the form prescribed by the department and must be signed on its face by the person using the stamp.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.202. Fee

The fee for an archery hunting stamp is \$3.25, of which 25 cents shall be retained by the agent issuing the stamp as a collection fee, except that employees of the department may not retain the collection fee.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.203. Hunting License Required

The purchase or possession of an archery hunting stamp does not permit a person to hunt wild deer, bear, turkey, or javelina without the license required by Chapter 42 of this code or by any means or methods not allowed by law.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.204. Disposition of Revenue

The net revenue derived from the sale of archery hunting stamps and all revenue derived from penalties assessed for violations of Section 43.201 of this code shall be sent to the department and deposited to the credit of the special game and fish fund.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.205. Penalty

(a) A person who violates Section 43.201 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

(b) A person hunting a species covered by this chapter during an open archery season who fails or refuses on the demand of any game warden or other peace officer to exhibit an archery hunting stamp is presumed to be in violation of Section 43.201 of this code.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER J. FIELD TRIAL LICENSES**§ 43.251. Definitions**

In this subchapter:

(1) "Member field trial" means a trial of retriever dogs held by a club or association that is a member of the American Kennel Club and during which championship points may be awarded.

(2) "Licensed field trial" means a trial of retriever dogs held by a club or association not a member of the American Kennel Club but which trial has been licensed by the American Kennel Club and during which championship points may be awarded.

(3) "Sanctioned field trial" means an informal retriever dog field trial held by any club or association and which trial is sanctioned by the American Kennel Club even though championship points are not awarded.

(4) "Retriever dog training" means any training activity relating to the development of retrieving breeds of dogs under field conditions for hunting purposes or which would qualify retriever breeds of dogs to take part in member, licensed, or sanctioned field trials.

(5) "Captive-reared birds" means pen-raised pheasant, chukar, mallard duck, and feral pigeon only.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.252. Field Trial Licenses Authorized

(a) The department may issue primary field trial area licenses applying to not more than 1,000 contiguous acres of land for each license.

(b) The department may issue to the holder of a primary field trial license not more than six auxiliary field trial licenses applying to not more than 300 contiguous acres for each auxiliary field trial license.

(c) The licenses authorized by this section must be on a form designed and provided by the department.

(d) A license authorized by this section is valid until December 31 of the year for which it is issued. [Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.253. License Fees

(a) The fee for a primary field trial area license is \$25.

(b) The fee for each auxiliary field trial area license is \$5.25.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.254. Who May Receive Licenses

(a) The owner or other person holding a possessory interest in land may apply for and receive a primary field trial area license for the land.

(b) No person may hold more than one primary field trial area license. No person may hold more than six auxiliary field trial area licenses.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.255. Areas to be Marked

(a) Each area covered by a primary field trial area license shall be identified with signs marked as follows: "Retriever dog field trial area licensed by the Parks and Wildlife Department."

(b) Each area covered by an auxiliary field trial area license shall be identified with signs marked as follows: "Retriever dog auxiliary field trial area licensed by the Parks and Wildlife Department."

(c) The signs described in Subsections (a) and (b) of this section shall be placed at each entrance of an area and along the boundaries of the area at intervals not to exceed 1,000 feet in a manner that clearly identifies the boundaries of the area.

(d) The lettering on each sign must be large enough to permit a person with ordinary vision under ordinary conditions to read the sign from 200 feet away.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.256. Taking Captive-Reared Birds Permitted

(a) A person holding a valid Texas hunting license, including a license issued to a nonresident

under Section 43.257 of this code, may hunt and take captive-reared birds on land covered by a primary field trial area license or an auxiliary field trial area license at any time during a member field trial, a licensed field trial, a sanctioned field trial, or during retriever dog training.

(b) Subsection (a) of this section does not apply unless the person is registered as provided in Section 43.258 of this code.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.257. Limited Nonresident Hunting License

(a) A nonresident may apply to the department or its agent for a nonresident field trial area hunting license, that permits the holder to hunt and take captive-reared birds on land covered by a primary field trial area license or an auxiliary field trial area license during a member field trial, a licensed field trial, or a sanctioned field trial only.

(b) The license fee for the nonresident field trial hunting license is \$5.25.

(c) A nonresident field trial hunting license expires on December 31 of the year for which it is issued.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.258. Record Book

The holder of a primary field trial area license or the manager of an area covered by any field trial area license shall keep a suitable record book and shall enter in the book the name and address and hunting license number of each guest participating in a member, licensed, or sanctioned field trial on the primary or an auxiliary area. The license holder or manager shall enter in the book the number and species of captive-reared birds acquired for the area or areas, the date of acquisition of the birds, the name of the seller, the number and species of captive-reared birds taken on the area or areas, and the disposition of all captive-reared birds taken on the area or areas.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.259. Birds to be Banded

(a) No person may release a captive-reared bird on a primary or auxiliary field trial area licensed under this subchapter unless the bird is banded with tag of a type approved by the department and which contains the license number of the area.

(b) No person may remove from a captive-reared bird the tag required by Subsection (a) of this section until the bird is finally processed.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.260. Prohibited Acts

(a) No person may:

(1) fail to mark the entrances and boundaries of a primary or auxiliary field trial area as required by Section 43.255 of this code;

(2) fail to keep a record book as required by Section 43.258 of this code;

(3) violate Section 43.259 of this code; or

(4) represent to others that he is the owner or manager of land covered by a primary or auxiliary field trial area when in fact he is not the owner or manager or when the land is not in fact licensed as permitted by this subchapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.261. Hunting During Season Not Prohibited

This subchapter does not prohibit the hunting of game birds by any lawful method or the operation of field trials during an open season for the taking of game birds as provided by law.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

CHAPTER 44. GAME BREEDER'S LICENSE

Section

- 44.001. Definitions.
- 44.002. License Requirement.
- 44.003. Game Breeder's License.
- 44.004. Reissuance of License.
- 44.005. Serial Number.
- 44.006. License Privileges.
- 44.007. Records.
- 44.008. Enclosure Size.
- 44.009. Inspection.
- 44.010. Shipment of Game Animals.
- 44.011. Purchase and Sale of Live Game Animals.
- 44.012. Sale During Open Season.
- 44.013. Use of Purchased Game Animals.
- 44.014. Application of General Laws.
- 44.015. Right of Department.
- 44.016. Penalties.

§ 44.001. Definitions

In this chapter:

(1) "Game breeder" means a person holding a valid game breeder's license.

(2) "Captivity" means the keeping of game animals in an enclosure suitable for and capable of retaining the animal it is designed to retain at all times under reasonable and ordinary circumstances and to prevent entry by another animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.002. License Requirement

No person may place in captivity or engage in the business of propagating any game animal of this state unless he has obtained a license issued under this chapter from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1209, ch. 456, § 9, eff. Sept. 1, 1975.]

§ 44.003. Game Breeder's License

The department shall issue a game breeder's license on payment of a license fee of \$5. The license is valid for a period of one year following the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1209, ch. 456, § 9, eff. Sept. 1, 1975.]

§ 44.004. Reissuance of License

A game breeder's license may not be issued to a previous licensee unless the licensee has filed with the department a copy of the record required by Section 44.007 of this code with an affidavit made before an officer qualified to administer oaths that the copy is true and correct.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.005. Serial Number

(a) The department shall issue a serial number to the applicant at the time of the first issuance of a game breeder's license to the applicant. The same serial number shall be assigned to the licensee whenever he holds a game breeder's license.

(b) The game breeder shall place a suitable permanent metal tag bearing his serial number on the ear of each deer or antelope held in captivity or sold by the game breeder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.006. License Privileges

The holder of a valid game breeder's license may:

(1) engage in the business of game breeding in the immediate locality for which the license was issued; and

(2) sell or hold in captivity for the purpose of propagation or sale wild deer, wild antelope, elk, black bear, collared peccary, and wild squirrels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.007. Records

Each game breeder shall keep a written record in a suitably bound book for the period from the date

of license issuance until the following September 1 containing:

(1) the number and source of each kind of game animal on hand at the time the license is issued;

(2) the number, source, and date of receipt of each kind of game animal on hand at any time after the license is obtained; and

(3) the number of each kind of game animal shipped or delivered, the date of shipment or delivery, and the name and address of persons to whom the shipment or delivery is made.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.008. Enclosure Size

A single enclosure for any game animal may not contain more than 320 acres.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.009. Inspection

An authorized employee of the department may inspect at any time and without warrant any pen, coop, or enclosure holding a game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.010. Shipment of Game Animals

(a) A common carrier may not accept a live game animal unless the game animal is one listed in Section 44.006(2) of this code and the shipment is made by a game breeder.

(b) No person, except a game breeder or his authorized agent, may transport or ship a live game animal unless he obtains a permit for shipment or transportation from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.011. Purchase and Sale of Live Game Animals

(a) Only game animals that are in a healthy condition may be sold, bartered, or exchanged, or offered for sale, barter, or exchange by a game breeder.

(b) No person may purchase or accept in this state a live game animal unless:

(1) the game animal bears a tag required by Section 44.005 of this code and is delivered or sold by a game breeder; or

(2) the game animal is delivered by a common carrier from outside this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.012. Sale During Open Season

No game breeder may sell or ship to another person in this state a wild deer, wild antelope, or

collared peccary, and no person in this state may purchase from a game breeder in this state a wild deer, wild antelope, or collared peccary during an open season for taking the game animal or during a period of 10 days before and after an open season. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.013. Use of Purchased Game Animals

(a) Except as provided in Subsection (b) of this section, game animals may be purchased or received in this state only for the purpose of liberation for stocking purposes or holding for propagation purposes. All game animals and increase from the game animals are under the full force of the laws of this state pertaining to wild game and the game animals may be held in captivity for propagation in this state only after a license is issued by the department under this chapter.

(b) Game animals may be held, taken, or received for scientific and zoological purposes under a permit issued by the department pursuant to Section 43.022 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.014. Application of General Laws

In order that native game species may be preserved, game animals held under a game breeder's license are subject to all laws and regulations of this state pertaining to wild game animals except as specifically provided in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.015. Right of Department

The department or an authorized employee of the department may take, possess, hold, transport, or propagate any game animal of this state for public purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.016. Penalties

(a) A person who violates a provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

(b) Each animal sold, purchased, or held in violation of this chapter constitutes a separate offense.

(c) The license of a game breeder convicted of a violation of this chapter is subject to forfeiture. If the license of a game breeder is forfeited, he is not entitled to reissuance of the license for a period of one year following the date of conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 45. GAME BIRD BREEDER'S LICENSE

Section	
45.001.	License Required.
45.002.	Form of License; Period of Validity.
45.003.	Types of Licenses; Fees.
45.004.	Size of Enclosures.
45.005.	Live Birds to be Banded.
45.006.	Bird Carcasses to be Stamped; Purchase Without Stamp Prohibited.
45.0061.	Source of Game Birds.
45.007.	Prohibited Acts.
45.008.	Records; Reports.
45.009.	Exceptions.
45.010.	Inspections.
45.011.	Permits Required by the United States.
45.012.	Penalty.

§ 45.001. License Required

(a) Except as provided in Subsection (b) of this section, no person may engage in the business of propagating game birds without first acquiring the proper license authorized to be issued under this chapter.

(b) A person is not required to have a license issued under this chapter if he possesses not more than 12 game birds for personal use only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1208, ch. 456, § 8(a), eff. Sept. 1, 1975.]

§ 45.002. Form of License; Period of Validity

(a) The department shall issue the licenses authorized by this chapter on a form provided by the department and may designate agents for their issuance.

(b) Each license shall be numbered.

(c) A license is valid for one year from the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.003. Types of Licenses; Fees

(a) A class 1 commercial game bird breeder's license entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity. The fee for a class 1 commercial game bird breeder's license is \$50.

(b) A class 2 commercial game bird breeder's license entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity, except that the holder of a class 2 license may not possess more than 1,000 game birds during any calendar year. The fee for a class 2 commercial game bird breeder's license is \$5.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1208, ch. 456, § 8(b), eff. Sept. 1, 1975.]

§ 45.004. Size of Enclosures

(a) No holder of a license under this chapter may retain game birds, other than a migratory bird or waterfowl, in an enclosure larger than 40 acres.

(b) No holder of a license under this chapter may retain a migratory bird or waterfowl in an enclosure larger than 320 acres.

(c) "Captivity" means the keeping of game birds in an enclosure or pen.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.005. Live Birds to be Banded

(a) No holder of a commercial game bird breeder's license may fail to band all live game birds in his possession before selling the birds as required by this section.

(b) The department shall issue to each holder of a commercial game bird breeder's license a serial number which shall remain the number of the person holding the license as long as he continues to hold a license.

(c) The bands required in this section shall be of metal and shall bear the serial number of the holder of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1209, ch. 456, § 8(c), eff. Sept. 1, 1975.]

§ 45.006. Bird Carcasses to be Stamped; Purchase Without Stamp Prohibited

(a) No holder of a license required by this chapter may sell or offer for sale the carcass of a dead pen-raised game bird unless the carcass is clearly stamped and marked by the stamp required by Subsection (b) of this section.

(b) Each holder of a license required by this chapter who offers for sale the carcass of a pen-raised game bird shall acquire and maintain a rubber stamp which, when used, shows the serial number of the holder of the license.

(c) No person may knowingly purchase the carcass of a game bird in this state unless the bird is stamped as required by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.0061. Source of Game Birds

A person who is not required to possess a commercial game bird breeder's license under Subsection (b) of Section 45.001 shall, on the request of a game warden commissioned by the department, furnish to the warden information as to the source from which game birds in the possession of the person were derived. The failure or refusal to comply with this section is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 8(d), eff. Sept. 1, 1975.]

§ 45.007. Prohibited Acts

(a) No holder of a game bird breeder's license may sell a live game bird unless it is in a healthy condition.

(b) No person may purchase a live game bird except from a holder of a game bird breeder's license; however, this subsection does not prohibit the purchase of live game birds delivered by a common carrier from outside the state.

(c) The carcass of a pen-raised game bird offered for sale must be killed other than by shooting. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.008. Records; Reports

(a) Each commercial game bird breeder shall maintain records showing the numbers of game birds acquired, propagated, sold, and disposed of in any other manner. The records shall be on forms provided by the department and shall contain any other information required by the department.

(b) During August of each year, but before August 31, a commercial game bird breeder shall send to the department a report showing the total number of game birds in the possession of the breeder during the previous year and accounting for the acquisition and disposition of each game bird.

(c) The failure to keep the records required by Subsection (a) of this section or to make the report as required by Subsection (b) of this section is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.009. Exceptions

(a) A person may purchase live pheasant from a commercial game bird breeder for any purpose.

(b) A commercial game bird breeder may slaughter game birds for his personal consumption at any time.

(c) This chapter does not apply to a person holding a permit under Section 43.022 of this code.

(d) Any person owning or operating a restaurant, hotel, boarding house, club, or other business where food is sold for consumption may sell game birds for consumption on the premises of the business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.010. Inspections

An authorized employee of the department may inspect the facilities and enclosures of a person licensed under this chapter at any time during normal business hours without a warrant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.011. Permits Required by the United States

This chapter does not authorize any act prohibited by federal law without a permit issued by the United States, nor does the possession of a permit issued by the United States authorize any act prohibited by this chapter unless expressly provided by federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.012. Penalty

A person who violates this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 46. FISHING LICENSES

SUBCHAPTER A. GENERAL FISHING LICENSE

- Section
- 46.001. Prohibited Acts.
- 46.002. Exemptions.
- 46.003. Exception for Blind.
- 46.004. License Fee.
- 46.005. Temporary Saltwater Sportfishing License.
- 46.006. Duplicate License.
- 46.007. Expiration of Licenses.
- 46.008. License Form.
- 46.009. License Deputies.
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- 46.011. Monthly Report.
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- 46.111. Effective Date of Subchapter.

SUBCHAPTER A. GENERAL FISHING LICENSE

§ 46.001. Prohibited Acts

Except as provided in this chapter, no person may fish in the water of this state unless he has obtained a fishing license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.002. Exemptions

(a) A license issued under this chapter is not required of a person:

(1) under 17 years old or 65 years old or older;
 (2) fishing on property that he owns or on which he resides;

(3) fishing on property that a member of his immediate family owns or on which the family resides;

(4) fishing in the county of his residence with a trotline, throw line, or ordinary pole and line without a reel or other winding device;

(5) having a commercial fishing license of this state;

(6) who is a resident of the Republic of Mexico, who is traveling in this country on a visa granted by the United States, and who is fishing in coastal water; or

(7) who is a member of a group of 25 or more persons who are visiting as tourists and do their fishing as a group.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.003. Exception for Blind

(a) A blind person, as defined by Section 1, Chapter 227, Acts of the 59th Legislature, Regular Session, 1965, is entitled to receive a special fishing license on proof of eligibility and on the payment of a fee of 25 cents, 15 cents of which may be retained as a collection fee.

(b) The department may make regulations concerning proof of eligibility under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.004. License fee

The fishing license fee is \$4.25. The license deputy issuing the license may retain 25 cents as a fee for collecting the license fee and issuing the license.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.005. Temporary Saltwater Sportfishing License

(a) Any person is entitled to receive from the department a license allowing fishing for sporting purposes in salt water for a period of three days.

(b) The fee for the temporary saltwater sportfishing license is \$1.25 of which fee 25 cents may be retained as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.006. Duplicate License

(a) If a license issued under this subchapter is lost or destroyed, a license deputy may issue a duplicate license on application of the license holder and receipt of a 50-cent duplicate license fee.

(b) The application for a duplicate license must be an affidavit containing:

(1) the facts concerning the loss or destruction of the license; and

(2) the serial number of the lost or destroyed license.

(c) The license deputy issuing the license may retain 25 cents as a fee for issuing the duplicate license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.007. Expiration of Licenses

(a) The licenses required by Section 46.001 of this code and authorized by Section 46.003 of this code are valid for a period of one year beginning on the date of issuance.

(b) A duplicate license is valid for the period of validity of the original license only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.008. License Form

A license issued under this subchapter must contain:

(1) the year for which the license is issued (printed across the face of the license);

(2) the name, address, and residence of the licensee;

(3) an approximate weight, height, age, and color of hair and eyes of the licensee for identification in the field; and

(4) the statement: "This license does not entitle the holder to fish on the enclosed and posted lands of another without the consent of the owner or his agent."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.009. License Deputies

Employees of the department, county clerks, and any person designated by the department to issue licenses are license deputies and may issue licenses under this subchapter. An employee of the department may not retain a collection or issuance fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.010. Duties of License Deputies

The license deputy shall:

(1) fill out correctly and preserve for the use of the department the stubs attached to the license; and

(2) keep a complete and correct record of all licenses issued, showing the name and residence

of each licensee, the serial number of the license, and the date of issuance of the license. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.011. **Monthly Report**

(a) Within 10 days after the end of each calendar month, license deputies shall send to the department the fees due the state and a report containing:

(1) the serial number and date of issuance of each license issued during the preceding month; and

(2) the names and addresses of the persons to whom licenses were issued during the preceding month.

(b) The department shall credit the license deputy with the amount remitted.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.012. **License Books**

(a) When all licenses in a license book are issued, the license deputy shall return the license book to the department by the 10th day of the month following the month in which last license in the book is issued.

(b) Unissued licenses shall be returned on the request of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.013. **Issuance or Acceptance of License**

No person may issue or accept a license required by this subchapter except on a form provided by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.014. **Fishing Under the License of Another**

No person may fish under a license issued to another or allow another person to fish under a license issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.015. **Penalty**

A person who violates a provision of this subchapter or who fails or refuses to show an officer his license on the request of the officer is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 46.016-46.100 reserved for expansion]

SUBCHAPTER B. LAKE TEXOMA
FISHING LICENSE

§ 46.101. **Lake Texoma**

This subchapter applies only to Lake Texoma, which is the portion of this state inundated by the water impounded by a dam across the channel of the Red River, known as Denison Dam, and any other portion of that area of land acquired by the United States for the operation of the reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.102. **Fishing License Required**

Except as provided in this subchapter, no person may catch fish in Lake Texoma unless he has acquired and possesses on his person a valid license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.103. **Exemptions**

Residents of this state engaged in fishing within the territorial boundaries of this state are not required to obtain a license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.104. **License: Period of Validity and Fee**

(a) A Lake Texoma fishing license is valid until December 31 following its date of issuance.

(b) The fee for the license is \$2.50. Fifteen cents of the fee may be retained by the issuing officer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.105. **Lake Texoma 10-Day Fishing License**

(a) A Lake Texoma 10-day fishing license is valid for 10 consecutive days including the date of issuance.

(b) The fee for the license is \$1.25. Fifteen cents of the fee may be retained by the officer issuing the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.106. **Form of License**

Licenses issued under this subchapter shall be on the form prescribed by the department and must contain:

- (1) the name and address of the licensee;
- (2) a personal description of the licensee;
- (3) date of issuance of the license; and
- (4) other information necessary for enforcement of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.107. Disposition of Fees

The issuing officer shall send license fees less allowable deductions collected under this subchapter to the department by the 10th day of the month following the date of receipt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.108. Division of Fees

The department shall keep separate and strict account of the revenue received from licenses issued under this subchapter for annual division between this state and the State of Oklahoma. The division shall be on a basis of the proportionate area of Lake Texoma lying within the territorial jurisdiction of the respective states.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.109. Payment by Comptroller

On February 1 of each year the comptroller shall pay to the state of Oklahoma 70 percent of the revenue collected from licenses issued under this subchapter during the previous calendar year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.110. Penalty

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.111. Effective Date of Subchapter

This subchapter does not become effective until:

(1) the State of Oklahoma makes provision for the sale of licenses in Oklahoma that are parallel to the licenses authorized by this subchapter;

(2) the State of Oklahoma provides for payment to this state of not less than 30 percent of all revenue collected by Oklahoma for the licenses; and

(3) the department is satisfied that this subchapter and the provisions of Oklahoma law are not in conflict and directs that this subchapter is effective.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 47. COMMERCIAL FISHING LICENSES

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- 47.003. Tidal Water Commercial Fisherman's License.
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47.005. Fish Boat License.
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47.010. Wholesale Truck Dealer's Fish License.
47.011. Retail Fish Dealer's License.
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47.053. Penalty.
47.054. Refusal to Show License.
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SUBCHAPTER A. LICENSES

§ 47.001. Definitions

In this chapter:

(1) "Commercial fisherman" means a person who catches fish, oysters, or other edible aquatic products from the nontidal water of this state for pay or for the purpose of sale, barter, or exchange.

(2) "Tidal water commercial fisherman" means a person who catches fish, oysters, shrimp, menhaden, or other edible aquatic products from tidal water of this state for pay or for the purpose of sale, barter, or exchange.

(3) "Wholesale fish dealer" means a person engaged in the business of buying for the purpose of selling, canning; preserving, processing, or handling for shipments or sale fish, oysters, shrimp, or other commercial edible aquatic products to retail fish dealers, hotels, restaurants, cafes, or consumers.

(4) "Retail fish dealer" means a person engaged in the business of buying for the purpose of sale to a consumer fresh or frozen edible aquatic products.

(5) "Bait dealer" means a person engaged in the business of selling minnows, fish, shrimp, or other aquatic products for fish bait.

(6) "Fish guide" means a person who operates a boat for compensation to accompany or to transport a person engaged in fishing in the water of this state.

(7) "Tidal water" means all the salt water of this state, including that portion of the state's territorial water in the Gulf of Mexico within three marine leagues from shore.

(8) "Nontidal water" means all the water of this state excluding tidal water.

(9) "Place of business" means the place where orders for aquatic products are received or where aquatic products are sold, including a vehicle if aquatic products are sold from the vehicle, but does not include a public cold-storage vault, temporary receiving station, or vehicle from which no orders are taken or no shipments or deliveries are made other than to the place of business of a licensee in this state.

(10) "Menhaden fish plant" means a fixed installation on land designed, equipped, and used to process fish and the by-products of fish by the application of pressure, heat, or chemicals or a combination of pressure, heat, and chemicals to raw fish to convert the raw fish into fish oil, fish solubles, fish scraps, or other products.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.002. General Commercial Fisherman's License

(a) No person may engage in business as a commercial fisherman unless he has obtained a general commercial fisherman's license.

(b) The license fee for a general commercial fisherman's license is \$10. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.003. Tidal Water Commercial Fisherman's License

(a) No person may engage in business as a tidal water commercial fisherman unless he has obtained a tidal water commercial fisherman's license.

(b) No person may catch or assist in catching menhaden in tidal water unless he has obtained a tidal water commercial fisherman's license.

(c) The license fee for the tidal water commercial fisherman's license is \$5. Fifteen cents of the fee may be retained by the issuing agent, except an employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.004. Fish Guide License

(a) No person may engage in business as a fish guide unless he has obtained a fish guide license.

(b) The license fee for a fish guide license is \$25. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.005. Fish Boat License

(a) A boat equipped with a motor of any kind or sails may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a fish boat license.

(b) The license fee for a fish boat license is \$3. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.006. Skiff License

(a) A boat propelled by oars or poles may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a skiff license and has firmly attached the skiff license to the boat.

(b) The license fee for a skiff license is \$1. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.007. Commercial Fishing Boat License

(a) No person may use a boat required to be numbered or registered under the laws of this state or the United States for the purpose of catching or assisting in catching fish, oysters, or any other edible aquatic life, except shrimp and menhaden, from tidal water for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a commercial fishing boat license.

(b) The license fee for a commercial fishing boat license is \$6. Twenty-five cents of the fee may be retained by the issuing officer, except an employee of the department.

(c) A licensee under this section whose boat is destroyed, lost, or put to another use is not required to obtain another license if another boat is used to replace the previous one.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.008. Menhaden Boat License

(a) A boat may not be used for the purpose of catching menhaden in tidal water unless the owner of the boat has acquired a menhaden boat license.

(b) The license fee for each boat is \$200 a year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.009. Wholesale Fish Dealer's License

(a) No person may engage in business as a wholesale fish dealer unless he has obtained a wholesale fish dealer's license.

(b) The license fee for a wholesale fish dealer's license is \$250 for each place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.010. Wholesale Truck Dealer's Fish License

The license fee for a wholesale truck dealer's fish license is \$125 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.011. Retail Fish Dealer's License

(a) No person may engage in business as a retail fish dealer unless he has obtained a retail fish dealer's license.

(b) The license fee for a retail fish dealer's license is:

(1) \$6 for each place of business in a city or town of less than 7,500 population according to the last preceding federal census;

(2) \$15 for each place of business in a city or town of not less than 7,500 nor more than 40,000 population according to the last preceding federal census; and

(3) \$20 for each place of business in a city or town of more than 40,000 population according to the last preceding federal census.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.012. Retail Oyster Dealer's License

(a) A retail fish dealer may engage in the business of buying only fresh or frozen oysters for the purpose of sale to the consumer if he obtains a retail oyster dealer's license.

(b) The license fee for a retail oyster dealer's license is \$5 for each place of business in a city or town of more than 7,500 population according to the last preceding federal census.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.013. Retail Dealer's Truck License

(a) A person may engage in the business of selling edible aquatic products from a motor vehicle to consumers only if he obtains a retail dealer's truck license.

(b) The license fee for a retail dealer's truck license is \$25 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.014. Bait Dealer's License

(a) No person may engage in business as a bait dealer unless he has obtained a bait dealer's license.

(b) The license fee for a bait dealer's license is \$10 for each place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.015. Seine or Net License

(a) No person may use a seine or net for the purpose of catching edible aquatic life in the water of this state for pay or sale unless he has acquired a seine or net license.

(b) The license fee for a seine or net is \$1 for each 100 feet or fraction of 100 feet of the length of the seine or net.

(c) The seine or net license shall be metal and must be firmly attached to each 100 feet or fraction of 100 feet of the length of the seine or net.

(d) A seine or net license may not be issued for any seine or net that is longer than 1,800 feet or whose meshes are less than one and one-half inches from knot to knot.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.016. Menhaden Fish Plant License

(a) No person may operate a menhaden fish plant unless he has obtained a menhaden fish plant license.

(b) Applications for a menhaden fish plant license must be submitted on forms prescribed by the department and accompanied by a \$50 filing fee and a certified copy of an order of the commissioners court of the county in which the plant will be located containing:

(1) a description of the plant and its location; and

(2) approval of the court for the construction and operation of the plant.

(c) Decisions of the commissioners court in approving or disapproving the construction of a plant are final and may not be reviewed or appealed.

(d) A menhaden fish plant license shall be issued after a hearing and a finding by the department that the construction and operation of the plant is in the public interest. Regardless of the decision of the department, the \$50 filing fee is not refundable.

(e) Notice of the hearing must be given at least 20 days prior to the date set for the hearing to the county judge of the county in which the plant is to be constructed and to all known interested parties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.017. **Renewal of Fish Plant License**

The department shall renew a menhaden fish plant license on the application of the licensee and on the payment of a \$50 renewal fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.018. **Interstate Transportation**

No person may bring into this state aquatic products for the purpose of offering them for sale unless he has obtained a license issued under this subchapter. Aquatic products caught in another state may not be sold under a general commercial fisherman's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 47.019 to 47.030 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO COMMERCIAL FISHING LICENSES

§ 47.031. **Expiration of Licenses**

(a) Except as provided in Subsections (b) and (c) of this section, all licenses issued under this chapter expire August 31 following the date of issuance.

(b) A menhaden boat license expires one year from the date of issuance.

(c) A menhaden fish plant license expires one year from the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.032. **Refusal of License**

(a) Except as provided in Subsection (b) of this section, no person owing the state any amount for a license or fee under a final judgment of a court may receive a license under this chapter until the indebtedness is satisfied by payment to the department.

(b) Subsection (a) of this section does not apply to applicants for a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, or menhaden fish plant license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.033. **Display of License**

All licenses, except a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, and menhaden fish plant license, must be publicly displayed at all times in the place of business of the licensee. Licenses required for vehicles transporting aquatic products for sale must be displayed in the vehicle.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.034. **Fish Size**

(a) No person engaged in business as a commercial fisherman or wholesale or retail fish dealer may possess in his place of business or on a boat or vehicle for the purpose of sale those species of fish of greater or lesser length than set out in Subsection (c) of this section.

(b) No person may buy, sell, or offer for sale those species of fish of greater or lesser length than set out in Subsection (c) of this section.

(c) The maximum and minimum length of fish are as follows:

Fish	Maximum Length	Minimum Length
Redfish or channel bass	35 inches	14 inches
Flounder and speckled sea trout	None	12 inches
Sheephead and pompano	None	9 inches
Mackerel	None	14 inches
Gaff-topsail	None	11 inches

(d) This section does not prohibit the processing and selling of lawful fish by cutting, filleting, wrapping, freezing, or otherwise preparing the fish for market.

(e) The possession of saltwater species of fish of greater or lesser length than set out in Subsection (c) of this section on board a licensed commercial shrimp boat engaged in the taking of shrimp or returning to port after taking shrimp is not a violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(1), eff. Sept. 1, 1975.]

§ 47.035. **Prima Facie Evidence**

Proof of possession of any undersized or oversized fish in the place of business of any wholesale or retail fish dealer or on board any boat engaged in commercial fishing or in any commercial vehicle is prima facie evidence of possession for the purpose of sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.036. **Venue**

Venue for a suit for possession of undersized or oversized fish is in the county where the illegal fish are found in possession, where the illegal fish are sold or offered for sale, or from which the illegal fish are shipped.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.037. **Inspection**

No person may refuse to allow an employee of the department to inspect aquatic products handled by or in the possession of any commercial fisherman,

wholesale fish dealer, or retail fish dealer at any time or in any place.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.038. Seines or Nets for Menhaden

(a) Nets or purse seines used for catching menhaden may not be:

(1) less than one and one-half inch stretched mesh, excluding the bag;

(2) used in any bay, river, pass, or tributary, nor within one mile of any barrier, jetty, island, or pass, nor within one-half mile offshore in the Gulf of Mexico; or

(3) used for the purpose of taking edible aquatic products for the purpose of barter, sale, or exchange.

(b) No person lawfully catching menhaden in the tidal water of this state may sell, barter, or exchange any edible aquatic products caught in a menhaden seine or net. Possession of edible aquatic fish in excess of five percent by volume of menhaden fish in possession is a prima facie violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 47.039 to 47.050 reserved for expansion]

SUBCHAPTER C. PENALTIES, DISPLAY OF LICENSE, AND TRANSFER OF FUNDS

§ 47.051. Penalty

A person who violates a provision of Section 47.002, 47.004 through 47.006, 47.009 through 47.015, 47.017, 47.032 through 47.034, or 47.037, of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 and is subject to the forfeiture, for one year from the date of the conviction, of a license held under the authority of the listed sections.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.052. Penalty

(a) A person who fails to comply with or who violates a provision of Section 47.003(a) or 47.007 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000, by confinement in jail for not less than one month nor more than one year, or by both.

(b) The department may seize boats, nets, seines, trawls, or other tackle in the possession of a person violating the sections listed in Subsection (a) of this section and hold them until after the trial of the person.

(c) Violations of the above sections may also be enjoined by the attorney general by suit filed in a district court in Travis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.053. Penalty

(a) A person who violates a provision of Section 47.003(b), 47.008, 47.016, or 47.038, of this code is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$20 nor more than \$100. On second conviction, the violator is punishable by a fine of not less than \$50 nor more than \$500.

(b) A licensee under any of the above sections who violates any of the above sections is also subject to suspension of his license for not less than 7 days nor more than 30 days at the discretion of the department on first conviction for a violation. On second conviction, the licensee is subject to revocation of his license for six months after the date of conviction. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.054. Refusal to Show License

A person catching fish for the purpose of market or sale who refuses to show his license to an authorized employee of the department upon request is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$25. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.055. Disposition of Funds

Money received for licenses issued under this chapter or fines paid for violations of this chapter, less allowable deductions, shall be sent to the department by the 10th day of the month following receipt. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 48. FISH FARMER'S LICENSE

Section	
48.001.	Definitions.
48.002.	Fish Farmer's License Required.
48.003.	Fish Farm Vehicle License Required.
48.004.	Bill of Lading Required for Certain Vehicles.
48.005.	License Fees.
48.006.	Form and Duration of License.
48.007.	Additional Fish Farmer's Licenses.
48.008.	Records.
48.009.	Harvesting and Sale of Fish.
48.010.	Sales of Bass and Crappie Limited.
48.011.	Federal Grants.
48.012.	Penalties.
48.013.	Fish Farms Protected.

§ 48.001. Definitions

In this chapter:

(1) "Fish farmer" means any person engaged in the business of producing, propagating, transporting, possessing, and selling fish raised in a private pond, but does not include a person engaged in the business of producing, propagating, transporting, possessing, and selling fish propagated for bait purposes.

(2) "Private pond" means a pond, reservoir, vat, or other structure capable of holding fish in confinement wholly within or on the enclosed land of an owner or lessor.

(3) "Owner" means a fish farmer licensed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.002. Fish Farmer's License Required

No person may be a fish farmer without first having acquired from the department a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.003. Fish Farm Vehicle License Required

(a) Except as provided by Subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.004. Bill of Lading Required for Certain Vehicles

A vehicle, from which no fish sales are made, transporting fish from a fish farm shall carry a bill of lading that shows the number and species of fish carried, the name of the owner and the location and license number of the fish farm from which the fish were transported, and the destination of the cargo.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.005. License Fees

The department shall issue a fish farmer's license or a fish farm vehicle license on the payment of \$5 for each license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.006. Form and Duration of License

(a) A fish farmer's license and a fish farm vehicle license must be on a numbered form provided by the department.

(b) A license is valid from September 1 or the date of issue, whichever is later, through the following August 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.007. Additional Fish Farmer's Licenses

A fish farmer holding a fish farmer's license may acquire additional licenses for display in or on additional premises or vehicles on payment to the department of \$1 for each additional license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.008. Records

The holder of a fish farmer's license shall maintain a record of the sales and shipments of fish. The record is open for inspection by designated employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.009. Harvesting and Sale of Fish

Fish of any size from a fish farm may be harvested and sold at any time and in any county.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.010. Sales of Bass and Crappie Limited

(a) Except as provided in Subsection (b) of this section, no person may sell bass or crappie from a fish farm for consumption or for resale.

(b) Bass and crappie may be sold for resale to a licensed fish farmer only, and to any person for stocking purposes.

(c) Other kinds of fish from a fish farm may be sold for any purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.011. Federal Grants

Federal grants for research and development of commercial fisheries may be used for individual fishery projects with the approval of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.012. Penalties

Any person who violates any provision of this chapter for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.013. Fish Farms Protected

(a) No person, other than the owner or operator of a fish farm or a person with the owner's or operator's consent, may fish on or take fish from a fish farm.

(b) Except as provided in Subsection (c) of this section, a person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) A person who violates this section by taking fish of a value of more than \$200 is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not more than 10 years. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 49. FALCONRY PERMIT

Section

49.001.	Definitions.
49.002.	Prohibited Acts.
49.003.	Beginner's Falconer's Permit.
49.004.	General Falconer's Permit.
49.005.	Raptor Limit.
49.006.	Renewal.
49.007.	Renewal Fees.
49.008.	Nonresident Falconer's Permit.
49.009.	Reciprocity.
49.010.	Hunting.
49.011.	Sale of Raptors.
49.012.	Property of State.
49.013.	Transportation of Raptors.
49.014.	Powers of Department.
49.015.	Rare or Endangered Species.
49.016.	Advisory Board.
49.017.	Penalties.

§ 49.001. Definitions

In this chapter:

(1) "Nonresident" means an individual, other than an alien, who has not been a resident of this state for more than six months immediately before applying for a falconry permit.

(2) "Alien" means an individual who is not a citizen of the United States and who has not declared his intention to become a citizen.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.002. Prohibited Acts

(a) Except as provided in Subsection (b) of this section, no person may take, capture, or possess, or attempt to take or capture, any native raptors unless he has obtained a permit issued under this chapter.

(b) A person may collect and hold protected species of wildlife for scientific, zoological, and propagation purposes if he holds a permit issued by the department for that purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.003. Beginner's Falconer's Permit

The department may issue a beginner's falconer's permit to any person who:

(1) is at least 17 years of age;

(2) submits an application on forms prescribed by the department; and

(3) submits a \$25 original permit fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.004. General Falconer's Permit

The department may issue a general falconer's permit to any person who:

(1) is at least 20 years of age;

(2) has at least three years of hunting experience with raptors;

(3) submits an application on forms prescribed by the department; and

(4) submits a \$35 original permit fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.005. Raptor Limit

(a) The holder of a beginner's falconer's permit may possess only one raptor specimen.

(b) The holder of a general falconer's permit may take or possess not more than three native raptors.

(c) The department shall designate species of raptor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.006. Renewal

(a) The beginner's falconer's permit and general falconer's permit expire August 31 following the date of issuance.

(b) Applications for renewal must be accompanied by the renewal fee and a report prescribed by the department accounting for all activities during the license year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.007. Renewal Fees

The renewal fee for the beginner's falconer's permit and the general falconer's permit is \$5.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.008. Nonresident Falconer's Permit

(a) A nonresident falconer's permit may be issued by the department to a nonresident or alien entitled to a nonresident hunting license.

(b) An applicant for a nonresident falconer's permit must submit an application on forms prescribed by the department and a \$5 permit fee.

(c) The permit is valid for five consecutive days.

(d) The holder of this permit may hunt with the aid of a validly held raptor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.009. Reciprocity

A person holding raptors under a valid license issued by another state and establishing permanent residence in this state must apply to the department within 10 days for a falconer's permit from this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.010. Hunting

The holder of a valid permit issued under this chapter and a valid hunting license may hunt native species of wild birds, wild animals, and migratory game birds during the open season and may hunt unprotected species of wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.011. Sale of Raptors

No person may buy, sell, barter, or exchange, or offer to buy, sell, barter, or exchange, a raptor in this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.012. Property of State

All raptors captured, taken, or held in this state remain the property of the people of the state except as provided in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.013. Transportation of Raptors

The department may issue a special permit to transport raptors out of the state on application of a permittee holding raptors who is permanently leaving the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.014. Powers of Department

The department may:

(1) prescribe reasonable rules and regulations for taking and possessing raptors, time and area from which raptors may be taken, and species that may be taken;

(2) provide standards for possessing and housing raptors held under a permit;

(3) prescribe annual reporting requirements and procedures; and

(4) prescribe eligibility requirements for any falconry permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.015. Rare or Endangered Species

The department shall insure that the taking and possessing for falconry purposes of raptors classified as rare or endangered by the United States Bureau of Sports, Fisheries, and Wildlife is restricted to competent and experienced individuals and to numbers consistent with good management practices and the current population status of the individual species or subspecies involved.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.016. Advisory Board

(a) The department shall establish an advisory board consisting of three mature and experienced falconers.

(b) Members of the advisory board shall be selected by the department from nominees submitted by the Texas Hawking Association, the North American Falconers Association, or any unaffiliated resident falconers.

(c) The advisory board shall advise the department on the development and implementation of the rules and regulations issued under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.017. Penalties

A person who violates a provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 for each violation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 50. COMBINATION HUNTING AND FISHING LICENSE

Section	
50.001.	Combination License Authorized.
50.002.	License Fee.
50.003.	Other Licenses Not Required.
50.004.	Form; Duplicate License.
50.005.	Holder Shall Comply With Other Law.

§ 50.001. Combination License Authorized

The department may issue to residents of this state a combination hunting and fishing license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.002. License Fee

The fee for the combination license is \$8.75. Authorized agents of the department, other than employees of the department, may retain 25 cents of the fee as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.003. Other Licenses Not Required

A resident who has acquired a combination hunting and fishing license is not required to obtain the hunting license required by Chapter 42 of this code or the fishing license required by Chapter 46 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.004. Form; Duplicate License

(a) The department shall prescribe the form of the license and shall attach to it deer tags as provided in Chapter 42 of this code.

(b) Duplicate licenses may be issued for the same fee and in the same manner as hunting licenses under Chapter 42 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.005. Holder Shall Comply With Other Law

A holder of a combination hunting and fishing license shall comply with and is subject to the penalties in Chapters 42 and 46 of this code, unless those requirements or penalties conflict with this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 51. SHELLFISH CULTURE LICENSE

Section

- 51.001. Definitions.
- 51.002. License Required.
- 51.003. License for Each Premises.
- 51.004. Issuance of License; Period of Validity.
- 51.005. License Fee.
- 51.006. Shipments of Shellfish.
- 51.007. Records.
- 51.008. Harvest and Sale of Shellfish.
- 51.009. Exotic Shellfish Permit Required.
- 51.010. Permits for Taking Brood Stock.
- 51.011. Penalty.

§ 51.001. Definitions

In this chapter:

(1) "Shellfish culture" means the business of producing, propagating, transporting, selling, or possessing for sale shellfish raised in private ponds or reservoirs in this state.

(2) "Shellfish" means aquatic species of crustaceans and mollusks, including oysters, clams,

shrimp, prawns, crabs, and crayfish of all varieties.

(3) "Private pond" means a pond, reservoir, vat, or other structure capable of holding shellfish in confinement wholly within or on privately owned enclosed land.

(4) "Exotic shellfish" means shellfish imported alive into this state for shellfish culture purposes, but does not include shellfish taken from the high seas adjacent to the Texas coast.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.002. License Required

No person may engage in shellfish culture in this state unless he has first acquired a shellfish culture license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.003. License for Each Premises

A separate license is required for each tract of land on which a private pond is used for shellfish culture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.004. Issuance of License; Period of Validity

(a) The department shall issue the shellfish culture license, and each license shall be numbered on a form provided by the department.

(b) A license is valid during the license year for which it is issued. The license year begins September 1 and extends through August 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.005. License Fee

The fee for a shellfish culture license is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.006. Shipments of Shellfish

Vehicles transporting shellfish to or from a licensed facility shall carry a bill of lading showing:

(1) the name, location, and license number of the shellfish culturist;

(2) the quantity and species of shellfish; and

(3) the source and destination of the shellfish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.007. Records

(a) The holder of a shellfish culture license shall make and keep records showing purchases, sales, and shipments of shellfish.

(b) The records are open to inspection by authorized employees of the department.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.008. Harvest and Sale of Shellfish

(a) Shellfish produced by a shellfish culturist may be harvested by any means and may be of any size.

(b) Subject to health regulations, shellfish produced by a shellfish culturist may be sold any time and in any county to any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.009. Exotic Shellfish Permit Required

(a) No person may import, possess, propagate, or transport exotic shellfish unless he has acquired a permit from the department.

(b) The department may not issue a permit to any shellfish culturist for exotic shellfish unless the applicant furnishes sufficient evidence showing that the shellfish are free of disease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.010. Permits for Taking Brood Stock

(a) The department may issue permits to shellfish culturists or their agents authorizing the taking of a reasonable quantity of shellfish brood stock during a closed season, in closed public waters, or of any size.

(b) The permits shall show:

(1) the name, address, and license number of the shellfish culturist;

(2) the period of time during which brood fish may be taken;

(3) the place where taking is allowed;

(4) the species and number of shellfish to be taken; and

(5) the method of taking.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.011. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE B. HUNTING AND FISHING

CHAPTER 61. UNIFORM WILDLIFE REGULATORY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Section
 61.001. Title.
 61.002. Purpose.

- 61.003. Applicability of Chapter.
- 61.004. Applicability of Additional Counties.
- 61.005. Definitions.

SUBCHAPTER B. PROHIBITED ACTS

- 61.021. Taking Wildlife Resources Prohibited.
- 61.022. Taking Wildlife Resources Without Consent of Landowner Prohibited.

SUBCHAPTER C. REGULATORY DUTIES

- 61.051. Duty to Investigate and Study Wildlife Resources.
- 61.052. General Regulatory Duty.
- 61.053. Open Seasons.
- 61.054. Proclamations of the Commission.
- 61.055. Amendments and Revocations.
- 61.056. Proclamations Concerning Certain Deer, Antelope, and Elk.
- 61.057. Antlerless Deer, Antelope, and Elk Permits.

SUBCHAPTER D. ADMINISTRATIVE PROCEDURES

- 61.101. County Hearing on Proclamation.
- 61.102. Notice on County Hearing.
- 61.103. Adoption of Proclamations.
- 61.104. Effective Date and Duration of Proclamations.
- 61.105. Copies of Proclamations.
- 61.106. Judicial Review of Proclamation.

SUBCHAPTER E. PROVISIONS AFFECTING LIMITED AREAS

- 61.201. Lake Tawakoni.
- 61.202. Approval of Certain County Commissioners Courts.
- 61.203. Trotlines and Crab Traps in Aransas County.
- 61.204. Limitations in Trans-Pecos Counties.
- 61.205. Deer in Dimmit, Uvalde, and Zavala Counties.
- 61.206. Storage and Processing of Deer in Lampasas County.
- 61.207. Trailing Deer With Dogs in Panola County.
- 61.208. Special Archery Season for Certain Tract.

SUBCHAPTER F. PENALTIES

- 61.901. Penalties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Title

This chapter may be cited as the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.002. Purpose

The purpose of this chapter is to provide a method for the conservation of an ample supply of wildlife resources in the places covered by this chapter to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.003. Applicability of Chapter

Title 7 of this code prescribes the counties, places, and wildlife resources to which this chapter applies.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.004. Applicability of Additional Counties

A law making this chapter applicable to all or a portion of the wildlife resources of a county or place repeals any provision of general or special law regulating the taking of those wildlife resources when the commission's proclamation relating to those wildlife resources in the county or place takes effect. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.005. Definitions

In this chapter:

(1) "Hunt" includes take, kill, pursue, trap, and the attempt to take, kill, or trap.

(2) "Wildlife resources" means all game animals, game birds, fur-bearing animals, alligators, marine animals, fish, and other aquatic life.

(3) "Depletion" means the reduction of a species below its immediate recuperative potential by any deleterious cause.

(4) "Waste" means a supply of a species or one sex of a species in sufficient numbers that a seasonal harvest will aid in the reestablishment of a normal number of the species.

(5) "Daily bag limit" means the quantity of a species of game that may be taken in one day.

(6) "Possession limit" means the maximum number of a species of game that may be possessed at one time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.006 to 61.020 reserved for expansion]

SUBCHAPTER B. PROHIBITED ACTS**§ 61.021. Taking Wildlife Resources Prohibited**

Except as permitted under a proclamation issued by the commission under this chapter, no person may hunt or possess a game bird, game animal, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time or in any place covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.022. Taking Wildlife Resources Without Consent of Landowner Prohibited

No person may hunt or possess a game animal, game bird, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time and at any place covered by this chapter unless the owner of the land or water, or the owner's agent, consents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.023 to 61.050 reserved for expansion]

SUBCHAPTER C. REGULATORY DUTIES**§ 61.051. Duty to Investigate and Study Wildlife Resources**

(a) The department shall conduct scientific studies and investigations of all species of wildlife resources to determine:

(1) supply;

(2) economic value;

(3) environments;

(4) breeding habits;

(5) sex ratios;

(6) effects of hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, and overpopulation; and

(7) any other factors or conditions causing increases or decreases in supply.

(b) The studies and investigations may be made periodically or continuously.

(c) The commission shall make findings of fact based on the studies and investigations of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.052. General Regulatory Duty

(a) The commission shall regulate the periods of time when it is lawful to take wildlife resources in the places covered by this chapter.

(b) The commission shall regulate the means, methods, manners, and places in which it is lawful to take wildlife resources in the places covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.053. Open Seasons

The commission shall provide open seasons for the taking of wildlife resources if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.054. Proclamations of the Commission

(a) Regulation of the taking of wildlife resources under this chapter shall be by proclamation of the commission.

(b) A proclamation of the commission authorizing the taking of wildlife resources must specify:

(1) the species, quantity, age or size, and, to the extent possible, the sex of the wildlife resources authorized to be taken;

(2) the means or method that may be used to take the wildlife resources; and

(3) the region, county, area, or portion of a county where the wildlife resources may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.055. Amendments and Revocations

(a) If the commission finds that there is a danger of depletion or waste, it shall amend or revoke its proclamations to prevent the depletion or waste and to provide to the people the most equitable and reasonable privilege to pursue, take, and kill wildlife resources.

(b) The commission may amend or revoke its proclamations at any time it finds the facts warrant a change.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.056. Proclamations Concerning Certain Deer, Antelope, and Elk

A proclamation of the commission authorizing the taking of antlerless deer, antelope, and elk is not effective for a specific tract of land unless the owner or other person in charge of the land agrees in writing to the removal and to the number of antlerless deer, antelope, or elk authorized to be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.057. Antlerless Deer, Antelope, and Elk Permits

(a) Except as provided in Subsection (c) of this section, no person may hunt an antlerless deer, antelope, or elk without first having acquired an antlerless deer, antelope, or elk permit issued by the department on a form provided by the department.

(b) The permit may be distributed by the department or by the owner or other person in charge of a tract of land where hunting is authorized and which is subject to an agreement under Section 61.056 of this code. An owner or other person in charge of land may distribute permits only for the land he owns or is in charge of.

(c) When conditions warrant, the commission may allow hunting of antlerless deer, antelope, or elk without a permit. The proclamation allowing hunting without a permit must be specific as to the county or portion of a county to which it applies.

(d) No person may sell or trade a permit authorized by this section for anything of value.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.058 to 61.100 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE PROCEDURES

§ 61.101. County Hearing on Proclamation

(a) Before a proclamation of the commission may be adopted, the department shall hold a public hearing in the county to be affected by the proclamation.

(b) The hearing may be conducted by a member of the commission or by any designated employee of the department. This subsection does not require the presence of a member at any county hearing. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.102. Notice on County Hearing

Notice of the hearing must be given in a newspaper published in the county at least 10 days before the date of the hearing. If no newspaper is published in the county, the notice must be given in a newspaper published in an adjoining county and having wide circulation in the county in which the hearing is to be held.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.103. Adoption of Proclamations

(a) A proclamation under this chapter must be adopted by a quorum of the commission at a meeting of the commission held in the commission's office in Austin.

(b) A proclamation may be adopted at any special or regular meeting of the commission, for which the date and time are designated by the commission.

(c) Any person interested in a proclamation is entitled to be heard at the meeting and may introduce evidence on the imminence of depletion or waste.

(d) For the purpose of adopting a proclamation under this chapter, a quorum of the commission is four members.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.104. Effective Date and Duration of Proclamations

(a) Except as provided in Subsection (b) of this section, a proclamation takes effect at the time determined by the commission. The time designated by the commission may not be earlier than 15 days after the day the proclamation is adopted by the commission.

(b) If the commission finds that there is an immediate danger of depletion in any area as to a species, the commission may declare a state of emergency, and a proclamation issued under the state of emergency takes effect on issuance.

(c) A proclamation of the commission continues in effect until it expires by its own terms or until it is amended or repealed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.105. Copies of Proclamations

On the adoption of a proclamation, a copy shall be numbered and filed in the office of the commission in Austin. A copy shall be filed with the secretary of state. A copy shall be sent to each county clerk for filing and to each county attorney of a county affected by the proclamation. A mimeographed copy shall be furnished to each employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.106. Judicial Review of Proclamation

(a) The venue for any suit challenging the validity of a proclamation of the commission under this chapter is in Travis County.

(b) The party complaining of a proclamation has the burden of proof to show invalidity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.107 to 61.200 reserved for expansion]

SUBCHAPTER E. PROVISIONS AFFECTING LIMITED AREAS

§ 61.201. Lake Tawakoni

The commission's regulations for Lake Tawakoni shall be uniform for the entire lake.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.202. Approval of Certain County Commissioners Courts

(a) No proclamation of the commission is effective in a county listed in Subsection (e) of this section unless it has been approved by the commissioners court of the county.

(b) The commissioners court of a county listed in Subsection (e) of this section shall approve or disapprove a proclamation, in whole or in part, at the first regular meeting occurring more than five days after it receives notification of the adoption of a proclamation affecting the county.

(c) If the commissioners court approves the proclamation, it takes effect at the time the commission has designated or immediately on its approval, whichever is later.

(d) If the commissioners court disapproves a proclamation, the taking of wildlife resources in the county is governed by the previous year's proclama-

tion. After disapproval of a proclamation, no public hearing on a similar proposed proclamation may be held within six months of the disapproval, unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

(e) This section applies only to Bandera, Coke, Crockett, Dimmit, Edwards, Grayson, Frio, Hays, Kerr, Kimble, Kinney, Lampasas, Medina, Menard, Reagan, Real, Robertson, San Saba, Schleicher, Sutton, Uvalde, Val Verde, and Zavala counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1222, ch. 456, § 21, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 1917, ch. 620, § 1

Acts 1975, 64th Leg., p. 1917, ch. 620, § 1, purports to amend § 13, subsec. b of Penal Code, Art. 978j-1 [now, this section], without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(1). As so amended, subsec. b reads:

"b. In Bandera, Coke, Crockett, Dimmit, Edwards, Frio, Gillespie, Grayson, Hays, Kerr, Kimble, Kinney, Lampasas, Llano, Mason, Medina, Menard, Reagan, Real, Robertson, San Saba, Schleicher, Sutton, Uvalde, Val Verde, and Zavala counties, and in Lamb County with regard to quail season only, orders, rules and regulations adopted in accordance with Section 8 of this Act shall not be effective as provided in Section 9 unless and until they have been approved by the Commissioners Court of each of such counties. The Commissioners Court in each county named in this subsection shall approve or disapprove the Commission's rule, regulation or order or part of order, at its next regular meeting occurring more than five (5) days after adoption by the Commission and notification of the counties cited herein. If approved, the rule, regulation or order becomes effective at the time specified in the proclamation by the Commission. If disapproved, for any of the above named counties, no public hearing on a similar proposal for the county may be held for a period of six (6) months unless a majority of said Commissioners Court certifies to the Commission that there has been some material change in the surrounding circumstances which necessitates the holding of a public hearing within the six month period. If the Commissioners Court disapproves the rules, regulations or orders, or parts of orders promulgated by the Commission, then the taking of the wildlife resources of the county is regulated by rules of prior year until such time as the Commissioners

Court approves rules, regulations, or orders subsequently promulgated by the Commission.

"In Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, San Saba, Schleicher, and Uvalde counties, orders, rules and regulations adopted in accordance with Section 8 of this Act shall not be effective as provided in Section 9 unless and until they have been approved by the Commissioners Court of each of such counties. The Commissioners Court in each county named in this subsection shall approve or disapprove the Commission's rule, regulation or order or part of order, at its next regular meeting occurring more than five (5) days after adoption by the Commission and notification of the counties cited herein. If approved, the rule, regulation or order becomes effective at the time specified in the proclamation by the Commission. If disapproved, for any of the above named counties, no public hearing on a similar proposal for the county may be held for a period of six (6) months unless a majority of said Commissioners Court certifies to the Commission that there has been some material change in the surrounding circumstances which necessitates the holding of a public hearing within the six (6) month period. If the Commissioners Court disapproves the rules, regulations or orders, or parts of orders promulgated by the Commission, then the taking of the wildlife resources of the county is regulated either by the general law of this State or by the rules of the prior year, to be determined by an order of the Commissioners Court, until such time as the Commissioners Court approves rules, regulations, or orders subsequently promulgated by the Commission. If the Commissioners Court fails to designate either the general law or the rules for the prior year, the law or rule in effect for the prior year continues in effect."

§ 61.203. Trotlines and Crab Traps in Aransas County

(a) The commission shall regulate the use of trotlines and crab traps outside the net-free zone in Aransas County to protect persons engaged in fishing, boating, and other water sports.

(b) The regulations may require spacing and marking of trotlines and crab traps and may authorize the seizure of abandoned trotlines and traps.

(c) The regulations under this section shall be adopted in the same manner as other regulations under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.204. Limitations in Trans-Pecos Counties

(a) The proclamations of the commission for Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell counties shall conform to the limitations prescribed in this section.

(b) An open season for black bear must be within the period of November 1 to December 31, and no person may kill or possess more than one black bear during a season.

(c) An open season for wild gray or cat and fox squirrel must be within the period of May 1 to December 31. The daily bag limit for wild gray or cat and fox squirrel may not be more than 10, and the possession limit may not be more than 20 at a time.

(d) An open season for wild turkey must be within the period of November 1 to December 31, and no person may kill or possess more than three wild turkey during a season.

(e) An open season for wild mourning dove must be within the period of September 1 to January 15. The daily bag limit for wild mourning dove may not be more than 15, and the possession limit may not be more than 30 at a time.

(f) An open season for chachalaca must be within the period of December 1 to December 31 and may not be for a period longer than 10 days. The daily bag limit for chachalaca may not be more than five, and the possession limit may not be more than five at a time.

(g) An open season for rails and gallinules must be within the period of September 1 to October 31. The daily bag limit for rails may not be more than 15, and the daily bag limit for gallinules may not be more than 15. The commission shall also prescribe an aggregate daily bag limit for rails and gallinules of not more than 15. The possession limit for rails or for gallinules and for rails and gallinules together may not be more than 30 at a time.

(h) An open season for wild plover must be within the period of September 1 to October 31. The daily bag limit for wild plover may not be more than 12, and the possession limit may not be more than 12 at a time.

(i) An open season for prairie chicken must be within the period of September 1 to October 31 and may not be for a period longer than 10 days. The daily bag limit for prairie chicken may not be more than 10, and the possession limit may not be more than 10 at a time.

(j) An open season for the taking, trapping, or selling of pelts of beaver, otter, fox, opossum, raccoon, mink, polecat or skunk, badger, muskrat, civet cat, or ringtail must be within the period of December 1 to March 1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.205. Deer in Dimmit, Uvalde, and Zavala Counties

(a) The commission shall maintain in Dimmit, Uvalde, and Zavala counties a deer herd and breeding stock of productive excellence that will assure harvest of buck deer of the size and quality for which these counties are noted.

(b) When investigations and findings of fact disclose that there is a danger of losing quality deer because of waste, depletion, or other controllable factors, the commission shall regulate the season, harvest limits, and the type, size, and sex of deer to maintain and recover the standard of excellence. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.206. Storage and Processing of Deer in Lampasas County

(a) The commission may regulate the making and maintenance of records by a bailee for hire accepting deer for storage or for processing. This section applies to Lampasas County only.

(b) A bailee for hire shall record the name and address of each bailor of deer, the date of the bailment, the name and address of every person who removes deer from storage (if processing is not done by the bailee), and the date of removal of the unprocessed deer. If the bailee processes the deer, he shall remove the deer tag, if any, at the time of processing. The records required by this section may be entered in the usual and customary books of account, or in a simple journal if no other records are maintained by the bailee.

(c) The records required by this section and the tags removed from processed deer shall be kept for at least four months after the record is made or the tag removed. After the four-month period, the bailee may destroy the records and tags.

(d) An authorized representative of the commission may inspect deer held for storage and deer tags held by the bailee during normal business hours and without causing undue interference of the bailee's business. A bailee for hire shall give to an authorized representative of the commission any deer tag held by the bailee, the name and address of any person removing deer from storage, and the date of any removal if the authorized representative makes a request for the tag or information during the four-month period after a bailment and the delivery of a proper receipt for the bailment. A bailee who complies with a proper request by giving a deer tag or information to an authorized representative is not liable to any person damaged as a result of compliance.

(e) Regulations of the commission under this section may not require a more onerous standard of

conduct or duty than the minimum requirements of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.207. Trailing Deer With Dogs in Panola County

The commission may regulate or prohibit the hunting and trailing of buck deer on any tract of 10,000 or more contiguous acres of land in Panola County which is designated as a preserve for restocking deer under the regulations of the commission and the Department of Interior of the United States and by state and federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.208. Special Archery Season for Certain Tract

(a) This section applies only to the tract of land described by Section 1, Chapter 646, Acts of the 59th Legislature, Regular Session, 1965.

(b) The commission shall:

(1) provide an archery season for the taking of buck and doe deer from October 1 through October 31; and

(2) require a special nonresident hunting license for the taking of deer and javelina by bow and arrow during the archery season required by this section.

(c) The nonresident hunting license fee is \$5 and the license is valid for five days only.

(d) It is lawful to:

(1) hunt javelina with bow and arrow of legal specifications at any time;

(2) hunt javelina with firearms during the archery season for deer; and

(3) hunt deer of either sex during the archery season.

(e) No person may use a crossbow at any time. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.209 to 61.900 reserved for expansion]

SUBCHAPTER F. PENALTIES

§ 61.901. Penalties

(a) A person who violates any provision of this chapter or any proclamation or regulation of the commission issued under the authority of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each game animal, game bird, fur-bearing animal, or fish taken in violation of this chapter or of a proclamation or regulation of the commission constitutes a separate offense.

(b) A person who violates a proclamation or regulation of the commission by the use of artificial lights in Hardin, Jasper, Newton, Orange, or Tyler counties is guilty of a misdemeanor and on conviction is punishable by confinement in jail for not less than 3 nor more than 90 days, or by a fine of not less than \$50 nor more than \$200, or by both. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 62. PROVISIONS GENERALLY APPLICABLE TO HUNTING

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SUBCHAPTER A. GENERAL PROVISIONS

§ 62.001. Definitions

For the purpose of enforcement of the game laws of this state:

- (1) "Closed season" means the period of time during which it is unlawful to hunt a game animal, wild fowl, or bird.
- (2) "Open season" means the period of time during which it is lawful to hunt a specified animal, game animal, wild fowl, or bird.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.002. Hunting With Certain Weapons

(a) No person may use a .22 caliber jetgun, rocket-gun, or firearm that uses rimfire ammunition in hunting wild deer, wild elk, wild antelope, wild Aoudad sheep, or wild desert bighorn sheep.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each animal hunted in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.003. Hunting From Vehicles

(a) Except as provided in Subsection (b) of this section, no person may hunt from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat, or from any floating device towed by powerboat or sailboat any wild game bird, wild game fowl, or wild game animal protected by this code.

(b) Game animals and game birds not classified as migratory may be hunted from a motor vehicle within the boundaries of private property by a person who is legally on the property for the purpose of hunting if no attempt is made to hunt any wild game bird, wild game fowl, or wild game animal on any part of the road system of this state.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.004. Hunting at Night

(a) No person may hunt any wild bird, wild game bird, wild fowl, or wild game animal protected by this code at any season of the year between one-half hour after sunset and one-half hour before sunrise.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. Each

bird or animal killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.005. Hunting With Light

(a) No person may hunt an animal or bird protected by this code with the aid of a headlight, hunting lamp, or other artificial light, including an artificial light attached to a motor vehicle.

(b) The possession of a headlight or hunting lamp used on or about the head when hunting at night between sunset and one-half hour before sunrise by a person hunting in an area where deer are known to range constitutes prima facie evidence that the person was violating this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$50, by confinement in the county jail for not less than 30 days nor more than 90 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.006. Hunting for Hire

(a) No person may employ another person or be employed by another person for compensation or promise of compensation to hunt any bird, wild fowl, or game animal protected by this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) If a person testifies against another person who employed him in violation of this section, all prosecutions against him in the case in which he testifies shall be dismissed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.007. Stopping for Search

(a) An authorized employee of the department may search the game bag, receptacle, automobile, or other vehicle if he has reason to believe that the bag, receptacle, automobile, or vehicle contains game unlawfully killed or taken.

(b) A person who refuses to allow a search or refuses to stop a vehicle when requested to do so by an authorized employee is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.008. Prima Facie Evidence

Except as provided in Subchapter B of this chapter, possession of a wild game bird, wild game animal, or other species of protected wildlife, whether dead or alive, during a time when the hunting of the

animal, bird, or species is prohibited is prima facie evidence of the guilt of the person in possession.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.009. Purchase for Evidence

A person who, for the purpose of establishing testimony, purchases a game bird or animal whose sale is prohibited by this code, is immune from prosecution for the purchase. A conviction for the unlawful sale of game may be sustained on the uncorroborated testimony of the purchaser.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.010. Exceeding Bag Limits, Hunting During Closed Season, etc.; Penalty

(a) No person may kill or take more than the daily, weekly, or seasonal bag limits for game birds or animals as set out in this code.

(b) No person may hunt any game bird or animal at any time of the year other than during the open season provided by this code.

(c) No person may kill, take, capture, wound, or shoot at any game bird or animal for which no open season is set out by this code.

(d) No person may possess an illegally killed game bird or animal.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each game bird or animal taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.011. Retrieval and Waste of Game

(a) It is an offense if a person while lawfully hunting kills or wounds a game bird or game animal and intentionally or knowingly fails to make a reasonable effort to retrieve the animal or bird and include it in the person's daily or seasonal bag limit.

(b) It is an offense if a person intentionally takes a game bird, game animal, or a fish, other than a rough fish, and intentionally, knowingly, or recklessly, or with criminal negligence, fails to keep the edible portions of the bird, animal, or fish in an edible condition.

(c) An offense under this section is a misdemeanor the punishment for which is a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1214, ch. 456, § 15, eff. Sept. 1, 1975.]

[Sections 62.012 to 62.020 reserved for expansion]

SUBCHAPTER B. SALE, TRANSPORTATION, AND STORAGE OF GAME

§ 62.021. Sale or Purchase of Game

(a) No person may sell, offer for sale, purchase, offer to purchase, or possess after purchase a wild bird, wild game bird, or wild game animal, dead or alive, or part of the bird or animal except deer hides and antlers.

(b) This section applies only to a bird or animal protected by this code without regard to whether the bird or animal is taken or killed in this state.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.022. Sale or Purchase of Certain Game

(a) No person may sell, offer for sale, or possess after purchase a wild deer, wild antelope, or Rocky Mountain sheep killed in this state; or the carcass, hide, or antlers of wild antelope or Rocky Mountain sheep; or the carcass of wild deer, excluding wild deer hides and antlers.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.023. Sale by Taxidermist

(a) If the owner of heads or hides that have been mounted or tanned has not claimed them within 90 days after notification by a taxidermist or tanner, the taxidermist or tanner may sell the head or hides for the amount due for labor performed.

(b) Heads or hides sold under this section must have attached the original transportation affidavit required under this subchapter.

(c) A taxidermist or tanner selling heads or hides under this section shall report immediately the sale to the department. The report must include the name of the person purchasing the head or hides and a copy of the transportation affidavit regarding the manner in which the head or hides were obtained.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.024. Importation of Game

(a) No person may bring into this state any bird or animal protected by this code during the closed season for that bird or animal except as provided by this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each

bird or animal imported in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.025. Importation of Game

(a) No person may bring into this state a bird or animal protected by this code for sale, barter, exchange, or shipment for sale during the open season for that bird or animal except as provided in Section 62.026 of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each bird or animal imported in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.026. Importation of Protected Wildlife From Mexico

(a) It is lawful to ship or bring any wild game birds, wild game animals, or other protected species of wildlife from the Republic of Mexico into this state at any season if the person importing the wildlife has obtained:

(1) an importation permit from the department or an authorized agent; and

(2) a statement from the United States Customs Officer at the port of entry showing that the wildlife was brought from the Republic of Mexico.

(b) An importation permit must be on a form provided by the department and shall be issued for a period not to exceed 30 days.

(c) The fee for an importation permit is \$1. The officer issuing the importation permit, except employees of the department, may retain 25 cents as his collection fee.

(d) Within 10 days after the expiration date of the importation permit, the holder of the permit shall return one copy of the permit to the department showing the species of wildlife imported, the number of each, the date of importation, and the port of entry.

(e) The department may prescribe reasonable rules and regulations for the importation of wild game birds, wild game animals, and other protected species of wildlife, and the number of each species that may be imported during a calendar week under this section.

(f) A person who violates a provision of this section or a rule or regulation issued under this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.027. Affidavit for Transporting Specimens

(a) No person may ship or carry to his home or to and from a taxidermist or tannery for mounting or preserving any specimen or part of specimen of a lawfully taken or killed wild bird or wild animal of this state unless he has made the transportation affidavit set out in this section. The specimens may not be transported for the purpose of sale, except as permitted by Sections 62.021 and 62.022 of this code.

(b) The transportation affidavit must be made before an officer authorized to administer oaths and must be in the following form:

State of Texas

County of _____

Before me, the undersigned authority, on this day personally appeared _____, who after being duly sworn, upon oath says: I live at _____ in the County of _____, State of _____; I have personally killed _____, which I desire to ship from _____ to _____ County, to _____, State of _____, which I lawfully killed for lawful use; that I have not killed during the present hunting season more than the bag limit of any of the wild game birds, wild fowl, or wild animals.

Signature _____

Sworn to and subscribed before me this _____ day of _____ A.D. 19__.

Office held _____

(c) The affidavit must be attached to the shipment and delivered to the common carrier transporting the shipment, and may not be removed during the period of transportation. If the specimen is carried by the person who killed it, the affidavit does not have to be attached to the shipment.

(d) Express agents, conductors, auditors of trains, captains of boats, and employees of the department may administer oaths for the affidavit required under this section. The person administering the oath may collect 25 cents for this service.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.028. Failure to Obtain Affidavit

A person is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100 if he:

(1) ships game from any place in this state without making the transportation affidavit;

(2) is an agent of an express company or common carrier and receives shipment of game without an attached transportation affidavit; or

(3) is an auditor, conductor, or person in charge of a railroad train and knowingly per-

mits a person to carry game without having made a transportation affidavit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.029. Records of Game in Storage

(a) As used in this section, a "public cold storage plant" is any plant in which game is stored for a person other than the owner of the plant.

(b) The owner or operator of a public cold storage plant shall maintain a book containing a record of:

(1) the name of each person placing a game bird or game animal in storage;

(2) the number and kind of game birds or game animals placed in storage; and

(3) the date on which each game bird or game animal is placed in storage.

(c) The record book kept by the owner or operator of a public cold storage plant may be inspected by an authorized employee of the department at any time.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.030. Possession of Game in Storage

A person may place and maintain, or possess, in a public or private storage plant, refrigerator, or locker lawfully taken or killed game birds, game animals, waterfowl, or migratory waterfowl not in excess of the number permitted to be possessed by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 62.031 to 62.050 reserved for expansion]

SUBCHAPTER C. ARCHERY SEASON

§ 62.051. Application of Subchapter

The provisions of this subchapter do not apply to the following counties: Angelina, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brewster, Briscoe, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Childress, Collingsworth, Colorado, Comanche, Comal, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, DeWitt, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Hopkins, Houston, Howard, Hutchinson, Irion, Jackson, Jasper, Johnson, Jones, Karnes, Kendall, Kenedy, Kent,

Kerr, Kleberg, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, LaSalle, Lavaca, Leon, Lipscomb, Live Oak, Llano, McCulloch, McMullen, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Mitchell, Montgomery, Moore, Morris, Motley, Nacogdoches, Newton, Nolan, Nueces, Ochiltree, Oldham, Panola, Parmer, Polk, Rains, Reagan, Real, Red River, Roberts, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Titus, Tom Green, Trinity, Tyler, Upshur, Val Verde, Victoria, Walker, Waller, Washington, Wharton, Wilbarger, Wilson, Wood, and Zavala.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 2000, ch. 664, § 1

Acts 1975, 64th Leg., p. 2000, ch. 664, § 1, purports to amend § 2A of Acts 1959, 56th Leg., ch. 189 [now, this section], without reference to repeal of said Act by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). As so amended, § 2A reads:

"Sec. 2A. The provisions of this Act shall not be applicable in whole or in part to the following counties: Angelina, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Blanco, Borden, Bosque, Bowie, Brazoria, Brewster, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Colorado, Comanche, Comal, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, DeWitt, Dickens, Dimmit, Eastland, Ector, Edwards, Ellis, Erath, Fannin, Fayette, Fisher, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Hopkins, Houston, Howard, Hutchinson, Irion, Jackson, Jasper, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kleberg, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, LaSalle, Lavaca, Lipscomb, Live Oak, Llano, McCulloch, McMullen, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Mitchell, Montgomery, Moore, Morris, Nacogdoches, Newton, Nolan, Nueces, Ochiltree, Oldham, Panola, Parmer, Polk, Rains, Reagan, Real, Red River, Roberts, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Sterling, Stonewall, Sutton, Taylor, Terrell, Throckmorton, Titus, Tom Green, Trinity, Tyler, Upshur, Val Verde, Victoria, Walker, Waller, Washington, Wharton, Wilbarger, Wilson, Wood, Zavala."

§ 62.052. Definition

As used in this subchapter, "buck deer" means a wild buck deer with three points or more.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.053. Archery Season

The open archery season for hunting buck deer, wild bear, wild turkey gobblers, and collared peccary or javelina with bow and arrow is October 1 through October 31 of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.054. Possession of Firearms or Crossbow

(a) While hunting buck deer, wild bear, wild turkey gobblers, or collared peccary or javelina during the open archery season, no person possessing a bow and arrow may have any type of firearm or crossbow on his person, in an automobile, or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.055. Equipment

(a) No person may hunt buck deer, wild bear, wild turkey gobblers, or collared peccary or javelina during the open archery season with:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths inch in width and not over one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) arrows that are poisoned, drugged, or explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.056. Archery Season in Certain Counties

In counties covered by this subchapter where the hunting season on buck deer, wild bear, wild turkey gobblers, and collared peccary or javelina is less than 31 days, the department shall determine the length of the season to hunt these animals with bows and arrows. This archery season may not be longer than

the open season for taking these game with firearms.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 62.057 to 62.060 reserved for expansion]

SUBCHAPTER D. HUNTING IN STATE PARKS

§ 62.061. Prohibited Acts

Except as authorized by the commission under this subchapter, no person may hunt a wild animal, wild bird, or wild fowl in a state park, fort, or historic site under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.062. Season

As sound biological management practices warrant, the commission may prescribe an open season for hunting in state parks, forts, or sites where size, location, and other physical conditions permit hunting. The open season may be only during the period beginning on the first day of November in one year and extending through the last day of February of the following year. However, no open season is authorized for the hunting of deer in any state park, the purposes and uses for which are primarily recreational.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.063. Regulatory Authority

The commission may prescribe the number, size, kind, and sex and the means and methods of taking any wildlife during an open season in a state park, fort, or historic site.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.064. Fee for Hunting

The commission may set a reasonable fee to be collected for hunting in state parks, forts, and sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.065. Disposition of Funds

Revenue received under this subchapter shall be deposited in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.066. Management of Resources

The commission may direct the service or division of the department charged with the management of wildlife resources to manage the aquatic and wildlife resources found in state parks, forts, or historic sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.067. General Hunting License

The provisions of this subchapter do not waive the requirement of a hunting license under this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.068. Arrest

A peace officer, game management officer, or commissioned state park employee may arrest without warrant a person found committing a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.069. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 62.070 to 62.080 reserved for expansion]

SUBCHAPTER E. WEAPONS ON LOWER COLORADO RIVER AUTHORITY LAND

§ 62.081. Weapons Prohibited

(a) Except as provided in Section 62.082 of this code, no person may hunt with, possess, or shoot a firearm, bow, crossbow, slingshot, or any other weapon on or across the land of the Lower Colorado River Authority.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.082. Target Ranges

(a) The Board of Directors of the Lower Colorado River Authority may lease river authority land to be used on a nonprofit basis for a target rifle or archery range only and not for hunting.

(b) A member of the boy scouts or the girl scouts or other nonprofit public service group or organization may possess and shoot a firearm, bow, and crossbow for target or instructional purposes under the supervision of a qualified instructor registered with and approved by the Lower Colorado River Authority on ranges designated by the Lower Colorado River Authority. This subsection does not permit hunting by any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.083. Approved Instructor and Range Records

The Lower Colorado River Authority shall maintain in its Austin office a current listing of approved and registered instructors and a map indicating the location of the designated ranges. The records shall

be made available on request to enforcement officers and county attorneys.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.084. **Penalty**

A person who violates Section 62.081 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 63. GAME AND NONGAME ANIMALS

SUBCHAPTER A. GAME ANIMALS

- Section
63.001. Game Animals.
63.002. Bag Limit for Certain Game.
63.003. Collared Peccary (Javelina).
63.004. Squirrel Season.
63.005. Squirrel Limit.
63.006. Deer and Bear Season.
63.007. White-Tailed Deer Permits.
63.008. Female Deer, Fawn, Young Buck.
63.009. Deer Call.
63.010. Hunting Deer With Dogs.

SUBCHAPTER B. NONGAME ANIMALS

- 63.101. Coypu (*Nutria*).
63.102. Wolves.

SUBCHAPTER A. GAME ANIMALS

§ 63.001. **Game Animals**

(a) The following animals are game animals: wild deer, wild elk, wild antelope, wild desert bighorn sheep, wild black bear, wild gray or cat squirrels, wild fox squirrels or red squirrels, and collared peccary or javelina.

(b) No species of any animal set out in Subsection (a) of this section or any other animal is a game animal if it is not indigenous to this state.

(c) Aoudad sheep are game animals in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.002. **Bag Limit for Certain Game**

No person may hunt or possess game animals in greater number than the daily, weekly, or seasonal bag limit as follows:

- (1) two wild buck deer during the open season of any one year;
- (2) one wild bear during the open season of any one year; and
- (3) ten wild squirrels in any one day.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.003. **Collared Peccary (Javelina)**

(a) No person may hunt collared peccary (javelina) at any time except during the open season which is the period beginning November 16 and extending through January 1.

(b) No person may take more than two collared peccary (javelina) in one open season.

(c) No person may take, sell, offer to sell, or have in possession for the purpose of sale or barter any collared peccary (javelina).

(d) This section does not apply to collared peccary (javelina) or their hides imported from another state or foreign country.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) taken, possessed, sold, offered for sale, or possessed for sale in violation of this section is a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.004. **Squirrel Season**

(a) Except as provided in Subsection (b) of this section, the open season for the hunting of wild gray squirrels and wild red or fox squirrels is the months of May, June, July, October, November, and December.

(b) Squirrels may be kept in cages as domestic pets at any time.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.005. **Squirrel Limit**

(a) Except as provided in Subsection (b) of this section, no person may take or kill more than 10 squirrels in one day or have in possession more than 20 squirrels at one time.

(b) This section does not apply to the following counties: Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Blanco, Brown, Bosque, Brazoria, Burnet, Caldwell, Calhoun, Callahan, Chambers, Colorado, Cooke, Coryell, Comanche, Comal, Concho, Delta, DeWitt, Dimmit, Eastland, Edwards, Erath, Fayette, Fort Bend, Franklin, Galveston, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hamilton, Hill, Hopkins, Jackson, Karnes, Kerr, Kendall, Kimble, Lamar, Lampasas, Lavaca, Live Oak, Llano, Mason, Matagorda, McCulloch, Menard, Medina, Mills, Montague, Real, Red River, Refugio, San Patricio, San Saba, Schleicher, Stephens, Tarrant, Throckmorton, Travis, Uvalde, Victoria, Waller, Washington, Wharton, Wilson, Wise, and Zavala.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.006. Deer and Bear Season

The open season for the hunting of wild buck deer and wild bear is the period beginning November 16 and extending through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.007. White-Tailed Deer Permits

(a) The department shall issue permits for the trapping, transporting, and transplanting of wild white-tailed deer to persons presenting a satisfactory showing that there is an overpopulation of the deer in an area where harvest provisions are inadequate for maintaining a balanced supply of the deer and that the deer will be removed and transplanted to an area of adaptable habitat for appropriate harvest.

(b) The trapping, transporting, and transplanting of wild white-tailed deer under a permit issued by the department shall be done at no expense to the state.

(c) No person may hunt wild white-tailed deer transplanted under this section except as allowed by law for the hunting of native wild white-tailed deer in the county to which the deer are transplanted.

(d) Permits issued under this section do not entitle a person to take, trap, or possess wild white-tailed deer on any privately owned land without the landowner's written permission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.008. Female Deer, Fawn, Young Buck

(a) No person may hunt a wild female deer, wild fawn deer, or wild buck deer without a pronged horn.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.009. Deer Call

(a) No person may use a deer call, whistle, decoy, call pipe, reed, or other mechanical or natural device to call or attract deer, except the rattling of deer horns.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not less than 20 days nor more than 90 days, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.010. Hunting Deer With Dogs

(a) Except as provided in Subsection (b) of this section, no person may use or permit the use of a dog in the hunting of deer.

(b) This section does not apply to Brazoria, San Augustine, and Fort Bend counties.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(d) Nothing in this section affects Chapter 61 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 63.011 to 63.100 reserved for expansion]

SUBCHAPTER B. NONGAME ANIMALS

§ 63.101. Coypu (Nutria)

(a) No person may possess, transport, or sell live coypu (nutria) unless he has obtained a written permit from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.102. Wolves

(a) No person may possess, transport, receive, or release a live wolf in this state.

(b) Subsection (a) does not apply to the transportation of a wolf by a state or county official while performing an official duty or to the possession or transportation of a wolf by the owner or agent of a licensed circus, zoo, or menagerie for exhibition or scientific purposes.

(c) A person who violates this section is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not less than six months nor more than five years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 64. BIRDS

SUBCHAPTER A. GENERAL PROVISIONS

- Section
64.001. Game Birds.
64.002. Protection of Nongame Birds.
64.003. Destroying Nests or Eggs.
64.004. Trapping Game Birds.

SUBCHAPTER B. SEASONS AND LIMITS

- 64.011. Eagle.
64.012. Hunting Turkey Hens.
64.013. Turkey Gobblers.

Section

- 64.014. Quail and Chachalaca.
- 64.015. Prairie Chicken.

SUBCHAPTER C. MIGRATORY GAME BIRDS

- 64.021. Definitions.
- 64.022. Authority of Department.
- 64.023. Open Season.
- 64.024. Regulations.
- 64.025. Suit.
- 64.026. Prohibited Acts.

SUBCHAPTER A. GENERAL PROVISIONS

§ 64.001. Game Birds

Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens, wild pheasants of all varieties, wild partridge, wild bobwhite quail, wild scaled quail, wild Mearn's quail, wild Gambel's quail, wild red-billed pigeons, wild band-tailed pigeons, wild mourning doves, wild white-winged doves, wild snipe of all varieties, wild shore birds of all varieties, chachalacas, wild plover of all varieties, and wild sandhill cranes are game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.002. Protection of Nongame Birds

(a) Except as provided in this section, Chapter 67, or Section 12.013 of this code, no person may:

- (1) catch, kill, injure, pursue, or possess, dead or alive, or purchase, sell, expose for sale, transport, ship, or receive or deliver for transportation, a bird that is not a game bird;
- (2) possess any part of the plumage, skin, or body of a bird that is not a game bird; or
- (3) disturb or destroy the eggs, nest, or young of a bird that is not a game bird.

(b) European starlings, English sparrows, grackles, ravens, red-winged blackbirds, cowbirds, and crows may be killed at any time and their nests or eggs may be destroyed.

(c) Canaries, parrots, and other exotic nongame birds may be sold, purchased, and kept as domestic pets.

(d) A person may defend and protect his domestic animals from predators.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each bird or part of a bird taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.003. Destroying Nests or Eggs

(a) No person may destroy or take the nest, eggs, or young of any wild game bird, wild bird, or wild fowl protected by this code except as provided in this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.004. Trapping Game Birds

(a) No person may set a trap, net, or other device for taking game birds or take or snare a game bird by a device without obtaining a permit from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 64.005 to 64.010 reserved for expansion]

SUBCHAPTER B. SEASONS AND LIMITS

§ 64.011. Eagle

Golden eagle or Mexican brown eagle may be hunted or trapped in this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.012. Hunting Turkey Hens

(a) No person may hunt or possess, dead or alive, a wild turkey hen at any time except as provided in this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.013. Turkey Gobblers

(a) No person may hunt wild turkey gobblers except during the open season, which is the period beginning November 16 and extending through December 31.

(b) No person may take, kill, or possess more than three turkey gobblers in one open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.014. Quail and Chachalaca

(a) No person may hunt quail or chachalaca except during the open season, which is the period beginning December 1 and extending through January 16.

(b) No person may kill more than 12 quail in one day, kill more than 36 quail in a seven-day period, or possess more than 36 quail at one time.

(c) No person may kill more than 5 chachalacas in one day, kill more than 10 chachalacas in a seven-

day period, or possess more than 10 chachalacas at one time.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.015. Prairie Chicken

(a) No person may hunt or possess prairie chicken in this state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. Each prairie chicken taken, killed, or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 64.016 to 64.020 reserved for expansion]

SUBCHAPTER C. MIGRATORY GAME BIRDS

§ 64.021. Definitions

In this subchapter:

(1) "Migratory game bird" means wild ducks of all species, wild geese and wild brant of all species, wild coot, wild rail, wild gallinules, wild plovers, Wilson's snipe or jack snipe, woodcock, mourning doves, white-winged doves, and sand-hill cranes.

(2) "Open season" means the period of time when it is lawful to take, kill, or pursue, or attempt to take or kill migratory game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.022. Authority of Department

The department shall provide the open season, and means, methods, and devices for the taking and possessing of migratory game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.023. Open Season

An open season may be provided only for the length of time justified by the supply of the species of migratory game bird affected in this state or in the zone or section of this state where the open season applies.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.024. Regulations

(a) The department shall conduct investigations prior to the issuance of regulations on an open season for a migratory game bird. The regulation may be issued if the supply of the migratory game bird is sufficient.

(b) The effective date of a regulation shall be stated in the regulation but may not be less than 10 days after the regulation is issued.

(c) A regulation is valid until the time specified in the regulation unless it is suspended or amended by the department in the same manner as in issuing the original regulation.

(d) A regulation issued by the department must be incorporated in the minutes of the meeting at which it was adopted, and a copy of the regulation must be filed with the secretary of state and each county clerk and county attorney.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.025. Suit

A party affected by and dissatisfied with a regulation issued under this subchapter may file suit against the department to test the validity of the regulation in a court of competent jurisdiction in Travis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.026. Prohibited Acts

(a) No person may hunt or possess a migratory game bird by any method or device except as provided by regulation issued under this subchapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. Each migratory game bird killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 65. REPTILES

SUBCHAPTER A. TURTLES AND TERRAPIN

Section	
65.001.	Season for Saltwater Terrapin.
65.002.	Underweight Turtle or Terrapin.
65.003.	Unlawful Taking of Sea Turtles and Sea Turtle Eggs.
65.004.	Texas Tortoise.
65.005.	Injunction.
65.006.	Penalties.

SUBCHAPTER B. HORNED TOADS

65.101.	Definition.
65.102.	Killing, Capturing, Selling, or Transporting Horned Toads.
65.103.	Injunction.
65.104.	Penalties.

SUBCHAPTER A. TURTLES AND TERRAPIN

§ 65.001. Season for Saltwater Terrapin

(a) No person may take or have in his possession any saltwater terrapin except during November, December, January, and February.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.002. Underweight Turtle or Terrapin

(a) No person may sell or ship any green turtle weighing less than 12 pounds or any terrapin of less than six inches in length of under shell.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.003. Unlawful Taking of Sea Turtles and Sea Turtle Eggs

(a) No person may knowingly take, kill, or disturb any sea turtle or sea turtle eggs in or from the waters of the state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.004. Texas Tortoise

No person may wilfully kill, injure, take, or have in his possession for the purpose of sale, barter, or commercial exploitation, any Texas Tortoise (*Gopherus berlandieri*) in the state except for propagation and scientific purposes. Possession includes the transportation, shipping, or storing of Texas Tortoises, dead or alive, within or into the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.005. Injunction

Any district attorney, county attorney, sheriff, or proper authorities in any county of the state, or the director, may institute appropriate proceedings, including a petition for injunction, to prevent a violation of Section 65.004 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.006. Penalties

A person who violates Section 65.004 of this code commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200 or by confinement in the county jail for not less than 10 days nor more

than 60 days or by both. Each Texas Tortoise (*Gopherus berlandieri*) unlawfully taken, killed, injured, or possessed constitutes a separate offense subject to the penalty provided in this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 65.007 to 65.100 reserved for expansion]

SUBCHAPTER B. HORNED TOADS

§ 65.101. Definition

In this subchapter, "horned toad" means a horned toad or horned lizard of the genus *Phrynosoma*.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.102. Killing, Capturing, Selling, or Transporting Horned Toads

No person may wilfully capture, trap, attempt to capture or trap, kill, injure, take, or have in his possession for the purpose of sale, barter, or commercial exploitation horned toads in the state except for propagation or scientific purposes. Possession includes transportation, shipping, or storing of horned toads, dead or alive, within the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.103. Injunction

Any district attorney, county attorney, sheriff, or the director or his authorized representative, or proper authorities in any county of the state may institute any appropriate proceedings, including a petition for injunction, to prevent the violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.104. Penalties

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each horned toad unlawfully taken, captured, killed, injured, or possessed constitutes a separate offense and is subject to the penalty provided by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 66. FISH

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SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER FISHING

§ 66.001. Salt and Fresh Water Defined

In this chapter:

(1) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths, but does not include coastal or tidal water.

(2) "Salt water" means all coastal or tidal water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.002. Consent to Take Fish From Private Water

(a) No person may catch fish by the use of a net or seine or explosive or by poisoning, polluting, muddying, ditching, or draining in any privately owned lake, pool, or pond without the consent of the owner.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

(c) In a prosecution under this section, the burden of proof to show consent is on the person charged. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.003. Placing Explosives or Harmful Substances in Water

(a) No person may place in the water of this state an explosive, poison, or other substance or thing deleterious to fish.

(b) Subsection (a) of this section does not apply to the use of explosives necessary for construction purposes when the use is authorized in writing by the county judge of the county where the work is to be done.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$100 and by confinement in the county jail for not less than 60 nor more than 90 days. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.004. Taking of Fish by Electric Shock Prohibited; Exception

(a) Except as provided by Subsection (d) of this section, no person may catch fish by using an electricity-producing device designed to shock fish.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) The possession of an electricity-producing device designed to shock fish, in a boat or along the shore or bank of any water of this state, is prima facie evidence of a violation of this section by the person in possession of the device.

(d) This section does not prohibit the use of an electricity-producing device of not more than three volts connected to a shrimp trawl used by an operator of a licensed commercial gulf shrimp boat in the outside water of this state at depths of more than seven fathoms. To qualify under this exemption, the commercial gulf shrimp boat and the trawl must be operating in compliance with the provisions of Chapter 77 of this code relating to the taking of shrimp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.005. Wilful Destruction of Boat, Seine, or Net

(a) No person may wilfully, with the intent to injure the owner, take a boat, seine, net, or other device for fishing into prohibited water, or use a boat, seine, net, or other device for fishing to take fish unlawfully, so as to cause the destruction of the boat, seine, net, or device.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 and confinement in the county jail for not less than 30 nor more than 90 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.006. Returning Small Fish Taken by Net or Seine

(a) No person who catches fish by the use of a seine or set net may fail to return to the water all fish under or over the size or weight limitations established in this chapter and all other fish for which no limitation is provided.

(b) Subsection (a) of this section does not apply to shark, gar, ray, turtle, sawfish, or catfish, except that it does apply to the gaff-topsail catfish.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.007. Harmful Tropical Fish

(a) No person may import, possess, sell, or release into water of this state harmful or potentially harmful tropical fish or fish eggs unless he has acquired from the department a written permit.

(b) The department shall determine and publish a list of tropical fish that are harmful or potentially harmful to human or other animal life.

(c) The department shall make rules to carry out the provisions of this section.

(d) A person who violates Subsection (a) of this section or a rule of the department made under Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.008. Fishing From Bridge

(a) No person may fish from the deck or road surface of any bridge or causeway on a road maintained by the State Highway Department.

(b) No person may deposit or leave any dead fish, crab, or bait on the deck or road surface of any bridge or causeway on a road maintained by the State Highway Department.

(c) The State Highway Department shall post appropriate signs on all bridges and causeways affected by this section.

(d) A person who violates Subsection (a) or (b) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.009. Navigation Districts

(a) No person may use a seine or net of any type, trotline, or other mechanical or physical device, except hook and line, to catch fish in a channel, turning basin, or other water of a navigation district operating under Chapter 63, Water Code.

(b) The possession of a mechanical device referred to in Subsection (a) of this section within a navigation district operating under Chapter 63, Water Code, is prima facie evidence of a violation of Subsection (a) of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100, by confinement in the county jail for not less than 5 days nor more than 30 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 66.010 to 66.100 reserved for expansion]

SUBCHAPTER B. FRESH WATER FISHING

§ 66.101. Methods of Fishing

(a) No person may catch fish in public fresh water by any method or by the use of any device except as authorized by this section.

(b) The following methods and uses are authorized:

- (1) the use of the ordinary hook and line or trotline;
- (2) the use of a minnow seine not longer than 20 feet for the taking of bait only;
- (3) the use of a minnow seine not longer than 20 feet, dip net, cast net, and umbrella net of meshes of any size for the purpose of catching bream, shad, carp, suckers, gar, and buffalo fish only;
- (4) the use of a trammel net, a drag or set net, or seine having meshes the sides of which are at least three inches long;
- (5) the use of a spear gun and spear or bow and arrow for the purpose of catching carp, buffalo fish, gaspergou, garfish, and Rio Grande perch only; and

(6) the use of a common funnel fruit jar type trap and its metallic counterpart for the taking of minnows only for bait, but only if the trap is no longer than two feet and has a throat no larger than one inch in diameter.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.102. Placing Prohibited Devices in Public Water

(a) No person may place in the public fresh water of this state for the purpose of catching fish any device prohibited by Section 66.101 of this code or any net or seine made of wire or other metallic substance, except the metallic counterpart of a common funnel fruit jar type trap conforming to the requirements of Section 66.101(b)(6) of this code.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

(c) A device in the public fresh water of this state in violation of this section is a nuisance, and officers and employees of the department shall destroy the device. An officer or employee of the department is immune from liability for the destruction of devices found in violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.103. Water Closed to Nets and Seines

(a) The commission may close any public fresh water to the use of nets and seines or to any type of net or seine if the commission finds that the closing is necessary to protect or conserve fish.

(b) Notice of the closing must be posted for two weeks in at least three stores or other locations near the water to be closed prior to the effective date of the closing.

(c) No person may use a net or seine or any type of net or seine prohibited by the commission in public fresh water closed by the commission under this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. The failure to post notice is a defense against a charge of violating Subsection (c) of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.104. Seasons for Taking Fish

There is no period of time when the taking of fish from public fresh water is prohibited.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.105. Taking of Fish: Minimum Size

(a) No person may take from public fresh water and retain, or place in a boat, creel, live-box, or other container or on a fish stringer, a largemouth black bass, a smallmouth black bass, a spotted bass, or any subspecies of these bass that is less than 10 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1207, ch. 456, § 6(a), eff. Sept. 1, 1975.]

§ 66.106. Catch Limits

(a) Except as provided in Subsections (b) and (c) of this section, no person may catch and retain in any one day, or place in or on any container or device used for holding fish while in the process of fishing, fish taken from public fresh water in excess of the following limitations:

Species	Limit
(1) large-mouth black bass, small-mouth black bass, spotted bass, or any of their subspecies, singly or in the aggregate	10
(2) striped bass	1
(3) blue, channel, or yellow flathead catfish, singly or in the aggregate	25
(4) crappie or white perch	25
(5) Walleye or sauger, singly or in the aggregate	5
(6) northern pike and muskellunge, singly or in the aggregate	3
(7) trout of the family Salmonidae, including but not limited to rainbow trout, brown trout, and coho salmon, singly or in the aggregate	5

(b) A person may possess at one time not more than 50 blue, channel, or yellow flathead catfish, singly or in the aggregate.

(c) The retention limit in this section for catfish does not apply to a person holding a commercial fishing license issued under Section 47.002 of this code.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1207, ch. 456, § 6(b), eff. Sept. 1, 1975.]

§ 66.107. Possession of Certain Fish While Using Spear Gun or Bow and Arrow

No person may possess fish other than carp, buffalo fish, gaspergou, garfish, and Rio Grande perch

while using a spear gun and spear or a bow and arrow.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.108. Injuring Small Fish Prohibited

(a) No person may fail to return immediately to the water any crappie or bass under the minimum size taken from public fresh water.

(b) No person may unnecessarily injure crappie or bass under the minimum size taken from public fresh water.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.109. Fish Ladders

(a) The commissioners court of each county, by written order, may require the owner of a public or private dam or other obstruction on a regularly flowing public freshwater stream to construct or repair fishways or fish ladders sufficient to allow fish in all seasons to ascend the dam or other obstruction for the purpose of depositing spawn.

(b) An owner who fails to construct or repair a fishway or fish ladder within 90 days after receiving the written order is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500. Each week of violation following the 90-day period constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.110. Screens to Protect Fish

(a) The department may direct a person or corporation taking fresh water of the state to cover the entrance of the intake canal, pipe, or other device used for taking water with a screen to protect fish.

(b) The department may regulate the manner of installation and the specifications of screens and other obstructions required under this section.

(c) No person may fail to comply with a direction of the department made in writing under Subsection (a) of this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. Each day's failure to comply constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.111. Sale and Purchase of Certain Fish

(a) No person may buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, or barter or exchange freshwater crappie, bass of the genus *Micropterus*, striped bass, walleye, sauger, northern pike, muskellunge, trout of the family Salmonidae, or flathead catfish.

(b) No person may sell or offer to sell any freshwater fish taken from the water of any county west of the Pecos River.

(c) Subsection (a) of this section does not apply to a fish reared in private water and marketed for the purpose of stocking the water of this state, nor to a fish shipped into this state and offered for sale for consumption.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of:

(1) not more than \$200 if Subsection (a) is violated; or

(2) not less than \$10 nor more than \$100 if Subsection (b) is violated.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 2, eff. Sept. 1, 1975.]

§ 66.112. Brood Fish

Employees of the department under the direction of the commission and the United States Fish and Wildlife Service of the Department of Interior may take brood fish from public fresh water at any time and in any manner to supply the needs of state and federal fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.113. Removal of Rough Fish and Turtles From Fresh Water

(a) The department may take rough fish and turtles from public fresh water by means of crews under the supervision of the department, using methods of removal approved by the department.

(b) When the department determines that rough fish and turtles exist in public fresh water in numbers detrimental to the propagation and preservation of game fish, it may issue permits to applicants for rough fish and turtle removal.

(c) The department may not issue a permit to an applicant whose record within the knowledge of the department shows repeated violations of the fishing laws of the state to an extent that the department finds that¹ the applicant's conduct to be in flagrant disregard of fish conservation laws, or if the applicant has previously had a permit issued under this section revoked for a violation of the law or a regulation of the commission.

(d) A permit issued under this section, unless revoked, is valid for a period set by the commission, not less than three months.

(e) Each permit applies to a single lake, or portion of a lake, stream, or river as determined by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

¹ So in enrolled bill.

§ 66.114. Rough and Game Fish Defined

In this subchapter:

(1) "Rough fish" means fish having no sporting value, the predatory fish, bony or rough-fleshed fish, or any other fish whose numbers should be controlled to protect and encourage the propagation of game fish. A game fish may not be classified as a rough fish.

(2) "Game fish" means black bass, white bass, crappie, bream, sunfish, and channel and yellow catfish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.115. Rough Fish: Regulations

The commission shall make regulations on the types of equipment that may be used by persons holding a permit under Section 66.113 of this code according to the lake, stream, river, or portion of lake, stream, or river.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.116. Rough Fish: Fees, Bonds

(a) The commission shall set a fee which persons holding a permit to remove rough fish and turtles shall pay to the department for each pound of fish and turtles removed under the permit. The commission shall set the minimum total poundage each permit holder must take under the terms of the permit, which may vary according to the place where removal is authorized.

(b) Each holder of a permit to remove rough fish and turtles shall execute a bond in an amount set by the department and payable to the director. The bond shall be conditioned on the payment of the fee required by Subsection (a) of this section, on the removal of the minimum poundage required under the permit, and on the faithful compliance with the regulations of the commission and the law. The bond must be approved by the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.117. Revocation of Rough Fish Permit; Commercial License Required

(a) The department shall revoke the permit of any person who takes rough fish or turtles in violation of the law or of the regulations of the commission.

(b) No person may take rough fish or turtles unless he has acquired the appropriate commercial fishing license or may use nets and seines unless complying with tagging requirements.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.118. Rough Fish: Disposition

(a) Rough fish and turtles taken by a contractor under Section 66.113 of this code may be sold by the contractor.

(b) Rough fish and turtles taken by the department shall be used for feed for hatchery fish, and the surplus not used for feed shall be sold at the highest price obtainable. The receipts from the sale of rough fish shall be used for the removal of rough fish and turtles by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 66.119 to 66.200 reserved for expansion]

SUBCHAPTER C. SALTWATER FISHING

§ 66.201. Redfish

(a) No person may take from public water and retain, or place in a boat, creel, live-box, or other container or on a stringer, a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.202. Nets and Seines in Inside Water: Non-commercial Fishing

(a) No person engaged in noncommercial fishing in the inside water of this state may use for the purpose of catching fish a seine or drag seine or any other device except:

- (1) an ordinary pole and line;
- (2) a casting rod;
- (3) a rod and reel;
- (4) artificial bait;
- (5) a trotline or set line;
- (6) a cast net;
- (7) a minnow seine of not more than 20 feet in length for catching bait only; and
- (8) a set net, trammel net, or strike net, the meshes of which may not be less than one and one-half inches from knot to knot.

(b) In this section, inside water is that water defined as "inside water" in Chapter 77 of this code and "noncommercial fishing" means the catching of

fish for a purpose other than for pay, barter, sale, or exchange.

(c) A person who violates this section is guilty of a misdemeanor and on the first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200, and the person's fishing license is subject to cancellation. If the person's license is cancelled, he is not entitled to receive another fishing license for one year from the date of his conviction.

(d) Authorized employees of the department may seize nets, seines, and other tackle used in violation of this section and hold them as evidence until the trial of the defendant. No suit may be maintained against an authorized employee acting under this subsection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.203. Nets and Seines in Outside Water: Non-commercial Fishing

(a) No person engaged in noncommercial fishing in the outside water of this state may use a net or seine that fails to meet the requirements of Subsection (b) of this section.

(b) The mesh of a net or seine, not including the bag and 50 feet on each side of the bag, must have sides of not less than one and one-half inches. The bag and that part of the net or seine 50 feet on each side of the bag must have meshes the sides of which are not less than one inch. No net or seine or combination of nets and seines connected together may be longer than 2,000 feet.

(c) In this section, outside water is that water defined as "outside water" in Chapter 77 of this code, and "noncommercial fishing" means the catching of fish for a purpose other than for pay, barter, sale, or exchange.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$20 nor more than \$100. On a second conviction the person is punishable by a fine of not less than \$50 nor more than \$200 and may have his license suspended for a period of not less than 30 nor more than 90 days. On a third or subsequent conviction the person is punishable by confinement in the county jail for not less than 30 nor more than 90 days and may have his license suspended for a period of not less than one year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.204. Vessels and Obstructions in Fish Passes

(a) No person may operate, possess, or moor a vessel or other floating device, or may place any piling, wire, rope, cable, net, trap, or other obstruction, in a natural or artificial pass opened, reopened,

dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay, within a distance of 2,800 feet inside the pass measured from the mouth of the pass where it empties into or opens on the Gulf of Mexico.

(b) The department shall erect permanent iron or concrete monuments showing the restricted area.

(c) This section does not restrict the power of the United States to regulate navigation.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$1 nor more than \$100. On a second or subsequent conviction the person is punishable by a fine of not less than \$1 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.205. Drum Seining Permits

(a) A person who has a lease for taking oysters in water where seining is prohibited may apply to the department for a permit to seine for drum.

(b) The application shall be under oath and must include a statement that drum are seriously damaging the applicant's oysters and that if the permit is issued he will not take and retain or destroy other food fish but will return them to the water.

(c) If the department finds that drum are seriously damaging the oysters of the applicant, the permit shall be issued. The permit must state the period of validity and must specify the area of its applicability.

(d) The department shall assign an employee of the department to supervise the seining.

(e) Seining for drum in prohibited water is lawful when done under the authority of a permit issued under this section and when done in the presence of the assigned employee.

(f) The holder of a permit shall pay \$2.50 for each day of seining under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.206. Trotline Tags

(a) The department shall issue numbered tags for trotlines used in public salt water.

(b) The commission may make regulations for the safe use of trotlines and to carry out the provisions of this section.

(c) A trotline tag shall be attached to each 300 feet of trotline or fractional part of 300 feet, and the department shall collect a fee of \$1 for each tag issued.

(d) No person may use a trotline in public salt water unless the trotline has attached to it the proper number of trotline tags.

(e) A person who violates this section or a rule of the commission relating to safe trotline usage is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(f) Authorized employees of the department may seize trotlines used in violation of this section and hold them as evidence until the trial of the defendant. No suit may be maintained against an authorized employee acting under this subsection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.207. Fish Pound Net Prohibited

(a) No person may use a fish pound net in the water of the Gulf of Mexico within three nautical miles of the coastline.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.208. Commercial Joint Fishing Ventures

(a) No person who is engaged in taking seafood in a commercial joint venture may sell or offer to sell the products of the joint venture except in the regular course of the joint venture with the express or implied consent of the co-venturer.

(b) No person who is employed to take seafood may sell or offer to sell the products taken in the course of his employment without the express or implied consent of his employer.

(c) No person may purchase seafood with the knowledge that it is sold in violation of Subsection (a) or (b) of this section.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$100 nor more than \$200. On a second or subsequent conviction the person is punishable by a fine of not less than \$500 nor more than \$2,000 or by confinement in the county jail for not less than five days nor more than six months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.209. Statistical Reports

(a) The department shall gather statistical information on the harvest of fish, shrimp, oysters, and other forms of edible marine life of the Texas coast.

(b) The department shall prescribe and distribute the report form. The form shall be designed to allow for statistical information concerning the numbers and quantity by weight of seafood taken, the species taken, the kinds of equipment used, and the water from which the catch is made.

(c) No dealer who purchases fish, shrimp, oysters, or other forms of edible marine life directly from the fisherman may fail to file the report with the department each month on or before the 10th day of the month. No dealer required to report may willfully file an incorrect report.

(d) Any dealer who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.210. Rough Fish

(a) The commission shall investigate saltwater species of fish. It shall classify and reclassify, when necessary, saltwater fish as game fish and nongame fish.

(b) In this subchapter:

(1) "Game fish" means species that are desirable because of their sport and recreational value and that strike or bite at bait or artificial lures.

(2) "Nongame fish" means species that have no sporting value, predatory fish, bony or rough-fleshed fish, and other species whose numbers should be controlled to protect and encourage the propagation of game fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.211. Permits for Taking Rough Fish

(a) The commission shall issue permits for the taking of nongame fish in salt water to control nongame fish and to provide for their use when the commission finds that the taking will not adversely affect the conservation of game fish.

(b) The permit may authorize the use of nets, seines, and other devices that are otherwise prohibited, except that the commission may not authorize the use of a net or other device, the use of which was unlawful on May 26, 1941, in water in which the use of a trammel net, set net, or gill net was unlawful on that date. The permit shall specify the species of fish permitted to be taken.

(c) An applicant for a permit must:

(1) be a citizen of the United States and have resided in this state continuously for a period of at least six months before the date of the application; and

(2) not have been convicted of a violation of any fishing law of this state for a period of two years before the date of the application.

(d) The department shall collect a fee of \$5 for the issuance of the permit.

(e) The permit is valid for one year from the date of its issuance unless it is revoked prior to its expiration.

(f) The department shall inspect, approve, and attach metal identification tags to all devices used under this section for taking fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.212. Holders of Rough Fish Permits: Offenses

(a) No person holding a permit to take rough saltwater fish may:

(1) use a net or other device that the commission may not authorize for use in water covered by the exception in Section 66.211 of this code;

(2) use for the taking of fish any device without there being attached to it a metal identification tag issued by the department;

(3) use any device that would be prohibited except for the permit to take any game fish or any other species of fish not authorized to be taken by the permit; or

(4) use any device that would be prohibited except for the permit in any manner that will or does carelessly or needlessly injure marine life other than those species authorized to be taken by the permit.

(b) A holder of a permit who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. On conviction he may also have the permit revoked.

(c) An officer of the department who finds a device authorized by permit being used in violation of this section shall immediately seize the device and hold it until after the trial. During the prosecution for an offense under this section, the holder of the permit may not use any device authorized by the permit but otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.213. Possession of Illegal Nets and Seines

(a) No person may possess a seine, strike net, gill net, or trammel net in or on the tidal water of this state where the use of the seine or net for the catching of fish is prohibited unless the seine or net is on board a vessel in port or in a channel and going to or from the Gulf of Mexico.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and the person's commercial fishing or dealer's license, or both, is subject to cancellation. A person whose license is cancelled under this section may not receive another license for one year from the date of the conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 66.214 to 66.300 reserved for expansion]

SUBCHAPTER D. TEXAS TERRITORIAL WATER

§ 66.301. Definition

In this subchapter, "coastal water" means all of the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.302. Licenses

(a) Except as provided in Subsections (b) and (c) of this section, the department shall grant to or withhold from alien vessels licenses required for boats or vessels used in fishing or shrimping in the coastal water of this state on the basis of reciprocity or retortion.

(b) The department shall issue licenses to a vessel of a nation designated as a friendly ally or neutral on receipt of a formal suggestion transmitted to the governor by the Secretary of State of the United States.

(c) The department shall not issue a license to any boat or vessel owned in whole or in part by any alien power, or a subject or national of an alien power, or any individual who subscribes to the doctrine of international communism or who has signed a treaty of trade, friendship, and alliance or a nonaggression pact with any communist power.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.303. Prohibited Acts

(a) No unlicensed alien vessel may take or attempt to take by any means or possess any natural resource of the coastal water of this state.

(b) A captain, master, or owner of any unlicensed alien vessel or boat who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.304. Port Authorities and Navigation Districts

It is the duty of the port authorities and navigation districts of this state to prevent the use of any port facility in a manner that they reasonably suspect may assist in the violation of this subchapter. They shall use all reasonable means, including the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types, other than warships of the United States, the presence of alien commercial fishing vessels within the coastal water of this state and shall promptly transmit the information to the department and to law enforcement

agencies of this state as the situation may indicate. They shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.305. Harbor Pilots

All harbor pilots shall promptly transmit any knowledge coming to their attention regarding possible violations of this subchapter to the appropriate navigation district or port authority or the appropriate law enforcement officials.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.306. Enforcement

All law enforcement agencies of the state, including agents of the department, are empowered and directed to arrest the masters and crews of vessels that are reasonably believed to be in violation of this chapter and to seize and detain the vessels and their equipment and catch. The arresting officer shall take the offending crews or property before the court having jurisdiction of the offense. The agencies are directed to request assistance from the United States Coast Guard in the enforcement of this Act when the agencies are without means to effectuate arrest and restraint of vessels and their crews operating in violation or probable violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.307. Political Asylum

No crew member or master seeking bona fide political asylum shall be fined or imprisoned under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 67. NONGAME SPECIES

Section

- 67.001. Regulations.
- 67.002. Management of Nongame Species.
- 67.003. Continuing Scientific Investigations.
- 67.004. Issuance of Regulations.
- 67.005. Penalty.

§ 67.001. Regulations

The department by regulation shall establish any limitations on the taking, possession, transportation, exportation, sale, and offering for sale of nongame fish and wildlife that the department considers necessary to manage these species.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.002. Management of Nongame Species

The department shall develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.003. Continuing Scientific Investigations

The department shall conduct ongoing investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.004. Issuance of Regulations

(a) The regulations shall state the name of the species or subspecies, by common and scientific name, that the department determines to be in need of management under this chapter.

(b) The department shall conduct a public hearing on all proposed regulations and shall publish notice of the hearing in at least three major newspapers of general circulation in this state at least one week before the date of the hearing.

(c) The department shall solicit comments on the proposed regulations at the public hearing and by other means.

(d) On the basis of the information received at the hearing or by other means, the department may modify a proposed regulation.

(e) Regulations become effective 60 days after the date they are proposed unless withdrawn by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.005. Penalty

(a) A person who violates a regulation of the commission issued under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(b) A person who violates a regulation of the commission issued under this chapter and who has been convicted on one previous occasion of a violation of a commission regulation under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates a regulation of the commission issued under this chapter and who has been convicted on two or more previous occasions of a violation of commission regulations under this

chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$500 nor more than \$2,000 and by confinement in jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 68. ENDANGERED SPECIES

Section

- 68.001. Definitions.
- 68.002. Endangered Species.
- 68.003. Statewide Extinction List.
- 68.004. Amendments to List by Director.
- 68.005. Petition of Reclassification.
- 68.006. Permit for Taking *Endangered Species*.
- 68.007. Propagation Permit Required.
- 68.008. Original Propagation Permit.
- 68.009. Renewal Propagation Permit.
- 68.010. Reports by Permittee.
- 68.011. Refusal or Cancellation of Permit.
- 68.012. Appeal.
- 68.013. Disposition of Fish or Wildlife.
- 68.014. Regulations.
- 68.015. Prohibited Acts.
- 68.016. Sold Species to be Tagged.
- 68.017. Seizure of Fish or Wildlife.
- 68.018. Disposition of Funds; Appropriations.
- 68.019. Applicability of Chapter.
- 68.020. Exceptions.
- 68.021. Penalty.

§ 68.001. Definitions

In this chapter:

(1) "Fish or wildlife" means any wild mammal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, or offspring, of any of these, dead or alive.

(2) "Management" means:

(A) the collection and application of biological information for the purpose of increasing the number of individuals within species or populations of fish or wildlife up to the optimum carrying capacity of their habitat and maintaining these numbers;

(B) the entire range of activities constituting a full scientific research program, including census studies, law enforcement, habitat acquisition and improvement, and education; and

(C) when and where appropriate, the protection of and regulation of the taking of fish and wildlife species and populations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.002. Endangered Species

Species of fish or wildlife are endangered if listed on:

(1) the United States List of Endangered Foreign Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix A);

(2) the United States List of Endangered Native Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix D); or

(3) the list of fish or wildlife threatened with statewide extinction as filed by the director of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.003. Statewide Extinction List

(a) The director shall file with the secretary of state a list of fish or wildlife threatened with statewide extinction.

(b) Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered due to:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) its overutilization for commercial or sporting purposes;

(3) disease or predation; or

(4) other natural or man-made factors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.004. Amendments to List by Director

(a) If the lists of endangered species issued by the United States are modified, the director shall file an order with the secretary of state accepting the modification. The order is effective immediately.

(b) The director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state. The order is effective on filing.

(c) The director shall give notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.

(d) If a reclassification petition is filed during the 60-day notice period required by Subsection (c) of this section, the order may not be filed until the conclusion of the proceeding on reclassification.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.005. Petition of Reclassification

(a) Three or more persons may petition the department to add or delete species of fish or wildlife from the statewide extinction list.

(b) The petition must present substantial evidence for the addition or deletion.

(c) If fewer than 50 people join in the petition, the department may refuse to review the classification list, but if 50 or more persons join in the petition, the department shall conduct a hearing to review the classification list. The hearing shall be open to the public, and notice of the hearing shall be given in at least three major newspapers of general circulation in the state at least one week before the date of the hearing.

(d) Based on the findings at the hearing, the department may file an order with the secretary of state altering the list of fish or wildlife threatened with statewide extinction. The order takes effect on filing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.006. Permit for Taking Endangered Species

The provisions of Subchapter C, Chapter 43, of this code are applicable to all fish or wildlife classified as endangered, and it is a violation of this chapter to possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport endangered fish or wildlife from their natural habitat for propagation for commercial purposes without the permit required by Section 43.022 of this code or a federal permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.007. Propagation Permit Required

No person may possess endangered fish or wildlife for the purpose of propagating them for sale unless he has first acquired a commercial propagation permit issued by the department under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.008. Original Propagation Permit

(a) A person may apply for an original propagation permit by submitting an application containing information or statements as required by the department and by submitting an original propagation permit fee of \$300.

(b) The department shall issue the permit if it determines that the applicant has complied with Subsection (a) of this section, that the initial breeding stock was acquired under a permit issued under Section 43.022 of this code or was otherwise legally acquired, and that the applicant has not violated the laws of the United States, this state, or another state with respect to the acquisition of breeding stock.

(c) An original propagation permit must contain a description of endangered fish and wildlife authorized to be possessed under the permit.

(d) An original propagation permit is valid for one year from the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.009. Renewal Propagation Permit

(a) A person holding an original propagation permit or a renewal propagation permit is entitled to receive from the department a renewal propagation permit on application to the department and on the payment of a renewal propagation permit fee of \$550 if the application and fee are received by the department during the period beginning 10 days before the expiration date of the outstanding permit and extending through the expiration date of the permit.

(b) A renewal propagation permit is valid for a period of three years beginning on the date of its issuance.

(c) The department may refuse to renew any permit if it determines that it would be in the best interest of the species of fish or wildlife described in the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.010. Reports by Permittee

A person holding a commercial propagation permit shall send to the department annually:

(1) a written evaluation by a veterinarian licensed to practice in this state of the physical conditions of the propagation facilities and the conditions of the fish or wildlife held under the permit; and

(2) a written report on forms prepared by the department relating to propagation activities during the previous year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.011. Refusal or Cancellation of Permit

(a) If, on the basis of the reports required by Section 68.010 of this code or an investigation or inspection by an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and immediate protection is needed, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.012. Appeal

(a) A person aggrieved by the action of the department in refusing to grant or renew a commercial propagation permit or in cancelling a permit

may appeal within 20 days of the final action of the department to a district court of Travis County or the county of his residence.

(b) The appeal shall be by trial de novo as are appeals from the justice court to the county court. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.013. Disposition of Fish or Wildlife

A person who ceases to hold a commercial propagation permit under this chapter shall dispose of endangered fish or wildlife held after the expiration or cancellation of the permit in the manner required by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.014. Regulations

The department shall make regulations necessary to administer the provisions of this chapter and to attain its objectives, including regulations to govern:

- (1) permit application forms, fees, and procedures;
- (2) hearing procedures;
- (3) procedures for identifying endangered fish and wildlife or goods made from endangered fish or wildlife which may be possessed, propagated, or sold under this chapter; and
- (4) publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.015. Prohibited Acts

(a) No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(b) No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(c) No person may sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.016. Sold Species to be Tagged

No person may sell endangered fish or wildlife or goods made from endangered fish or wildlife unless the fish or wildlife or goods are tagged or labeled in

a manner to indicate compliance with Section 68.015(a) and (b) of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.017. Seizure of Fish or Wildlife

(a) A peace officer who has arrested a person for a violation of this chapter may seize fish or wildlife or goods made from fish or wildlife taken, possessed, or made in violation of this chapter.

(b) Property taken under this section shall be delivered to the department for holding pending disposition of the court proceedings. If the court determines that the property was taken, possessed, or made in violation of the provisions of this chapter, the department may dispose of the property under its regulations. The costs of the department in holding seized fish or wildlife during the pendency of the proceedings may, in appropriate cases, be assessed against the defendant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.018. Disposition of Funds; Appropriations

(a) All revenue received under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(b) Funds for the administration of this chapter may be appropriated from the general revenue fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.019. Applicability of Chapter

All species and subspecies of wildlife classified as endangered are governed by this chapter to the exclusion of other regulatory and licensing laws.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.020. Exceptions

(a) This chapter does not apply to:

- (1) coyotes (prairie wolves);
- (2) cougars;
- (3) bobcats;
- (4) prairie dogs;
- (5) red foxes; or

(6) animals, fish, or fowl that are privately owned or to the management or taking of privately owned animals, fish, or fowl by the private owners.

(b) This chapter does not apply to the possession of mounted or preserved endangered fish or wildlife acquired before August 31, 1973, by public or private nonprofit educational, zoological, or research institutions. The department may require an institution to

furnish a list of mounted or preserved fish or wildlife possessed and proof of the time of acquisition. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.021. Penalty

(a) A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(b) A person who violates any provision of this chapter and who has been convicted on one previous occasion of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates any provision of this chapter and who has been convicted on two or more previous occasions of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$500 nor more than \$2,000 and by confinement in jail for not less than six months nor more than one year.

(d) A violation of a regulation of the department issued under the authority of this chapter is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE C. FUR-BEARING ANIMALS

CHAPTER 71. LICENSES

Section

- 71.001. Definitions.
- 71.002. Trapper's License Required.
- 71.003. Propagation License.
- 71.004. Beaver and Otter Trapping License.
- 71.005. Wholesale and Retail Fur Buyer's Licenses.
- 71.006. Purchases by Retail Fur Buyer.
- 71.007. Purchases by Wholesale Fur Buyer.
- 71.008. Issuance of Licenses.
- 71.009. License Fees.
- 71.010. License Period.
- 71.011. Possession and Display of Licenses.
- 71.012. Inspections.
- 71.013. Fees of Issuing Agents.
- 71.014. Taking of Fur-Bearing Animals for Propagation; Reports.
- 71.015. Penalties.

§ 71.001. Definitions

In this subtitle:

(1) "Fur-bearing animal" means wild beaver, otter, mink, ringtailed cat, badger, skunk, racoon, muskrat, opossum, fox, or civet cat.

(2) "Trapper" means a person who takes the pelt of a fur-bearing animal for the purpose of sale and who sells or offers for sale the pelt of a fur-bearing animal of this state.

(3) "Retail fur buyer" means a person who purchases the pelt of a fur-bearing animal of this state from trappers only.

(4) "Wholesale fur buyer" means a person who purchases for himself or for another person the pelt of a fur-bearing animal of this state from a trapper or from a retail fur buyer.

(5) "Resident" means a person who has resided in this state for at least two years prior to the time an application for a trapper's license is made.

(6) "Nonresident" means any person applying for a trapper's license other than a resident.

(7) "Sale" includes barter and other transfers of ownership for consideration.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.002. Trapper's License Required

No person may take the pelt of a fur-bearing animal for the purpose of sale without first having acquired a trapper's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.003. Propagation License

No person may take alive a wild fur-bearing animal for the purpose of sale without first having acquired a propagation license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.004. Beaver and Otter Trapping License

In addition to the other licenses required in this chapter, no person may trap beaver or otter outside the county of his residence without first having acquired a beaver-otter trapping license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.005. Wholesale and Retail Fur Buyer's Licenses

No person may purchase the pelt of a fur-bearing animal in this state unless he has acquired and possesses a valid wholesale fur buyer's license or a valid retail fur buyer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.006. Purchases by Retail Fur Buyer

No retail fur buyer may purchase in this state the pelt of a fur-bearing animal except from a licensed trapper.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.007. Purchases by Wholesale Fur Buyer

No wholesale fur buyer may purchase in this state the pelt of a fur-bearing animal except from a licensed trapper, a licensed retail fur buyer, or another licensed wholesale fur buyer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.008. Issuance of Licenses

The licenses authorized by this chapter shall be issued by the department, or an authorized agent of the department, to applicants on the payment of the license fees.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.009. License Fees

(a) The fee for a trapper's license is \$5 if the applicant is a resident and \$200 if the applicant is a nonresident.

(b) The fee for a propagation license is \$10.

(c) The fee for a beaver-otter trapping license is \$50.

(d) The fee for a retail fur buyer's license is \$5.

(e) The fee for a wholesale fur buyer's license is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.010. License Period

The license period for licenses issued under this chapter is September 1 of one year through August 31 of the following year, and a license is current and valid only for the license period for which it is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.011. Possession and Display of Licenses

(a) A trapper shall carry the trapper's license on his person while taking fur-bearing animals.

(b) A wholesale fur buyer or a retail fur buyer shall carry on his person the required license while conducting business at a place other than an established place of business.

(c) A wholesale fur buyer or a retail fur buyer shall display the required license at all times at the established place of business for which the license is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.012. Inspections

The established place of business of any wholesale or retail fur buyer and any vehicle being used by a trapper or a wholesale or retail fur buyer for the collection or transportation of pelts of fur-bearing

animals is subject to inspection without a warrant by game management officers at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.013. Fees of Issuing Agents

County clerks and other authorized agents of the department may retain 20 cents of the fee for the issuance of a trapper's license or a retail or wholesale fur buyer's license and 50 cents of the fee for the issuance of a beaver-otter trapper's license as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.014. Taking of Fur-Bearing Animals for Propagation; Reports

(a) A person holding a propagation license permit may take alive fur-bearing animals only during the open season for the taking of fur-bearing animals.

(b) The holder of a propagation license shall report to the department on or before March 16 each year. The report must show the number and kind of fur-bearing animals held in captivity and the number and kind of fur-bearing animals and pelts disposed of during the previous year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.015. Penalties

(a) Except as provided in another subsection of this section, a person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(b) A person who violates Section 71.004 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(c) A person who violates Section 71.003 of this code or who fails to comply with Section 71.014 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

(d) A person subject to sentencing under Subsection (a) or (c) of this section forfeits his license and becomes ineligible to acquire another until one year after the date of his conviction, if the jury, or the court in the absence of a jury, assesses forfeiture.

(e) A person who is sentenced under Subsection (c) of this section forfeits his license under Subsection (d) of this section, and if he takes, sells, offers for sale, buys, or offers to buy a fur-bearing animal or pelt during the period he is ineligible to acquire another license, he is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100 and is ineligible to acquire a

license for a period of one year from the date of his conviction if so assessed by the jury or court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 72. LIMITATIONS ON TAKING FUR-BEARING ANIMALS

Section

- 72.001. Taking During Open Season.
- 72.002. Open Seasons.
- 72.003. Possession of Green Pelt.
- 72.004. Hunting Mink With Dogs.
- 72.005. Trapping Without Consent of Landowner.
- 72.006. Protection of Muskrats.
- 72.007. Penalties.

§ 72.001. Taking During Open Season

No person may take or attempt to take the pelt of a fur-bearing animal for the purpose of sale at any time except during the open season. A person may take fur-bearing animals at any time if the taking is for any purpose other than the sale of the pelt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.002. Open Seasons

The open seasons for the taking of pelts of fur-bearing animals are:

- (1) muskrat, from November 15 of one year through March 15 of the following year;
- (2) mink, from November 15 of one year through January 15 of the following year; and
- (3) all other fur-bearing animals, during all of January and December of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.003. Possession of Green Pelt

(a) The possession of a green or undried pelt of a fur-bearing animal after the time specified by this section by a trapper or a retail fur buyer is prima facie evidence of a violation of Section 72.001 of this code.

(b) The times are:

- (1) for all fur-bearing animals except muskrat:
 - (A) February 5 of any year by a licensed resident or nonresident trapper;
 - (B) February 15 or any year by a licensed retail fur buyer; and
- (2) for muskrat:
 - (A) March 20 of any year for a licensed resident or nonresident trapper;
 - (B) March 30 of any year by a licensed retail fur buyer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.004. Hunting Mink With Dogs

(a) No person may hunt or take wild mink with dogs.

(b) No person may possess the pelt of a mink while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.005. Trapping Without Consent of Landowner

No person may set a trap or deadfall on any enclosed land without the consent of the owner. Enclosed land is land enclosed by a fence, water, or other natural or artificial barrier, or a combination of barriers used by the owner as a method of enclosure.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.006. Protection of Muskrats

(a) No person may destroy the bed, nest, or breeding place of a muskrat or take a muskrat by any means except trapping.

(b) No person may trap, kill, or set a trap for a muskrat on land of another without the consent of the owner or lessee of the land.

(c) No person may possess the hide of a muskrat on land of another without the consent of the owner or lessee of the land unless the hide was lawfully taken and legally belongs to the person having possession of it.

(d) No person may purchase the hide or fur of a muskrat on the land of another.

(e) This section does not prevent the owner of land from taking muskrats at any time by any means.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.007. Penalties

(a) A person who violates Section 72.001 or 72.003 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(b) A person who violates Section 72.004, 72.005, or 72.006 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE D. CRUSTACEANS AND MOLLUSKS

CHAPTER 76. OYSTERS

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- 76.002. Designation of Public and Private Beds.
- 76.003. Beds Subject to Location.

Section

- 76.004. Riparian Rights.
- 76.005. Affidavit of Riparian Rights.
- 76.006. Application for Location; Fee.
- 76.007. Maximum Acreage Under Location.
- 76.008. Lease or Control by Foreign Corporation Prohibited.
- 76.009. Examination and Survey of Location.
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- 76.012. Locator's Certificate.
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- 76.201. Definitions.
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SUBCHAPTER A. PUBLIC AND PRIVATE OYSTER BEDS

§ 76.001. Natural Oyster Bed

(a) A natural oyster bed exists when at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

(b) In this section, a barrel of oysters is equal to three boxes of oysters in the shell. The dimensions of a box are 10 inches by 20 inches by 13-½ inches. In filling a box for measurement, the oysters may not be piled more than 2-½ inches above the height of the box at the center. Two gallons of shucked oysters without shells equals one barrel of oysters in the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.002. Designation of Public and Private Beds

(a) All natural oyster beds are public.

(b) All oyster beds not designated as private are public.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.003. Beds Subject to Location

Except as provided in Section 76.004 of this code, an oyster bed or reef, other than a natural oyster bed, is subject to location by the department. This section does not apply to a bed or reef that has been exhausted within an eight-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.004. Riparian Rights

(a) The lawful occupant of a grant of land in this state has the exclusive right to use any creek, bayou, lake, or cove included within the metes and bounds of the original grant for the planting or sowing of oysters.

(b) If the creek, bayou, lake, or cove is not included in the original grant, a riparian owner has an exclusive right in the creek, bayou, lake, or cove for the planting and sowing of oysters to the middle of the creek, bayou, lake, or cove or to 100 yards from the shore, whichever distance is shorter.

(c) The right of a riparian owner of land along any bay shore in this state to plant oysters extends 100 yards into the bay from the high-water mark or from where the land survey ceases. The right to a natural oyster bed under this subsection is not exclusive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.005. Affidavit of Riparian Rights

(a) The department may require the owner of riparian rights described in Section 76.004 of this code when offering oysters for sale to make an affidavit stating that the oysters were produced on his property.

(b) The failure of an owner of riparian rights described in Section 76.004(a) of this code to have an affidavit when required by the department or to show it to a game management officer on request or

to the person to whom the oysters are offered for sale when required by the department is prima facie evidence that the oysters were produced from public beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.006. Application for Location; Fee

(a) Any citizen of the United States or any domestic corporation may file a written application with the department for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state.

(b) The application must describe the location desired.

(c) The application must be accompanied by a fee of \$20.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.007. Maximum Acreage Under Location

No person may own, lease, or control more than 100 acres of land covered by water under certificates of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.008. Lease or Control by Foreign Corporation Prohibited

No corporation other than those incorporated under the laws of this state may lease or control land under a certificate of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.009. Examination and Survey of Location

(a) On receipt of an application for a location, the department shall examine the proposed location as soon as practicable by any efficient means.

(b) If the location is subject to certification, the department shall have the location surveyed by a competent surveyor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.010. Areas Not Subject to Location

The following areas are not subject to location:

- (1) a natural oyster bed;
- (2) a bay shore area within 100 yards of the shore;
- (3) an area subject to an exclusive riparian right; and
- (4) an area already under certification as a location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.011. Survey Markings and Buoys

(a) In making a location, the surveyor shall plant two iron stakes or pipes having a diameter of not less than two inches on the shoreline nearest to the proposed location, so that one stake or pipe is at each end of the location. The stakes or pipes shall be set at least three feet in the ground and with reference to bearings of at least three permanent objects or natural landmarks.

(b) The locator shall place and maintain, under the direction of the department, a buoy at each corner of the location farthest from the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.012. Locator's Certificate

(a) The department shall issue to each locator a certificate signed and sealed by the director.

(b) The certificate must contain:

- (1) the date of the application;
- (2) the date of the survey; and
- (3) a description of the location by metes and bounds with reference to points of the compass and natural objects by which the location may be found and verified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.013. Survey Fee

(a) Before delivery of the certificate, the locator shall pay to the department the surveyor's fee and other costs of establishing the location.

(b) The amount of the fee required by Section 76.006(c) of this code may be deducted from the amount owed to the department under this section.

(c) If the amount paid under Section 76.006(c) of this code exceeds the amount owed under this section, the difference shall be returned to the locator.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.014. Filing of Certificate

(a) Before the expiration of 60 days following the date of the certificate, the locator shall file the certificate with the county clerk of the county of the location.

(b) The clerk shall file the certificate in a well-bound book kept for that purpose and shall return the original certificate and a registration receipt to the locator. The clerk is entitled to receive as a fee for filing the certificate the same fee as for recording deeds.

(c) The original certificate and certified copies of it are admissible in court under the same rules governing the admissibility of deeds and certified copies of deeds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.015. Rights of Locator

(a) The holder of a certificate of location as provided for in Section 76.012 of this code is protected in his possession of the location against trespass in the same manner as are freeholders.

(b) This section applies only as long as the stakes or pipes and buoys required by this chapter are maintained in their correct positions and the locator complies with the law and the regulations governing the fish and oyster industries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.016. Fencing of Location

A locator or his assignee may fence all or part of his location if the fence does not obstruct navigation into or through a regular channel or cut leading to other public water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.017. Location Rental

(a) No rental fee is owed on any location when oysters are not sold or marketed from the location for a period of five years after the date of the establishment of the location.

(b) When oysters are sold or marketed from the location and thereafter, the holder of the certificate shall pay to the department \$1.50 per acre of location per year and two cents for each barrel of oysters from the location sold.

(c) Rental fees are due annually by March 1.

(d) The failure to pay any rental when due terminates the lease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.018. Oyster Production Required

If oysters from the location are not sold or marketed within five years from the date of the establishment of the location, the lease is void.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.019 to 76.030 reserved for expansion]

SUBCHAPTER B. OYSTER PERMITS

§ 76.031. Application for Permit

(a) A person desiring to plant oysters on his own location or to take oysters from oyster reefs and public water shall apply to the department for an oyster permit.

(b) Only those persons who are citizens of Texas or corporations composed of American citizens and chartered by this state to engage in the culture of

oysters or to transact business in the purchase and sale of fish and oysters may apply for a permit.

(c) The application must:

(1) state the purpose for taking oysters; and

(2) give the quantity of oysters to be taken from designated areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.032. Discretion to Issue Permit

The department may issue or refuse to issue a permit to any applicant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.033. Conditions of Permit

(a) The department shall require the permittee to take only the oysters authorized in the permit from beds or reefs designated in the permit.

(b) The department shall:

(1) mark off the exact area of beds or reefs from which oysters may be taken;

(2) designate the bottoms on which oysters may be deposited if they are taken to be prepared for market;

(3) require the permittee to cull the oysters on the grounds where they are to be located; and

(4) specify what implements may be used in taking oysters.

(c) The department may make other conditions or regulations to protect and conserve oysters on public reefs and beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.034. Minimum Size

No permittee may take oysters of a smaller size than 3-1/2 inches from hinge to mouth unless authorized by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.035. Oysters Property of Permittee

All oysters taken or deposited in public water by the holder of an oyster permit under the terms of a permit are the personal property of the permit holder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.036. Marking Beds

(a) The holder of a permit shall clearly and distinctly mark, by buoys, stakes, or fences, the boundaries of the areas designated in the permit from which he may take or in which he may deposit oysters.

(b) No person may be prosecuted for taking oysters from the bed of a permittee unless the boundaries are established and maintained as provided in this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.037. Theft of Oysters From Private Bed

(a) No person may fraudulently take oysters placed on private beds without the consent of the owner of the private bed or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who lawfully deposited them.

(b) A person who violates this section is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not less than one nor more than two years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.038. Interference With Buoys or Markers

(a) No person may deface, injure, destroy, or remove a buoy, marker, or fence used to designate or enclose a private oyster bed or location where oysters have been deposited for preparation for market without the consent of the owner of the bed or location.

(b) No person may deface, injure, destroy, or remove a buoy, marker, or sign of the department used for designating water closed for the taking of fish or oysters without the consent of the department.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.039. Prohibited Sales

(a) No person gathering oysters for planting or for depositing for market preparation on locations or on private oyster beds may sell, market, or dispose of the oysters gathered, at the time they are gathered, for any other purpose than planting or preparing for market.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

(c) This section does not affect the right of a person to sell or assign an oyster location or private bed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.040 to 76.100 reserved for expansion]

SUBCHAPTER C. OYSTER DREDGE LICENSE

§ 76.101. Oyster Dredge License Required

No person may take or attempt to take oysters from the public water of this state by the use of a dredge without first having acquired an oyster dredge license from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.102. Exemptions From License

An oyster dredge license is not required if the boat taking the oysters is licensed as a commercial bay or bait shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.103. Types of Licenses; Period of Validity

(a) The department may issue commercial oyster dredge licenses and sports oyster dredge licenses.

(b) An oyster dredge license expires on August 31 following the date of its issuance or on August 31 of the yearly period for which it is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.104. License Fees

(a) The fee for a commercial oyster dredge license is \$25.

(b) The fee for a sports oyster dredge license is \$5.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.105. Commercial License: Dredge Size

No holder of a commercial oyster dredge license may use more than one dredge which may not exceed 36 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.106. Sports License: Dredge Size

No holder of a sports oyster dredge license may use more than one dredge which may not exceed 14 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.107. Sale of Sports Oysters Prohibited

No person may sell oysters taken under the authority of a sports oyster dredge license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.108. Open Season

(a) No person may take oysters from public beds or reefs except during the open season or except by permit issued by the department.

(b) The open season is the period beginning on November 1 of one year and extending through April 30 of the following year.

(c) There is no closed season in that part of Laguna Madre and abutting water south of the Port Mansfield Channel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.109. Night Dredging Prohibited

During the open season, no person may take oysters from public water during the period between sunset and sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.110. Number and Description of Dredges

(a) No person may possess on board any commercial fishing boat, barge, float, or other vessel more than one oyster dredge. If a vessel is towing another vessel, the towing and towed vessels combined may not have on board more than one dredge.

(b) No person may possess on board any commercial fishing boat, barge, float, or other vessel, or any combination of vessels in tow, a dredge:

(1) exceeding 36 inches in width across the mouth; or

(2) having a capacity of more than two bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.111. Retention Limits

(a) No person may have on board any vessel in the public water of this state, or on any combination of vessels in tow, more than 50 barrels of culled oysters of the legal size.

(b) A barrel is equal to three bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.112. Oyster Size Limits

(a) No person may take or possess a cargo of oysters more than five percent of which are between three-fourths inch and three inches measured from beak to bill or along an imaginary line through the long axis of the shell.

(b) A cargo of undersized oysters shall be determined by taking at random five percent of the total cargo of oysters as a sample, of which not more than five percent may measure less than three inches along an imaginary straight line through the long axis of the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.113. Culling Oysters

(a) No person may fail or refuse to cull oysters between three-fourths inches and three inches measured as provided in Section 76.112 of this code at the time the oysters are taken or to fail or refuse to return culled oysters to the reef immediately.

(b) No person may possess more than one bushel of unculted oysters during the period he is on the reef.

(c) Unculted oysters shall be kept separate from culled oysters.

(d) If returning undersized oysters to the bed from which they were taken is impractical, the department may sell them.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.114. Exception to Size and Retention Limits

(a) The commission by permit may allow the use of one or more dredges of any size and cargoes in excess of 50 barrels in transplanting to or harvesting from private leases.

(b) The commission by permit may allow the taking and retention of cargoes having oysters between three-fourths inch and three inches in a greater percentage than five percent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.115. Closing Areas

(a) The commission may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked.

(b) The commission may open closed areas when appropriate.

(c) Before closing any area, the commissioner shall post notices of the closing in fish and oyster houses in two towns nearest the area to be closed and shall publish notice in a daily newspaper of general circulation in the area to be closed. The notices shall be posted and published at least three days before the effective date of the closing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 18, eff. Sept. 1, 1975.]

§ 76.116. Oysters From Polluted Areas

(a) There is no open season for taking oysters from areas declared to be polluted by the State Department of Health.

(b) The department may authorize by permit the transplanting of oysters from polluted areas to private oyster leases.

(c) A person removing oysters from polluted areas without a permit shall replace the oysters in the

beds from which they were taken as directed by authorized employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.117. Obedience to Orders

No person may fail or refuse to obey a lawful order of a commissioned game management officer of the department issued under the authority of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.118. Penalty

A person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.119 to 76.200 reserved for expansion]

SUBCHAPTER D. SHELLFISH IN POLLUTED WATER

§ 76.201. Definitions

In this subchapter:

(1) "Shellfish" means oysters, clams, and mussels, either fresh or frozen and either shucked or in the shell.

(2) "Polluted area" means an area that is continuously or intermittently subject to the discharge of sewage or other wastes, or to the presence of coliform organisms in quantities likely to indicate that shellfish taken from the area are unfit for human consumption.

(3) "Commissioner" means the State Commissioner of Health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.202. Declaration of Polluted Areas

(a) The commissioner shall declare any area within the jurisdiction of the state to be polluted if he finds that it is a polluted area.

(b) The commissioner shall close to the taking of shellfish for a period he deems advisable any water to which shellfish from polluted areas may have been transferred.

(c) The commissioner shall establish by order the areas which he declares to be polluted and shall modify or revoke the orders in accordance with the results of sanitary and bacteriological surveys conducted by the State Department of Health. The

commissioner shall file the orders in the office of the State Department of Health and shall furnish copies of the orders describing polluted areas to any interested person without charge.

(d) The commissioner shall conspicuously outline polluted areas on maps, which he shall furnish without charge to any interested person. The failure of any person or persons to avail themselves of this information does not relieve them from a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.203. Rules and Regulations

(a) The commissioner, with the approval of the State Board of Health, shall make rules and regulations establishing specifications for plant facilities and for the harvesting, transporting, storing, handling, and packaging of shellfish.

(b) The commissioner shall file the rules and regulations in the office of the secretary of state.

(c) The rules and regulations are effective three months from the date of their promulgation.

(d) The commissioner shall furnish without charge printed copies of the rules and regulations to any interested person on request.

(e) The commissioner may make reasonable and necessary regulations, not inconsistent with any provision of this subchapter, for the efficient enforcement of this subchapter.

(f) The violation of any regulation made under this subchapter is a violation of this subchapter. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.204. Inspection of Shellfish Plants

(a) The commissioner or his authorized agent shall inspect all shellfish plants and the practices followed in the handling and packaging of shellfish. If it is found that the operator is complying with the rules and regulations promulgated under this subchapter, the commissioner shall issue a certificate attesting to the compliance.

(b) The commissioner or his authorized agent may reinspect a plant at any time and shall revoke the certificate on refusal of the operator to permit an inspection or free access at reasonable hours, or on a finding that the plant is not being operated in compliance with the rules and regulations promulgated under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.205. Taking Shellfish From Polluted Areas

No person may take, sell, or offer or hold for sale any shellfish from an area declared by the commissioner to be polluted without complying with all

rules and regulations made by the commissioner to insure that the shellfish have been purified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.206. Transplanting Shellfish From Polluted Areas

(a) Section 76.205 of this code does not prohibit the transplanting of shellfish from polluted water when permission for the transplanting is first obtained from the Parks and Wildlife Department and the transplanting is supervised by the department.

(b) The department shall furnish a copy of the transplant permit to the commissioner prior to the commencement of transplanting activity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.207. Purification of Shellfish

The commissioner may allow purification of shellfish taken from polluted areas by artificial means, subject to the rules and regulations of the commissioner and subject to supervision deemed necessary by the commissioner in the interest of public health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.208. Sale of Shellfish Improperly Handled

No person may sell or offer or hold for sale any shell stock or shucked shellfish that have not been handled and packaged in accordance with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.209. Sale of Shellfish From Improper Facilities

No person may sell or offer or hold for sale any shellfish where the facilities for packaging and handling the shellfish do not comply with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.210. Unlawfully Operating a Shellfish Plant

No person may operate a shellfish plant engaged in the handling and packaging of shellfish, either shucked or in the shell, without a valid certificate issued by the commissioner for each plant or place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.211. Sale of Shellfish Without a Certificate Number

No person may sell or offer for sale any shellfish that are not in a container bearing a valid certificate number from a state or a nation whose shellfish certification program conforms to the current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry, issued by the United States Public Health Service. The provisions of this section do not apply to the sale for on-premises consumption of shellfish removed from a certified container.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.212. Compliance With Regulations

(a) The commissioner shall give any plant a reasonable time to comply with regulations issued under this subchapter after the date of promulgation, but not longer than six months unless an extension is granted.

(b) On a showing that more time is reasonably required, the commissioner may extend the time for compliance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.213. Enforcement

Commissioned officers of the Parks and Wildlife Department shall enforce the provisions of Section 76.205 of this code. Other provisions of this subchapter shall be enforced by the commissioner and his authorized representatives with assistance from the officers of the department as determined by the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.214. Disposition of Unfit or Unlawful Shellfish

Any shellfish that are held or offered for sale at retail or for human consumption, and that have not been handled and packaged in accordance with the specifications fixed by the commissioner under this subchapter, or that are not in a certified container as provided in this subchapter or are otherwise found by the commissioner to be unfit for human consumption, are subject to immediate condemnation, seizure, and confiscation by the commissioner or his agents. The shellfish shall be held, destroyed, or otherwise disposed of as directed by the commissioner.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.215. Performance Bond

In order to insure that the certificate holder will comply with all legal requirements imposed under this subchapter, the commissioner, when reasonably

necessary for the enforcement of this subchapter, may require each person holding a plant certificate to post and maintain with him a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or a cash deposit in a form acceptable to the commissioner. Any failure to comply with the legal requirements of this subchapter will result in the certificate holder or his surety paying as forfeiture to the commissioner a sum not to exceed \$1,000.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.216. Penalty

A person who violates any provision of this subchapter or a regulation of the commissioner is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 77. SHRIMP

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SUBCHAPTER A. GENERAL PROVISIONS

§ 77.001. Definitions

In this chapter:

(1) "Coastal water" means all the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of the state.

(2) "Inside water" means all bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which saltwater shrimp are found or into which saltwater shrimp migrate.

(3) "Outside water" means the salt water of the state contiguous to and seaward from the shoreline of the state along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, out-

lets, passes, rivers, streams, and other bodies of water; and that portion of the Gulf of Mexico extending from the shoreline seaward and within the jurisdiction of the state.

(4) "Major bays" means the deeper, major bay areas of the inside water, including Sabine Lake, Trinity Bay, Galveston Bay, East Galveston Bay, West Galveston Bay, Matagorda Bay (including Keller's Bay and East Matagorda Bay), Tres Palacios Bay, Espiritu Santo Bay, Lavaca Bay from the present causeway seaward, San Antonio Bay, Ayres Bay, Aransas Bay, Mesquite Bay, and Corpus Christi Bay, all exclusive of tributary bays, bayous, and inlets.

(5) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as agent, bailee, or custodian of another.

(6) "Commercial gulf shrimp boat" means any boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the outside water of the state for pay or for the purpose of sale, barter, or exchange, or from salt water outside the state for pay or for the purpose of sale, barter, or exchange, and that unloads at a port or other point in the state without having been previously unloaded in another state or foreign country.

(7) "Commercial bay shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water of this state for pay or for the purpose of sale, barter, or exchange.

(8) "Commercial bait shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp for use as bait and other edible aquatic products from the inside water of the state for pay or for the purpose of sale, barter, or exchange.

(9) "Shrimp house operator" means a person who operates a shrimp house, plant, or other establishment for compensation or profit for the purpose of unloading and handling, from commercial gulf shrimp boats or commercial bay shrimp boats, fresh shrimp and other edible aquatic products caught or taken from the coastal water of the state or from salt water outside the state and brought into the state without having been previously unloaded in an-

other state or foreign country, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(10) "Bait-shrimp dealer" means a person who operates an established place of business in a coastal county of the state for compensation or profit for the purpose of handling shrimp caught for use as bait from the inside water of this state, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(11) "Individual bait-shrimp trawl" means a trawl, net, or rig used for the purpose of catching shrimp for one's own personal use.

(12) "Second offense" and "third and subsequent offenses" mean offenses for which convictions have been obtained within three years prior to the date of the offense charged.

(13) "Contiguous zone," means that area of the Gulf of Mexico lying adjacent to and offshore of the jurisdiction of the State of Texas and in which shrimp of the genus *Penaeus* are found.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(a), eff. Sept. 1, 1975.]

§ 77.002. License Fees

License fees provided in this chapter are a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.003. Disposition of Funds

Money received for licenses issued under this chapter or fines for violations of this chapter shall be remitted to the department by the 10th day of the month following the date of collection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.004. Research Program

(a) The department shall conduct continuous research and study of:

- (1) the supply, economic value, environment, and breeding habits of the various species of shrimp;
- (2) factors affecting the increase or decrease in shrimp;
- (3) the use of trawls, nets, and other devices for the taking of shrimp;
- (4) industrial and other pollution of the water naturally frequented by shrimp; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of shrimp landed at points in the state.

(b) The research may be conducted by the department or an agency designated by the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.005. Reporting by Licensee

A licensee under this chapter who lands shrimp in the state shall submit to the department by the 10th day of each month, on forms furnished by the department, a report stating:

(1) the number of pounds of shrimp landed at points in the state by the licensee during the reporting period;

(2) the water from which the shrimp were taken; and

(3) the names of the species of shrimp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.006. Department Findings and Report

(a) Based on the study and reports obtained under Section 77.004 and 77.005 of this code, the department shall make findings of fact and enter the findings in the permanent records of the department.

(b) The findings of fact shall be published as a report and presented to the governor and each member of the legislature before each regular session of the legislature.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.007 to 77.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO SHRIMPING

§ 77.011. License Requirement

No person may operate in the coastal water without obtaining the appropriate license, if required, as prescribed in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.012. Foreign Shrimp

Provisions of this chapter prohibiting possession, sale, purchase, unloading, or other handling of shrimp apply to shrimp caught in this state and shrimp coming from another state or country unless specifically provided otherwise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.013. Size

Except as provided by this chapter, no person may catch, possess, or have on board a boat within coastal water, or buy, sell, unload, transport, or handle, an amount of fresh shrimp, except sea bobs, which average in count of individual specimens more than 65 headless fresh shrimp to the pound or more than 39 heads-on fresh shrimp to the pound.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.014. Method of Taking Count

(a) An authorized employee of the department shall take the count of shrimp in the presence of the person possessing the shrimp.

(b) The employee shall select a minimum of three representative samples for each 1,000 pounds or fraction of 1,000 pounds of headless or heads-on shrimp being sampled.

(c) Each sample must weigh five pounds after draining at least three minutes.

(d) The count per pound for the sample is determined by dividing the number of specimens in the sample by five.

(e) The average count per pound for the entire quantity being sampled is determined by totalling the count per pound for each sample and dividing that total by the number of samples.

(f) The average count per pound as determined under this section is prima facie evidence of the average count per pound of the shrimp in the entire cargo or quantity of shrimp sampled.

(g) Headless and heads-on shrimp shall be sampled, weighed, and counted separately.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.015. Gradation and Processing

Shrimp found to be of legal size under this chapter may subsequently be graded for size for packaging, processing, or sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.016. Restrictions on Individual Bait-Shrimp Trawl

No person may use, possess, or have on board a boat in coastal water more than one individual bait-shrimp trawl, or an individual bait-shrimp trawl:

(1) with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl is placed in use;

(2) exceeding 20 feet in length between the doors or boards or other spreading device; or

(3) with doors or boards exceeding 15 inches by 30 inches each, or a total of 450 square inches each.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.017. Possession After Season

No person may retain saltwater shrimp in their fresh state legally taken in the coastal water of this state for more than five days after the end of an open season for the taking of shrimp unless he is a licensed bait dealer or sports fisherman.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.018. Foreign Trawl or Shrimp

(a) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county a trawl and spreading device that may lawfully be used in the coastal water of another state if:

(1) the trawl and equipment are immediately en route to or from a home port or destination on land;

(2) the trawl and equipment have been used during the open season for shrimp in another state; and

(3) the trawl and equipment are not used or intended for use in the coastal water of this state in violation of this chapter.

(b) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county shrimp that are lawfully caught in the coastal water of another state if the catch is immediately en route to or from a home port or destination on land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.019. Prohibited Handling of Shrimp

No shrimp house operator, wholesale fish dealer, retail fish dealer, wholesale truck dealer, retail truck dealer, or other person holding a license issued by the department may knowingly unload, buy, or handle in any way shrimp or bait shrimp:

(1) from an unlicensed gulf shrimp boat or unlicensed commercial bay shrimp boat;

(2) of a prohibited size;

(3) caught in the inside water or outside water during the closed season for the water; or

(4) in violation of a provision of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.020. Penalty

A person who violates a provision of this chapter except Section 77.024 of this code, is guilty of a misdemeanor and on conviction is punishable:

(1) by a fine of not less than \$50 nor more than \$200 for the first offense;

(2) by a fine of not less than \$100 nor more than \$500, or confinement in the county jail for not less than 10 days nor more than 60 days, or both, for the second offense; and

(3) by a fine of not less than \$500 nor more than \$2,000 and confinement in the county jail for not less than 30 days nor more than six months for the third offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.021. Separate Offense

Each day on which a violation occurs constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.022. Responsibility for Violation

(a) When a vessel is involved in a violation of this chapter, the captain of the vessel shall be considered primarily responsible for the violation. A member of the crew of a vessel shall not be guilty of a violation unless it also be charged that the member of the crew acted in violation of the orders of the captain of the vessel.

(b) The owner of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is charged and proved that the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(i), eff. Sept. 1, 1975.]

§ 77.023. License Forfeiture

(a) On conviction for a third and subsequent offense under this chapter, a license under which operations involved in the violation are being conducted is subject to forfeiture.

(b) A license that is forfeited under this section may not be reissued for a period of 12 months from the date of forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.024. Operation Without License

(a) No person whose license has been forfeited under Section 77.023 of this code may do business without a new license or possess another license for the period of forfeiture.

(b) A person violating this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$2,500 nor more than \$5,000 and confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.025. Period of Limitation

Text as added by § 13(j) of Acts 1975, 64th Leg., p. 1213, ch. 456

Except as provided in Article 12.05, Code of Criminal Procedure, 1965, as amended, an indictment or information for a violation of this chapter may be presented within one year after the date of the commission of the offense and not afterward.

[Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(j), eff. Sept. 1, 1975.]

For text as added by § 20(g) of Acts 1975, 64th Leg., p. 1222, ch. 456, see Section 77.025, post

§ 77.025. Confiscation and Disposal of Shrimp

Text as added by § 20(g) of Acts 1975, 64th Leg., p. 1222, ch. 456

When an enforcement officer of the department believes that a person has unlawful possession of any shrimp taken in violation of this chapter, all shrimp aboard any vessel involved or in the trawl, whether in storage, on deck, and whether alive or dead, whole or headed, frozen or fresh, shall be deemed to have been taken in violation of the chapter and shall be confiscated by the arresting officer. The cargo of shrimp shall be sold to the highest of three bidders by the officer. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund number 900, pending the outcome of the action taken against the person charged with the illegal possession. Unless the person is found guilty, all the proceeds shall be paid to the defendant. [Acts 1975, 64th Leg., p. 1222, ch. 456, § 20(g), eff. Sept. 1, 1975.]

For text as added by § 13(j) of Acts 1975, 64th Leg., p. 1213, ch. 456, see Section 77.025, ante

[Sections 77.026 to 77.030 reserved for expansion]

SUBCHAPTER C. SHRIMP LICENSES**§ 77.031. Commercial Bay Shrimp Boat License**

(a) No person may operate a commercial bay shrimp boat for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water unless the owner has obtained a commercial bay shrimp boat license.

(b) The fee for a commercial bay shrimp boat license is \$40.

(c) A commercial bay shrimp boat license expires on March 1 of the year following the date of issuance.

(d) An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant intends to derive the major

portion of his livelihood from commercial shrimp fishery and that he will maintain adequate facilities to conduct the business.

(e) Except as provided in Section 77.0371 of this code, not more than one commercial bay shrimp boat license may be issued to a boat during the licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(g), eff. Sept. 1, 1975.]

§ 77.032. Issuance of Commercial Bay Shrimp Boat License

A commercial bay shrimp boat license may be issued only in the months of January and February unless the applicant has acquired title to the shrimp boat by purchase or new construction after the last day of February of the year for which the license is sought, in which case the applicant must submit an affidavit that the boat was acquired after the last day of February and that prior to the last day of February the applicant had not entered into an agreement to acquire the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.033. Commercial Bait-Shrimp Boat License

(a) No person may operate a commercial bait-shrimp boat for the purpose of catching or assisting in catching shrimp for use as bait only and other edible aquatic products from the inside water unless the owner of the boat has obtained a commercial bait-shrimp boat license.

(b) The fee for a commercial bait-shrimp boat license is \$40.

(c) A commercial bait-shrimp boat license expires August 31 following the date of issuance.

(d) Not more than one commercial bait-shrimp boat license may be issued to a boat for each licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.034. Inspection for Commercial Bait-Shrimp Boat License

Before the issuance of a commercial bait-shrimp boat license, an authorized employee of the department shall inspect the boat to be licensed to insure that adequate facilities are present and that 50 percent of the daily catch of the bait shrimp may be maintained alive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.035. Commercial Gulf Shrimp Boat License

(a) No person may operate a commercial gulf shrimp boat for catching or assisting in catching shrimp and other edible aquatic products from the

outside water, or have on board a boat, or unload, or allow to be unloaded at a port or point in this state, shrimp and other edible aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the owner of the boat has obtained a commercial gulf shrimp boat license.

(b) The fee for a commercial gulf shrimp boat license is \$50.

(c) The commercial gulf shrimp boat license expires August 31 following the date of issuance.

(d) Except as provided in Section 77.0371 of this code, not more than one commercial gulf shrimp boat license may be issued to a boat during the licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(h), eff. Sept. 1, 1975.]

§ 77.036. Official Registration

(a) An applicant for a commercial shrimp boat license issued under this subchapter must submit to the department the boat's United States Bureau of Customs official document or the Texas certificate of number for a motorboat.

(b) The certificate of license issued by the department for a commercial shrimp boat must contain the name of the boat and the number appearing on the United States Bureau of Customs official document or the Texas certificate of number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.037. Transfer of License

A commercial shrimp boat license issued under this subchapter may be transferred on the application of the licensee only from a boat that has been destroyed or lost to a boat acquired by the licensee as a replacement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.0371. Duplicate License of Transfer of Vessel

On the sale of any boat licensed under this subchapter, the department, on receipt of an application from the new owner and the surrender of the original license, shall issue, without charge, a duplicate license reflecting the change of ownership.

[Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(a), eff. Sept. 1, 1975.]

§ 77.038. Display of Licenses

A commercial shrimp boat license issued under this subchapter must be prominently displayed on the bow, outside the wheelhouse, or at another point outside the boat designated by the department, and

on each side of the boat, evidencing payment of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.039. License Design

(a) A commercial shrimp boat license issued under this subchapter must be a metal or plastic sign or emblem at least 32 square inches in size, and have a different color or design for each license period.

(b) The character, color, and design of each class of commercial shrimp boat license issued under this subchapter must be distinguishable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.040. Other Licenses Required

(a) A person holding a commercial shrimp boat license under this subchapter is not required to obtain a commercial fishing boat license under Section 47.007 of this code.

(b) The captain and each paid member of the crew of a boat having a commercial shrimp boat license issued under this subchapter must have a tidal water commercial fisherman's license issued under Section 47.003 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.041. Gear on Commercial Shrimp Boat

All shrimp trawls and fishing gear, except fishnets or seines, with which a boat having a commercial shrimp boat license issued under this subchapter is equipped may be used unless the use is otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.042. Shrimp House Operator License

(a) No person may engage in business as a shrimp house operator unless he has obtained a shrimp house operator's license issued by the department.

(b) The fee for a shrimp house operator's license is \$150.

(c) A shrimp house operator's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.043. Bait-Shrimp Dealer License

(a) No person may engage in business as a bait-shrimp dealer unless he has obtained a bait-shrimp dealer's license from the department for each bait stand or place of business he maintains.

(b) The fee for a bait-shrimp dealer's license is \$40.

(c) A bait-shrimp dealer's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.044. Issuance of Bait-Shrimp Dealer's License

(a) The department shall issue a bait-shrimp dealer's license only after it has determined that the applicant for the license is a bona fide bait-shrimp dealer.

(b) A bait-shrimp dealer's license may not be held by a person who also holds a shrimp house operator's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.045. Rights and Duties of Bait-Shrimp Dealer

(a) The holder of a bait-shrimp dealer's license may sell, purchase, and handle shrimp, minnows, fish, and other forms of aquatic life for sale or resale for fish bait purposes in the coastal counties of this state.

(b) The holder of a bait-shrimp dealer's license is not required to obtain a bait dealer's license issued under Section 47.014 of this code unless he engages in the business in a county other than a coastal county.

(c) Frozen dead bait held under a bait-shrimp dealer's license must be packaged and labeled "Bait Shrimp" in block letters at least one inch in height.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.046. Exemptions From Bait-Shrimp Dealer's License

A bait-shrimp dealer's license is not required for:

(1) grocery stores in coastal counties which do not unload or purchase shrimp directly from commercial bait-shrimp boats;

(2) bait dealers in coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes, but these dealers must have a bait-dealer's license issued under Section 47.014 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.047. Prohibited Handling of Shrimp by Bait-Shrimp Dealer

No bait-shrimp dealer may knowingly unload, buy, or handle in any way bait shrimp from an unlicensed commercial bait-shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.048. Individual Bait-Shrimp Trawl License

(a) No person may possess or have on board a boat in coastal water an individual bait-shrimp trawl unless the owner of the trawl has obtained an individual bait-shrimp trawl license from the department.

(b) The fee for the individual bait-shrimp trawl license is \$5.

(c) The individual bait-shrimp trawl license expires on August 31 following the date of issuance. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.049 to 77.060 reserved for expansion]

SUBCHAPTER D. SHRIMPING IN OUTSIDE WATER

§ 77.061. General Closed Season

Except as specifically provided in this subchapter, no person may catch shrimp in outside water:

(1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or

(2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

§ 77.062. Change in General Closed Season

Based on sound biological data, the commission may change the opening and closing dates of the June 1 to July 15 closed season to provide for an earlier, later, or longer season not to exceed 60 days. The commission may change the closing date with 72 hours public notice and may reopen the season with 24 hours notice. The commission may delegate to the director the duties and responsibilities of opening and closing the shrimping season under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

§ 77.0621. Contiguous Zone Season

Except as specifically provided in this subchapter, no citizen of this state may catch from the contiguous zone shrimp during a closed season as provided in Subdivision (1) of Section 77.061 of this code, including a closed season modified as provided in Section 77.062 of this code.

[Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(c), eff. Sept. 1, 1975.]

§ 77.063. General Limitation on Nets

(a) Except as specifically provided in this subchapter, no person may catch shrimp in the outside water with, or possess or have on board a boat in the coastal water for use in outside water, a trawl, except a try net or test net, with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any

consecutive series of five stretched meshes after the trawl has been put in use. Measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) No person may use a try net in outside water exceeding 12 feet in width as measured from board to board or between the extremes of any other spreading device.

(c) This section does not apply to the taking of sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.064. Night Shrimping

No person may catch shrimp of any size or species in the outside water extending from the coastline of Texas up to and including seven fathoms in depth during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.065. White Shrimp

(a) A licensed commercial gulf shrimp boat operator may catch white shrimp in the outside water not exceeding four fathoms in depth from June 1 to July 15, both dates inclusive, or during the period prescribed under Section 77.062 of this code.

(b) No more than one net may be used at a time, except a try net, and the trawl may not exceed 25 feet in width as measured along the corkline or headrope from hanging to hanging.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(e), eff. Sept. 1, 1975.]

§ 77.066. Sea Bobs

(a) No commercial gulf shrimp boat operator may catch sea bobs with a trawl exceeding 25 feet in width measured along the corkline from board to board or between the extremes of any other spreading device or with a trawl having a mesh size in excess of six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been placed in use. Not more than one trawl may be used at a time.

(b) No person catching sea bobs may catch or have on board a boat any other species of shrimp which exceed ten percent, in weight or number, of the entire catch.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.067. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in the outside water with an individual bait-shrimp trawl, cast net, dip net, bait

trap, or minnow seine not larger than 20 feet in length manually operated on foot only without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a boat in the outside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirements set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.068. Noncommercial Shrimping

(a) Subject to the limitations prescribed in this section, during the open season in outside water a person may catch shrimp for personal use by means of:

(1) a cast net, dip net, bait trap, or minnow seine that is not more than 20 feet long and that is manually operated on foot only without the use of any mechanical means or devices;

(2) an individual bait-shrimp trawl; or

(3) a manually operated seine not exceeding 400 feet in length with a mesh of not less than one and one-half inch square, except for the bag and 50 feet on each side of the bag, the mesh of which may not be larger than one inch square.

(b) A person may catch for personal use not more than 100 pounds of shrimp (in their natural state with heads attached) each day during the open season in outside water.

(c) The seine described in Subsection (a)(3) of this section may not be used within one mile of any natural or man-made pass leading from inside water to outside water, and any shrimp or marine life caught with the seine but not kept by the person using the seine shall be returned to the water. Shrimp caught with this seine may not be sold.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.069. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in outside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.070. Possession of Shrimp

Except as permitted by Section 77.065 and Section 77.067 of this code, no person may possess or have on board a boat in coastal water, or buy, sell, unload, transport, or handle in any way, shrimp caught in

the outside water during the closed season or shrimp taken unlawfully from the contiguous zone during the closed season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(d), eff. Sept. 1, 1975.]

§ 77.071. Regulations in Contiguous Zone

(a) The department shall not enforce any regulations in the contiguous zone if it determines that the shrimp it desires to manage are being harvested on a meaningful basis by vessels not subject to the same or similar regulations.

(b) The department may negotiate reciprocal agreements with another state with respect to the application of one state's shrimping regulations in its contiguous zone to citizens of the other state.

[Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(f), eff. Sept. 1, 1975.]

[Sections 77.072 to 77.080 reserved for expansion]

SUBCHAPTER E. SHRIMPING IN INSIDE WATER

§ 77.081. Application

No person may catch shrimp of any size or species within the inside water except as provided in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.082. Shrimping in Passes

No person may catch shrimp of any size or species within the natural or man-made passes leading from the inside water to the outside water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.083. Heading Shrimp

No person may head shrimp aboard a boat in the inside water or dump or deposit shrimp heads in the inside water except in artificial passes, canals, or basins.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.084. Trawl Doors

Except during the period from August 15 to December 15, both dates inclusive, no person may have on board a boat in the inside water for use on the inside water more than one set of trawl doors or other spreading devices nor more than one set of try-net doors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.085. Try Nets

No person may use, possess, or have on board a boat in inside water a try net or test net exceeding 12 feet in width measured along the corkline or headrope from hanging to hanging.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(b), eff. Sept. 1, 1975.]

§ 77.086. Mesh Size

(a) Except as provided in this subchapter, no person may catch shrimp in the inside water with, or possess or have on board a boat in the coastal water for use in inside water, a trawl and bag or trawl liner having a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl or bag has been placed in use. The measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) This section does not apply to try nets or test nets.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(c), eff. Sept. 1, 1975.]

§ 77.087. Net Width

During the period from August 15 to December 15 of each year, both dates inclusive, no person may catch shrimp of any size or species in the major bays with more than one net or a net exceeding 65 feet in width measured along the corkline or headrope from hanging to hanging. This section does not apply to try nets or test nets.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(d), eff. Sept. 1, 1975.]

§ 77.088. Night Shrimping Prohibited

Except as provided in this subchapter, no person may catch shrimp or use or operate a net or trawl to catch shrimp of any size or species in the inside water except during the period beginning 30 minutes before sunrise and ending 30 minutes after sunset.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.089. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in inside water with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a

boat in the inside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.090. Noncommercial Shrimping

(a) A person may catch shrimp for personal use with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only and without the use of any mechanical means or devices:

(1) in inside water from August 15 to December 15 in an amount not to exceed 100 pounds of shrimp per day; and

(2) in major bays of inside water from May 15 to July 15, both dates inclusive, in an amount not to exceed 15 pounds of shrimp per day.

(b) The weight of shrimp taken or caught under this section is determined in their natural state with heads attached.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.091. Commercial Shrimp Season

A licensed commercial bay shrimp boat operator may catch shrimp of lawful size in the major bays during the periods from August 15 to December 15, both dates inclusive, and May 15 to July 15, both dates inclusive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.092. Commercial Shrimp Limit

(a) During the period from May 15 to July 15, both dates inclusive, a licensed commercial bay shrimp boat operator may catch not more than 300 pounds of shrimp per boat per calendar day, and may possess or have on board a boat in the inside water or unload or attempt to unload at a point in this state not more than 300 pounds of shrimp.

(b) The weight of shrimp must be determined in their natural state with heads attached.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.093. Commercial Shrimp Nets

In major bays of inside water during the period from May 15 to July 15, no licensed commercial bay shrimp boat operator may catch shrimp with more than one net at a time, except a try net, or with a net:

(1) exceeding 25 feet in length measured along the corkline or headrope from hanging to hanging; or

(2) having meshes, including the meshes of the bag or liner, in excess of six and one-half inches between the most widely separated knots in any consecutive series of five stretched meshes after the net or bag has been placed in use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(e), eff. Sept. 1, 1975.]

§ 77.094. Commercial Bait-Shrimp Season

A licensed commercial bait-shrimp boat operator in the inside water may catch shrimp of any size or species for use as bait only at any time of the year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.095. Commercial Bait-Shrimp Limit

(a) No licensed commercial bait-shrimp boat operator may catch more than 150 pounds of shrimp per boat per calendar day, or possess or have on board a boat, or unload or attempt to unload at a point in the state more than 150 pounds of shrimp.

(b) The weight of the shrimp must be determined in their natural state with heads attached. Not more than 50 percent of the shrimp may be dead and 50 percent of the shrimp must be kept in a live condition on board the vessel taking the bait shrimp.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.096. Commercial Bait-Shrimp Nets

No licensed commercial bait-shrimp boat operator may catch shrimp in inside water with:

(1) more than one net at a time, except that one try net not exceeding five feet in width as measured along the corkline or headrope from hanging to hanging may also be used;

(2) a net exceeding 25 feet in width measured along the corkline or headrope from hanging to hanging; or

(3) a net or bag having a mesh size of not less than six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the net or bag has been placed in use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(f), eff. Sept. 1, 1975.]

§ 77.097. Commercial Bait-Shrimping at Night

(a) No licensed commercial bait-shrimp boat operator may catch shrimp for use as bait between sunset and sunrise except during the period beginning December 16 of one year and ending August 14 of the following year, both dates inclusive.

(b) Bait-shrimp may be taken at any time of the day or night in the water of the Laguna Madre. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.098. Bait-Shrimp Sale

No licensed commercial bait-shrimp boat operator may sell or unload shrimp caught under this subchapter at any time except to a bona fide bait-shrimp dealer or a sports fisherman operating a boat in inside water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.099. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in inside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 78. CLAMS, MUSSELS, AND SPONGE CRABS

SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS

Section

- 78.001. License Required.
- 78.002. License Form; Expiration.
- 78.003. License Fee.
- 78.004. Unlawful Acts.

SUBCHAPTER B. SPONGE CRABS

- 78.101. Definitions.
- 78.102. Unlawful Taking of Sponge Crabs.

SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS

§ 78.001. License Required

No person may take any mussels, clams, or naiads or their shells from the public water of the state without a license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.002. License Form; Expiration

The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. The license expires one year after the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.003. License Fee

The license fee is \$10, payable to the department, with an additional \$25 fee for permission to use a dredge.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.004. Unlawful Acts

A person who violates the provisions of Section 78.001 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 78.005 to 78.100 reserved for expansion]

SUBCHAPTER B. SPONGE CRABS

§ 78.101. Definitions

“Coastal water” has the same meaning as is given to the term by the Texas Shrimp Conservation Act (Chapter 77 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.102. Unlawful Taking of Sponge Crabs

(a) No person may take sponge crabs from the coastal water of the state by any means.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE E. WILDLIFE MANAGEMENT AREAS, SANCTUARIES, AND PRESERVES

CHAPTER 81. MANAGEMENT AREAS AND PRESERVES: GENERAL AUTHORITY

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Section

- 81.001. Taking of Wildlife From Hatcheries and Reservations Prohibited.
- 81.002. Predacious Animals on Hatcheries or Reservations.
- 81.003. Trespass on State Hatcheries and Reservations.
- 81.004. Fishing in Sanctuary.
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- 81.101. Saltwater Areas.
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SUBCHAPTER F. SCIENTIFIC AREAS

- 81.501. Creation of Scientific Areas.
- 81.502. Powers and Duties.
- 81.503. Land of Public Entities.
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- 81.505. Protected Status.
- 81.506. Funds to be Specifically Appropriated.

SUBCHAPTER A. ACTS PROHIBITED IN WILDLIFE PROTECTION AREAS

§ 81.001. Taking of Wildlife From Hatcheries and Reservations Prohibited

(a) No person may take, injure, or kill any fish kept by the state in its hatcheries, or any bird or animal kept by the state on its reservation grounds or elsewhere for propagation or exhibition purposes.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.002. Predacious Animals on Hatcheries or Reservations

(a) No person may bring into or keep any cat, dog, or other predacious animal on a fish hatchery or reservation for the propagation or exhibition of birds or animals.

(b) Any predacious animal found on the grounds of a hatchery or reservation is a nuisance and any authorized employee of the department shall destroy the animal. When an animal is destroyed under the authority of this subsection, no damage suit for the destruction of the animal may be brought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.003. Trespass on State Hatcheries and Reservations

(a) No person may enter without the permission of the department on the grounds of a state fish hatchery or on grounds set apart by the state for the propagation and keeping of birds and animals.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.004. Fishing in Sanctuary

(a) No person may fish or attempt to take fish from a fish sanctuary designated under Subchapter C of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.005. Hunting on Game Preserves Prohibited

(a) No person may hunt, take, or molest a game bird or animal in a state game preserve created under Subchapter D of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.006. Taking or Possessing Species From Wildlife Management Areas

(a) No person may take or attempt to take or possess any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Subchapter E of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.007 to 81.100 reserved for expansion]

SUBCHAPTER B. FISH HATCHERIES

§ 81.101. Saltwater Areas

The commission may construct and maintain saltwater hatcheries and propagation farms for fish, oysters, and game on islands owned by the state in coastal water. Funds available to the department for the enforcement of game, fish, and oyster laws may be used for costs and expenses authorized under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.102. Freshwater Areas

The department may purchase land for the construction, maintenance, enlargement, and operation of freshwater fish hatcheries, and for the construction and maintenance of passes leading from one body of tidewater to another. On approval of the title by the attorney general, purchases may be made from funds appropriated to the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.103. Property Acquisition; Manner and Means

The department may enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of erecting, constructing, enlarging, and maintaining fish hatcheries, buildings, equipment, roads, and passageways to the hatcheries. The department may also enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of constructing, enlarging, and maintaining passes or channels from one body of tidewater to another body of tidewater in the state. The manner and method of condemnation, assessment, and payment of damages is the same as is provided for railroads.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.104. Condemnation Suits

Condemnation suits under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department and shall be held in Travis County. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the comptroller against any fund in state treasury that is limited in use for fish or wildlife purposes and that is appropriated to the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.105 to 81.200 reserved for expansion]

SUBCHAPTER C. FISH SANCTUARIES

§ 81.201. Creation of Freshwater Sanctuaries

The department, with the approval of the commissioners court of the affected county, shall set aside and reserve portions of each public freshwater stream or other body of water as fish sanctuaries in the county for the propagation of freshwater fish in their natural state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.202. Purposes of Sanctuaries

The department shall use fish sanctuaries to increase and preserve the supply of freshwater fish in all fresh water where the fish supply has been reduced from any cause below the maximum number of fish in their natural state that the water will support.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.203. Designation of Sanctuaries

When the department determines that any public fresh water in its natural state has a lesser supply of fish than it can support, the department, without delay, shall set aside and designate one or more portions of the water as a sanctuary for the propagation of freshwater fish in order to increase the supply of fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.204. Sanctuary Duration

An area set aside and designated as a sanctuary under Section 81.203 of this code may be used for a sanctuary for any period not longer than five years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.205. Amount of Fresh Water Set Aside in One County

No more than 50 percent of the public fresh water in any county may be set aside or designated as a sanctuary or sanctuaries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.206. Proclamation

(a) Sanctuaries shall be set aside and designated by proclamation of the commission signed by the chairman.

(b) The proclamation must contain:

- (1) the area to be included in the sanctuary;
- (2) the reason for creation of the sanctuary;
- (3) the date on which the proclamation takes effect;
- (4) the duration of the proclamation; and
- (5) a statement that the sanctuary is set aside and designated under the authority of this subchapter, the citation of which must be included.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.207. Notice

The department shall give notice of the creation of a sanctuary by each of the following methods:

(1) by posting copies of the proclamation on the courthouse door of each county in which the sanctuary is located;

(2) by publishing a brief summary of the proclamation in a newspaper in the county in which the sanctuary is located, or in a newspaper of an adjoining county if the county where the sanctuary is located has no newspaper, once each week for five consecutive weeks; and

(3) by posting at least six signs bearing the conspicuous inscription "State Fish Sanctuary—No Fishing" around the boundary of the sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.208. Effective Date of Proclamation

The proclamation takes effect on the day of the last publication of the notice required by Section 81.207(2) of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.209. Excluded Counties

This subchapter does not apply to Wichita, Clay, Baylor, and Wilbarger counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.210 to 81.300 reserved for expansion]

SUBCHAPTER D. GAME PRESERVES

§ 81.301. Creation of Game Preserves

A person who owns and possesses land in this state may transfer to the state the right to preserve, protect, and introduce for propagation specified game birds or game animals for any period not less than 10 years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.302. Instrument of Transfer

(a) The right to preserve, protect, and introduce for propagation the game animals and game birds shall be transferred by a written and acknowledged instrument executed by the owner of the land.

(b) The instrument shall be filed with the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.303. Declaration of Preserve

The commission may declare land described in an instrument of transfer as game preserve land for the period of time specified in the instrument.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.304. Maximum Acreage Per County

The aggregate acreage of game preserve land in a county may not exceed 10 percent of the total acreage of the county.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.305. Numbering of Preserves

Game preserves shall be numbered in the order of the filing of the instrument of transfer for the preserve.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.306. Control of Game Preserves

The department shall control all land declared to be game preserve land for the preservation, protection, and propagation of game birds and game animals as authorized under the respective instrument of transfer. Authorized employees of the department may enter on game preserves in the performance of their duties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.307. Posting Preserves

The department shall prepare and post signs at each gate or other entrance to a preserve. The signs shall be printed to read: "State Game Preserve, Trespassing Prohibited."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.308 to 81.400 reserved for expansion]

SUBCHAPTER E. WILDLIFE MANAGEMENT AREAS

§ 81.401. Management of Areas

The department may manage, along sound biological lines, wildlife and fish found on any land the department has or may acquire as a wildlife management area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.402. Regulation of Hunting and Fishing

(a) The department may prohibit hunting and fishing in game management areas to protect any species of wildlife or fish.

(b) The department from time to time, as sound biological management permits, may allow open seasons for hunting or fishing.

(c) During an open season the department may prescribe the number, kind, sex, and size of game or fish that may be taken.

(d) The department may prescribe the means, methods, and conditions for the taking of game or fish during an open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.403. Permits

(a) Except as provided in Subsection (b) of this section, special permits for hunting of wildlife on game management areas shall be issued by the department to applicants by means of an impartial method of distribution subject to limitations on the maximum number of permits to be issued.

(b) No person may receive a special permit for hunting on game management areas for two consecutive years unless all applications from persons who applied but did not receive a permit for the preceding year are filled.

(c) The department shall charge a permit fee in the amount set by the commission based on the costs of the department in issuing the permits, enforcing game laws, and protecting hunters during hunting periods on game management areas.

(d) This subchapter does not exempt any person from compliance with hunting license laws.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.404. Contracts for Removal of Fur-Bearing Animals

(a) The department may contract for the removal of fur-bearing animals and reptiles in wildlife management areas under the control of the department. The removal of fur-bearing animals and reptiles shall be according to sound biological management practices.

(b) Contracts for the removal of fur-bearing animals and reptiles shall be entered into under the direction of the State Board of Control in the manner provided by general law for the sale of state property, except that the department shall determine the means, methods, and quantities of fur-bearing animals and reptiles to be taken, and the department may accept or reject any bid received by the board of control.

(c) Fur-bearing animals may be removed only during the open season provided in Section 72.002 of this code. Reptiles may be removed at any time unless there is a proclamation relating to a specific species of reptiles in effect under Chapter 67 of this code, in which case that species of reptiles may be

removed only during the open season provided for in the proclamation.

(d) Revenue received by the department under this section shall be deposited in the special game and fish fund.

[Acts 1975, 64th Leg., p. 1207, ch. 456, § 5, eff. Sept. 1, 1975.]

[Sections 81.405 to 81.500 reserved for expansion]

SUBCHAPTER F. SCIENTIFIC AREAS

§ 81.501. Creation of Scientific Areas

The department may promote and establish a state system of scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.502. Powers and Duties

To the extent necessary to carry out the purposes of this subchapter, the department may:

(1) determine the acceptance or rejection of state scientific areas proposed for incorporation into a state system of scientific areas;

(2) make and publish all rules and regulations necessary for the management and protection of scientific areas;

(3) cooperate and contract with any agencies, organizations, or individuals for the purposes of this subchapter;

(4) accept gifts, grants, devises, and bequests of money, securities, or property to be used in accordance with the tenor of such gift, grant, devise, or bequest;

(5) formulate policies for the selection, acquisition, management, and protection of state scientific areas;

(6) negotiate for and approve the dedication of state scientific areas as part of the system;

(7) advocate research, investigations, interpretive programs, and publication and dissemination of information pertaining to state scientific areas and related areas of scientific value;

(8) acquire interests in real property by purchase; and

(9) hold and manage lands within the system.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.503. Land of Public Entities

All public entities and their agencies are authorized and urged to acquire, administer, and dedicate land as state scientific areas within the system un-

der the policies of the commission authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.504. Effect on Existing Areas

Inclusion of a state or local park, preserve, wildlife refuge, or other area within the system established under this subchapter does not cancel, supersede, or interfere with any other law or provision of an instrument relating to the use, management, or development of the area for other purposes except that any agency administering an area within the system is responsible for preserving the natural character of the area under the policies of the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.505. Protected Status

Neither the designation of an area as a scientific area within the state system nor an intrusion, easement, or taking allowed by the commission under this subchapter voids or replaces a protected status under the law which the area would have if it were not included within the system.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.506. Funds to be Specifically Appropriated

The commission may not use any funds for the acquisition of scientific areas other than those specifically appropriated for use under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 82. STATUTORY SANCTUARIES AND PRESERVES

SUBCHAPTER A. GUS ENGELING WILDLIFE MANAGEMENT AREA

- Section
- 82.001. Creation.
- 82.002. Prohibitions on Hunting, Fishing, Trapping, and Seasons.
- 82.003. Special Permits.
- 82.004. Unlawful Acts.
- 82.005. Penalty.

SUBCHAPTER B. CONNIE HAGAR WILDLIFE SANCTUARY—ROCKPORT

- 82.101. Creation and Boundaries.
- 82.102. Boundary Markers.
- 82.103. Unlawful Act.
- 82.104. Penalties.

SUBCHAPTER C. BLACK GAP WILDLIFE MANAGEMENT AREA, CULBERSON AND HUDSPETH COUNTIES

- 82.201. Creation.
- 82.202. Acceptance of Gifts; Game Fund.
- 82.203. Land Purchase; School Lands.
- 82.204. Other Land; Title Approval.

- Section
- 82.205. Land Purchase; Private.
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SUBCHAPTER D. WILDLIFE SANCTUARY: GALVESTON COUNTY

- 82.301. Creation.
- 82.302. Unlawful Acts.
- 82.303. Penalties.

SUBCHAPTER E. GAME AND FISH RESERVE: MARION AND HARRISON COUNTIES

- 82.401. Land Set Aside.
- 82.402. Creation.
- 82.403. Boundary Markers.
- 82.404. Amount of Area Set Aside.
- 82.405. Public Hunting and Fishing.
- 82.406. Investigation of Feasibility of Timber Land Purchase.
- 82.407. Mineral Rights.
- 82.408. Unlawful Acts.
- 82.409. Penalty.

SUBCHAPTER F. INGLESIDE COVE WILDLIFE SANCTUARY: SAN PATRICIO AND NUECES COUNTIES

- 82.501. Creation.
- 82.502. Marking Boundaries.
- 82.503. Unlawful Acts.
- 82.504. Penalties.

SUBCHAPTER G. FISH HATCHERIES: SMITH COUNTY

- 82.601. Creation.
- 82.602. Property Acquisition.
- 82.603. Condemnation; Manner and Means.

SUBCHAPTER H. ISLAND CHANNEL

- 82.651. Island Channel.

SUBCHAPTER I. LAKE CORPUS CHRISTI GAME SANCTUARY

- 82.701. Game Sanctuary.
- 82.702. Prohibited Acts.
- 82.703. Markers.
- 82.704. Penalty.

SUBCHAPTER A. GUS ENGELING WILDLIFE MANAGEMENT AREA

§ 82.001. Creation

The department may manage wildlife and fish species in the Gus Engeling Wildlife Management Area in Anderson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.002. Prohibitions on Hunting, Fishing, Trapping, and Seasons

(a) The department may prohibit all hunting, trapping, and fishing within the management area for any period of time necessary to safeguard any species of wildlife or fish found within the management area.

(b) The department, as sound biological management practices warrant, may prescribe open seasons for hunting, trapping, and fishing within the management area.

(c) The department may prescribe the number, kind, sex, and size of any wildlife and fish that may be taken from the area and may prescribe the means and methods for taking and the conditions under which any wildlife or fish species may be taken within the area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.003. Special Permits

Any special permit issued for the taking of wildlife or fish species within the management area is available to all applicants on an impartial basis to the extent of the total number of permits issued. No person may receive a special permit for two consecutive years unless all applications from persons who applied but did not receive a special permit in the preceding year are filled. The provisions of this section do not waive the license requirements as provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.004. Unlawful Acts

No person may hunt or possess any wildlife or fish species taken from the area except as permitted by the department under the provision of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.005. Penalty

A person who violates any provision of this subchapter or who takes wildlife or fish at any time except as permitted by the department is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.006 to 82.100 reserved for expansion]

SUBCHAPTER B. CONNIE HAGAR WILDLIFE SANCTUARY—ROCKPORT

§ 82.101. Creation and Boundaries

The Connie Hagar Wildlife Sanctuary—Rockport in Aransas County is described as follows:

Being all of the water area of Aransas Bay and Little Bay between the shoreline of Live Oak Peninsula and a line described as follows:

BEGINNING at the point where the city limits of the City of Rockport intersects the shoreline of the Aransas Bay;

THENCE, one mile due east to a point in Aransas Bay;

THENCE, in a northeasterly direction approximately 1- $\frac{3}{8}$ miles to a point which is $\frac{1}{2}$ mile due east of Nine Mile Point;

THENCE, in a north by northwesterly direction approximately 2 miles to a point which is $\frac{1}{2}$ mile due east of the channel entrance to the Fulton Harbor;

THENCE, due west to the shoreline of Live Oak Peninsula.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.102. Boundary Markers

The department shall place suitable markers defining the boundaries of the wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.103. Unlawful Act

No person may hunt any bird or animal within the wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.104. Penalties

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.105 to 82.200 reserved for expansion]

SUBCHAPTER C. BLACK GAP WILDLIFE MANAGEMENT AREA, CULBERSON AND HUDSPETH COUNTIES

§ 82.201. Creation

The department may set aside a fenced game management area in Culberson and Hudspeth counties for the protection and perpetuation of Texas Bighorn Mountain Sheep (*Ovis canadensis texiana*).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.202. Acceptance of Gifts; Game Fund

The department may accept gifts of land in Culberson and Hudspeth counties or money to be deposited in the special game and fish fund. The gifts shall be used for the Texas Bighorn Sheep management unit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.203. Land Purchase; School Lands

The department may purchase the surface rights in not more than eight sections of public school lands located in Culberson and Hudspeth counties in the following blocks: Blocks 65 and 66, T. & P. Ry. Co. land; Blocks 42-1/2, 43, 54-1/2, Public School Lands. The minerals on the land purchased shall be reserved to the school fund and managed by the school land board. The price to be paid for the land shall not exceed \$1 per acre and shall be paid for by the department out of the special game and fish fund. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.204. Other Land; Title Approval

The department may purchase other land in Culberson and Hudspeth counties as necessary for the operation of the game management unit. The department may pay for the land out of the special game and fish fund on approval of the title by the attorney general. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.205. Land Purchase; Private

The department may enter on, condemn, and appropriate not more than 12 sections of land belonging to any person or corporation in Culberson and Hudspeth counties for the purpose stated in this subchapter. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.206. Condemnation

The method of condemnation, assessment, and payment of damages is the same as is provided by law for railroads. Condemnation suits brought under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn on the special game and fish fund. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.207. Expenditures

All expenditures provided under this subchapter shall be made from the special game and fish fund. The expenditures shall not exceed \$20,000 in one year. Three-fourths of the expenditures shall be

reimbursed out of federal aid in wildlife restoration funds available to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.208 to 82.300 reserved for expansion]

**SUBCHAPTER D. WILDLIFE SANCTUARY:
GALVESTON COUNTY**

§ 82.301. Creation

The group of small islands located in Galveston Bay near Smith's Point and known as Vingt et Un Islands are a state wildlife sanctuary. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.302. Unlawful Acts

No person may hunt or in any way molest any of the birds on any of the islands or within 50 yards of the islands, nor may any person enter on the islands for any purpose without first obtaining permission from the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.303. Penalties

A person violating any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.304 to 82.400 reserved for expansion]

**SUBCHAPTER E. GAME AND FISH RESERVE:
MARION AND HARRISON COUNTIES**

§ 82.401. Land Set Aside

All of the public land and school land situated in, under, and adjacent to the bed of Caddo Lake in the counties of Marion and Harrison are withdrawn from sale and preserved for public use as a state game and fish reserve. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.402. Creation

The department may establish one or more game sanctuaries in the water of Caddo Lake for the protection of wild ducks, geese, and all other migratory birds. The sanctuaries shall protect the birds from being pursued, hunted, taken, or disturbed. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.403. Boundary Markers

The department shall designate and define the boundaries of the sanctuaries by placing markers or signs around the boundaries of each sanctuary with the words "Game Preserve" on each marker or sign. The markers or signs shall be placed not more than 500 yards apart.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.404. Amount of Area Set Aside

The sanctuaries shall not include more than 20 percent of the area of the lake.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.405. Public Hunting and Fishing

The public may hunt and fish on all of the water of the lake except that water set aside for sanctuaries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.406. Investigation of Feasibility of Timber Land Purchase

The department, in conjunction with the state forester, shall investigate the feasibility and desirability of acquiring title to a block of timbered land adjacent to the lake comprising from 5,000 to 10,000 acres, to be placed under the joint control of the state forester and the department, with the view of ultimately preserving a belt of native forest for the future and also for the propagation of game.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.407. Mineral Rights

The mineral rights under the land reserved for the sanctuaries are withdrawn from sale and the rights may not be offered for sale until the legislature directs the rights to be sold.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.408. Unlawful Acts

(a) No person may hunt any kind of game on the sanctuaries established under this subchapter.

(b) No person may hunt any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

(c) No person may pursue or frighten or attempt to pursue or frighten any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.409. Penalty

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$500, and in addition, the hunting license of the violator is subject to forfeiture for one year following the date of the conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.410 to 82.500 reserved for expansion]

SUBCHAPTER F. INGLESIDE COVE WILDLIFE SANCTUARY: SAN PATRICIO AND NUECES COUNTIES

§ 82.501. Creation

The Ingleside Cove Wildlife Sanctuary is composed of an area in San Patricio and Nueces counties described as follows:

BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel;

THENCE, in a northwesterly direction along the shoreline to channel marker number "22" with a flashing red light every 4 seconds known as Donnel Point;

THENCE, due west crossing the Reynolds Channel to the east side of a spoil bank;

THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southern most point, continuing southeast crossing Ingleside cut to the north shore of Ingleside Point;

THENCE, in an easterly and southeasterly direction along the east shoreline following the Reynolds Channel through Ingleside Point to the southern most portion of this cut;

THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southern most portion of Ingleside Cove;

THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.502. Marking Boundaries

The department shall place suitable markers defining the boundary of the wildlife sanctuary as described in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.503. Unlawful Acts

(a) No person may hunt any bird within the sanctuary.

(b) No person may fish by any means other than rod and reel within the sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.504. Penalties

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.505 to 82.600 reserved for expansion]

SUBCHAPTER G. FISH HATCHERIES:
SMITH COUNTY

§ 82.601. Creation

The department may construct, enlarge, and maintain fish hatcheries in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.602. Property Acquisition

The department may enter on, condemn, and appropriate land, water rights, easements, rights-of-way, and property of any person or corporation in Smith County for the purposes designated in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.603. Condemnation; Manner and Means

The method of condemnation, assessment, and payment of damages is the same as is provided for railroads. Condemnation suits brought under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn by the comptroller against any fund in the state treasury appropriated to the department for the use of constructing and maintaining fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.604 to 82.650 reserved for expansion]

SUBCHAPTER H. ISLAND CHANNEL

§ 82.651. Island Channel

(a) The department may construct and maintain a channel through Padre Island, Mustang Island, and St. Jo Island, or any of them.

(b) The department may contract for the construction of a channel under this section on approval by the commission and approval from the federal government of an application for authority to construct channels.

(c) The cost of the construction and maintenance of a channel constructed under this section may be paid from the special game and fish fund only. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.652 to 82.700 reserved for expansion]

SUBCHAPTER I. LAKE CORPUS CHRISTI
GAME SANCTUARY

§ 82.701. Game Sanctuary

All the water of Lake Corpus Christi in San Patricio and Live Oak counties is a game sanctuary. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.702. Prohibited Acts

(a) Except as provided in Subsection (b) of this section, no person may enter on the portion of Lake Corpus Christi that is a game sanctuary with a gun or rifle, and no person may attempt to shoot a bird or animal in the portion of Lake Corpus Christi that is a game sanctuary.

(b) A person may hunt ducks and geese during the open seasons for ducks and geese with a shotgun in the portion of Lake Corpus Christi in San Patricio County. This exception does not apply to hunting within one mile of the boy scout camp, the girl scout camp, or Lake Corpus Christi Park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.703. Markers

The Parks and Wildlife Department shall erect appropriate markers at intervals adequately spaced to warn hunters of the one-mile limit around the boy scout camp, the girl scout camp, and Lake Corpus Christi Park in San Patricio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.704. Penalty

A person who violates Section 82.702 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 83. FEDERAL-STATE AGREEMENTS

Section

- 83.001. Fish Restoration Projects.
83.002. Commercial Fisheries Research.
83.003. Wildlife-Restoration Projects.
83.004. Migratory Game Bird Reservations.

§ 83.001. Fish Restoration Projects

The department shall conduct and establish cooperative fish restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects" (Public Law No. 681, 81st Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of the interior.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.002. Commercial Fisheries Research

(a) The department shall conduct research in and develop commercial fisheries under an Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (Title 16, Sections 779-779f, U.S.C.A.). The department shall comply with the act and the rules and regulations promulgated under the act by the secretary of the interior.

(b) Funds received from the federal government and appropriated by the state for research and development of commercial fisheries shall be deposited in the state treasury to the credit of the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.003. Wildlife-Restoration Projects

The department shall establish and conduct cooperative wildlife-restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes" (Public Law No. 415, 75th Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of agriculture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.004. Migratory Game Bird Reservations

(a) The United States of America may acquire by purchase, gift, devise, or lease areas of land or water in this state necessary for the establishment of migratory bird reservations under an Act of Congress entitled "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reser-

vations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes."

(b) The state retains jurisdiction and authority over the areas which are not incompatible with the administration, maintenance, protection, and control of the areas by the United States under the act. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE F. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

CHAPTER 86. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

Section

- 86.001. Management and Protection.
86.002. Permit Required; Penalty.
86.003. Application for Permit.
86.004. Granting of Permit.
86.005. Economic Considerations.
86.006. Permit.
86.007. Permits Not Assignable.
86.008. Denial of Permit.
86.009. Termination and Revocation.
86.010. Removal and Replanting of Oysters and Oyster Beds.
86.011. No Special Privileges.
86.012. Sales of Materials.
86.013. Use on Roads.
86.014. Use for Seawalls, etc.
86.015. Sand From Corpus Christi and Nueces Bays.
86.016. Deposit of Funds.
86.017. Use of Funds.
86.018. Taking From Certain Areas Prohibited.
86.019. Oil and Gas Lessees.

§ 86.001. Management and Protection

The commission shall manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state, and on islands within those limits, and within the freshwater areas of the state not embraced by a survey or private land, and on islands within those areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.002. Permit Required; Penalty

(a) No person may disturb or take marl, sand, gravel, shell, or mudshell under the management and protection of the commission or operate in or disturb any oyster bed or fishing water for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority without first having acquired from the commission a permit authorizing the activity.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each

day's operation in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.003. Application for Permit

(a) A person desiring a permit may apply to the commission.

(b) The application must be in writing and must describe the area in which authorization to operate is sought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.004. Granting of Permit

The commission may grant a permit to an applicant who has complied with all requirements of the commission if the commission finds that the disturbing, taking, and carrying away of marl, sand, gravel, shell, or mudshell will not:

(1) damage or injuriously affect any island, reef, bar, channel, river, creek, or bayou used for navigation, or any oysters, oyster beds, or fish in or near the water used in the operation; and

(2) change or injuriously affect any current that would affect navigation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.005. Economic Considerations

In determining whether or not a permit should be granted, the commission shall consider the injurious effect on oysters, oyster beds, and fish in or near the water used in the operation as well as the needs of industry for marl, sand, gravel, shell, and mudshell and its relative value to the state for commercial use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.006. Permit

(a) The permit shall identify the person authorized to disturb, take, or carry away marl, sand, gravel, shell, or mudshell and shall describe the nature of the material that may be disturbed, taken, or carried away.

(b) The permit shall describe the area where the operation may occur and shall state the purpose of the operation.

(c) The permit may contain other terms and conditions.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.007. Permits Not Assignable

A permit issued under this chapter is not assignable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.008. Denial of Permit

If the commission refuses to grant a permit to an applicant, it shall make a full written finding of facts explaining the reason for the refusal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.009. Termination and Revocation

The failure or refusal by the holder of a permit to comply with any term or condition of the permit operates as an immediate termination and revocation of all rights conferred or claimed under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.010. Removal and Replanting of Oysters and Oyster Beds

(a) The commission may remove oysters and oyster beds and replant them in other natural or artificial reefs if the commission finds that the removal and replanting will benefit the growth and propagation or the betterment of oysters and oyster beds or fishing conditions.

(b) The removal and replanting of oysters and oyster beds shall be at the expense of the person holding a permit or of an applicant for a permit and not the state.

(c) Before authorizing the removal and replanting of oysters or oyster beds the commission shall give notice to interested parties and hold a hearing on the subject.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.011. No Special Privileges

No special privileges or exclusive rights may be granted to any person to take marl, sand, gravel, shell, or mudshell or to operate in or on any place under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.012. Sales of Materials

(a) The commission, with the approval of the governor, may sell marl, sand, gravel, shell, and mudshell for not less than four cents a ton.

(b) The commission may require other terms and conditions for the sale of marl, sand, gravel, shell, and mudshell.

(c) Payment for sales shall be made to the commission.

(d) Marl, sand, gravel, shell, and mudshell may be removed without payment to the commission if removed from land or flats patented to a navigation district by the state for any use on the land or flats or on any adjoining land or flats for any purpose for

which the land or flats may be used under the authority of the patent to the district.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.013. Use on Roads

(a) A county, subdivision of a county, city, or town that has a permit to take marl, sand, gravel, shell, or mudshell is not required to purchase marl, sand, gravel, shell, or mudshell taken and used for roads and streets.

(b) A county, subdivision of a county, city, or town that purchases marl, sand, gravel, shell, or mudshell for use on roads and streets from a holder of a permit who has purchased the material from the commission may receive a refund of the amount paid by the permit holder by submitting a sworn itemized account of an official of the county, subdivision of the county, city, or town. All refunds under this subsection must be approved by the commission and be paid by the comptroller by warrant.

(c) The State Highway Commission may receive a refund of the amount paid to the commission for the purchase of marl, sand, gravel, shell, or mudshell used by the highway commission on public roads.

(d) The commission may make regulations for the payment of refunds under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.014. Use for Seawalls, etc.

(a) The commission shall grant to any county, city, or town that is authorized under Title 118, Revised Civil Statutes of Texas, 1925, to build and maintain seawalls a permit for the taking of marl, sand, gravel, shell, or mudshell to be used for the building, extending, protecting, maintaining, or improving any seawall, breakwater, levee, dike, floodway, or drainway.

(b) Permits under this section shall be issued under regulations established by the commission.

(c) A county, city, or town taking marl, sand, gravel, shell, or mudshell under this section is not required to purchase the marl, sand, gravel, shell, or mudshell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.015. Sand From Corpus Christi and Nueces Bays

Sand and other deposits having no commercial value may be taken from Corpus Christi and Nueces bays for filling and raising the grade of the salt flats in the northern part of the city of Corpus Christi and the lowlands lying north of the north boundary line of the city of Corpus Christi, in Nueces County, and south of the south boundary line of the city of

Portland, in San Patricio County, without making payments for it to the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.016. Deposit of Funds

The proceeds from the sale of marl, sand, gravel, shell, and mudshell shall be deposited in the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.017. Use of Funds

Funds collected by the commission from the sale of marl, sand, gravel, shell, and mudshell may be used for the enforcement of the provisions of this chapter, the payment of refunds, and the construction and maintenance of fish hatcheries. No less than three-fourths of the proceeds from the sale of marl, sand, gravel, shell, and mudshell, after the payment of refunds, shall be used for the construction and maintenance of fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.018. Taking From Certain Areas Prohibited

(a) No person may take marl, sand, gravel, shell, or other material from any place between a seawall and the water's edge, from a beach or shoreline within 300 feet of the mean low tide, or within one-half mile of the end of any seawall, for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.019. Oil and Gas Lessees

This chapter does not require the holder of an oil and gas lease executed by the state to obtain a permit from the commission to exercise any right granted under the lease or other laws of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 6. COMPACTS

CHAPTER 91. GULF STATES COMPACT

Section	
91.001.	Members of Commission.
91.002.	Terms of Commission Members.
91.003.	Delegate of Commissioner.
91.004.	Powers and Duties.
91.005.	Cooperation of State Agencies.
91.006.	Reports.

Section

91.007. Auditor.
91.008. Text of Compact.

§ 91.001. Members of Commission

The three members of the Gulf States Marine Fisheries Commission from the state authorized under Article III of the Gulf States Marine Fisheries Compact are:

- (1) the executive director of the department;
- (2) a legislator appointed jointly by the lieutenant governor and speaker of the house of representatives; and
- (3) a citizen with a knowledge of the marine fisheries problems appointed by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.002. Terms of Commission Members

(a) The executive director of the department shall serve on the Gulf States Marine Fisheries Commission in an ex-officio capacity, and his term expires when he ceases to hold the office of executive director of the department. His successor as a member of the Gulf States Marine Fisheries Commission is his successor as executive director of the department.

(b) The legislator appointed as a member of the Gulf States Marine Fisheries Commission shall serve in an ex-officio capacity, and his term expires at the time he ceases to hold his legislative office. His successor as a member of the Gulf States Marine Fisheries Commission shall be appointed as provided by Section 91.001(2) of this code.

(c) The citizen appointed as a member of the Gulf States Marine Fisheries Commission shall serve a term of three years or until his successor has been appointed and has qualified. A vacancy in this position shall be filled for the unexpired term by appointment by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.003. Delegate of Commissioner

The executive director of the department as ex-officio member of the Gulf States Marine Fisheries Commission may delegate to an authorized employee of the department the power to be present and participate, including the right to vote for the executive director, at any meeting, hearing, or proceeding of the Gulf States Marine Fisheries Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.004. Powers and Duties

All the powers provided for in the compact and all the powers necessary or incidental to the carrying

out of the compact are granted to the Gulf States Marine Fisheries Commission and members of the commission. These powers are in aid of and supplemental to but not a limitation on the powers vested in the Gulf States Marine Fisheries Commission by other laws of this state or by the terms of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.005. Cooperation of State Agencies

(a) All officers of the state shall do all things falling within their respective jurisdictions necessary or incidental to the carrying out of the compact.

(b) All officers, bureaus, departments, and persons in state government shall furnish the Gulf States Marine Fisheries Commission information and data requested by the commission and aid the commission by loan of personnel or other means lying within their legal rights.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.006. Reports

The Gulf States Marine Fisheries Commission shall keep accurate accounts of receipts and disbursements and shall submit on or before February 10 of each year a report to the governor and legislature of the state containing:

(1) a detailed description of the transactions conducted by the commission during the preceding calendar year;

(2) recommendations for any legislative action considered advisable or necessary to carry out the intent and purposes of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.007. Auditor

The state auditor from time to time shall examine the accounts and books of the Gulf States Marine Fisheries Commission, including receipts, disbursements, and other items relating to its financial standing. The auditor shall report the results of the examination to the governor of each state that is a party to the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.008. Text of Compact

The Gulf States Marine Fisheries Compact reads as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the Gulf Coast States have the proprietary interest in and jurisdiction over fisheries in the

waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent, pursuant to Article I, Section 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned States and which are frequented by anadromous fish or marine species, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such State charged with the conservation of the fishery resources to which this compact pertains; or, if there be more than one officer or agency, the official of that State named by the Governor thereof. The second shall be a member of the Legislature of such State designated by such Legislature, or in the absence of such designation, such legislator shall be designated by the Governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such State, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the Governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their respective jurisdictions to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever,

and to assure a continuing yield from the fishery resources of the aforementioned States. To that end the commission shall draft and recommend to the Governors and Legislatures of the various signatory States, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the Governor of each compacting State its recommendations relating to enactments to be presented to the Legislature of that State in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the States party hereto with regard to problems connected with the fisheries, and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the States party hereto the stocking of the waters of such States with fish and fish eggs or joint stocking by some or all of the States party hereto, and when two or more States shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint, and at its pleasure remove or discharge, such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place; but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting States. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting States which have an interest in such species. The commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission, cooperating with the research agencies in each State for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen

and the salt water anglers and such other interests of each State as the commissioners deem advisable may be established by the commissioners from each State for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any State, other than those named specifically in Article II of this compact, shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article II, the participation of such State in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of the proprietary interest of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State, imposing additional conditions and restrictions to conserve its fisheries.

Article X

It is agreed that any two or more States party hereto may further amend this compact by acts of their respective Legislatures, subject to approval of Congress as provided in Article I, Section X, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such States as shall so compact, and at their joint expense. The representatives of such States shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted, but the creation of such section shall not be deemed to deprive the States so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other Articles of this compact.

Article XI

Continued absence of representation or of any representative on the commission from any State party hereto, shall be brought to the attention of the Governor thereof.

Article XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the States party hereto. Such initial appropriation as set forth below shall be made available yearly until modified as hereinafter provided:

Florida	\$3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	<u>\$13,000.00</u>

The proration and total cost per annum of Thirteen Thousand (\$13,000.00) Dollars, above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission and approved by the Legislatures of the respective States. Each State party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

Article XIII

This compact shall continue in force and remain binding upon each compacting State until renounced by Act of the Legislature of such State, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the Legislature. Notice of such renunciation shall be given the other States party hereto by the Secretary of State of compacting State so renouncing upon passage of the Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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CHAPTER 101. ANDERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 101.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 101.011. Fish Sale.
- 101.012. Nets.
- 101.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 101.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Anderson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 101.002 to 101.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 101.011. Fish Sale

(a) No person, firm, or corporation may fish for, take, catch, or have in possession for sale, or carry,

transport, or ship for sale, or buy or sell, or offer to buy or sell, barter, or exchange any fish caught from the water of the Neches River in Anderson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100. Each fish caught and each sale or shipment in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 101.012. Nets

(a) During the months of June, July, August, September, October, November, December, and January, no person may place or use a setnet or dragnet or seine or take or catch fish in the water of the Neches River in Anderson County.

(b) This section does not prohibit the use of minnow seines as provided by law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 101.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit any catfish, perch, crappie, white perch, bass, trout, or other edible fish on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Anderson County and leave the fish to die without the intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 102. ANDREWS COUNTY

§ 102.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Andrews County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 103. ANGELINA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

103.001. Regulatory Act: Applicability.

1 West's Tex.Stats. & Codes '75 Supp.—17

SUBCHAPTER B. GAME ANIMALS

Section

103.011. Squirrel Season.

103.012. Squirrel Limit.

103.013. Trailing Wounded Deer With Dogs.

SUBCHAPTER C. BIRDS

103.021. Quail.

103.022. Turkey.

SUBCHAPTER D. FISH

103.031. Fish.

SUBCHAPTER E. FUR-BEARING ANIMALS

103.041. Fox.

103.042. Fur-Bearing Animals.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 103.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies in Angelina County only to freshwater fish in Sam Rayburn Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.002 to 103.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 103.011. Squirrel Season

(a) No person may hunt squirrel in Angelina County at any time except during the period beginning on October 1 and extending through January 15.

(b) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.012. Squirrel Limit

(a) No person may take more than five squirrels a day during the open season.

(b) A person who violates this section is punishable by a fine of not more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.013. Trailing Wounded Deer With Dogs

A person may use dogs to trail a wounded deer in Angelina County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.014 to 103.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 103.021. Quail

(a) No person may hunt wild quail in Angelina County except during the period beginning on December 1 and extending through January 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. The taking or killing of each bird in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.022. Turkey

(a) No person may hunt wild turkey in Angelina County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.023 to 103.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 103.031. Fish

(a) No person may use a net with less than three inches square mesh to take fish in the water of Angelina County, excluding Sam Rayburn Reservoir.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or confinement in the county jail for not less than 10 days nor more than 30 days, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.032 to 103.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 103.041. Fox

(a) No person may shoot or attempt to shoot or trap wild fox in Angelina County on land other than that which he owns, leases, or holds under an agreement to work the land unless:

- (1) the fox is rabid; or
- (2) prior written consent to kill fox from the owner or lessee of the land on which he is hunting has been obtained.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.042. Fur-Bearing Animals

(a) No person may take the pelt of a fur-bearing animal in Angelina County except during the months of January and December.

(b) Only during the season set out in Subsection (a) of this section, a person may take fur-bearing animals by a trap or other mechanical device on property that he owns or on property for which a written permit has been given by the owner for trapping purposes.

(c) Pelts of fur-bearing animals taken under this section may be sold or offered for sale.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 104. ARANSAS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 104.001. Regulatory Act: Applicability.
- 104.002. Partial Exclusion of Certain Area.

SUBCHAPTER B. FISH

- 104.011. Shrimp.
- 104.012. Net-Free Zone.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 104.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Aransas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 104.002. Partial Exclusion of Certain Area

For that part of San Antonio Bay lying within the northeast part of Aransas County, the Aransas River where it forms the boundary with Refugio County, and Copano Creek where it forms the boundary with Calhoun County, wildlife resources under the Uniform Wildlife Regulatory Act includes only fish, aquatic life, and marine animals and does not include oysters.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 104.003 to 104.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 104.011. Shrimp

In Aransas County shrimp are not covered under the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 104.012. Net-Free Zone

(a) The net-free zone in Aransas County is comprised of Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-mile Point, past the town of Rockport to a point at the east end of Talley Island. The net-free zone also includes that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(b) No person may set or drag a net or seine except a minnow seine not exceeding 20 feet in length for taking bait in the net-free zone.

(c) No person may place or set a trotline or crab trap in the net-free zone.

(d) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 105. ARCHER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

105.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

105.011. Fish Sale.

105.012. Leaving Fish to Die.

105.013. Injuring Fish.

105.014. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 105.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Archer County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 105.002 to 105.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 105.011. Fish Sale

(a) No person, firm, or corporation may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from the diversion dam on the Big Wichita River in the northeast corner of Archer County, above the dam and up the valley of the Big Wichita River to the storage dam on the river in Baylor County, up the river from the storage dam as far as the water is impounded in the river by the storage dam in Archer County, or from any water in Lake Wichita in Archer County, or from Diversion Lake formed in Archer County, or from the water in laterals leading off of irrigation canals connected with Lake Kemp or the diversion dam, or from any water in Archer County in the lateral, canal, or drainage ditch leading from what is known as the South Side Canal out of Diversion Lake from a point in the South Side Canal in Section No. 16, of Denton County school lands, League No. 4, Wichita County, to Holliday Creek and down Holliday Creek to Lake Wichita in Archer County, or from the water of Lake Arrowhead located in Archer County or any water in Lake Kickapoo in Archer County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50 for each violation.

(c) Each fish caught, sold, or purchased in violation of this section constitutes a separate offense.

(d) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in his possession, or the county where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Subsection (a), Section 105.011 of this code, any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without any intent to eat the fish, or leave any minnows without any intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.013. Injuring Fish

(a) No person may injure or destroy any fish by using dynamite, powder, other explosive, or poison in any of the water described in Subsection (a), Section 105.011 of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000, and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.014. Special Charge

District judges of Archer County shall give a special charge on this subchapter to the grand juries of Archer County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 106. ARMSTRONG COUNTY

§ 106.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Armstrong County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 107. ATASCOSA COUNTY

§ 107.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Atascosa County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 108. AUSTIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

108.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

108.011. Squirrel Season.

108.012. Squirrel Retention Limits.

SUBCHAPTER C. FISH

Section

108.021. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 108.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies only to the following wildlife resources in Austin County:

- (1) deer;
- (2) quail; and
- (3) turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 108.002 to 108.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 108.011. Squirrel Season

(a) No person may hunt squirrel in Austin County except during the open season.

(b) The open season for squirrel in Austin County is during May, June, July, October, November, and December of each year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 108.012. Squirrel Retention Limits

(a) No person may take or kill more than 10 squirrels in one day in Austin County.

(b) No person may possess at one time more than 20 squirrels taken or killed in Austin County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel taken or possessed in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 108.013 to 108.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 108.021. Minnows

(a) No person may use a minnow seine in excess of 20 feet in length to take minnows in Austin County.

(b) No person may transport to, sell in, or take for the purpose of transporting to or selling in a county other than Austin County minnows taken from the fresh water of Austin County.

(c) The transportation out of Austin County of more than 250 minnows at one time by one person or the transportation out of Austin County of any minnows by a commercial minnow dealer or his agent is a prima facie violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 109. BAILEY COUNTY

§ 109.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bailey County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 110. BANDERA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

110.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

110.011. Injuring Fish.

110.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 110.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bandera County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 110.002 to 110.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 110.011. Injuring Fish

(a) No person may destroy fish in the freshwater streams of Bandera County by the use of any dynamite, powder, or other explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 110.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Bandera County any catfish, crappie, perch, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 111. BASTROP COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

111.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

111.011. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 111.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bastrop County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 111.002 to 111.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 111.011. Minnow Transport

(a) No person may transport more than 150 minnows taken from the fresh water of Bastrop County beyond the limits of Bastrop County at any one time.

(b) Possession of more than 150 minnows at one time is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 112. BAYLOR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

112.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 112.011. Fish Sale.
- 112.012. Leaving Fish to Die.
- 112.013. Injuring Fish.
- 112.014. Special Charge.
- 112.015. Minnow Sale and Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 112.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Baylor County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 112.002 to 112.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 112.011. Fish Sale

(a) No person, firm, or corporation may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, above the dam, up the valley of the river to the storage dam on the river in Baylor County, up the valley of the river from the storage dam as far as the water is impounded by the dam in the river in Baylor County, or from any water impounded in Baylor County by the diversion dam, or from any water impounded in Baylor County by the storage dam, or from any water in the Big Wichita River in Baylor County connecting with the big reservoir or Lake Kemp created by the storage dam with the diversion reservoir or Diversion Lake formed in Baylor County by the diversion dam, or from any water of the irrigation canals connected with Lake Kemp or the diversion dam, or from any water in laterals leading off of the canals in Baylor County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50 for each violation.

(c) Each fish caught, sold, or purchased in violation of this section constitutes a separate offense.

(d) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in possession,

or where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Subsection (a), Section 112.011 of this code, any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without any intent to eat the fish or leave any minnows without any intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.013. Injuring Fish

(a) No person may injure or destroy any fish by using dynamite, powder, other explosive, or poison in any of the water described in Subsection (a), Section 112.011 of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.014. Special Charge

District judges of the judicial districts of Baylor County shall give a special charge on Sections 112.011 through 112.013 of this code to the grand juries of Baylor County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.015. Minnow Sale and Transport

(a) No person may take minnows from the water of Baylor County for transport and sale out of the county.

(b) Taking more than 200 minnows from the water of Baylor County and transporting them from Baylor County to any other county in this state is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 113. BEE COUNTY**§ 113.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bee County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 114. BELL COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

114.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

114.011. Minnow Sale.
114.012. Transporting Minnows.

SUBCHAPTER A. APPLICATION OF UNIFORM WILDLIFE REGULATORY ACT**§ 114.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 114.002 to 114.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 114.011. Minnow Sale**

(a) No person may take from any stream, pond, lake, or lagoon in Bell County minnows commonly used for fish bait if the minnows are to be used for the purpose of barter or sale.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 114.012. Transporting Minnows

(a) No person may take minnows from the public water of Bell County for the purpose of transporting the minnows out of Bell County for sale or barter outside the county.

(b) No person may sell minnows taken from the public water of Bell County outside the county.

(c) The transportation out of Bell County of more than 125 minnows by a person at one time or the transportation out of the county or possession of more than 500 minnows at one time by a commercial minnow dealer or his agent who is not from Bell

County is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each minnow possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 115. BEXAR COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

115.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

115.011. Axis Deer.
115.012. Axis Deer; Treated as Other Deer.

SUBCHAPTER C. FISH

115.021. Fish Sale.
115.022. Leaving Fish to Die.
115.023. Injuring Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 115.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bexar County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 115.002 to 115.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS**§ 115.011. Axis Deer**

In Bexar County, wild axis deer not individually owned are included under the term "wildlife resources" for regulatory purposes under the Uniform Wildlife Regulatory Act (Chapter 61 of this code). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.012. Axis Deer: Treated as Other Deer

(a) The regulations on the taking of axis deer not individually owned in Bexar County shall be the same as for other deer.

(b) The licensing and tagging requirements of Chapter 42 of this code shall be uniformly applied to axis deer not individually owned, and no extra deer tags may be issued for axis deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 115.013 to 115.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 115.021. Fish Sale

(a) No person may barter, sell, or offer to barter or sell any bass, white perch, crappie, catfish taken from the streams of Bexar County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 and not more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Bexar County any catfish, crappie, perch, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.023. Injuring Fish

(a) No person may destroy fish in the freshwater streams of Bexar County by the use of any dynamite, powder, or other explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and may be confined in the county jail for not more than one year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 116. BLANCO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

116.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

- 116.011. Definitions.
- 116.012. Open Archery Season.
- 116.013. Prohibited Archery Equipment.
- 116.014. Deer Permits.
- 116.015. Limit and Possession of Deer.

Section

- 116.016. Penalty.
- 116.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 116.021. Fish Sale.
- 116.022. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 116.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Blanco County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 116.002 to 116.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

Amendment by Acts 1975, 64th Leg., p. 2000, ch. 664, § 2

Acts 1975, 64th Leg., p. 2000, ch. 664, § 2, purports to amend § 1 of Acts 1965, 59th Leg., ch. 428 [now, this Subchapter, in part], without reference to repeal of said Act by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(b). As so amended, § 1 reads:

“Section 1. This Act applies only in the following counties: Burnet, Gillespie, Kendall, Llano, Mason, McCulloch, San Saba, and Travis.”

§ 116.011. Definitions

As used in this subchapter:

- (1) “Buck deer” means a deer that has a hardened antler protruding through the skin.
- (2) “Antlerless deer” is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.012. Open Archery Season

(a) The open archery season in Blanco County begins on October 1 and extends through October 31 of each year.

(b) During the open archery season a person may hunt, take, and kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded

hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 116.013. Prohibited Archery Equipment

No person may hunt, take, or kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Blanco County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 116.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Blanco County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season in Blanco County.

(b) No person may possess an antlerless deer in Blanco County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Blanco County that does not have attached to it a

tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Blanco County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.016. Penalty

A person who violates any provision of Sections 116.012–116.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.017. Possession of Firearms

(a) No person may hunt, kill, or take wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Blanco County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 116.018 to 116.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 116.021. Fish Sale

(a) No person may take, offer, or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Blanco County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.022. Minnow Transport

(a) No person may transport minnows taken, caught, or seined from the water of Blanco County to another county in this state.

(b) The possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 117. BORDEN COUNTY

§ 117.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Borden County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 118. BOSQUE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

118.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 118.011. Sale of Fish From Lake Waco or Bosque River.
- 118.012. Sale of Fish From the Brazos River or Lake Whitney.
- 118.013. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 118.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bosque County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 118.002 to 118.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 118.011. Sale of Fish From Lake Waco or Bosque River

(a) No person may barter or sell, offer to barter or sell, or buy any bass, crappie, perch, channel or Opelousas catfish, or any other fish taken from the water of Lake Waco or the Bosque Rivers and their tributaries in Bosque County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish caught, possessed, sold, offered for sale, or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the offense is committed, where he is found with the fish, or where the fish are sold or offered for sale.

(d) The district judges of the judicial districts of Bosque County shall give a special charge on this section to the grand juries of Bosque County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 118.012. Sale of Fish From the Brazos River or Lake Whitney

(a) No person may offer, expose, or possess for sale or sell any fish taken from the water of the Brazos River, Lake Whitney, or their tributaries in Bosque County except as authorized by the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. The possession of each fish in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 118.013. Minnow Transport

(a) Except as provided in Subsection (b) of this section, no person may take minnows from the water of Bosque County to transport out of the county for sale.

(b) A person may raise and propagate minnows on his own premises or on premises under his control for personal use or commercial purposes, including sale inside or outside the county.

(c) Transportation of more than 100 minnows from the water of Bosque County to another county in this state is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 119. BOWIE COUNTY

§ 119.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bowie County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 120. BRAZORIA COUNTY**§ 120.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brazoria County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 121. BRAZOS COUNTY**§ 121.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brazos County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 122. BREWSTER COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

122.001. Regulatory Act: Applicability

SUBCHAPTER B. FISH

122.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 122.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brewster County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 122.002 to 122.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 122.011. Regulatory Act: Exemption**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Brewster County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 123. BRISCOE COUNTY**§ 123.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Briscoe County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 124. BROOKS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

124.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

124.011. Collared Peccary.

SUBCHAPTER C. BIRDS

124.021. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 124.001. Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Brooks County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 124.002 to 124.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS**§ 124.011. Collared Peccary**

(a) Except as provided in Subsection (b) of this section, a person may take, capture, shoot, or kill collared peccary (javelina) at any time in Brooks County.

(b) No person may sell or offer for sale, or take, kill, or possess for the purpose of sale collared peccary (javelina) or any part of a collared peccary (javelina).

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) sold, offered for sale, or taken or possessed for the purpose of sale constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 124.012 to 124.020 reserved for expansion]

SUBCHAPTER C. BIRDS**§ 124.021. Quail**

(a) No person may take or kill quail in Brooks County except during the open season, which is December 1 of one year to January 31 of the following year, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail killed or taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 125. BROWN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

125.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

125.011. Fish Sale.

125.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 125.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brown County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 125.002 to 125.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 125.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, channel catfish, or catfish caught, trapped, or ensnared in the streams of Brown County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 125.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Brown County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 126. BURLESON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

126.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

126.011. Regulatory Act: Exemption.

126.012. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 126.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Burleson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 126.002 to 126.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 126.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Burleson County except those fish in the Somerville Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 126.012. Minnow Transport

(a) As used in this section, "minnow hatchery" means a pond or series of ponds situated entirely on private, enclosed property and not connected with nor any part of a stream and used in whole or in part for the propagation of minnows.

(b) No person may transport minnows taken, caught, or seined in Burleson County to any other county in this state except as provided in Subsections (c) and (d) of this section.

(c) A person may transport not more than 500 minnows from Burleson County for personal use.

(d) Minnows raised in a minnow hatchery may be taken from Burleson County to another county.

(e) The possession of more than 500 minnows at one time is prima facie evidence of a violation of this section unless the minnows were raised in a minnow hatchery.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 127. BURNET COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

127.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

127.011. Definitions.

127.012. Open Archery Season.

Section	
127.013.	Prohibited Archery Equipment.
127.014.	Deer Permits.
127.015.	Limit and Possession of Deer.
127.016.	Penalty.
127.017.	Possession of Firearms.

SUBCHAPTER C. FISH

127.021.	Fish Sale.
127.022.	Leaving Fish to Die.
127.023.	Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 127.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Burnet County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 127.002 to 127.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 127.011. Definitions

As used in this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.012. Open Archery Season

(a) The open archery season in Burnet County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt, take, and kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 127.013. Prohibited Archery Equipment

No person may hunt, take, or kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Burnet County by means of:

- (1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;
- (2) arrows that are not equipped with broadhead hunting points at least seven-eighths inch

in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 127.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Burnet County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Burnet County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Burnet County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Burnet County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.016. Penalty

A person who violates Section 127.012 through Section 127.015 of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.017. Possession of Firearms

(a) No person may hunt, kill, or take wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Burnet County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 127.018 to 127.020 reserved for expansion]

SUBCHAPTER C. FISH.

§ 127.021. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Burnet County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Burnet County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.023. Minnow Transport

(a) No person may transport minnows caught, seined, or taken from Burnet County into another county of this state.

(b) The possession of more than 500 minnows at one time by a person is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 128. CALDWELL COUNTY

§ 128.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Caldwell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 129. CALHOUN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

129.001. Regulatory Act: Applicability.

129.002. Wildlife Act Applicability: Exclusions.

SUBCHAPTER B. FISH

129.011. Guadalupe River: Fishing Methods.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 129.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Calhoun County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 129.002. Wildlife Act Applicability: Exclusions

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to oysters and shrimp in Calhoun County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 129.003 to 129.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 129.011. Guadalupe River: Fishing Methods

(a) No person may catch fish from the Guadalupe River in Calhoun County except by:

- (1) hook and line;
- (2) trotline;
- (3) flounder gig and light; or
- (4) cast net or minnow seine not exceeding 20 feet in length to be used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 130. CALLAHAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

130.001. Regulatory Act: Applicability.

SUBCHAPTER B. LAKE BAIRD

- 130.011. Minnows.
 130.012. Fish Sale.
 130.013. Discharge of Firearm.
 130.014. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 130.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Callahan County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 130.002 to 130.010 reserved for expansion]

SUBCHAPTER B. LAKE BAIRD

§ 130.011. Minnows

No person may take from Lake Baird in Callahan County minnows commonly used for bait if the minnows are to be used for barter or sale. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 130.012. Fish Sale

No person may sell, buy, offer to sell or buy, or take or possess for commercial purposes fish taken from Lake Baird in Callahan County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 130.013. Discharge of Firearm

(a) Except as provided in this section, no person may shoot, fire, or discharge any pistol or rifle in, on, along, or across Lake Baird in Callahan County.

(b) This section does not apply to peace officers or other representatives of the department in the conduct of their official duties.

(c) This section does not apply to a person hunting with a shotgun during an open season in Callahan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 130.014. Penalty

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish taken or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 131. CAMERON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 131.001. Regulatory Act: Applicability.
 131.002. Regulatory Act: Shrimp and Oysters in Outside Water Excluded.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

131.011. Audubon Society Land.

SUBCHAPTER C. FISH

131.021. Flounder, Speckled Trout, and Redfish Size Limits.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 131.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cameron County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 131.002. Regulatory Act: Shrimp and Oysters in Outside Water Excluded

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp and oysters in the outside water of the Gulf of Mexico in Cameron County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 131.003 to 131.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 131.011. Audubon Society Land

(a) This section applies to Green Island and the group of three islands in Big Bay and the flats, reefs, and shallow water near those islands in Cameron County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

- (1) hunting birds known to be a prey on other birds or eggs; or
- (2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 131.012 to 131.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 131.021. Flounder, Speckled Trout, and Redfish Size Limits

(a) No person in Cameron County may retain or place in a container or boat or on a stringer a speckled trout less than 12 inches long, a flounder less than 12 inches long, or a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 132. CAMP COUNTY

SUBCHAPTER A. APPLICABILITY TO UNIFORM WILDLIFE REGULATORY ACT

Section

132.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

- 132.011. Definition.
- 132.012. Deer Season.
- 132.013. Deer Limit and Possession.
- 132.014. Penalty.
- 132.015. Squirrel.

SUBCHAPTER C. BIRDS

- 132.021. Quail.
- 132.022. Turkey.

SUBCHAPTER D. FUR-BEARING ANIMALS

Section

- 132.031. Fox.
- 132.032. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 132.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to Camp County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 132.002 to 132.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 132.011. Definition

As used in this subchapter, "buck deer" means a deer having a hardened antler protruding through the skin.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 132.012. Deer Season

No person may hunt or possess any wild deer in Camp County except during the open season, which is the 15-day period beginning on the first Saturday following November 16.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 132.013. Deer Limit and Possession

(a) No person may hunt or possess any deer except a buck deer in Camp County.

(b) No person may hunt, take, or possess more than one buck deer in Camp County during an open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 132.014. Penalty

(a) A person who violates Sections 132.012 or 132.013 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, or confinement in the county jail for not less than 1 day nor more than 30 days, or both.

(b) Each deer taken or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 132.015. Squirrel

(a) No person may hunt squirrel in Camp County except during the open season, which is October 1 through January 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 132.016 to 132.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 132.021. Quail

(a) No person may hunt wild quail in Camp County except during the open season, which is December 1 of one year to January 16 of the following year, both dates inclusive. However, no person may hunt quail on Sundays during the open season.

(b) No person may kill more than 12 quail in one day, or more than 36 quail in any seven-day period. No person may possess more than 36 quail at one time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 132.022. Turkey

(a) No person may hunt wild turkey except during the open season, which is November 16 to December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 132.023 to 132.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 132.031. Fox

(a) No person may trap, hunt with guns, or possess for barter or sale any wild fox or the pelts of wild fox in Camp County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

(c) A farmer or poultry raiser is not guilty of violating this section if he kills a fox that is in the act of destroying chickens, other poultry, or farm animals.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 132.032. Hunting Mink With Dogs

Section 72.004 of this code, prohibiting hunting mink with dogs and possessing a mink pelt while hunting with dogs, does not apply in Camp County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 133. CARSON COUNTY

§ 133.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Carson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 134. CASS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

134.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

134.011. Deer Season.
134.012. Deer Limit.
134.013. Use of Firearms.
134.014. Penalty.
134.015. Squirrel.

SUBCHAPTER C. BIRDS

134.021. Turkey.
134.022. Quail.

SUBCHAPTER D. FISH

134.031. Methods of Fishing.
134.032. Crappie.

SUBCHAPTER E. LAKE TEXARKANA

134.041. Discharge of Firearm.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 134.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.002 to 134.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 134.011. Deer Season

No person may hunt deer in Cass County except during the open season, which is November 16 through November 21 and December 26 through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.012. Deer Limit

(a) No person may take or kill more than two deer during an open season in Cass County.

(b) No person may take, kill, or possess any deer except a buck deer with a pronged antler in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.013. Use of firearms

(a) No person may use .22 caliber rimfire ammunition to hunt deer in Cass County.

(b) No person may hunt wild deer in Cass County by any means other than with a rifle or shotgun capable of being fired from the shoulder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.014. Penalty

A person who violates Sections 134.011 through 134.013 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each deer taken, killed, or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.015. Squirrel

(a) No person may take or kill squirrel in Cass County except during the months of October, November, and December.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.016 to 134.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 134.021. Turkey

(a) No person may possess wild turkey killed or caught in Cass County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.022. Quail

(a) No person may hunt wild quail in Cass County except during the open season, which is December 1 through February 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.023 to 134.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 134.031. Methods of Fishing

(a) No person may take or catch fish in the public fresh water of Cass County by any means other than an ordinary hook and line, set hook and line, gig, or artificial bait.

(b) Except as provided in Subsections (c) and (d) of this section, no person may place in the public fresh water of Cass County any seine, net, or other device or trap for taking or catching fish.

(c) A minnow seine not longer than 20 feet may be used to catch minnows for bait.

(d) A hoop, trammel or gill net with meshes not less than three inches square may be used in the fresh water of Cass County for taking or catching buffalo fish, carp, and catfish except during the months of March and April.

(e) No person may use a pond net.

(f) All fish and minnows more than two and one-half inches long taken in seining for minnows must be returned to the water alive.

(g) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.032. Crappie

There is no daily catch or retention limit on crappie or white perch in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.033 to 134.040 reserved for expansion]

SUBCHAPTER E. LAKE TEXARKANA

§ 134.041. Discharge of Firearm

(a) Except as provided in this section, no person may shoot a pistol or rifle in, on, along, or across Lake Texarkana.

(b) Subsection (a) of this section does not apply to peace officers, game wardens, or representatives of the department in the lawful discharge of their duties.

(c) Subsection (a) of this section does not apply to a person hunting with a shotgun during an open season or when it is lawful to hunt in or on Lake Texarkana.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 135. CASTRO COUNTY

§ 135.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Castro County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 136. CHAMBERS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

136.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

136.011. Hunting With Certain Weapons.
136.012. Shooting in Certain Places.
136.013. Enforcement; Penalties.

SUBCHAPTER C. GAME ANIMALS

136.021. Squirrel.
136.022. Deer.

SUBCHAPTER D. BIRDS

136.031. Turkey.
136.032. Quail.

SUBCHAPTER E. FISH

136.041. Catfish Size Limits.
136.042. Net Size for Rough Fish and Catfish.
136.043. Seining Near Cities Prohibited.
136.044. Galveston and Trinity Bays: Nets.
136.045. East Galveston Bay: Nets.
136.046. Other Water: Fishing Methods.
136.047. Commission May Close Certain Water.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 136.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Chambers County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 136.002 to 136.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 136.011. Hunting With Certain Weapons

(a) No person in Chambers County may hunt with a shotgun using a shell larger than No. four squirrel shot or with a rifle larger than a rimfire .22 caliber rifle where deer are known to roam, except during the open season for deer.

(b) The evidence of possession of a shotgun and shell containing larger than No. four squirrel shot or a rifle larger than a rimfire .22 caliber rifle in or through woods where deer are known to roam constitutes prima facie evidence of a violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.012. Shooting in Certain Places

(a) No person may shoot a pistol or rifle in, on, along, or across the water of the Trinity River, Wallisville Reservoir, and Lake Anahuac in Chambers County.

(b) No person may shoot a pistol, crossbow, bow and arrow, shotgun, or rifle in, on, along, or across the water of Oyster Bayou in Chambers County from State Highway 65 south to the mouth of Oyster Bayou in East Bay.

(c) The water described in Subsections (a) and (b) of this section are part of the public fresh water of this state suited and adapted to the preservation, protection, and propagation of game and fish, and this section is to aid in the preservation, protection, and propagation of game and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.013. Enforcement; Penalties.

(a) Section 136.012 of this code does not apply to a person hunting migratory waterfowl with a shotgun during a prescribed open season in and on the Trinity River and the Wallisville Reservoir.

(b) Sections 136.011 and 136.012 of this code do not apply to peace officers, or representatives of the department in the lawful discharge of their duties.

(c) It is the duty of the department to enforce the provisions of this subchapter, and enforcement officers may arrest without a warrant a person violating a provision in his presence.

(d) A person who violates Section 136.011 or Section 136.012 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 136.014 to 136.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 136.021. Squirrel

(a) No person may hunt squirrel in Chambers County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 15 and extending through January 15.

(b) No person in Chambers County may take or kill more than 10 squirrels during a day or possess more than 20 squirrels at a time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.022. Deer

(a) No person may hunt wild deer in Chambers County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500.

(c) This section expires on November 16, 1980.
[Acts 1975, 64th Leg., p. 1220, ch. 456, § 19(a), eff. Sept. 1, 1975.]

[Sections 136.023 to 136.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 136.031. Turkey

(a) No person may hunt wild turkey in Chambers County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.032. Quail

(a) No person may hunt quail in Chambers County except during the open season beginning on the second Saturday in November and extending through January 31.

(b) No person in Chambers County may kill or take more than 12 quail of all varieties during a day or possess more than 24 quail of all varieties at a time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken, killed, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 136.033 to 136.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 136.041. Catfish Size Limits

(a) No person may retain or place in a container or boat or on a stringer a catfish caught from the public water of Chambers County which is less than 11 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.042. Net Size for Rough Fish and Catfish

(a) In Chambers County, except in the water of Trinity Bay, Lake Anahuac, and Turtle Bay Bayou, a hoop net, gill net, and trammel net may be used for the catching of rough fish and catfish only.

(b) No person may use in the water described in Subsection (a) of this section for the purpose of taking rough fish or catfish a hoop net, gill net, or trammel net having meshes smaller than three inches.

(c) No person may take bass or crappie with a net authorized by this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.043. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in

Chambers County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.044. Galveston and Trinity Bays: Nets

(a) No person may possess, use, or place in or on that portion of Galveston Bay or Trinity Bay in Chambers County lying north of a line from Eagle Point to Smith Point a setnet, gill net, trap, or other device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d) When an officer of this state finds a seine, net, trawl, trap, or other device in use or possessed in violation of this section, the officer shall arrest the violator and hold the device as evidence. No suit may be maintained against an officer acting under the authority of this section. The officer shall take the alleged violator before the appropriate county court and shall file a complaint against the person. On the trial of the person, if it be found that the device was being used or possessed in violation of this section, the court shall order the destruction of the device by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the device was destroyed.

(e) When an officer of this state finds a seine, net, trawl, trap, or other device the use or possession of which is prohibited by this section in or on the water described in Subsection (a) of this section and no person is found in possession of the seine, net, trawl, trap, or other device, the officer shall seize and hold the device and shall make a report by affidavit to the appropriate county court. The court shall direct

that the sheriff or constable post a copy of the report in the courthouse for a period of 10 days, after which the sheriff or constable shall make his return to the court showing when and where the notice was posted. Then the court shall hold a hearing to determine if the device was used in violation of this section, and if it be found that the device was used in violation of this section, the court shall order the destruction of the device by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the device was destroyed.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than \$50 nor more than \$250. On a second or subsequent conviction he may be punished by a fine of not less than \$50 nor more than \$250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.045. East Galveston Bay: Nets

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Chambers County during the period beginning on August 15 and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Chambers County at any time:

(1) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and

(2) water of Galveston Bay lying east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching fish if the meshes are less than one and one-half inches from knot to knot.

(d) When an officer of this state finds a strike net, gill net, trammel net, or shrimp trawl in use or possessed in violation of this section, the officer shall arrest the violator and hold the device as evidence. No suit may be maintained against an officer acting under the authority of this section. The officer shall take the alleged violator before the appropriate

county court or justice court and shall file a complaint against the person. On the trial of the person, if it be found that the net or trawl was being used or possessed in violation of this section, the court shall order the destruction of the net or trawl by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the net or trawl was destroyed.

(e) When an officer of this state finds a strike net, gill net, trammel net, or shrimp trawl the use or possession of which is prohibited by this section in or on the water described in Subsection (a) of this section and no person is found in possession of the net or trawl, the officer shall seize and hold the net or trawl and shall make a report by affidavit to the appropriate county court or justice court. The court shall direct that the sheriff or constable post a copy of the report in the courthouse. Thirty days after the notice is posted, the court shall order the destruction of the device by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the device was destroyed.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and his commercial fishing license is subject to revocation for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.046. Other Water: Fishing Methods

(a) No person may place or use a seine, net, or other device for catching fish in any of the bays, streams, bayous, or canals of Chambers County not covered by Sections 136.042, 136.043, and 136.044 of this code except:

- (1) an ordinary pole and line;
- (2) a casting rod and reel;
- (3) artificial bait;
- (4) a trotline;
- (5) a setline;
- (6) a flounder gig and light; and
- (7) a cast net or minnow seine not more than 20 feet long and used only for catching bait.

(b) Enforcement officers of the department may seize and hold devices used in violation of this section until the trial of the accused.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurs is prima facie evidence against the owner of the boat, vehicle, net, or seine, or against the party last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. On a

second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.047. Commission May Close Certain Water

(a) The commission may close tidal water in Chambers County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent its destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;
- (4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 136.043, 136.044, and 136.045 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 137. CHILDRESS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
137.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

137.011. Definition.
137.012. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 137.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Childress County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 137.002 to 137.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 137.011. **Definition**

As used in this subchapter, "minnow hatchery" means a pond or series of ponds located entirely on private, enclosed property and not connected with nor a part of a stream, used in whole or in part for the propagation of minnows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 137.012. **Minnow Transport**

(a) Except as provided in Subsections (b) and (c) of this section, no person may transport minnows caught, taken, or seined from the water of Childress County to another county in this state.

(b) A person may transport not more than 150 minnows taken from the water of Childress County to another county for personal use.

(c) Minnows raised in a minnow hatchery in this state may be transported from Childress County to another county.

(d) The possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 138. CHEROKEE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

- 138.001. Regulatory Act: Applicability.
138.002. Lake Palestine.

SUBCHAPTER B. GAME ANIMALS

- 138.011. Deer.
138.012. Hunting Deer With Dogs: Evidence.
138.013. Squirrel.

SUBCHAPTER C. BIRDS

Section

- 138.021. Turkey.
138.022. Quail.

SUBCHAPTER D. FISH

- 138.031. Fish Sale.
138.032. Nets and Seines.
138.033. Prohibited Methods of Fishing.

SUBCHAPTER E. FUR-BEARING ANIMALS

- 138.041. Steel Traps.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 138.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Cherokee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.002. **Lake Palestine**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all of the water area of Lake Palestine located in Cherokee County. The provisions of this chapter do not apply to the water area of Lake Palestine in Cherokee County, except as specifically noted.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.003 to 138.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 138.011. **Deer**

(a) No person may hunt wild deer north of U. S. Highway 84 in Cherokee County except during the open season for the taking of deer beginning on November 16 and extending through November 30 of each year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1223, ch. 456, § 24, eff. Sept. 1, 1975.]

§ 138.012. **Hunting Deer With Dogs: Evidence**

Possession of a high-powered rifle or a shotgun with buckshot while in control of a dog, or while accompanying a person in control of a dog, in any area in Cherokee County where deer are known to range is prima facie evidence of a violation of Section 63.010 of this code, relating to hunting deer with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.013. Squirrel

(a) No person may hunt, take, or kill any squirrel in Cherokee County except during the period beginning October 1 and extending through December 31 of each year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.014 to 138.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 138.021. Turkey

(a) No person may hunt wild turkey in Cherokee County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.022. Quail

(a) No person may hunt, take, or kill any wild quail in Cherokee County except during the period beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.023 to 138.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 138.031. Fish Sale

(a) No person may sell, offer for sale, or possess for the purpose of sale any fish caught or taken from the public fresh water of Cherokee County, including that portion of Lake Palestine located within the county, or from the portion of the Angelina River that is the boundary line between Cherokee and Nacogdoches counties north of Texas Highway 21.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.032. Nets and Seines

(a) No person may place, use, or catch fish with any setnet or dragnet or seine in the public fresh water of Cherokee County, or in the water of the Neches River within the boundaries of Cherokee County, except during the months of June, July, August, September, October, November, December, and January.

(b) This section does not prohibit the use of minnow seines as provided by general law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.033. Prohibited Methods of Fishing

(a) This section applies to the Angelina River and Mud Creek in Cherokee County.

(b) No person may catch or attempt to catch fish by placing any lime, poison, drug, dynamite, nitroglycerin, giant powder, or any other explosive or substance harmful to fish in the water of the river or creek.

(c) No person may catch or attempt to catch fish by the aid of what is commonly known as "telephoning," or by using any other electricity-producing apparatus designed for shocking fish. Possession of any such equipment in a boat or along the bank or shore of the river or creek is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$300 nor more than \$750. On second conviction of a violation of this section, a person is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than six months. On a third or subsequent conviction of a violation of this section, a person is punishable by a fine of not less than \$1,000 nor more than \$2,000 and by confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.034 to 138.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 138.041. Steel Traps

(a) No person may take any fur-bearing animal in Cherokee County with a steel trap, snare, deadfall, or any mechanical device other than a gun or pistol, except between December 1 and the following February 15, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 139. CLAY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

139.001. Regulatory Act: Applicability.

SUBCHAPTER B. LAKE ARROWHEAD

139.011. Fish Sale.
139.012. Injuring Fish.
139.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 139.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Clay County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 139.002 to 139.010 reserved for expansion]

SUBCHAPTER B. LAKE ARROWHEAD

§ 139.011. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, or catfish or any other fish except minnows taken from Lake Arrowhead in Clay County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or bought in violation of this section is a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in possession, or where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 139.012. Injuring Fish

(a) No person may injure or destroy fish by the use of dynamite, powder, other explosive, or poison in the water of Lake Arrowhead in Clay County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and

may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 139.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the water of Lake Arrowhead in Clay County any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish or minnows and leave the fish to die without any intention to eat the fish or use the minnows for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 140. COCHRAN COUNTY

§ 140.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cochran County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 141. COKE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

141.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

141.011. Fish Sale.
141.012. Minnow Transport.
141.013. Trespass.
141.014. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 141.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coke County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 141.002 to 141.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 141.011. Fish Sale

No person may sell, buy, offer to sell or buy, take, or possess for commercial purposes fish taken from

the water of Sweetwater Oak Creek Lake in Coke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 141.012. Minnow Transport

(a) No person may transport minnows taken from the water of Sweetwater Oak Creek Lake in Coke County out of Coke County for the purpose of sale.

(b) No person may transport more than 200 minnows taken from the water of Sweetwater Oak Creek Lake out of Coke County for any purpose. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 141.013. Trespass

This subchapter does not license, permit, or authorize any person to go on the land of another person to catch fish or minnows without the consent of the owner of the land or water. In any prosecution for a violation of this subchapter, the burden to prove consent of the owner of the land is on the alleged trespasser.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 141.014. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100. Each fish taken or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 142. COLEMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

142.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

142.011. Fish Sale.

142.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 142.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coleman County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 142.002 to 142.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 142.011. Fish Sale

(a) No person may sell or offer for sale any bass or crappie (white perch) caught, trapped, or ensnared in the water of Coleman County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 142.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Coleman County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 143. COLLIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

143.001. Regulatory Act: Applicability.

SUBCHAPTER B. MINNOWS

143.011. Minnows.

SUBCHAPTER C. LAKE LAVON

143.021. Fish Sale.

143.022. Harmful Refuse.

143.023. Discharge of Firearm.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 143.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Collin County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 143.002 to 143.010 reserved for expansion]

SUBCHAPTER B. MINNOWS

§ 143.011. Minnows

(a) No person may take minnows from the streams or rivers of Collin County for the purpose of sale.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$100. Each minnow taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 143.012 to 143.020 reserved for expansion]

SUBCHAPTER C. LAKE LAVON

§ 143.021. Fish Sale

(a) No person may sell, barter, offer to sell or barter, take, or possess fish or minnows taken from the water of Lake Lavon in Collin County for commercial purposes.

(b) A person violating this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 143.022. Harmful Refuse

(a) No person may throw, leave, or cause to be thrown or left any wastepaper, glass, metal, tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or in close proximity to Lake Lavon in Collin County if the substance is detrimental to fish or persons fishing in Lake Lavon.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 143.023. Discharge of Firearm

(a) Except as provided in Subsections (b) and (c) of this section, no person may shoot, fire, or discharge any firearm in, on, along, or across Lake Lavon in Collin County.

(b) This section does not apply to peace officers, game wardens, or other representatives of the department in the lawful discharge of their duties.

(c) This section does not apply to a person hunting with a shotgun during an open season or when it is lawful to hunt in or on Lake Lavon.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 plus costs, or confinement in the county jail for not more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 144. COLLINGSWORTH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

144.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

144.011. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 144.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Collingsworth County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 144.002 to 144.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 144.011. Quail

(a) No person may hunt quail in Collingsworth County except during the open season, which is December 1 through January 31, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each bird taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 145. COLORADO COUNTY

§ 145.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Colorado County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 146. COMAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

146.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

146.011. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 146.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Comal County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 146.002 to 146.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 146.011. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Comal County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 147. COMANCHE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

147.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

147.011. Fish Sale.

147.012. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 147.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code)

applies to the wildlife resources in Comanche County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 147.002 to 147.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 147.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, channel catfish, or catfish caught, trapped, or ensnared in the water of Comanche County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 147.012. Minnow Transport

(a) As used in this section, "minnow hatchery" means a pond or series of ponds located entirely on private, enclosed property and not connected with nor a part of a stream, and used in whole or in part for the propagation of minnows.

(b) Except as provided in Subsection (c) or (d) of this section, no person may transport minnows caught, seined, or taken in Comanche County to another county of this state.

(c) A person may transport not more than 200 minnows from Comanche County to another county for personal use.

(d) Minnows raised in a fish hatchery may be transported from Comanche County to another county.

(e) Possession of more than 400 minnows at one time by a person who is not a legal resident of Comanche County is prima facie evidence of a violation of this section.

(f) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 148. CONCHO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

148.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

148.011. Fish Sale.

148.012. Leaving Fish to Die.

148.013. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 148.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Concho County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 148.002 to 148.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 148.011. **Fish Sale**

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Concho County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 148.012. **Leaving Fish to Die**

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Concho County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use the fish for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 148.013. **Minnow Transport**

(a) No person may transport minnows taken from the water of Concho County out of the county for the purpose of sale.

(b) No person may transport more than 200 minnows taken from the water of Concho County to another county for any purpose.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 149. COOKE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

149.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

149.011. Fish Sale.

149.012. Lake Texoma: Fish Sale.

149.013. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 149.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cooke County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 149.002 to 149.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 149.011. **Fish Sale**

(a) No person may take or possess for the purpose of sale any fish from the fresh water in Cooke County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine not to exceed \$100. Each act of taking, and each fish taken or possessed, in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 149.012. **Lake Texoma: Fish Sale**

A person may buy or sell any sucker, buffalo, carp, shad, or gar taken from Lake Texoma in Cooke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 149.013. **Minnow Sale**

(a) No person may sell outside Cooke County, or take for the purpose of selling outside Cooke County, any minnows from the public water of Cooke County.

(b) The taking from Cooke County of more than 200 minnows at any one time by any person, or the taking from Cooke County of any minnows by a commercial minnow dealer or his agent, is a prima facie violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 150. CORYELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

150.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

150.011. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 150.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coryell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 150.002 to 150.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 150.011. Minnows

(a) Except as provided in Subsection (c) of this section, no person may take minnows from the water of Coryell County for the purpose of sale.

(b) Except as provided in Subsection (c) of this section, no person may take more than 125 minnows from the water of Coryell County and transport them to another county.

(c) A person may raise and propagate minnows on his premises or premises under his control for personal use, commercial purposes, and sale inside or outside Coryell County.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$250.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 151. COTTLE COUNTY

Section

151.001. Regulatory Act: Applicability.

151.002. Regulatory Act: Special Quail Season.

§ 151.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cottle County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 151.002. Regulatory Act: Special Quail Season

The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this

code) shall provide for an open season for the hunting of wild quail of all varieties in Cottle County beginning on December 1 of one year and extending through January 15 of the following year.

[Acts 1975, 64th Leg., p. 1214, ch. 456, § 14, eff. Sept. 1, 1975.]

CHAPTER 152. CRANE COUNTY

§ 152.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Crane County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 153. CROSBY COUNTY

§ 153.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Crosby County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 154. CROCKETT COUNTY

§ 154.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Crockett County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 155. CULBERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

155.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

155.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 155.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Culberson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 155.002 to 155.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 155.011. **Regulatory Act: Exemption**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Culberson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 156. DALLAM COUNTY

§ 156.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dallam County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 157. DALLAS COUNTY

§ 157.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dallas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 158. DAWSON COUNTY

§ 158.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dawson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 159. DEAF SMITH COUNTY

§ 159.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Deaf Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 160. DELTA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

160.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

160.011. Deer.

160.012. Squirrels.

SUBCHAPTER C. BIRDS

Section

160.021. Turkey.

160.022. Quail

SUBCHAPTER D. FISH

160.031. Nets and Seines.

SUBCHAPTER E. FUR-BEARING ANIMALS

160.041. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 160.001. **Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Delta County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.002 to 160.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 160.011. **Deer**

(a) No person may hunt deer in Delta County except during the open season beginning on November 22 and extending through December 1.

(b) During the open season, no person may take, kill, or have in his possession a deer other than a buck with pronged horn. No person may take or kill more than one buck deer in one season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 160.012. **Squirrels**

(a) No person may hunt squirrel in Delta County except during the open seasons beginning on May 1 and extending through July 31, and beginning on October 1 and extending through December 31. During the open seasons no person may kill, take, or have in his possession more than eight squirrels a day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.013 to 160.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 160.021. **Turkey**

(a) No person may hunt wild turkey in Delta County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or confinement in the county jail for not less than 1 day nor more than 30 days, or both. Each turkey killed or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 160.022. Quail

(a) No person may hunt wild quail in Delta County except during the open season beginning on December 1 and extending through January 16. During the open season, no person may hunt wild quail in Delta County on Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.023 to 160.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 160.031. Nets and Seines

No person may take or catch catfish, perch, buffalo fish, or drum in Delta County by hand or with a seine or net having meshes one inch square, except during the open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.032 to 160.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 160.041. Hunting Mink With Dogs

A person may hunt, take, or kill or attempt to hunt, take, or kill wild mink in Delta County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 161. DENTON COUNTY

§ 161.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Denton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 162. DEWITT COUNTY

§ 162.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in DeWitt County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 163. DICKENS COUNTY

§ 163.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Dickens County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 164. DIMMIT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

164.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

164.011. Fish Sale.

164.012. Leaving Fish to Die.

164.013. Minnow Sale and Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 164.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dimmit County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 164.002 to 164.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 164.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Dimmit County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 164.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Dimmit County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die, unless the person intends to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. The allowing of each fish to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 164.013. Minnow Sale and Transport

(a) No person may sell or take for the purpose of sale any minnows in Dimmit County. No commercial minnow dealer, nor any of his employees, may take any minnows out of Dimmit County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 165. DONLEY COUNTY**§ 165.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Donley County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 166. DUVAL COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

166.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

166.011. Regulatory Act: Exclusion.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 166.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Duval County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 166.002 to 166.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS**§ 166.011. Regulatory Act: Exclusion**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to deer without antlers in Duval County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 167. EASTLAND COUNTY**§ 167.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Eastland County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 168. ECTOR COUNTY**§ 168.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ector County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 169. EDWARDS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

169.001. Regulatory Act: Applicability.

169.002. Mandatory Proclamation.

SUBCHAPTER B. FISH

169.011. Fish Sale.

169.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 169.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Edwards County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 169.002. Mandatory Proclamation

(a) The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code) shall prohibit the hunting of doe deer in Edwards County.

(b) This section expires January 1, 1977.

[Acts 1975, 64th Leg., p. 1222, ch. 456, § 22, eff. Sept. 1, 1975.]

[Sections 169.003 to 169.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 169.011. Fish Sale

(a) No person may take, offer, or possess, for the purpose of sale, any bass, crappie, perch, or bream in Edwards County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 169.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Edwards County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 170. ELLIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

170.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

170.011. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 170.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ellis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 170.002 to 170.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 170.011. Minnow Transport

(a) As used in this section "minnow hatchery" means a pond or series of ponds located entirely on private, enclosed property and not connected with or a part of a stream, and used either in whole or in part for the propagation of minnows.

(b) Except as provided in Subsections (c) and (d) of this section, no person may transport minnows caught in Ellis County to another county in this state.

(c) A person may transport not more than 150 minnows for personal use from Ellis County to another county.

(d) Minnows raised in a minnow hatchery may be transported from Ellis County to another county.

(e) The possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 171. EL PASO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

171.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

171.011. Regulatory Act: Exemption.

171.012. Method of Taking Fish.

171.013. Fish Limit.

171.014. Importation and Sale of Black Bass.

171.015. Importation Tags.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 171.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in El Paso County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 171.002 to 171.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 171.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in El Paso County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.012. Method of Taking Fish

(a) No person may use a method or device to catch fish other than a hook and line, pole and line, or trotline or setline in El Paso County.

(b) No person may use a minnows seine longer than 10 feet or a seine with meshes larger than three-eighths of an inch square to catch bait in El Paso County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each fish taken in violation of this chapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.013. Fish Limit

(a) Except as provided in Subsection (b) of this section, no person may catch or possess more than 10 fish in one day or more than 30 fish in one week in El Paso County.

(b) No person may catch or possess more than 20 perch in one day or more than 60 perch in one week in El Paso County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.014. Importation and Sale of Black Bass

(a) Black bass imported from another country may be sold in El Paso County if:

(1) the fish were caught in inland water of a foreign country which is not international water of the United States and the foreign country;

(2) the country from which the fish were imported permits the taking of the fish for sale; and

(3) an importation tag is attached to the gill, dorsal fin, or tail of each black bass sold.

(b) A person who sells or attempts to sell a black bass in El Paso County which does not have properly attached an importation tag is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.015. Importation Tags

(a) A licensed customhouse broker who wishes to handle the importation of black bass for sale in El Paso County shall notify the commission. The commission shall assign the broker a permanent record number and provide the number of metal importation tags requested by the broker.

(b) The cost of the importation tags shall be paid by the broker, and each tag shall contain the permanent record number of the broker and a separate number to identify the tag.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 172. ERATH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

172.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

172.011. Fish Sale.

172.012. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 172.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Erath County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 172.002 to 172.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 172.011. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish taken from the Bosque River or its tributaries in Erath County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish bartered, bought, or sold or offered for barter or sale constitutes a separate offense. A person who violates this section may be prosecuted in the county where the offense is committed, where he is found with the fish in his possession, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in Erath County to give a special charge on this law to the grand juries of Erath County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 172.012. Minnow Sale

In Erath County a person may raise and propagate minnows on his own premises or on premises under his control for personal use or for commercial purposes, and for sale inside or outside the county, at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 173. FALLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
173.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

173.011. Instruments to Call or Attract Animals.

SUBCHAPTER C. FISH

173.021. Fish Sale.
173.022. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 173.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Falls County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 173.002 to 173.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 173.011. Instruments to Call or Attract Animals

(a) No person may use any device or instrument used to call or attract animals to aid in the hunting of any wild animal on state-owned land in Falls County.

(b) The Commissioners Court of Falls County may extend the prohibition expressed in Subsection (a) to any privately owned land in Falls County, any designated portion or section of the county, or to all of the county. The commissioners court shall notify the Texas Parks and Wildlife Commission of its desire to broaden the coverage of Subsection (a) of this section. After receiving a return from the commission, the commissioners court shall specify what land or portion of the county is added to the coverage of Subsection (a) of this section on forms prescribed by the Texas Parks and Wildlife Commission. The court shall return the forms to the commission, properly attested to as the official act of the Commissioners Court of Falls County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 173.012 to 173.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 173.021. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, catfish, or any other fish taken from the water of the Brazos River in Falls County or from the water within one mile from the mouth of any tributary of the Brazos River in Falls County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 173.022. Minnow Transport

(a) No person may transport at any one time beyond the borders of Falls County more than 125 minnows taken from any stream, pond, lake, or lagoon in Falls County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 174. FANNIN COUNTY

§ 174.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fannin County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 175. FAYETTE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
175.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

175.011. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 175.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fayette County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 175.002 to 175.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 175.011. Minnow Transport and Sale

(a) No person may transport any minnows taken from the water of Fayette County out of the county for the purpose of sale, nor transport more than 200 minnows out of the county for any purpose.

(b) Possession of more than 200 minnows is prima facie evidence of a violation of this section.

(c) This section does not apply to the transportation of minnows by the state and federal fish hatcheries in Fayette County.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 176. FISHER COUNTY

§ 176.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fisher County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 177. FLOYD COUNTY

§ 177.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Floyd County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 178. FOARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

178.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

178.011. Deer.

SUBCHAPTER C. BIRDS

178.021. Turkey.

178.022. Quail.

SUBCHAPTER D. FISH

Section

178.031. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 178.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Foard County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.002 to 178.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 178.011. Deer

(a) No person may hunt deer in Foard County except during the open season between November 30 and December 15, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.012 to 178.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 178.021. Turkey

(a) No person may hunt wild turkey in Foard County except during the open season between November 30 and December 15, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 178.022. Quail

(a) No person may hunt quail in Foard County except during the open season between December 1 and January 31, both dates inclusive. No person may kill more than 12 quail in any one day in Foard County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.023 to 178.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 178.031. Minnow Transport

(a) No person may transport into another county any minnows caught, seined, or taken from the water of Foard County, except that a person may transport into another county no more than 150 minnows for personal use or any minnows raised in a minnow hatchery in this state.

(b) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with nor a part of any stream, and used either in whole or in part for the propagation of minnows.

(c) Possession of more than 500 minnows by any person at one time is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 179. FORT BEND COUNTY

§ 179.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fort Bend County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 180. FRANKLIN COUNTY

§ 180.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Franklin County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 181. FREESTONE COUNTY

§ 181.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Freestone County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 182. FRIO COUNTY

§ 182.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Frio County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 183. GAINES COUNTY

§ 183.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gaines County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 184. GALVESTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

184.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

184.011. Turkey.

SUBCHAPTER C. FISH

184.021. Galveston Bay: Seines.

184.022. Other Water: Net and Seines.

184.023. Seining Near Cities Prohibited.

184.022. Commission May Close Certain Water.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 184.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act does not apply to wildlife resources in Galveston County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 184.002 to 184.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 184.011. Turkey

(a) No person may hunt wild turkey in Galveston County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 184.012 to 184.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 184.021. Galveston Bay: Seines

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Galveston County during the period beginning on August 15 of one year and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Galveston County at any time:

(1) Swan Lake;

(2) Moses Lake;

(3) Clear Lake;

(4) Dickinson Bayou or Bay west of a line from Miller's Point to April Fool Point;

(5) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and

(6) water of Galveston Bay lying east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching fish if the meshes are less than one and one-half inches from knot to knot.

(d) When an officer of this state finds a strike net, gill net, trammel net, or shrimp trawl in use or possessed in violation of this section, the officer shall arrest the violator and hold the device as evidence. No suit may be maintained against an officer acting under the authority of this section. The officer shall take the alleged violator before the appropriate county court or justice court and shall file a complaint against the person. On the trial of the person, if it be found that the net or trawl was being used or possessed in violation of this section, the court shall order the destruction of the net or trawl by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the net or trawl was destroyed.

(e) When an officer of this state finds a strike net, gill net, trammel net, or shrimp trawl the use or possession of which is prohibited by this section in or on the water described in Subsection (a) of this section and no person is found in possession of the net or trawl, the officer shall seize and hold the net

or trawl, and shall make a report by affidavit to the appropriate county court or justice court. The court shall direct that the sheriff or constable post a copy of the report in the courthouse. Thirty days after the notice is posted, the court shall order the destruction of the device by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the device was destroyed.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and his commercial fishing license is subject to revocation for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 184.022. Other Water: Net and Seines

(a) No person may place or use a seine, net, or other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the bays, streams, bayous, or canals of Galveston County not covered by Section 184.021 of this code, or in San Luis Pass in Galveston County.

(b) Enforcement officers of the department may seize and hold nets and seines or other devices used in violation of this section until the trial of the accused.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200, and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 184.023. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Galveston County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 184.024. Commission May Close Certain Water

(a) The commission may close tidal water in Galveston County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;
- (4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 184.021, 184.022, and 184.023 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 185. GARZA COUNTY

§ 185.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Garza County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 186. GILLESPIE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

186.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

- 186.011. Definitions.
- 186.012. Open Archery Season.
- 186.013. Prohibited Archery Equipment.
- 186.014. Deer Permits.
- 186.015. Limit and Possession of Deer.
- 186.016. Penalty.
- 186.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 186.021. Fish Sale.
- 186.022. Minnow Transport.
- 186.023. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 186.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gillespie County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 186.002 to 186.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 186.011. Definitions

As used in this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.012. Open Archery Season

(a) The open archery season in Gillespie County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 186.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 186.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Gillespie County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season in Gillespie County.

(b) No person may possess an antlerless deer in Gillespie County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Gillespie County which does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Gillespie County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.016. Penalty

A person who violates Section 186.012 through Section 186.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Gillespie County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 186.018 to 186.020 reserved for expansion]

SUBCHAPTER C. FISH**§ 186.021. Fish Sale**

(a) No person may catch or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Gillespie County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.022. Minnow Transport

(a) No person may transport minnows caught, taken, or seined from the water of Gillespie County to another county in this state.

(b) The possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.023. Leaving Fish to Die

(a) No person may knowingly place, throw, deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Gillespie County any catfish, perch, crappie, white perch, bass, trout, or other

edible fish, and leave the fish to die without any intention of eating the fish or using them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 187. GLASSCOCK COUNTY

§ 187.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Glasscock County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 188. GOLIAD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

188.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

188.011. Squirrel.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 188.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Goliad County except for deer, quail, turkey, and alligators.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 188.002 to 188.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 188.011. Squirrel

Squirrel may be killed at any time in Goliad County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 189. GONZALES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

189.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

189.011. Fishing Methods.

189.012. Fish Sale.

189.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 189.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gonzales County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 189.002 to 189.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 189.011. Fishing Methods

(a) No person may catch any fish from the public water of Gonzales County by any means other than an ordinary hook and line or artificial bait or trotline not more than 300 feet in length, but a net or seine not more than 20 feet in length may be used to take minnows or perch for bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 189.012. Fish Sale

(a) No person may sell, offer for sale, or possess for the purpose of sale any fish, except minnows and perch used for bait, taken from the public water of Gonzales County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 189.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the water of Gonzales County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 190. GRAY COUNTY

§ 190.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gray County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 191. GRAYSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 191.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

191.011. Minnows. 191.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 191.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Grayson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 191.002 to 191.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 191.011. Minnows

(a) No person may sell outside of Grayson and Cooke counties any minnows caught in Grayson County.

(b) No person may transport from Grayson County to any county other than Cooke County for the purpose of sale any minnows caught in Grayson County.

(c) The transportation from Grayson County to any county other than Cooke County of more than 200 minnows by a person or of any minnows by a commercial minnow dealer or an agent of a dealer constitutes prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 191.012. Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch fish from the fresh

water of Grayson County for the purpose of sale or possess for the purpose of sale fish caught from the fresh water of Grayson County.

(b) A person may sell or buy sucker, buffalo fish, carp, shad, and gar caught from the fresh water of Grayson County, including Lake Texoma in Grayson County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10. Each fish caught or possessed for the purpose of sale constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 192. GREGG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 192.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

192.011. Deer.

SUBCHAPTER C. BIRDS

192.021. Turkeys.

SUBCHAPTER D. FUR-BEARING ANIMALS

192.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 192.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Gregg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.002 to 192.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 192.011. Deer

(a) No person may take or kill any deer in Gregg County, except that a person may take or kill buck deer with pronged horns during the open season between November 15 and November 30, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in the county jail for not less than ten days nor more than six months, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.012 to 192.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 192.021. Turkeys

(a) No person may hunt any wild turkeys in Gregg County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.022 to 192.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 192.031. Hunting Mink With Dogs

(a) No person may hunt wild mink in Gregg County with dogs.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each mink found in possession in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 193. GRIMES COUNTY

§ 193.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Grimes County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 1986, ch. 659, § 1

Acts 1975, 64th Leg., p. 1986, ch. 659, § 1, purports to amend § 3, subsec. c of Penal Code, Art. 978j-1 by adding a paragraph (15), without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(1). As so added, par. (15) reads:

"(15) In Grimes County deer are not included in the term 'wildlife resources' for a period from the effective date of this Act to January 1, 1977."

CHAPTER 194. GUADALUPE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
194.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

194.011. Fish Sale.
194.012. Explosives.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 194.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Guadalupe County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 194.002 to 194.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 194.011. Fish Sale

(a) No person may barter, buy, or sell, or offer to barter or sell, any bass, crappie, perch, catfish, or any other fish taken from the fresh water of Guadalupe County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 194.012. Explosives

(a) No person may destroy fish by using any dynamite, powder, or any other explosive in any freshwater stream in Guadalupe County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for no more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 195. HALE COUNTY

§ 195.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hale County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 196. HALL COUNTY

§ 196.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hall County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 197. HAMILTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 197.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

197.011. Fish Sale. 197.012. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 197.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hamilton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 197.002 to 197.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 197.011. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish taken from the Bosque River or its tributaries in Hamilton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish bartered, bought, or sold or offered for barter or sale constitutes a separate offense. A person who violates this section may be prosecuted in the county where the offense is committed, where he is found with the fish in his possession, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in Hamilton County to give a special charge on this law to the grand juries of Hamilton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 197.012. Minnow Sale

(a) Except as provided by Subsection (b) of this section, no person may sell, offer for sale, or possess for the purpose of sale in Hamilton County any minnows taken from the water of the county.

(b) In Hamilton County a person may raise and propagate minnows on his own premises or on premises under his control for personal use or for commercial purposes and for sale inside or outside the county at any time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 198. HANSFORD COUNTY

§ 198.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hansford County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 199. HARDEMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 199.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

199.011. Minnow Transport.

SUBCHAPTER C. BIRDS

199.021. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 199.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hardeman County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 199.002 to 199.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 199.011. Minnow Transport

(a) No person may transport into another county any minnows caught, seined, or taken from the

water of Hardeman County, except that a person may transport into another county no more than 150 minnows for personal use or any minnows raised in a minnow hatchery in this state.

(b) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with or a part of any stream, and used either in whole or in part for the propagation of minnows.

(c) Possession of more than 500 minnows by any person at one time is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. BIRDS

§ 199.021. Quail

The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code) shall provide for an open season for the hunting of quail in Hardeman County beginning on December 1 of one year and extending through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 200. HARDIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

200.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

200.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

200.021. Hunting Deer With Dogs.

200.022. Possession of Deer.

SUBCHAPTER D. FUR-BEARING ANIMALS

200.031. Attracting Foxes With Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 200.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hardin County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.002 to 200.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 200.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in Hardin County, but only during the open season for the game bird or game animal. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.012 to 200.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 200.021. Hunting Deer With Dogs

(a) No person may allow or permit a dog under his control to hunt, chase, or molest any wild deer in Hardin County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 200.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in Hardin County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.023 to 200.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 200.031. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Hardin County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit to use them from the Parks and Wildlife Department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 201. HARRIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

201.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 201.011. Regulatory Act: Saltwater Marine Life Excluded.
 201.012. Seining Near Cities Prohibited.
 201.013. Galveston Bay: Nets and Seines.
 201.014. Other Water: Nets and Seines.
 201.015. Commission May Close Certain Water.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 201.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Harris County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 201.002 to 201.010 reserved for expansion]

SUBCHAPTER B. FISH

Acts 1975, 64th Leg., p. 1277, ch. 479, § 1

Acts 1975, 64th Leg., p. 1277, ch. 479, § 1, relating to devices for catching crabs in Harris County, was enacted without reference to codification of all game and fish laws in this Code. As so enacted, the Act reads:

“(a) This section applies only to the water of Burnett Bay, Crystal Bay, Scott Bay, and Black Duck Bay in Harris County.

“(b) No person may possess, use, or place more than three crab traps, crab pots, or other similar devices used for the catching of crabs on or in the water described in Subsection (a) of this section. This prohibition does not include crab lines, hooks or lines, or trotlines normally employed for the catching of crabs.

“(c) It is an affirmative defense to a prosecution under this section that the person possessed the trap, pot, or device prohibited by Subsection (b) of this section on board a vessel while en route to water where the use of the trap, pot, or device is not prohibited and that the trap, pot, or other device was not used for the purpose of catching crabs in the water to which this section applies.

“(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

“(e) Peace officers and other authorized employees of the Parks and Wildlife Department may seize crab traps, crab pots, and other devices used in violation of this section. Items seized under this section shall be held for evidence and may be destroyed or disposed of as required by law if used in violation of this section. No suit may be maintained against an officer or an authorized employee of the department for the seizure of items as authorized by this section.”

§ 201.011. Regulatory Act: Saltwater Marine Life Excluded

In Harris County, saltwater species of marine life are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.012. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Harris County within one mile of the limits of a city.

(b) In this section, “city” means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.013. Galveston Bay: Nets and Seines

(a) No person may possess, use, or place in or on that portion of Galveston Bay lying in Harris County a setnet, gill net, trap, or other similar device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the

device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d) When an officer of this state finds a seine, net, trawl, trap, or other device in use or possessed in violation of this section, the officer shall arrest the violator and hold the device as evidence. No suit may be maintained against an officer acting under the authority of this section. The officer shall take the alleged violator before the appropriate county court and shall file a complaint against the person. On the trial of the person, if it is found that the device was being used or possessed in violation of this section, the court shall order the destruction of the device by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the device was destroyed.

(e) When an officer of this state finds a seine, net, trawl, trap, or other device the use or possession of which is prohibited by this section in or on the water described in Subsection (a) of this section and no person is found in possession of the seine, net, trawl, trap, or other device, the officer shall seize and hold the device and shall make a report by affidavit to the appropriate county court. The court shall direct that the sheriff or constable post a copy of the report in the courthouse for a period of 10 days, after which the sheriff or constable shall make his return to the court showing when and where the notice was posted. Then the court shall hold a hearing to determine if the device was used in violation of this section, and if it is found that the device was used in violation of this section, the court shall order the destruction of the device by the officer holding it. The officer shall report to the court by sworn statement showing how, when, and where the device was destroyed.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than \$50 nor more than \$250. On a second or subsequent conviction, he may be punished by a fine of not less than \$50 nor more than \$250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.014. Other Water: Nets and Seines

(a) No person may place or use a seine, net, or other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the saltwater bays, streams, bayous, or canals of Harris County other than Galveston Bay.

(b) Enforcement officers of the department may seize and hold nets and seines or other devices used in violation of this section until the trial of the accused.

(c) The identification of a boat, vehicle, net, or seine from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.015. Commission May Close Certain Water

(a) The commission may close tidal water in Harris County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 201.012, 201.013, and 201.014 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 202. HARRISON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

202.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

202.011. Hunting Deer With Dogs.

SUBCHAPTER C. FISH

202.021. Fish Sale.

SUBCHAPTER D. CADDO LAKE

202.031. Firing Weapons.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 202.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Harrison County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.002 to 202.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 202.011. Hunting Deer With Dogs

No person may pursue or take deer with dogs in Harrison County except in that portion of the county south of Interstate Highway 20 and east of State Highway 43.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.012 to 202.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 202.021. Fish Sale

(a) No person may buy or sell, offer to buy or sell, possess for sale, or carry, transport, or ship for sale, barter, or exchange any white bass or striped bass (barfish) in Harrison County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of no more than \$100. Each sale, shipment, or other act in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.022 to 202.030 reserved for expansion]

SUBCHAPTER D. CADDO LAKE

§ 202.031. Firing Weapons

(a) No person may shoot a pistol or rifle in, on, along, or across Caddo Lake in Harrison County.

(b) This section does not apply to peace officers, game management officers, or representatives of the Parks and Wildlife Commission in the discharge of their official duties, nor does it prevent a person from hunting with a shotgun during an open season or when it is lawful to hunt in or upon Caddo Lake in Harrison County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

(d) Venue for prosecutions for violations of this section is in Harrison or Marion counties. Prosecutions may be brought and maintained in either county without regard to the county where the offense was committed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 203. HARTLEY COUNTY

§ 203.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hartley County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 204. HASKELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

204.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

204.011. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 204.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Haskell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 204.002 to 204.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 204.011. Minnow Transport

(a) No person may transport minnows caught, seined, or taken from Haskell County into another county of this state.

(b) Possession of more than 500 minnows at one time by a person is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 205. HAYS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
205.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

205.011. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 205.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hays County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 205.002 to 205.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 205.011. Minnow Transport and Sale

(a) No person may transport any minnows taken from the water of Hays County out of the county for the purpose of sale or transport more than 200 minnows out of the county for any purpose.

(b) Possession of more than 200 minnows by a person is prima facie evidence of a violation of this section.

(c) This section does not apply to the transportation of minnows by the state and federal fish hatcheries in Hays County.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 206. HEMPHILL COUNTY

§ 206.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hemphill County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 207. HENDERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
207.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

207.011. Cedar Creek Reservoir: Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 207.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Henderson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 207.002 to 207.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 207.011. Cedar Creek Reservoir: Fish Sale

(a) Except as provided by Subsection (b) of this section no person may sell or offer to sell any fish taken from that portion of the Joe B. Hogsett Reservoir known as the Cedar Creek Reservoir situated in Henderson County.

(b) This section does not prohibit the selling of rough fish taken by seine or net under contract with the Parks and Wildlife Department as provided by general law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 208. HIDALGO COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

208.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

208.011. Pheasants.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 208.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hidalgo County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 208.002 to 208.010 reserved for expansion]

SUBCHAPTER B. BIRDS**§ 208.011. Pheasants**

(a) No person may hunt wild pheasants in Hidalgo County except during the open season, which is the months of October, November, December, January, February, and March. During the open season wild pheasants may be hunted in Hidalgo County only on enclosed tracts of land consisting of not less than 250 acres that have been stocked with wild pheasants raised by a licensed game breeder in this state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each pheasant taken or killed in violation of this section constitutes a separate offense.

(c) This section does not permit the hunting of pheasants on private land without consent of the person owning or having control of the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 209. HILL COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

209.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

209.011. Fish Sale.

209.012. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 209.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hill County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 209.002 to 209.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 209.011. Fish Sale**

(a) No person may offer, expose, or possess for sale or sell any fish caught or taken from the Brazos River, Lake Whitney, or their tributaries in Hill County except as authorized by the Parks and Wildlife Department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Possession of each fish taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 209.012. Minnow Transport

(a) Except as provided in Subsection (b) of this section, no person may transport into another county any minnows caught, seined, or taken from the water of Hill County.

(b) A person may transport from Hill County into another county not more than 150 minnows for personal use, or transport from Hill County into another county any minnows raised in a minnow hatchery in this state.

(c) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed land and not connected with, or a part of, any stream and used either in whole or in part for the propagation of minnows.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 210. HOCKLEY COUNTY

§ 210.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hockley County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 211. HOOD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
211.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

211.011. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 211.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hood County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 211.002 to 211.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 211.011. Minnow Transport and Sale

(a) Except as provided in Subsection (b) of this section, no person may transport outside the county for the purpose of sale any minnows taken from the water of Hood County, and no person may have more than 150 minnows in possession or in any vehicle at any time.

(b) A licensed bait dealer may take minnows from a private minnow hatchery in Hood County and transport them for sale.

(c) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with, or a part of, any stream and used in whole or in part for the propagation of minnows.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each

minnow taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 212. HOPKINS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
212.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

212.011. Deer.
212.012. Squirrel.

SUBCHAPTER C. BIRDS

212.021. Turkey.
212.022. Quail.

SUBCHAPTER D. FUR-BEARING ANIMALS

212.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 212.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Hopkins County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.002 to 212.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 212.011. Deer

(a) No person may hunt deer in Hopkins County except during the open season beginning on November 22 and extending through December 1.

(b) During the open season, no person may take, kill, or have in his possession a deer other than a buck with pronged horn. No person may take or kill more than one buck deer in one season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 212.012. Squirrel

(a) No person may hunt squirrel in Hopkins County except during the open seasons beginning on May 1 and extending through July 31, and beginning on October 1 and extending through December 31.

During the open seasons no person may kill, take, or have in his possession more than eight squirrels a day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.013 to 212.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 212.021. Turkey

(a) No person may hunt any wild turkey in Hopkins County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or confinement in the county jail for not less than 1 day nor more than 30 days, or both. Each turkey killed or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 212.022. Quail

(a) No person may hunt wild quail in Hopkins County except during the open season beginning on December 1 and extending through January 31. During the open season, no person may hunt wild quail in Hopkins County on Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.023 to 212.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 212.031. Hunting Mink With Dogs

A person may hunt wild mink in Hopkins County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 213. HOUSTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

213.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

213.011. Deer.

SUBCHAPTER C. FISH

213.021. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 213.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Houston County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 213.002 to 213.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 213.011. Deer

(a) No person may hunt wild deer in Houston County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each deer taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 1986, ch. 659, § 2

Acts 1975, 64th Leg., p. 1986, ch. 659, § 2, purports to amend § 13, subsec. n of Penal Code, Art. 978j-1, without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(1). As so amended, subsec. n reads:

"n. In Trinity County it shall be illegal to take spike deer at any time. In Trinity, Houston and Leon counties, the commission shall provide for an archery season for the taking of deer beginning on October 1 and extending through October 31 of each year."

[Sections 213.012 to 213.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 213.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish caught or taken from the public fresh water of Houston County, except fish taken

from those parts of the Trinity and Neches rivers which are in Houston County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 214. HOWARD COUNTY

§ 214.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Howard County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 215. HUDSPETH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

215.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

215.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 215.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hudspeth County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 215.002 to 215.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 215.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Hudspeth County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 216. HUNT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

216.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

216.011. Fish Sale.

216.012. Sale of Fish From Lake Tawakoni.

216.013. Leaving Fish to Die.

SUBCHAPTER C. SABINE RIVER

Section

216.021. Sabine River: Navigability.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 216.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hunt County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 216.002 to 216.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 216.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Hunt County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 216.012. Sale of Fish From Lake Tawakoni

(a) Except as provided in this section, no person may sell or offer to sell any fish taken from Lake Tawakoni in Hunt County.

(b) This section does not prohibit the sale of rough fish taken by net or seine under contract with the department as provided in this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 216.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Hunt County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 216.014 to 216.020 reserved for expansion]

SUBCHAPTER C. SABINE RIVER

§ 216.021. Sabine River: Navigability

(a) That part of the Sabine River located between its source and its juncture with the east boundary line of Hunt County is not a navigable stream for the purpose of hunting and fishing rights on and along the stream. This section does not divest the state of whatever title it may have to the bed or water of the stream.

(b) Article 5302, Revised Civil Statutes of Texas, 1925, does not apply to that portion of the Sabine River described in Subsection (a) of this section. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 217. HUTCHINSON COUNTY

§ 217.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hutchinson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 218. IRION COUNTY

§ 218.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Irion County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 219. JACK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

219.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

219.011. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 219.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jack County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 219.002 to 219.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 219.011. Minnow Transport

(a) No person may take minnows from the public fresh water of Jack County for barter or sale outside the area composed of Jack, Stephens, Young, and Palo Pinto counties.

(b) No person may transport for sale minnows taken from the public fresh water of Jack County beyond the borders of the area composed of Jack, Stephens, Young, and Palo Pinto counties.

(c) Transportation of minnows out of the area described in this section by a commercial bait dealer or his agent is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 220. JACKSON COUNTY

§ 220.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jackson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 221. JASPER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

221.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

221.011. Hunting With Dogs.

221.012. Hunting Deer With Dogs.

221.013. Possession of Deer.

SUBCHAPTER C. FISH

221.021. Fish Sale.

SUBCHAPTER D. FUR-BEARING ANIMALS

221.031. Regulatory Act: Exclusion.

221.032. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 221.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jasper County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.002 to 221.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 221.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in Jasper County only during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.012. Hunting Deer With Dogs

(a) No person may knowingly allow a dog under his control to hunt wild deer in Jasper County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.013. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer in Jasper County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.014 to 221.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 221.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any black bass, trout, white perch, or catfish of less than 18 inches in length taken from the water of the Sabine, Attoyoc, Angelina, and Neches rivers or any of their tributaries or lakes through which the flood streams of the rivers or their tributaries flow in Jasper County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or confinement in the county jail for not less than 10 days nor more than 30 days, or both. Each fish sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.022 to 221.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 221.031. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fox in Jasper County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.032. Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Jasper County unless he has obtained a permit from the department allowing him to use the devices for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 222. JEFF DAVIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 222.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

222.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 222.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jeff Davis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 222.002 to 222.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 222.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Jeff Davis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 223. JEFFERSON COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

223.001. Regulatory Act: Applicability.

SUBCHAPTER B. SHRIMP

223.011. Regulatory Act: Exclusion.

223.012. Shrimp Regulations.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 223.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jefferson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 223.002 to 223.010 reserved for expansion]

SUBCHAPTER B. SHRIMP**§ 223.011. Regulatory Act: Exclusion**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp in Jefferson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 223.012. Shrimp Regulations

(a) The commission may regulate the taking of shrimp from the coastal water of Jefferson County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Jefferson County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

- (1) the size of shrimp that may be taken;
- (2) open and closed shrimp seasons;
- (3) the means of taking shrimp;
- (4) the size and type of boats and equipment that may be used for taking shrimp;
- (5) the length and mesh size of nets and trawls and their spreading devices; and
- (6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Jefferson County.

(c) The commission, by regulation adopted in accordance with this section, may provide for the licensing of all persons taking, selling, or handling shrimp in Jefferson County and may license boats and equipment used for the taking, selling, or han-

dling of shrimp in Jefferson County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Jefferson County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the methods of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 224. JIM HOGG COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

224.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

224.011. Deer Season.

224.012. Collared Peccary.

SUBCHAPTER C. BIRDS

224.021. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 224.001. Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Jim Hogg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 224.002 to 224.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS**§ 224.011. Deer Season**

(a) No person may hunt deer in Jim Hogg County except during the open season beginning on the

second Saturday in November and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 224.012. Collared Peccary

(a) Collared peccary (javelina) may be hunted at any time in Jim Hogg County.

(b) No person may sell, offer for sale, or take or possess for the purpose of barter or sale any collared peccary (javelina) or any part of a collared peccary (javelina).

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) or part of a collared peccary (javelina) possessed for sale, sold, or offered for sale in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 224.013 to 224.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 224.021. Quail Season

(a) No person may hunt wild quail in Jim Hogg County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 225. JIM WELLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 225.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

225.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 225.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code)

applies to the wildlife resources in Jim Wells County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 225.002 to 225.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 225.011. Fish Sale

(a) No person may take for sale any fish from Lake Corpus Christi formerly known as Lake Lovenskiold in Jim Wells County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 226. JOHNSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 226.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

226.011. Fish Sale. 226.012. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 226.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Johnson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 226.002 to 226.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 226.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish caught or taken from the Brazos River, Lake Whitney, or their tributaries in Johnson County except as authorized by the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each fish possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 226.012. Minnow Transport

(a) No person may catch minnows in Johnson County for the purpose of sale outside Johnson County.

(b) No person may take more than 125 minnows from Johnson County and transport them out of Johnson County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$250.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 227. JONES COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

227.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

227.011. Fish Sale.

227.012. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 227.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jones County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 227.002 to 227.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 227.011. Fish Sale**

(a) No person may catch fish in the public water of Jones County for commercial purposes.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$250. Each day a person violates this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 227.012. Minnows

(a) No person may catch minnows commonly used for bait from the water of Fort Phantom Hill Lake in Jones County if the minnows are to be used for barter or sale.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 228. KARNES COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

228.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

228.011. Sale of Collared Peccary (Javelina).

SUBCHAPTER C. FISH

228.021. Minnow Sale and Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 228.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Karnes County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 228.002 to 228.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS**§ 228.011. Sale of Collared Peccary (Javelina)**

(a) No person may take, kill, or possess for the purpose of sale or sell or offer for sale any collared peccary (javelina) or any part of a collared peccary (javelina) in Karnes County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) or part of a collared peccary (javelina) taken, possessed, or offered for sale or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 228.012 to 228.020 reserved for expansion]

SUBCHAPTER C. FISH**§ 228.021. Minnow Sale and Transport**

(a) No person may take minnows from the water of Karnes County for the purpose of sale.

(b) No commercial minnow dealer or his employee may take minnows from the water of Karnes County.

(c) No person may transport minnows taken from the water of Karnes County out of the county for commercial purposes.

(d) No person may transport more than 200 minnows out of Karnes County in one day or have more than 200 minnows in a vehicle in Karnes County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 229. KAUFMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

229.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

229.011. Fish Sale.

229.012. Sale of Certain Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 229.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kaufman County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 229.002 to 229.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 229.011. Fish Sale

(a) No person may take or possess for sale, sell, or offer for sale any bass, trout, crappie, white perch, bream or other perch or channel catfish measuring less than 12 inches in length, taken from the fresh water of Kaufman County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 229.012. Sale of Certain Fish

(a) No person may sell or offer to sell any fish taken from Lake Tawakoni in Kaufman County or from Joe B. Hogsett Reservoir (Cedar Creek Reservoir) in Kaufman County.

(b) This section does not prohibit the selling of rough fish taken by seine or net under contract with the department as provided in this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 230. KENDALL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

230.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

230.011. Definitions.

230.012. Open Archery Season.

230.013. Prohibited Archery Equipment.

230.014. Deer Permits.

230.015. Limit and Possession of Deer.

230.016. Penalty.

230.017. Possession of Firearms.

230.018. Axis Deer Hunting.

SUBCHAPTER C. BIRDS

230.021. Turkey Gobblers.

SUBCHAPTER D. FISH

230.031. Setlines.

230.032. Balcones Creek.

230.033. Penalty.

230.034. Fish Sale.

SUBCHAPTER E. SPECIAL REGULATORY PROVISIONS

230.041. Regulatory Authority.

230.042. Definitions.

230.043. Investigations.

230.044. Open Seasons.

230.045. Consent of Landowner.

230.046. Regulations.

230.047. Amendments and Revocation.

230.048. Regulations for Antlerless Deer.

230.049. Antlerless Deer Permits.

230.050. Adoption of Regulations.

230.051. Approval of Commissioners Court.

230.052. Effective Date and Duration of Regulations.

230.053. Copies of Regulations.

230.054. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 230.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Kendall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.002 to 230.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 230.011. Definitions

As used in this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.012. Open Archery Season

(a) The open archery season in Kendall County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers, or bearded hens and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Kendall County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Kendall County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with a bow and arrow during the open archery season in Kendall County.

(b) No person may possess an antlerless deer in Kendall County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Kendall County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Kendall County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.016. Penalty

A person who violates Sections 230.012 through Section 230.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Kendall County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.018. Axis Deer Hunting

(a) No person may hunt axis deer by any means in Kendall County outside of property enclosed by a deer-proof fence.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. Each axis deer taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.019 to 230.020 reserved for expansion]

SUBCHAPTER C. BIRDS**§ 230.021. Turkey Gobblers**

(a) No person may take or attempt to take more than two turkey gobblers during the open season in Kendall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each turkey gobbler taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.022 to 230.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 230.031. **Setlines**

No person may catch fish in Kendall County with a trotline or setline having more than 25 hooks or having hooks spaced less than four feet apart.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.032. **Balcones Creek**

No person may catch fish in Kendall County from February 1 to May 1 in that portion of Balcones Creek which forms the boundary between Bexar and Kendall counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.033. **Penalty**

A person who violates Section 230.031 or 230.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.034. **Fish Sale**

(a) No person may take, offer, or possess for sale any catfish, perch, crappie, bream, or bass in Kendall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.035 to 230.040 reserved for expansion]

SUBCHAPTER E. SPECIAL REGULATORY PROVISIONS

§ 230.041. **Regulatory Authority**

(a) The Parks and Wildlife Commission has regulatory authority over the wildlife resources in Kendall County as provided in this subchapter.

(b) All general laws relating to Kendall County and the provisions of this chapter remain applicable until superseded or suspended by regulation of the commission issued under this subchapter.

(c) On the expiration of any regulation issued by the commission under this subchapter, or on the expiration of this subchapter, the general law or provision of this subchapter superseded or suspended by a regulation shall apply.

(d) This subchapter expires on December 31, 1977. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.042. **Definitions**

In this subchapter:

(1) "Depletion" means the reduction of a species below immediate recuperative potentials by any deleterious cause or causes.

(2) "Waste" means supply of a species or sex of a species sufficient that a seasonal harvest of the species will not prevent or, in the case of overpopulation, that will aid in the reestablishment of normal numbers of the species.

(3) "Wildlife resources" means all game birds, game animals, fur-bearing animals, collared peccary (javelina), and all freshwater fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.043. **Investigations**

The commission shall conduct investigations on the wildlife resources in Kendall County as provided in Section 61.051 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.044. **Open Seasons**

The commission shall provide open seasons for the hunting and catching of wildlife resources in Kendall County if the investigations and findings of fact reveal that it is safe to provide an open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.045. **Consent of Landowner**

No person may hunt or catch wildlife resources in Kendall County by any means during an open season established by the commission unless the owner of the land or water, or his agent, has given his consent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.046. **Regulations**

(a) The regulation of the taking of wildlife resources in Kendall County under this subchapter shall be by regulation issued by the commission.

(b) A regulation of the commission authorizing the hunting or catching of wildlife resources in Kendall County must specifically provide for:

(1) the species, quantity, age or size, and sex of the wildlife resource authorized to be taken;

(2) the means or method that may be used to take the wildlife resource; and

(3) the area or portion of the county where the wildlife resource may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.047. Amendments and Revocation

(a) If the commission finds that there is a danger of depletion or waste of wildlife resources in Kendall County, it shall amend or revoke its regulations to prevent the depletion or waste and to provide the people the most equitable and reasonable privilege to hunt wildlife resources in Kendall County.

(b) The commission may amend or revoke its regulations in accordance with this subchapter at any time it finds the facts warrant a change.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.048. Regulations for Antlerless Deer

A regulation of the commission authorizing the taking of antlerless deer is not effective for a tract of land unless the owner or other person in charge of the land agrees in writing to the regulation and to the number of antlerless deer authorized to be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.049. Antlerless Deer Permits

(a) No person may hunt antlerless deer in Kendall County without first having obtained an antlerless deer permit issued by the commission on a form provided by the commission under rules established by the commission.

(b) No person may sell any permit received from the commission for the hunting and taking of antlerless deer if:

(1) payment for the permit is contingent on the purchaser killing and taking the antlerless deer; or

(2) retention of the purchase price by the seller is contingent on the purchaser killing and taking the antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.050. Adoption of Regulations

Regulations governing the hunting or catching of wildlife resources in Kendall County shall be adopted by the commission after notice and hearing as provided in Sections 61.101, 61.102, and 61.103 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.051. Approval of Commissioners Court

(a) The Commissioners Court of Kendall County shall approve or disapprove of a regulation of the commission, in whole or in part, at the first regular meeting occurring more than five days after notification of the adoption by the commission.

(b) If the commissioners court disapproves a regulation, the taking of the wildlife resource in Kendall County is governed by the appropriate general law or provision of this chapter.

(c) After disapproval of a regulation, no public hearing on a similar proposed regulation may be held within six months of the disapproval unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.052. Effective Date and Duration of Regulations

(a) Except as provided in Subsection (b) of this section, a regulation takes effect within 15 days after the day the regulation was approved by the commissioners court.

(b) If the commission finds that there is an immediate danger of depletion in any area of Kendall County as to a species because of an act of God, it may declare a state of emergency, and a regulation issued under the state of emergency takes effect on approval of the commissioners court.

(c) A regulation of the commission continues in effect until it expires of its own terms or until it is amended or repealed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.053. Copies of Regulations

On approval of a regulation by the Commissioners Court of Kendall County, the commission shall file, copy, and circulate the regulation as provided in Section 61.105 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.054. Penalty

A person who violates a provision of this subchapter or a regulation issued under this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each wildlife resource taken in violation of this subchapter or a regulation issued under this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 231. KENEDY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

231.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS

231.011. Precinct No. 1: Deer and Javelina.

SUBCHAPTER C. BIRDS

231.021. Precinct No. 1: Turkey.

231.022. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 231.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Kenedy County with respect to fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Act (Chapter 61 of this code) does not apply to wildlife resources in Kenedy County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 231.002 to 231.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 231.011. Precinct No. 1: Deer and Javelina

(a) No person may hunt deer or javelina (collared peccary) in justice precinct No. 1 in Kenedy County except during the open season beginning on November 15 and extending through December 1.

(b) No person may take more than one buck deer or more than one javelina (collared peccary) in precinct No. 1 in Kenedy County during a year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 231.012 to 231.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 231.021. Precinct No. 1: Turkey

(a) No person may hunt wild turkey gobbler in justice precinct No. 1 in Kenedy County except during the open season beginning on November 15 and extending through December 1.

(b) No person may take more than one wild turkey gobbler in precinct No. 1 in Kenedy County during a year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 231.022. Quail

(a) No person may hunt wild quail in Kenedy County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 232. KENT COUNTY

§ 232.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kent County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 233. KERR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

233.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

233.011. Collared Peccary (Javelina) Sale.

SUBCHAPTER C. FISH

233.021. Injuring Fish.

233.022. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 233.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kerr County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 233.002 to 233.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 233.011. Collared Peccary (Javelina) Sale

(a) No person may take or possess for barter or sale, sell, or offer for sale any collared peccary (javelina), or any part of one, in Kerr County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina), or part of one, taken, possessed, sold, or offered for sale in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 233.012 to 233.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 233.021. Injuring Fish

(a) No person may destroy fish in any freshwater stream in Kerr County by the use of dynamite, powder, or other explosives.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 233.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kerr County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 234. KIMBLE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

234.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

234.011. Doe Archery Season.

SUBCHAPTER C. FISH

234.021. Fish Sale.

234.022. Minnow Transport, Sale, and Possession.

234.023. Leaving Fish to Die.

1 West's Tex.Stats. & Codes '75 Supp.—21

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 234.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kimble County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 234.002 to 234.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 234.011. Doe Archery Season

In Kimble County, does may be taken by longbow and arrow during the open season for buck deer. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 234.012 to 234.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 234.021. Fish Sale

(a) No person may offer, take, or possess for sale any catfish, perch, crappie, bream, or bass taken from the water of Kimble County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 234.022. Minnow Transport, Sale, and Possession

(a) No person may transport any minnows taken from the public fresh water of Kimble County for the purpose of sale.

(b) No person may transport more than 200 minnows taken from the public fresh water of Kimble County out of the county in one day for any purpose.

(c) No person except a licensed bait dealer residing in Kimble County may possess more than 200 minnows.

(d) No person may possess more than 1,000 minnows taken from the fresh water of Kimble County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 234.023. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers,

pools or lagoons, or tanks, in Kimble County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 235. KING COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
235.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

235.011. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 235.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in King County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 235.002 to 235.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 235.011. Minnow Transport

(a) Except as provided in Subsections (b) and (c) of this section, no person may transport any minnows caught, seined, or taken from the water of King County into another county.

(b) A person may transport not more than 150 minnows caught, seined, or taken from the water of King County into another county for personal use.

(c) A person may transport any minnows raised in a minnow hatchery in this state from King County into another county.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 236. KINNEY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
236.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

236.011. Fish Sale.

236.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 236.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kinney County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 236.002 to 236.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 236.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Kinney County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 236.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kinney County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 237. KLEBERG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

237.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS

237.011. Javelina.

SUBCHAPTER C. BIRDS

237.021. Quail.

237.022. Audubon Society Land.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 237.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Kleberg County with respect to fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Kleberg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 237.002 to 237.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 237.011. Javelina

(a) This section applies to the following land in Kleberg County:

All lands within the Kleberg Town and Improvement Company's Subdivision (except those lands lying within the confines of the City of Kingsville, the town of Ricardo, and the United States Naval Auxiliary Air Station);

All lands lying within King Addition, except farm lots one, three, and the West one-half and the Northeast one-fourth of lot five; and

All lands lying within King Addition No. 3, King Addition No. 4, and King Addition No. 2.

(b) There is no closed season during which javelina may not be hunted in the area described in Subsection (a) of this section.

(c) No person may take or possess for sale, sell, barter, or offer for sale in the area described in Subsection (a) of this section a javelina or a part of a javelina.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each javelina taken, possessed, sold, or offered for sale in

violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 237.012 to 237.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 237.021. Quail

(a) No person may hunt wild quail in Kleberg County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 237.022. Audubon Society Land

(a) This section applies to North Bird Island and South Bird Island and the flats, reefs, and shallow water near those islands in Kleberg County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States, may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 238. KNOX COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

238.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

238.011. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 238.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Knox County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 238.002 to 238.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 238.011. Minnow Transport

(a) Except as provided in Subsections (b) and (c) of this section, no person may transport any minnows caught from the water of Knox County into another county.

(b) A person may transport not more than 150 minnows caught from the water of Knox County into another county for personal use.

(c) A person may transport any minnows raised in a minnow hatchery in this state from Knox County into another county.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 239. LAMAR COUNTY

§ 239.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lamar County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 240. LAMB COUNTY

§ 240.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lamb County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 241. LAMPASAS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

241.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

241.011. Fish Sale.

241.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 241.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lampasas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 241.002 to 241.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 241.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Lampasas County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 241.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Lampasas County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 242. LA SALLE COUNTY**SUBCHAPTER A. APPLICABILITY TO UNIFORM WILDLIFE REGULATORY ACT**

Section

242.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

242.011. Deer Season.

242.012. Collared Peccary (Javelina).

SUBCHAPTER C. BIRDS

242.021. Turkey.

242.022. Quail.

242.023. Pheasant.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 242.001. Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in La Salle County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 242.002 to 242.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS**§ 242.011. Deer Season**

(a) No person may hunt buck deer in La Salle County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each deer killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 242.012. Collared Peccary (Javelina)

(a) No person may hunt collared peccary (javelina) in La Salle County except during the open season beginning on November 1 and extending through December 15.

(b) No person may take or possess collared peccary (javelina) or any part of a collared peccary (javelina) for barter or sale or barter or sell collared peccary (javelina) in La Salle County.

(c) No person may take more than two collared peccary (javelina) in one open season.

(d) This section does not apply to collared peccary (javelina) or their hides imported from another state or country.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each

collared peccary (javelina) taken, possessed, sold, offered for sale, or possessed for sale in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 242.013 to 242.020 reserved for expansion]

SUBCHAPTER C. BIRDS**§ 242.021. Turkey**

(a) No person may hunt turkey in La Salle County except during the open season beginning on November 1 and extending through December 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each turkey killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 242.022. Quail

(a) No person may hunt quail in La Salle County except during the open season beginning on November 1 and extending through December 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail taken, killed, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 242.023. Pheasant

Wild pheasant of all varieties may be hunted at any time in La Salle County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 243. LAVACA COUNTY**§ 243.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lavaca County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 244. LEE COUNTY**§ 244.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 245. LEON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

245.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

245.011. Deer.

245.012. Squirrel.

SUBCHAPTER C. BIRDS

245.021. Quail.

245.022. Turkey.

SUBCHAPTER D. FISH

245.031. Fish Limit.

SUBCHAPTER E. FUR-BEARING ANIMALS

245.041. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 245.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Leon County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.002 to 245.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

Amendment by Acts 1975, 64th Leg., p. 1986, ch. 659, § 2

Acts 1975, 64th Leg., p. 1986, ch. 659, § 2, purports to amend § 13, subsec. n of Penal Code, Art. 978j-1, without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(1). As so amended, subsec. n reads:

"n. In Trinity County it shall be illegal to take spike deer at any time. In Trinity, Houston and Leon counties, the commission shall provide for an archery season for the taking of deer beginning on October 1 and extending through October 31 of each year."

§ 245.011. Deer

(a) No person may hunt deer in Leon County except during the open season beginning on the Saturday nearest to November 15 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 245.012. Squirrel

(a) No person may hunt or possess squirrel in Leon County except during the open seasons beginning on May 16th and extending through July 31, and beginning on October 1 and extending through December 31.

(b) No person may take, kill, or possess more than 5 squirrels in one day or more than 15 squirrels in one calendar week during the open seasons in Leon County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.013 to 245.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 245.021. Quail

(a) No person may hunt wild quail in Leon County except during the open season beginning on December 15 of one year and extending through the last day of February the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 245.022. Turkey

(a) No person may hunt turkey in Leon County at any time.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.023 to 245.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 245.031. Fish Limit

There is no daily catch or retention limit on crappie or white perch in Leon County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.032 to 245.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 245.041. Calling Devices

(a) No person may use any horn, recording, or other device to call or attract wild fox in Leon County unless he has obtained a permit from the department for the use of the device for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 246. LIBERTY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

246.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

246.011. Hunting With Certain Weapons.

246.012. Discharge of Firearms.

246.013. Penalty.

SUBCHAPTER C. GAME ANIMALS

246.021. Squirrel Transport.

SUBCHAPTER D. FUR-BEARING ANIMALS

246.031. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 246.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Liberty County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.002 to 246.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 246.011. Hunting With Certain Weapons

(a) No person may hunt with a shotgun using a shell containing larger than Number Four squirrel shot or with a rifle larger than a rimfire 22-caliber rifle in an area of Liberty County where deer roam unless it is the open season for taking deer in Liberty County.

(b) Possession of a shotgun and shell containing larger than Number Four squirrel shot or a rifle larger than a rimfire 22-caliber rifle in, through, or

at woods where deer roam in Liberty County is prima facie evidence of a violation of this section.

(c) This section does not apply to peace officers or representatives of the commission in the lawful discharge of their official duties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 246.012. Discharge of Firearms

(a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, and across the water of the Trinity River or Wallisville Reservoir in Liberty County.

(b) This section does not apply to peace officers or representatives of the department in the lawful discharge of their duties or to a person hunting migratory waterfowl during an open season in and on the Trinity River and Wallisville Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 246.013. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.014 to 246.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 246.021. Squirrel Transport

(a) No person may ship or cause to be shipped, receive for the purpose of transportation, transport, or carry beyond the limits of Liberty County wild squirrels.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.022 to 246.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 246.031. Calling Devices

(a) No person may use any horn, recording, or other device to call or attract wild fox in Liberty County unless he has first obtained a permit from the department to use the devices for making wildlife movies or scientific research.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 247. LIMESTONE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

247.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

247.011. Calling Devices.

SUBCHAPTER C. GAME ANIMALS

247.021. Squirrel.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 247.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Limestone County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 247.002 to 247.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 247.011. Calling Devices

(a) No person may use any type of squealer, call, or other device or instrument used to call or attract animals to aid in the hunting of any wild animal on state-owned land in Limestone County.

(b) The Commissioners Court of Limestone County may extend the prohibition set out in Subsection (a) of this section to any privately owned land in Limestone County or to all or part of Limestone County. The commissioners court must notify the commission of their intent to broaden the prohibition. On receipt of a return from the commission, the commissioners court shall specify the land to which the prohibition is to be applied on forms prescribed by the commission. The forms shall be returned to the commission and be properly attested to as the official act of the Commissioners Court of Limestone County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 247.012 to 247.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 247.021. Squirrel

(a) No person may hunt squirrel in Limestone County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 248. LIPSCOMB COUNTY

§ 248.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lipscomb County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 249. LIVE OAK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

249.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

249.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 249.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Live Oak County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 249.002 to 249.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 249.011. Fish Sale

(a) No person may take for sale any fish from the water of Lake Corpus Christi in Live Oak County, the Nueces River between Calallen Dam and the west boundary of Live Oak County, and the tributaries of the Nueces River in Live Oak County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 250. LLANO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

250.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

- 250.011. Definitions.
- 250.012. Open Archery Season.
- 250.013. Prohibited Archery Equipment.
- 250.014. Deer Permits.
- 250.015. Limit and Possession of Deer.
- 250.016. Penalty.
- 250.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 250.021. Fish Sale.
- 250.022. Injuring Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 250.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Llano County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 250.002 to 250.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 250.011. Definitions

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.012. Open Archery Season

(a) The open archery season in Llano County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 250.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild bear, wild antlerless deer, wild turkey gobblers or bearded

hens, and collared peccary (javelina) in Llano County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 250.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Llano County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from the used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season in Llano County.

(b) No person may possess an antlerless deer in Llano County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Llano County if it does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Llano County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.016. **Penalty**

A person who violates Section 250.012 through Section 250.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.017. **Possession of Firearms**

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp in Llano County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 250.018 to 250.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 250.021. **Fish Sale**

(a) No person may take, offer, or possess for sale any catfish, perch, crappie, bream, or bass from the water of Llano County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.022. **Injuring Fish**

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Llano County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 251. LOVING COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

251.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

251.011. Fish Sale.

251.012. Fishing Methods.

251.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 251.001. **Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Loving County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 251.002 to 251.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 251.011. **Fish Sale**

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Loving County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 251.012. **Fishing Methods**

(a) Except as provided in Subsection (b) of this section, no person may take or catch any fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Loving County by any means other than an ordinary hook and line, trotline, or artificial bait, and no person may place in that water any seine, net or other device, or trap for taking or catching fish.

(b) A person may use a minnow seine not more than 20 feet long to catch minnows for bait.

(c) In seining for bait as permitted by this section, all minnows more than three inches long shall be returned to the water at once while alive.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 251.013. **Leaving Fish to Die**

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any

of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Loving County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 252. LUBBOCK COUNTY

§ 252.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lubbock County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 253. LYNN COUNTY

§ 253.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lynn County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 254. McCULLOCH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

254.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 254.011. Definitions.
- 254.012. Open Archery Season.
- 254.013. Prohibited Archery Equipment.
- 254.014. Deer Permits.
- 254.015. Limit and Possession of Deer.
- 254.016. Penalty.
- 254.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 254.021. Fish Sale.
- 254.022. Leaving Fish to Die.
- 254.023. Minnow Transport.
- 254.024. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 254.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code)

applies to the wildlife resources in McCulloch County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 254.002 to 254.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 254.011. Definitions

In this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.012. Open Archery Season

(a) The open archery season in McCulloch County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers, or bearded hens and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 254.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in McCulloch County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 254.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in McCulloch County who desires to permit the hunting

of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in McCulloch County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in McCulloch County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In McCulloch County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.016. Penalty

A person who violates Section 254.012 through Section 254.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in McCulloch County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 254.018 to 254.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 254.021. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of McCulloch County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in McCulloch County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.023. Minnow Transport

(a) Except as provided in Subsection (b) of this section, no person may transport any minnows caught in McCulloch County into another county.

(b) A person may transport from McCulloch County into another county not more than 150 minnows for personal use or transport from McCulloch County into another county any minnows raised in a minnow hatchery in this state.

(c) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with, or a part of, any stream and used either in whole or in part for the propagation of minnows.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.024. Minnow Sale

(a) No person may sell, barter, or exchange in McCulloch County any minnows caught in McCulloch County.

(b) No person may seine for sale or possess for sale any minnows in McCulloch County.

(c) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each sale, barter, or exchange in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 255. McLENNAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

255.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

255.011. Fish Sale.

255.012. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 255.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in McLennan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 255.002 to 255.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 255.011. Fish Sale

(a) No person may buy, barter, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish taken from Lake Waco, the Bosque River, or their tributaries in McLennan County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish bought, sold, bartered or offered for sale or barter in violation of this section constitutes a separate offense. A person may be prosecuted for a violation of this section in the county where the offense is committed, where he is found possessing the fish, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in McLennan County to give a spe-

cial charge on this law to the grand juries of McLennan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 255.012. Minnow Transport and Sale

(a) No person may take minnows from the water of McLennan County for the purpose of transporting them out of the county for sale.

(b) Transportation of more than 100 minnows taken from the water of McLennan County into another county is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 and not more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 256. McMULLEN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

256.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

256.011. Deer.

256.012. Collared Peccary (Javelina).

SUBCHAPTER C. BIRDS

256.021. Turkeys.

256.022. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 256.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in McMullen County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 256.002 to 256.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 256.011. Deer

A person may hunt deer in McMullen County during the open season beginning on November 1 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 256.012. Collared Peccary (Javelina)

(a) This section applies to all collared peccary (javelina) and their hides except those imported from another state or foreign country.

(b) No person may hunt collared peccary (javelina) in McMullen County except during the open

season beginning on November 1 and extending through December 15.

(c) No person may take in one season in McMullen County more than two collared peccary (javelina).

(d) No person may take or possess for barter or sale, or offer for sale, or sell collared peccary (javelina), or part of one, in McMullen County at any time.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) taken or possessed, or offered or possessed for sale, or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 256.013 to 256.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 256.021. Turkeys

A person may hunt wild turkeys in McMullen County during the open season beginning on November 1 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 256.022. Quail

A person may hunt quail in McMullen County during the open season beginning on October 15 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 12, eff. Sept. 1, 1975.]

CHAPTER 257. MADISON COUNTY

§ 257.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Madison County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 258. MARION COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

258.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

258.011. Shooting Pistols on Caddo Lake.

SUBCHAPTER C. ANIMALS

258.021. Deer.

258.022. Squirrel.

258.023. Coypu.

SUBCHAPTER D. BIRDS

Section

258.031. Quail.

258.032. Blinds.

258.033. Turkey.

SUBCHAPTER E. FISH

258.041. Fishing Methods.

258.042. Fish Size and Retention Limits.

258.043. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 258.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Marion County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.002 to 258.110 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 258.011. Shooting Pistols on Caddo Lake

(a) No person may shoot a pistol in, on, along, or across Caddo Lake in Marion County.

(b) This section does not apply to peace officers or employees of the department engaged in official duties, nor does this section prohibit hunting with a shotgun during an open season.

(c) Peace officers and authorized employees of the department may inspect boats and other watercraft for violations of this section without a warrant.

(d) A prosecution for a violation of this section may be maintained in Marion or Harrison County without regard to where the offense occurred.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.012 to 258.020 reserved for expansion]

SUBCHAPTER C. ANIMALS

§ 258.021. Deer

(a) No person may hunt deer in Marion County except during the open seasons beginning on November 16 and extending through November 21 and beginning on December 26 and extending through December 31.

(b) No person may take more than two buck deer with pronged antlers during a calendar year in Marion County.

(c) No person may hunt deer in Marion County during the period between sunset and sunrise.

(d) No person may hunt deer on the land of another without the permission of the owner or lessee.

(e) No person may hunt deer in Marion County by a method other than with a rifle or shotgun capable of being fired from the shoulder, and no person may hunt deer in Marion County with:

(1) .22 caliber rimfire ammunition; or

(2) a .22 caliber rifle, jet gun, or rocket gun.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$500, or by confinement in jail for not less than 10 days nor more than three months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.022. Squirrel

(a) No person may take or kill squirrel in Marion County except during the open season during the months of October, November, and December.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.023. Coypu

Coypu (nutria) may be hunted at any time in Marion County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.024 to 258.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 258.031. Quail

(a) No person may hunt quail in Marion County except during the open season beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.032. Blinds

(a) No person may construct a blind to be leased for the hunting of waterfowl in Marion County without first having obtained from the department a permit.

(b) No person may lease a blind to be used in Marion County for the hunting of waterfowl without first having obtained from the department a permit for each blind.

(c) The department shall issue the permits required by this section for an annual fee of \$5 for each blind leased.

(d) No person may construct or use a blind in Marion County for the hunting of waterfowl if the blind is nearer than 300 yards to another blind used for the hunting of waterfowl. This section applies to any blind whether leased or used privately.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

(f) In a prosecution for using a blind nearer than 300 yards of another blind, it is an affirmative defense that the blind being used by the accused was located, built, and ready for use before the other blind was constructed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.033. Turkey

(a) No person may hunt or kill wild turkey in Marion County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) This section expires on September 1, 1980. [Acts 1975, 64th Leg., p. 1223, ch. 456, § 25, eff. Sept. 1, 1975.]

[Sections 258.034 to 258.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 258.041. Fishing Methods

(a) No person may catch fish in Marion County except by the following methods:

(1) ordinary hook, rod and reel, set hook and line, trotline, or artificial bait;

(2) for minnows for bait only, a minnow seine not more than 20 feet long;

(3) for buffalo fish, gar, catfish, shad, and bowfin or grindle during any month of the year except February, March, April, and May, a hoop net, setnet, or trammel net the meshes of which are not less than three and one-half inches square; and

(4) for buffalo fish, gar, catfish, shad, and bowfin or grindle in Caddo Lake, a gig.

(b) No person using a net authorized by Subdivision (2) or (3) of Subsection (a) of this section may fail to return to the water any fish taken with the net that are not authorized to be caught with the net being used. No person may possess a fish not

authorized to be taken with a net while the person is using a net.

(c) Nets, the use of which are not authorized by this section in Marion County, are a public nuisance, and peace officers and enforcement officers of the department are to destroy them. No suit may be maintained against an officer or employee of the department for carrying out the provisions of this subsection.

(d) A person who violated this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.042. Fish Size and Retention Limits

(a) No person may catch and keep a catfish from the water of Caddo Lake in Marion County if the fish is shorter than eight inches.

(b) No person may catch and keep more than 25 catfish from Caddo Lake in Marion County during one day.

(c) There is no daily limit or possession limit on crappie in Marion County.

(d) No person may possess or catch and keep in one day more than 25 white bass or striped bass in Marion County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50, unless the person violates Subsection (d) of this section, in which case he is punishable by a fine of not less than \$100. Each fish taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.043. Fish Sale

(a) No person may possess for sale, sell, buy, offer to sell or buy, transport or ship for the purpose of sale, or barter a white bass or a striped bass in Marion County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100. Each fish sale or shipment in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 259. MARTIN COUNTY

§ 259.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Martin County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 260. MASON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

260.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 260.011. Definitions.
- 260.012. Open Archery Season.
- 260.013. Prohibited Archery Equipment.
- 260.014. Deer Permits.
- 260.015. Limit and Possession of Deer.
- 260.016. Penalty.
- 260.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 260.021. Fish Sale.
- 260.022. Leaving Fish to Die.
- 260.023. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 260.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mason County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 260.002 to 260.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 260.011. Definitions

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.012. Open Archery Season

(a) The open archery season in Mason County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 260.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Mason County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 260.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Mason County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Mason County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Mason County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Mason County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.016. Penalty

A person who violates Section 260.012 through Section 260.015 of this code is guilty of a misde-

meanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Mason County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 260.018 to 260.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 260.021. Fish Sale

(a) No person may take for sale, offer for sale, or possess for sale any catfish, perch, crappie, bream, or bass in Mason County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Mason County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.023. Minnow Transport

(a) No person may transport any minnows caught in Mason County into another county.

(b) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 261. MATAGORDA COUNTY

Section

- 261.001. Regulatory Act: Applicability.
- 261.002. Regulatory Act: Shrimp Excluded.

§ 261.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Matagorda County.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 261.002. Regulatory Act: Shrimp Excluded

In Matagorda County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 262. MAVERICK COUNTY

§ 262.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Maverick County.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 263. MEDINA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 263.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 263.011. Fish Sale.
- 263.012. Injuring Fish.
- 263.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 263.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Medina County.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 263.002 to 263.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 263.011. Fish Sale

(a) No person may barter, sell, or offer for barter or sale any bass, perch, crappie, or catfish taken from the freshwater streams of Medina County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 263.012. Injuring Fish

(a) No person may use dynamite, powder, or other explosive in the freshwater streams of Medina County resulting in the destruction of fish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and confinement in the county jail for not more than one year.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 263.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Medina County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 264. MENARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 264.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 264.011. Fish Sale.
- 264.012. Minnows.
- 264.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 264.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Menard County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 264.002 to 264.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 264.011. **Fish Sale**

(a) No person may take, offer, or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Menard County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 264.012. **Minnows**

(a) No person may transport minnows taken from the public fresh water of Menard County for the purpose of sale.

(b) No person may transport more than 200 minnows taken from the public fresh water of Menard County beyond Menard County in one day.

(c) No person, except a licensed bait dealer residing in Menard County, may possess more than 200 minnows in Menard County.

(d) No person may possess more than 1,000 minnows taken from the fresh water of Menard County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 264.013. **Leaving Fish to Die**

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Menard County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 265. MIDLAND COUNTY

§ 265.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Midland County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 266. MILAM COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section
266.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

266.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 266.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Milam County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 266.002 to 266.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 266.011. **Fish Sale**

(a) No person may barter, sell, offer for barter or sale, buy, or possess after purchase any fish taken from the water of Milam County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 267. MILLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
267.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

267.011. Fish Sale.
267.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 267.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mills County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 267.002 to 267.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 267.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Mills County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 267.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Mills County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 268. MITCHELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
268.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

268.011. Fish Sale: Lake Colorado City.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 268.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mitchell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 268.002 to 268.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 268.011. Fish Sale: Lake Colorado City

(a) No person may catch fish from Lake Colorado City in Mitchell County for the purpose of sale.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 269. MONTAGUE COUNTY

§ 269.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Montague County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 270. MONTGOMERY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
270.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

270.011. Squirrel Sale.

SUBCHAPTER C. FISH

Section

270.021. Minnow Sale and Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 270.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Montgomery County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 270.002 to 270.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 270.011. Squirrel Sale

(a) No person may sell, offer for sale, or ship for sale any squirrel in Montgomery County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 270.012 to 270.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 270.021. Minnow Sale and Transport

(a) As used in this section, "minnow hatchery" is a pond or series of ponds located wholly on private, enclosed property and not connected with nor part of any stream and used in whole or in part for the propagation of minnows.

(b) Except as provided in Subsections (c) and (d) of this section, no person may transport any minnows taken from Montgomery County to another county in this state.

(c) A person may transport not more than 150 minnows taken from Montgomery County to another county in this state for personal use.

(d) A person may transport minnows raised in a fish hatchery from Montgomery County to another county in this state.

(e) Possession of more than 500 minnows at one time is prima facie evidence of a violation of this section.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 271. MOORE COUNTY

§ 271.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Moore County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 272. MORRIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

272.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

272.011. Deer Season.

272.012. Deer Limit.

272.013. Methods of Hunting Deer.

272.014. Permission of Owner.

272.015. Penalty.

272.016. Squirrel.

SUBCHAPTER C. BIRDS

272.021. Quail.

SUBCHAPTER D. FISH

272.031. Nets.

SUBCHAPTER E. FUR-BEARING ANIMALS

272.041. Coypu.

SUBCHAPTER F. LAKE TEXARKANA AND DAINGERFIELD LAKE

272.051. Discharge of Firearms.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 272.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.002 to 272.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 272.011. Deer Season

No person may hunt deer in Morris County except during the open seasons beginning on November 16 and extending through November 22 and beginning on December 25 and extending through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.012. Deer Limit

In Morris County, no person may take or kill more than one deer during an open season or take, kill, or possess any deer except a buck deer with a pronged horn of three points or more.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.013. Methods of Hunting Deer

(a) No person may use .22 caliber rimfire ammunition in hunting deer in Morris County.

(b) No person may hunt wild deer in Morris County with a .22 caliber rifle.

(c) No person may hunt wild deer in Morris County by any means other than a rifle, except a .22 caliber rifle, or a shotgun capable of being fired from the shoulder or bows and arrows conforming to the specifications described in Section 62.055 of this code.

(d) No person may use a dog to hunt deer or allow a dog to run, trail, or pursue a deer in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.014. Permission of Owner

No person may hunt deer on the land of another in Morris County without the permission of the owner or lessee of the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.015. Penalty

A person who violates Sections 272.011 through 272.014 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each deer taken, killed, or possessed in violation of these sections constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.016. Squirrel

(a) No person may hunt squirrel in Morris County except during the open season beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.017 to 272.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 272.021. Quail

(a) No person may hunt wild quail in Morris County except during the open season beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.022 to 272.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 272.031. Nets

(a) Except as provided in Subsections (b), (c), and (d) of this section, a person may use a seine or net with meshes of not less than three inches to catch fish from the water of Morris County.

(b) No person may use nets of any type in Daingerfield State Park Lake or Ellison Creek Reservoir (Lone Star Lake) in Morris County.

(c) No person may use a setnet or seine to catch white perch, crappie, or bass of any kind in Morris County.

(d) A person may use a minnow seine not more than 20 feet long to catch minnows for bait in Morris County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.032 to 272.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 272.041. Coypu

A person may take or kill coypu (nutria) at any time in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.042 to 272.050 reserved for expansion]

SUBCHAPTER F. LAKE TEXARKANA AND
DAINGERFIELD LAKE

§ 272.051. Discharge of Firearms

(a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, or across Daingerfield Lake or Lake Texarkana in Morris County.

(b) This section does not apply to peace officers, game wardens, or agents of the department in the lawful exercise of their duty or to persons hunting with a shotgun during an open season in or on Daingerfield Lake or Lake Texarkana.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 273. MOTLEY COUNTY

§ 273.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Motley County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 274. NACOGDOCHES COUNTY

§ 274.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Nacogdoches County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 275. NAVARRO COUNTY

§ 275.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Navarro County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 276. NEWTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

276.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY
APPLICABLE TO HUNTING

- 276.011. Hunting With Dogs.
276.012. Hunting Deer With Dogs.
276.013. Possession of Deer.

SUBCHAPTER C. FISH

- 276.021. Fish Sale.

SUBCHAPTER D. FUR-BEARING ANIMALS

- 276.031. Regulatory Act: Exclusion.
276.032. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 276.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Newton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.002 to 276.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY
APPLICABLE TO HUNTING

§ 276.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in Newton County only during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.012. Hunting Deer With Dogs

(a) No person may knowingly allow a dog under his control to hunt wild deer in Newton County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.013. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer in Newton County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and imprisonment in the county jail for not less than three days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.014 to 276.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 276.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any black bass, trout, white perch, or catfish of less than 18 inches in length taken from the water of the Sabine, Attoyoc, Angelina, and Nechés rivers or any of their tributaries or lakes through which the flood streams of the rivers or their tributaries flow in Newton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or imprisonment in the county jail for not less than 10 days nor more than 30 days, or both. Each fish sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.022 to 276.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 276.031. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fox in Newton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.032. Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Newton County unless he has obtained a permit from the department allowing him to use the device for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 277. NOLAN COUNTY

§ 277.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Nolan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 278. NUECES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

278.001. Regulatory Act: Applicability.

SUBCHAPTER B. SHRIMP

278.011. Nets and Seines.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 278.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Nueces County with respect to fish, aquatic life, and marine animals, except shrimp and oysters.

(b) Except as provided in Subsection (a), the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Nueces County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 278.002 to 278.010 reserved for expansion]

SUBCHAPTER B. SHRIMP

§ 278.011. Nets and Seines

(a) No person may use for the purpose of catching shrimp a net or seine, except a cast net or minnow seine not more than 20 feet in length for catching bait only, in the water of the Gulf of Mexico within one mile of the Horace Caldwell pier located on Mustang Island and the Bob Hall pier located on Padre Island in Nueces County or within 1,000 feet of the shoreline of Padre Island in Nueces County.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100, and on a second or subsequent conviction is punishable by a fine of not less than \$100 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 279. OCHILTREE COUNTY

§ 279.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ochiltree County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 280. OLDHAM COUNTY**§ 280.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Oldham County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 281. ORANGE COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

281.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

281.011. Hunting With Dogs.

SUBCHAPTER C. SHRIMP

281.021. Regulatory Act: Shrimp Excluded.

281.022. Shrimp Regulations.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 281.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Orange County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 281.002 to 281.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING**§ 281.011. Hunting With Dogs**

(a) In Orange County a person may use dogs in hunting game animals (including deer) and game birds during the open season when the animal may be hunted.

(b) In Orange County no person may allow or permit a dog under his control to hunt or molest a wild deer except during the open deer season.

(c) No person in Orange County may possess the freshly killed carcass or a part of the carcass of a wild deer except during the open deer season.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 281.012 to 281.020 reserved for expansion]

SUBCHAPTER C. SHRIMP**§ 281.021. Regulatory Act: Shrimp Excluded**

In Orange County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 281.022. Shrimp Regulations

(a) The commission may regulate the taking of shrimp from the coastal water of Orange County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Orange County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

- (1) the size of shrimp that may be taken;
- (2) open and closed shrimp seasons;
- (3) the means of taking shrimp;
- (4) the size and type of boats and equipment that may be used for taking shrimp;
- (5) the length and mesh size of net and trawls and their spreading devices; and
- (6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Orange County.

(c) The commission by regulation adopted in accordance with this section may provide for the licensing of all persons taking, selling, or handling shrimp in Orange County and may license boats and equipment used for the taking, selling, or handling of shrimp in Orange County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Orange County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained, and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the method of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted

to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 282. PALO PINTO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
282.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

282.011. Possum Kingdom Lake: Fish Sale.
282.012. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 282.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Palo Pinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 282.002 to 282.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 282.011. Possum Kingdom Lake: Fish Sale

(a) No person may barter or sell, offer to barter or sell, or buy any fish taken from Possum Kingdom Lake or any of its backwater in Palo Pinto County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 282.012. Minnow Transport and Sale

(a) No person may take minnows from the public fresh water of Palo Pinto County for barter or sale outside an area composed of Jack, Stephens, Young and Palo Pinto counties.

(b) No person may transport minnows taken from the public fresh water of Palo Pinto County for sale beyond the borders of an area composed of Jack, Stephens, Young, and Palo Pinto counties.

(c) Transportation of minnows out of the area described in this section by a commercial bait dealer or his agent is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 283. PANOLA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
283.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

283.011. Hunting Deer With Dogs.

SUBCHAPTER C. MURVAUL LAKE

283.021. Camping.
283.022. Firearms.
283.023. Certain Water Sports on Lake Murvail.
283.024. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 283.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Panola County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 283.002 to 283.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 283.011. Hunting Deer With Dogs

Except as prohibited by the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code), it is lawful to hunt or trail buck deer in Panola County with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 283.012 to 283.020 reserved for expansion]

SUBCHAPTER C. MURVAUL LAKE

§ 283.021. Camping

No person may camp on the shores of Murvail Lake in Panola County on land owned by the Panola County Fresh Water Supply District Number 1 except at places designated as campsites by the Board of Supervisors of the Panola County Fresh Water Supply District Number 1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.022. Firearms

(a) Except as provided by Subsection (b) of this section, no person may possess for shooting a rifle or pistol of any kind on or over the water of Murvail Lake in Panola County.

(b) This section does not apply to a peace officer or game management officer of this state or to a

regular employee of the Panola County Fresh Water Supply District Number 1.

(c) Possession of a rifle or pistol of any kind within 500 feet from the water of Murvaul Lake is prima facie evidence of a violation of this section. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.023. Certain Water Sports on Lake Murvaul

No person may swim, bathe, wade, or water ski in or on Lake Murvaul except within areas designated by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 as areas for swimming, bathing, wading, or water skiing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.024. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 and costs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 284. PARKER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

284.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

284.011. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 284.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Parker County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 284.002 to 284.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 284.011. Minnow Transport

(a) Except as provided in Subsection (b) of this section, no person may transport into another county minnows caught in Parker County.

(b) A person may transport from Parker County into another county not more than 150 minnows for personal use or transport from Parker County into another county minnows raised in a minnow hatchery in this state.

(c) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated

wholly on private, enclosed property and not connected with, nor a part of, any stream, and used either in whole or in part for the propagation of minnows.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 285. PARMER COUNTY

§ 285.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Parmer County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 286. PECOS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

286.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

286.011. Regulatory Act: Exception.

286.012. Fishing Methods.

286.013. Fish Sale.

286.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 286.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Pecos County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 286.002 to 286.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 286.011. Regulatory Act: Exception

In Pecos County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.012. Fishing Methods

(a) No person may catch fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of

Pecos County by any means other than ordinary hook and line, trotline, or artificial bait.

(b) Except as provided in Subsection (c) of this section, no person may place in the water described in this section any seine, net or other device, or trap for taking or catching fish.

(c) A person may use a minnow seine not more than 20 feet long for the purpose of catching minnows for bait.

(d) In seining for bait as permitted in Subsection (c) of this section, all minnows more than three inches long shall be returned to the water at once while alive.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.013. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Pecos County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.014. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Pecos County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 287. POLK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

287.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

287.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

287.021. Hunting Deer With Dogs.

287.022. Possession of Deer.

SUBCHAPTER D. FISH

Section

287.031. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 287.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Polk County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.002 to 287.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 287.011. Hunting With Dogs

A person may use dogs to hunt game birds or game animals in Polk County only during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.012 to 287.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 287.021. Hunting Deer With Dogs

(a) No person may knowingly allow or permit a dog under his control to hunt any wild deer in Polk County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 287.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in Polk County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.023 to 287.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 287.031. Minnow Transport and Sale

(a) No person may take any minnows from the water of Polk County for the purpose of sale.

(b) No commercial minnow dealer, nor his employee, may take minnows from the water of Polk County.

(c) No person may transport minnows taken from the water of Polk County into another county for the purpose of sale or for any commercial purpose.

(d) No person may transport more than 200 minnows taken from the water of Polk County into another county for any purpose.

(e) No person may have more than 200 minnows taken from the water of Polk County in any vehicle in Polk County.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 288. POTTER COUNTY

§ 288.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Potter County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 289. PRESIDIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

289.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

289.011. Regulatory Act: Exception.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 289.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Presidio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 289.002 to 289.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 289.011. Regulatory Act: Exception

In Presidio County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 290. RAINS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

290.001. Regulatory Act: Applicability.

290.002. Regulatory Act: Lake Tawakoni.

SUBCHAPTER B. BIRDS

290.011. Quail.

SUBCHAPTER C. FISH

290.021. Lake Tawakoni: Fish Sale.

290.022. Leaving Fish to Die.

SUBCHAPTER D. FUR-BEARING ANIMALS

290.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 290.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Rains County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 290.002. Regulatory Act: Lake Tawakoni

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in the water area of Lake Tawakoni in Rains County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.003 to 290.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 290.011. Quail

(a) No person may hunt wild quail in Rains County except during the open season beginning on December 1 of one year and extending through January 16 of the following year. During the open season no person may hunt wild quail in Rains County except on Mondays, Wednesdays, and Saturdays. If any Monday or Wednesday during the open season is a legal holiday, then a person may hunt quail on the next day after the legal holiday.

(b) No person may kill more than 12 quail in one day or more than 36 quail during any seven-day

period. No person may possess more than 36 quail at one time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.012 to 290.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 290.021. Lake Tawakoni: Fish Sale

(a) No person may sell any fish taken from that part of the water area of Lake Tawakoni located in Rains County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 290.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Rains County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.023 to 290.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 290.031. Hunting Mink With Dogs

A person may hunt wild mink in Rains County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 291. RANDALL COUNTY

§ 291.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Randall County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 292. REAGAN COUNTY

§ 292.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Reagan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 293. REAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

293.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

293.011. Fish Sale.

293.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 293.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Real County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 293.002 to 293.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 293.011. Fish Sale

(a) No person may offer, possess, or take for sale any catfish, perch, crappie, bream, or bass in Real County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 293.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Real County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 294. RED RIVER COUNTY

§ 294.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Red River County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 295. REEVES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

295.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

295.011. Regulatory Act: Exception.

295.012. Fishing Methods.

295.013. Fish Sale.

295.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 295.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Reeves County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 295.002 to 295.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 295.011. Regulatory Act: Exception

In Reeves County, fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.012. Fishing Methods

(a) No person may catch fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Reeves County by any means other than ordinary hook and line, trotline, or artificial bait.

(b) Except as provided in Subsection (c) of this section, no person may place in the water described

in this section any seine, net or other device, or trap for catching fish.

(c) A person may use a minnow seine not more than 20 feet long for the purpose of catching minnows for bait.

(d) In seining for bait as permitted in Subsection (c) of this section, all minnows more than three inches long shall be returned to the water at once while alive.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.013. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Reeves County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.014. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Reeves County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 296. REFUGIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

296.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

296.011. Quail.

SUBCHAPTER C. FISH

296.021. Fishing Methods: Guadalupe River.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 296.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of

Refugio County with respect to all fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Refugio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 296.002 to 296.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 296.011. Quail

The open season for wild quail in Refugio County when it is lawful to hunt wild quail begins on November 15 in one year and extends through February 15 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 296.012 to 296.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 296.021. Fishing Methods: Guadalupe River

(a) No person may catch fish in the Guadalupe River in Refugio County except by:

- (1) hook and line;
- (2) trotline;
- (3) flounder gig and light; and

(4) a cast net or minnow seine not exceeding 20 feet in length and used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 297. ROBERTS COUNTY

§ 297.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Roberts County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 298. ROBERTSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

298.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

298.011. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 298.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Robertson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 298.002 to 298.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 298.011. Minnow Sale

(a) No person may sell outside the county or take for transportation and sale outside the county any minnows from the public water of the minnow conservation district consisting of Robertson County.

(b) The transportation out of the county of more than 200 minnows by a person at one time, or the transportation out of the county of any minnows by a commercial minnow dealer or his agent at any time, is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 299. ROCKWALL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

299.001. Regulatory Act: Applicability.

299.002. Regulatory Act: Lake Ray Hubbard.

SUBCHAPTER B. FISH

299.011. Fishing Methods.

299.022. Fish Sale.

299.023. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 299.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Rockwall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 299.002. **Regulatory Act: Lake Ray Hubbard**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in all of the water area of Lake Ray Hubbard in Rockwall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 299.003 to 299.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 299.011. **Fishing Methods**

(a) Except as provided in Subsection (d) of this section no person may catch fish in the fresh water of Rockwall County by any means other than ordinary pole and line, rod and reel, setline, throw line, or trotline.

(b) Hooks on any setline, throw line, or trotline used shall be not less than three feet apart.

(c) A person may catch fish with artificial bait equipped with more than two hooks on ordinary pole and line or rod and reel.

(d) A person may use a minnow seine not more than 20 feet long to take minnows for bait. Any fish other than a minnow taken with the minnow seine shall be returned immediately while alive to the water.

(e) Possession of any tackle not authorized by this section within 200 yards of any stream, lake, or other fresh water in Rockwall County is prima facie evidence of a violation of this section.

(f) This section does not apply to that part of Lake Ray Hubbard located in Rockwall County.

(g) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each device possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 299.022. **Fish Sale**

(a) No person may take for sale or possess for sale any fish from the fresh water of Rockwall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a

fine of not more than \$200. Each fish taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 299.023. **Minnows**

(a) No person may take minnows from the streams or rivers in Rockwall County, except that a person may take not more than 50 minnows at one time when not for the purpose of sale.

(b) This section does not apply to Lake Ray Hubbard.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$100. Each minnow taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 300. RUNNELS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

300.001. **Regulatory Act: Applicability.**

SUBCHAPTER B. FISH

300.011. **Fish Sale.**

300.012. **Leaving Fish to Die.**

300.013. **Minnow Transport.**

300.014. **New Lake Winters; Fish Sale.**

300.015. **New Lake Winters; Minnows.**

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 300.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Runnels County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 300.002 to 300.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 300.011. **Fish Sale**

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Runnels County.

(b) This section does not apply to New Lake Winters in Runnels County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Runnels County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.013. Minnow Transport

(a) Except as provided in Subsection (b) of this section, no person may transport from Runnels County into another county any minnows caught in the water of Runnels County.

(b) A person may transport not more than 300 minnows caught in the water of Runnels County from Runnels County into another county for personal use, and a person may transport minnows from Runnels County into another county when the minnows have been raised in a minnow hatchery in this state.

(c) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with, or a part of, any stream, and used either in whole or in part for the propagation of minnows.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.014. New Lake Winters; Fish Sale

(a) No person may buy, sell, offer to buy or sell, or take or possess for commercial purposes fish from the water of New Lake Winters in Runnels County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.015. New Lake Winters; Minnows

(a) No person may knowingly possess minnows taken from the water of New Lake Winters in Runnels County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 301. RUSK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

301.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

301.011. Fish Sale.

301.012. Prohibited Methods of Fishing.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 301.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Rusk County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 301.002 to 301.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 301.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish caught from the public fresh water of Rusk County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 301.012. Prohibited Methods of Fishing

(a) This section applies only to the Angelina River and Mud Creek in Rusk County.

(b) No person may place any lime, poison, drug, dynamite, nitroglycerin, giant powder, or other explosive or substance harmful to fish in the water of the Angelina River or Mud Creek to catch or attempt to catch fish.

(c) No person may catch fish by the aid of "telephoning" or by using any other electricity-producing apparatus designed to shock fish.

(d) Possession of equipment described in Subsection (c) of this section in a boat or along the bank or shore of the Angelina River or Mud Creek in Rusk County is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on first conviction is punishable

by a fine of not less than \$300 nor more than \$750. A second conviction of a violation of this section is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than six months. A third or subsequent conviction of a violation of this section is punishable by a fine of not less than \$1,000 nor more than \$2,000 and by confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 302. SABINE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 302.001. Regulatory Act: Applicability.
302.002. Regulatory Act: Certain Tract.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 302.011. Open Season for Game Birds and Game Animals.

SUBCHAPTER C. GAME ANIMALS

- 302.021. Hunting Deer With Dogs.
302.022. Squirrel Limit.

SUBCHAPTER D. BIRDS

- 302.031. Turkey.

SUBCHAPTER E. FISH

- 302.041. Regulatory Act: Applicability.
302.043. Fish Sale.
302.044. Sabine River: Fish Sale.

SUBCHAPTER F. FUR-BEARING ANIMALS

- 302.051. Methods of Taking Opossum, Bobcats, and Catamounts.
302.052. Attracting Foxes With Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 302.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Sabine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.002. Regulatory Act: Certain Tract

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all wildlife resources in that portion of the following described land which is located in Sabine County:

A tract of land containing approximately 10,500 acres partly in Sabine County and partly in San Augustine County described as follows:

BEGINNING at the intersection of the north line of Farm to Market Highway 83

and the east line of Farm to Market Highway 1751;

THENCE in a northerly direction with the east line of Farm to Market Highway 1751, 34,300 feet to its point of intersection with the south line of the Armstead Chumney League;

THENCE easterly with the south line of the Armstead Chumney League 6,700 feet to the southeast corner of the Armstead Chumney League;

THENCE northerly with the east line of the Armstead Chumney League 1800 feet to the southwest corner of the Ben Clark Survey;

THENCE easterly with the south line of the Ben Clark Survey and easterly with the north line of the Nicholas Coleman Survey, 3,000 feet to the Nicholas Coleman Survey's northeast corner;

THENCE southerly with the east line of the Nicholas Coleman Survey and the west line of the Hulda Hollien Survey, 1,800 feet to the northwest corner of the Southern Pine Lumber Company tract in the Hulda Hollien Survey;

THENCE easterly with the north line of the Southern Pine Lumber Company tract, 7,500 feet to the east line of the Hulda Hollien Survey;

THENCE southerly with the east line of the Hulda Hollien Survey, 1,600 feet to the westerly northeast corner of the J. C. Dickerson Survey;

THENCE westerly with the north line of the J. C. Dickerson Survey, 2,100 feet to its northwest corner;

THENCE southerly with the west line of the J. C. Dickerson Survey, 2,000 feet to its southwest corner;

THENCE easterly with the south line of the J. C. Dickerson Survey, 2,500 feet to the west line of the county road;

THENCE southerly with the west line of the County Road 28,100 feet to the north line of Farm to Market Highway 83;

THENCE westerly with the north line of Farm to Market Highway 83, 15,000 feet to the place of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.003 to 302.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 302.011. Open Season for Game Birds and Game Animals

(a) No person may hunt or possess a game bird or game animal in Sabine County except during the open season, which is the same as the open season provided from time to time for game birds and game animals in Jasper, Newton, and Tyler counties under the Uniform Wildlife Regulatory Act.

(b) This section does not apply to wild turkeys in Sabine County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.012 to 302.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 302.021. Hunting Deer With Dogs

A person may hunt and trail wild buck deer in Sabine County with dogs during the open season for hunting deer in Sabine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.022. Squirrel Limit

(a) During the open season for taking squirrel in Sabine County, no person may take, kill, or possess more than five squirrels in one day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.023 to 302.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 302.031. Turkey

(a) No person may take or kill or attempt to take or kill any wild turkey in Sabine County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.032 to 302.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 302.041. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in all of the water area of the Sam Rayburn Reservoir located in Sabine County and in all of the water area of Toledo Bend Reservoir located in Sabine County.

(b) In that part of the Sam Rayburn Reservoir located in Sabine County, only freshwater fish are included in the term "wildlife resources."

(c) In that part of Toledo Bend Reservoir located in Sabine County only fish are included in the term "wildlife resources."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.043. Fish Sale

(a) No person may offer or possess for sale or sell any fish caught or taken from the public fresh water of Sabine County.

(b) This section does not apply to that part of the Sabine River (Toledo Bend Reservoir) in Sabine County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.044. Sabine River: Fish Sale

(a) A person may sell fish, except bass and crappie, taken from that part of the Sabine River located in Sabine County.

(b) This section does not exempt a person from other laws regulating catching fish for commercial purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.045 to 302.050 reserved for expansion]

SUBCHAPTER F. FUR-BEARING ANIMALS

§ 302.051. Methods of Taking Opossum, Bobcats, and Catamounts

A person may take opossum, bobcats, and catamounts in Sabine County with a steel trap or any other type of trap or snare.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.052. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Sabine County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit from the department to use them.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 303. SAN AUGUSTINE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 303.001. Regulatory Act: Applicability.
- 303.002. Regulatory Act: Certain Tract.

SUBCHAPTER B. GAME ANIMALS

- 303.011. Deer Season.
- 303.012. Squirrel Season.
- 303.013. Squirrel Limit.

SUBCHAPTER C. BIRDS.

- 303.021. Turkey.
- 303.022. Quail.

SUBCHAPTER E. FUR-BEARING ANIMALS

- 303.041. Methods of Taking Opossum, Bobcats, and Catamounts.
- 303.042. Attracting Foxes With Calling Devices.

SUBCHAPTER D. FISH

- 303.031. Regulatory Act: Applicability.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 303.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in San Augustine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 303.002. Regulatory Act: Certain Tract

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all wildlife resources in that portion of the following described land which is located in San Augustine County:

A tract of land containing approximately 10,500 acres partly in Sabine County and partly in San Augustine County, described as follows:

BEGINNING at the intersection of the north line of Farm to Market Highway 83

and the east line of Farm to Market Highway 1751;

THENCE in a northerly direction with the east line of Farm to Market Highway 1751, 34,300 feet to its point of intersection with the south line of the Armstead Chumney League;

THENCE easterly with the south line of the Armstead Chumney League 6,700 feet to the southeast corner of the Armstead Chumney League;

THENCE northerly with the east line of the Armstead Chumney League 1800 feet to the southwest corner of the Ben Clark Survey;

THENCE easterly with the south line of the Ben Clark Survey and easterly with the north line of the Nicholas Coleman Survey, 3,000 feet to the Nicholas Coleman Survey's northeast corner;

THENCE southerly with the east line of the Nicholas Coleman Survey and the west line of the Hulda Hollien Survey, 1,800 feet to the northwest corner of the Southern Pine Lumber Company tract in the Hulda Hollien Survey;

THENCE easterly with the north line of the Southern Pine Lumber Company tract, 7,500 feet to the east line of the Hulda Hollien Survey;

THENCE southerly with the east line of the Hulda Hollien Survey, 1,600 feet to the westerly northeast corner of the J. C. Dickerson Survey;

THENCE westerly with the north line of the J. C. Dickerson Survey, 2,100 feet to its northwest corner;

THENCE southerly with the west line of the J. C. Dickerson Survey, 2,000 feet to its southwest corner;

THENCE easterly with the south line of the J. C. Dickerson Survey, 2,500 feet to the west line of the county road;

THENCE southerly with the west line of the county road 28,100 feet to the north line of Farm to Market Highway 83;

THENCE westerly with the north line of Farm to Market Highway 83, 15,000 feet to the place of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 303.003 to 303.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 303.011. Deer Season

(a) No person may hunt wild deer in San Augustine County except during the open season. During the open season no person may hunt wild deer in San Augustine County except wild buck deer. The open season begins on the Saturday nearest November 15 and extends through the first Sunday in January, except that if the first Sunday in January occurs after January 4, the last day of the open season is January 1.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 303.012. Squirrel Season

(a) No person may hunt squirrel in San Augustine County except during the open season beginning on October 1 and extending through December 31st.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each act of hunting in violation of this section constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 303.013. Squirrel Limit

(a) During the open season for taking squirrel in San Augustine County, no person may take or possess more than five squirrels in one day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 303.014 to 303.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 303.021. Turkey

(a) No person may hunt wild turkey in San Augustine County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 303.022. Quail

(a) No person may take or kill quail in San Augustine County except during the open season beginning on December 1 of one year and extending through January 31 of the next year.

(b) No person may kill more than 12 quail in one day, take more than 36 quail in one week, or possess more than 36 quail at one time during the open season in San Augustine County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each bird taken or possessed in violation of this section constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 303.023 to 303.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 303.031. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to freshwater fish in all of the water area of the Sam Rayburn Reservoir located in San Augustine County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 303.032 to 303.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 303.041. Methods of Taking Opossum, Bobcats, and Catamounts

A person may take opossum, bobcats, and catamounts in San Augustine County with a steel trap or any other type of trap or snare. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 303.042. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in San Augustine County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit to use them from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 304. SAN JACINTO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 304.001. Regulatory Act: Applicability.
304.002. Regulatory Act: Lake Livingston.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 304.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

- 304.021. Hunting Deer With Dogs.
304.022. Possession of Deer.
304.023. Squirrels.

SUBCHAPTER D. BIRDS

- 304.031. Turkey.

SUBCHAPTER E. FUR-BEARING ANIMALS

- 304.041. Fox.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 304.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in San Jacinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.002. Regulatory Act: Lake Livingston

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all of the water area of Lake Livingston located in San Jacinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.003 to 304.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 304.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in San Jacinto County during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.012 to 304.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 304.021. Hunting Deer With Dogs

(a) No person may allow or permit a dog under his control to hunt wild deer in San Jacinto County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in San Jacinto County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.023. Squirrels

(a) No person may hunt squirrel in San Jacinto County except during the open season beginning on October 15 and extending through January 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel hunted in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.024 to 304.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 304.031. Turkey

(a) No person may hunt wild turkey in San Jacinto County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.032 to 304.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 304.041. Fox

(a) A person may hunt or trap wild fox at any time in San Jacinto County.

(b) The commissioners court in San Jacinto County may fix and pay, out of the general fund of the county, bounties on the destruction of wild fox in the county.

CHAPTER 305. SAN PATRICIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

305.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

305.011. Regulatory Act: Quail Exempted.

305.012. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 305.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Patricio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 305.002 to 305.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 305.011. Regulatory Act: Quail Exempted

In San Patricio County quail are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 305.012. Quail Season

The open season when it is lawful to hunt wild quail of all varieties in San Patricio County begins on December 1 of one year and extends through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 306. SAN SABA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

306.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

306.011. Definitions.

306.012. Open Archery Season.

Section

306.013. Prohibited Archery Equipment.

306.014. Deer Permits.

306.015. Limit and Possession of Deer.

306.016. Penalty.

306.017. Possession of Firearms.

SUBCHAPTER C. FISH

306.021. Fish Sale.

306.022. Leaving Fish to Die.

306.023. Minnow Transport.

306.024. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 306.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Saba County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 306.002 to 306.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 306.011. Definitions

In this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.012. Open Archery Season

(a) The open archery season in San Saba County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer; wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 306.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) in San Saba County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 306.014. Deer Permits

(a) At least 15 days prior to the opening of the archery season, a landowner or lessee in San Saba County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from the used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrows during the open archery season in San Saba County.

(b) No person may possess an antlerless deer in San Saba County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in San Saba County if it does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) No person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer in San Saba County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.016. Penalty

A person who violates Section 306.012 through Section 306.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp in San Saba County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 306.018 to 306.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 306.021. Fish Sale

(a) No person may buy, barter, or sell or offer to barter or sell any bass, crappie, perch, catfish, or any other fish taken from the fresh water in San Saba County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in San Saba County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.023. Minnow Transport

(a) Except as provided in Subsection (b) of this section, no person may transport any minnows caught, seined, or taken in San Saba County into another county.

(b) A person may transport from San Saba County into another county not more than 150 minnows for personal use, or transport from San Saba County into another county any minnows raised in a minnow hatchery in this state.

(c) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with, nor a part of, any stream, and used either in whole or in part for the propagation of minnows.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.024. Minnow Sale

(a) No person may sell, barter, or exchange in San Saba County any minnows caught, seined, or taken in San Saba County.

(b) No person may seine for sale or possess for sale any minnows in San Saba County.

(c) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each sale, barter, or exchange in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 307. SCHLEICHER COUNTY

§ 307.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Schleicher County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 308. SCURRY COUNTY

§ 308.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Scurry County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 309. SHACKELFORD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

309.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

309.011. Fish Sale.

309.012. Hubbard Creek Lake: Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 309.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Shackelford County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 309.002 to 309.010 reserved for expansion]

SUBCHAPTER B. FISH.

§ 309.011. Fish Sale

(a) No person may take for commercial purposes any fish from the public water of Shackelford County.

(b) This section does not apply to that portion of Hubbard Creek Lake located in Shackelford County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$250. Each day in which a person takes fish for commercial purposes from the public water of Shackelford County is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 309.012. Hubbard Creek Lake: Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch for barter or sale, possess or transport for barter or sale, offer to barter or sell, or barter or sell any fish taken from that part of Hubbard Creek Lake located in Shackelford County.

(b) A person may catch, possess, transport, barter, or sell fish from Hubbard Creek Lake under a contract with the department for removal of rough fish as provided in Section 66.113 of this code.

(c) A person may catch or possess not more than 200 minnows a day for use as bait in fishing the water of Hubbard Creek Lake.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each

fish possessed or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 310. SHELBY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

310.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

310.011. Deer.

310.012. Hunting Deer With Dogs.

310.013. Squirrel.

SUBCHAPTER C. BIRDS

310.021. Turkeys.

310.022. Quail.

SUBCHAPTER D. FUR-BEARING ANIMALS

310.031. Methods of Taking Fur-Bearing Animals.

310.032. Fox.

310.033. Attracting Foxes With Calling Devices.

SUBCHAPTER E. FISH

310.041. Regulatory Act: Applicability.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 310.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Shelby County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.002 to 310.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 310.011. Deer

(a) Except as provided in Subsection (b) of this section, no person may take or kill any deer in Shelby County at any time.

(b) A person may take or kill buck deer in that portion of Shelby County lying east of U.S. Highway 96, leading from Carthage in Panola County, through Tenaha and Center in Shelby County, to San Augustine in San Augustine County, during the open seasons beginning on November 15 and extending through November 30, and beginning on December 26 and extending through December 31.

(c) For the purpose of this section, a "buck deer" is a deer with a hardened antler protruding through the skin.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or by confinement in the county jail for not less than 10 days nor more than six months, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.012. Hunting Deer With Dogs

(a) No person may use a dog to hunt any deer in that portion of Shelby County south and west of U.S. Highways 59 and 96, leading from Carthage in Panola County, through Tenaha and Center in Shelby County, to San Augustine in San Augustine County.

(b) A person owning or controlling a dog who permits the dog to run, trail, or pursue a deer is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.013. Squirrel

(a) No person may hunt squirrel in Shelby County except during the open season beginning on October 1 and extending through December 31.

(b) During the open season in Shelby County no person may take in one day or have in his possession at one time more than 10 squirrels.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.014 to 310.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 310.021. Turkeys

(a) No person may hunt wild turkey in Shelby County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.022. Quail

(a) No person may take or kill quail in Shelby County except during the open season beginning on December 1 of one year and extending through January 31 of the next year.

(b) No person may kill more than 12 quail in one day, take more than 36 quail in one week, or possess more than 36 quail at one time during the open season in Shelby County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each bird taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.023 to 310.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 310.031. **Methods of Taking Fur-Bearing Animals**

(a) No person may trap any fur-bearing animal, or set any trap or deadfall for any fur-bearing animal in Shelby County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.032. **Fox**

(a) Except as provided in Subsections (b) and (c) of this section, no person may hunt wild fox in Shelby County.

(b) A person may kill wild fox caught destroying domestic fowl or other domestic stock.

(c) When the state health officer finds and declares that the health of the people of Shelby County is menaced by rabies caused by rabid foxes, a person may kill or destroy wild foxes until the state health officer declares that the danger from rabid foxes has passed.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.033. **Attracting Foxes With Calling Devices**

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Shelby County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit to use them from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.034 to 310.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 310.041. **Regulatory Act: Applicability**

The provisions of the Uniform Wildlife Regulatory Act (Chapter 61 of this code) apply to fish in all of the water area of Toledo Bend Reservoir located in Shelby County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 311. SHERMAN COUNTY

§ 311.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sherman County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 312. SMITH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

312.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

312.011. Regulatory Authority: Deer.

312.012. Prohibited Weapons.

312.013. Squirrel.

SUBCHAPTER C. BIRDS

312.021. Regulatory Authority: Quail.

312.022. Daily Hunting Permitted.

312.023. Turkey.

312.024. Pheasant.

SUBCHAPTER D. FISH

312.031. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 312.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.002 to 312.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 312.011. **Regulatory Authority: Deer**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to deer in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.012. Prohibited Weapons

(a) In Smith County, no person may hunt using a shotgun shell containing larger than Number 4 shot, except during the open season for deer.

(b) In Smith County, no person may hunt with a high-powered rifle in an area where deer are known to roam, except during the open deer season.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.013. Squirrel

(a) No person may hunt squirrel in Smith County except during the open season beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.014 to 312.020 reserved for expansion]

SUBCHAPTER C. BIRDS**§ 312.021. Regulatory Authority: Quail**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to quail in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.022. Daily Hunting Permitted

A person in Smith County may hunt game birds each day of the week during the open seasons. This section does not apply to quail.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.023. Turkey

(a) No person may hunt turkey in Smith County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.024. Pheasant

There is no closed season for the hunting of pheasant of all varieties in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.025 to 312.030 reserved for expansion]

SUBCHAPTER D. FISH**§ 312.031. Fish Sale**

(a) Except as provided in Subsection (b) of this section, no person may sell, offer for sale, or possess for the purpose of sale fish caught from the public fresh water of Smith County.

(b) A person having a commercial fishing license may sell rough fish (drum, shad, carp, suckers, gar, and buffalo fish) caught from the Sabine River in Smith County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 313. SOMERVELL COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

313.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

313.011. Minnow Sale.

313.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 313.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Somervell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 313.002 to 313.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 313.011. Minnow Sale**

(a) Except as provided in Subsection (b) of this section, no person may catch minnows from the public fresh water of Somervell County for sale.

(b) A licensed bait dealer may catch minnows from the public fresh water of Somervell County for sale in Somervell County.

(c) No licensed bait dealer who catches minnows from the public fresh water of Somervell County may sell or transport or attempt to sell or transport the minnows outside of Somervell County. This subsection does not apply to minnows caught from private minnow hatcheries.

(d) In this section "private minnow hatchery" means a pond or series of ponds used in whole or in part for the propagation of minnows and located on private, enclosed property and not connected with or a part of a stream.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$250.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 313.012. Fish Sale

(a) Except as provided in Section 313.011 of this code or as authorized by the department, no person may sell, possess for sale, offer for sale, or expose for sale fish caught from the Brazos River or its tributaries or from Lake Whitney or its source streams in Somervell County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each fish possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 314. STARR COUNTY

§ 314.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Starr County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 315. STEPHENS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
315.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

315.011. Minnow Sale.
315.012. Fish Sale: Possum Kingdom Lake.
315.013. Fish Sale: Hubbard Creek Lake.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 315.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Stephens County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 315.002 to 315.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 315.011. Minnow Sale

(a) No person may catch minnows from the public fresh water of Stephens County for barter or sale outside the counties of Jack, Young, Stephens, and Palo Pinto.

(b) No person may transport from the counties of Jack, Young, Stephens, and Palo Pinto to any other county minnows caught from the public fresh water of Stephens County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 315.012. Fish Sale: Possum Kingdom Lake

(a) No person may barter, sell, or buy or offer to barter or sell fish caught from Possum Kingdom Lake or its backwater located in Stephens County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 315.013. Fish Sale: Hubbard Creek Lake

(a) No person may catch, possess, or transport for the purpose of sale or sell or barter or offer to sell or barter fish from Hubbard Creek Lake in Stephens County.

(b) This section does not apply to a person operating under contract with the department authorized by Section 66.113 of this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish possessed or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 316. STERLING COUNTY

§ 316.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sterling County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 317. STONEWALL COUNTY**§ 317.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Stonewall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 318. SUTTON COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

318.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

318.011. Fish Sale.

318.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 318.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sutton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 318.002 to 318.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 318.011. Fish Sale**

(a) No person may catch or possess for the purpose of sale or offer for sale catfish, perch, crappie, bream, or bass in Sutton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 318.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Sutton County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 319. SWISHER COUNTY**§ 319.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Swisher County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 320. TARRANT COUNTY**§ 320.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tarrant County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 321. TAYLOR COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

321.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

321.011. Minnows: Fort Phantom Hill Lake.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 321.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Taylor County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 321.002 to 321.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 321.011. Minnows: Fort Phantom Hill Lake**

(a) No person may catch minnows of any species commonly used as fish bait from Fort Phantom Hill Lake in Taylor County for the purpose of barter or sale.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 322. TERRELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
322.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

322.011. Regulatory Act: Exception.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 322.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Terrell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 322.002 to 322.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 322.011. Regulatory Act: Exception

In Terrell County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 323. TERRY COUNTY

§ 323.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Terry County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 324. THROCKMORTON COUNTY

§ 324.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Throckmorton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 325. TITUS COUNTY

§ 325.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Titus County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 326. TOM GREEN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
326.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

326.011. Minnows.
326.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 326.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tom Green County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 326.002 to 326.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 326.011. Minnows

(a) No person may transport outside Tom Green County:

(1) more than 200 minnows in any one day caught from the water of Tom Green County; or

(2) for the purpose of sale any minnows caught from the water of Tom Green County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 326.012. Fish Sale

(a) No person may purchase or sell or attempt to purchase or sell freshwater fish caught from the water of Tom Green County except buffalo fish, carp, suckers, and garfish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 327. TRAVIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section
327.001. Wildlife Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY
APPLICABLE TO HUNTING

327.011. Definitions.
327.012. Open Archery Season.
327.013. Prohibited Archery Equipment.
327.014. Deer Permits.
327.015. Limit and Possession of Deer.
327.016. Penalty.
327.017. Possession of Firearms.

SUBCHAPTER C. BIRDS

327.021. Release of Pheasants.

SUBCHAPTER D. FISH

327.031. Minnows.
327.032. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 327.001. Wildlife Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Travis County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 327.002 to 327.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY
APPLICABLE TO HUNTING

§ 327.011. Definitions

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" means a deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.012. Open Archery Season

(a) The open archery season in Travis County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 327.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Travis County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 327.014. Deer Permits

(a) At least 15 days before the opening date of the open archery season, a landowner or lessee in Travis County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate that taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Travis County unless he has in possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of a deer in Travis County that does not have attached to it a tag issued to the person on his valid hunting license unless the carcass has been finally processed.

(d) No person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.016. **Penalty**

A person who violates Section 327.012 through Section 327.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.017. **Possession of Firearms**

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Travis County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 327.018 to 327.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 327.021. **Release of Pheasants**

(a) A person may purchase wild pheasants legally propagated by a person holding a license under Chapter 45 of this code and may release the pheasants in Travis County for hunting or shooting purposes.

(b) The holder of a license issued under Chapter 45 of this code may release pheasants for hunting or shooting purposes in Travis County.

(c) At least 30 percent of the birds released on any premises for shooting purposes shall be released within five days before the opening of the controlled season, and the remainder of the birds may be released at any time during the controlled season.

(d) Birds released under this section must be in good health, be full-winged, and in condition to go wild.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 327.022 to 327.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 327.031. **Minnows**

(a) No person may transport minnows caught from the public water of Travis County out of Travis County for the purpose of sale.

(b) No person may transport out of Travis County more than 200 minnows for any purpose.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.032. **Fish Sale**

(a) Except as provided in Subsection (b) of this section, no person may catch or possess for the purpose of sale or offer for sale fish from the water of Travis County.

(b) This section does not apply to rough fish, including shad, carp, suckers, gar, buffalo fish, mullet, and needlefish, from the water of Travis County, but not including the water of the Colorado River Lakes.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each fish caught or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 328. TRINITY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

328.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

328.011. Deer Season; Spike Deer.

SUBCHAPTER C. FISH

328.021. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 328.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Trinity County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 328.002 to 328.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 328.011. **Deer Season; Spike Deer**

(a) No person may hunt deer in Trinity County except during the open season beginning on November 16 and extending through December 31.

(b) No person may take or kill a spike deer in Trinity County at any time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a

fine of not less than \$25 nor more than \$200. Each animal taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 1986, ch. 659, § 2

Acts 1975, 64th Leg., p. 1986, ch. 659, § 2, purports to amend § 13, subsec. n of Penal Code, Art. 978j-1 [now, this section, in part], without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(1). As so amended, subsec. n reads:

"n. In Trinity County it shall be illegal to take spike deer at any time. In Trinity, Houston and Leon counties, the commission shall provide for an archery season for the taking of deer beginning on October 1 and extending through October 31 of each year."

[Sections 328.012 to 328.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 328.021. Minnows

(a) No person may catch minnows from the water of Trinity County for the purpose of sale.

(b) No commercial minnow dealer or his employee may take minnows from the water of Trinity County for any purpose.

(c) No person may transport minnows taken from the water of Trinity County out of the county for the purpose of sale.

(d) No person may transport during a single day more than 2,000 minnows out of Trinity County for any purpose.

(e) No person may have more than 2,000 minnows in a vehicle in Trinity County.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 329. TYLER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

329.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

329.011. Hunting With Dogs.

SUBCHAPTER C. FUR-BEARING ANIMALS

329.021. Regulatory Act: Fox Excluded.

329.022. Fox: Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 329.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tyler County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 329.002 to 329.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 329.011. Hunting With Dogs

(a) In Tyler County a person may use dogs in hunting game birds and game animals only during the open season for the game bird or game animal.

(b) In Tyler County no person may knowingly allow a dog under his control to hunt a wild deer except during the open deer season.

(c) Except during the open deer season, no person in Tyler County may possess the carcass or a part of the carcass of a wild deer freshly killed.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 329.012 to 329.020 reserved for expansion]

SUBCHAPTER C. FUR-BEARING ANIMALS

§ 329.021. Regulatory Act: Fox Excluded

In Tyler County fox are not included as wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 329.022. Fox: Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Tyler County except that, with a permit obtained from the department a device may be used for scientific research or the making of wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 330. UPSHUR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

330.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

330.011. Hunting Weapons.

SUBCHAPTER C. GAME ANIMALS

330.021. Deer.

330.022. Squirrels.

SUBCHAPTER D. BIRDS

330.031. Quail.

330.032. Turkey.

SUBCHAPTER E. FISH

330.041. Suckerfish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 330.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Upshur County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.002 to 330.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 330.011. Hunting Weapons

(a) No person may hunt with a rifle larger than .22 caliber or with a shotgun loaded with buckshot or a slug in an area of Upshur County where deer are known to range, except during the open deer season.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.012 to 330.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 330.021. Deer

(a) No person may hunt or possess deer in Upshur County except during a 31-day open season beginning on the first Saturday following November 16.

(b) No person in Upshur County may hunt a deer other than a buck deer.

(c) No person may kill or take more than one buck deer during the open season in Upshur County.

(d) A "buck deer" means a deer having a hardened antler protruding through the skin.

(e) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, by confinement in jail for not less than 1 day nor more than 30 days, or by both. Each deer taken in violation of this section, constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 330.022. Squirrels

(a) No person may hunt wild red or fox squirrel or wild gray squirrel in Upshur County except during the open season beginning on October 1 and extending through December 31.

(b) No person may take or kill more than 7 squirrels in a day or more than 30 squirrels in a seven-day period during the open season.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.023 to 330.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 330.031. Quail

(a) No person may hunt wild quail in Upshur County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) No person may hunt wild quail on Sunday.

(c) No person may kill more than 12 quail in one day or more than 36 quail during any period of seven days. No person may possess at one time more than 36 quail.

(d) No person may hunt quail on the land of another without the oral consent of the owner or other person in charge of the land given in the presence of two witnesses or the written consent of the owner or other person in charge of the land.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 330.032. Turkey

(a) No person may hunt wild turkey in Upshur County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.033 to 330.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 330.041. Suckerfish

A person may catch suckerfish in Gin and Glade creeks during February, March, and April with any kind of trammel net.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 331. UPTON COUNTY

§ 331.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Upton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 332. UVALDE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

332.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

332.011. Minnows.

332.012. Fish Sale.

332.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 332.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Uvalde County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 332.002 to 332.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 332.011. Minnows

(a) No person may catch for the purpose of sale minnows in the water of Uvalde County.

(b) No person may sell minnows taken from the water of Uvalde County.

(c) No commercial minnow dealer or employee of a dealer may transport minnows from Uvalde County.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 332.012. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Uvalde County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 332.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Uvalde County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 333. VAL VERDE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

333.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

333.011. Minnow Transport.

333.012. Fish Sale.

333.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 333.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Val Verde County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 333.002 to 333.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 333.011. Minnow Transport

(a) No person may transport from Val Verde County minnows caught in Val Verde County.

(b) The possession of more than 200 minnows in Val Verde County is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 333.012. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Val Verde County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 333.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Val Verde County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 334. VAN ZANDT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

334.001. Regulatory Act: Applicability.

334.002. Regulatory Act: Lake Tawakoni.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

334.011. Trapping Without Permission of Landowner.

SUBCHAPTER C. BIRDS

334.021. Quail.

334.022. Turkey.

SUBCHAPTER D. FISH

Section

334.031. Fish Sale; Lake Tawakoni.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 334.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Van Zandt County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 334.002. Regulatory Act: Lake Tawakoni

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in all of the water area of Lake Tawakoni in Van Zandt County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.003 to 334.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 334.011. Trapping Without Permission of Landowner

(a) No person in Van Zandt County may set a trap, snare, deadfall, or other device for the taking of a bird or animal protected by this code on the land of another person without first having received from the landowner or his authorized agent written permission for the taking. The permit must specify the period of time during which the taking is authorized and the methods of taking authorized.

(b) The evidence that a person was setting a device for the taking of a bird or animal on land of another person and that the person did not have in his possession the permit required by this section is prima facie evidence of a violation of this section.

(c) No person may use a forged or otherwise fraudulent permit in taking or attempting to take a bird or animal by a trap, snare, deadfall, or other device on the land of another.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.012 to 334.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 334.021. Quail

(a) No person may hunt quail in Van Zandt County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) No person may hunt quail on a Sunday in Van Zandt County.

(c) No person may hunt quail with a gun or a dog outside the county of his residence on the land of another person in Van Zandt County without first having received from the landowner or his agent in charge of the land written permission to hunt. The permission must give the time during which hunting is allowed. This subsection does not apply to a person hunting in the company of the landowner or agent.

(d) The evidence that a person was hunting quail with a gun or a dog on the private land of another outside the county of his residence without being in possession of the permit required by this section is prima facie evidence of a violation of this section.

(e) No person may use a forged or otherwise fraudulent permit to hunt quail with a gun or dog on the land of another in Van Zandt County.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 334.022. Turkey

(a) No person may hunt turkey in Van Zandt County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.023 to 334.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 334.031. Fish Sale; Lake Tawakoni

(a) No person may sell fish caught from Lake Tawakoni in Van Zandt County except under a contract with the department for the taking of rough fish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 335. VICTORIA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

335.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

335.011. Quail.

SUBCHAPTER C. FISH

335.021. Regulatory Act: Marine Life Excluded.

335.022. Fishing Methods: Guadalupe River.

335.023. Seining Within One Mile of City.

335.024. Fishing Methods: Certain Water.

335.025. Commission May Close Certain Water.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 335.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Victoria County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 335.002 to 335.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 335.011. Quail

(a) In Victoria County, quail are not included as wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

(b) The open season when it is lawful to hunt wild quail of all varieties in Victoria County begins on November 15 of one year and extends through February 15 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 335.012 to 335.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 335.021. Regulatory Act: Marine Life Excluded

In Victoria County saltwater species of marine life are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.022. Fishing Methods: Guadalupe River

(a) No person may catch fish from the Guadalupe River in Victoria County except by:

- (1) hook and line;
- (2) trotline;

(3) flounder gig and light;

(4) cast net or minnow seine not exceeding 20 feet in length to be used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.023. Seining Within One Mile of City

(a) No person may catch fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Victoria County within one mile of a city.

(b) "City" means a community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. The identification of a boat operating in violation of this section is prima facie evidence of a violation by the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.024. Fishing Methods: Certain Water

(a) No person may catch fish from the water of Lavaca Bay, Banal Lake, Mesquite Creek, Placado Creek, Garcitas Creek, or Oyster Bayou in Victoria County except by:

(1) hook and line;

(2) rod and reel;

(3) trotline;

(4) flounder gig and light; or

(5) cast net or minnow seine not exceeding 20 feet in length and for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.025. Commission May Close Certain Water

(a) The commission may close tidal water in Victoria County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

(1) the reason for the closing;

(2) a designation of the area to be closed;

(3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, giggering, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 335.023 and 335.024 apply.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 336. WALKER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

336.001. Regulatory Act: Applicability.

SUBCHAPTER B. FUR-BEARING ANIMALS

336.011. Fox Calling Devices.

SUBCHAPTER C. FISH

336.021. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 336.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Walker County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 336.002 to 336.010 reserved for expansion]

SUBCHAPTER B. FUR-BEARING ANIMALS

§ 336.011. Fox Calling Devices

(a) No person may use a horn, recording, or other device to call or attract fox in Walker County except

that a person may use a calling device for scientific research or the making of wildlife movies if a permit is acquired from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 336.012 to 336.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 336.021. Minnows

(a) No person may transport for the purpose of sale from Walker County Minnows taken from Walker County.

(b) No person may transport from Walker County more than 2,000 minnows.

(c) No person may possess in a vehicle in Walker County more than 2,000 minnows.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 337. WALLER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

337.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS

337.011. Squirrel.

SUBCHAPTER C. FISH

337.021. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 337.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies only to the following wildlife resources in Waller County:

- (1) deer;
- (2) quail; and
- (3) turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 337.002 to 337.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 337.011. Squirrel

(a) No person may hunt squirrel in Waller County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 337.012 to 337.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 337.021. Minnows

(a) No person may use a minnow seine in excess of 20 feet in length to take minnows in Waller County.

(b) No person may transport to, sell in, or take for the purpose of transporting to or selling in a county other than Waller County minnows taken from the fresh water of Waller County.

(c) The transportation out of Waller County of more than 250 minnows at one time by one person or the transportation out of Waller County of any minnows by a commercial minnow dealer or his agent is a prima facie violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 338. WARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

338.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

338.011. Fish Sale.

338.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 338.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ward County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 338.002 to 338.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 338.011. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Ward County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 338.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Ward County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 339. WASHINGTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 339.001. Regulatory Act: Applicability.
- 339.002. Regulatory Act: Somerville Reservoir.

SUBCHAPTER B. ANIMALS

- 339.011. Deer.
- 339.012. Squirrel.

SUBCHAPTER C. FISH

- 339.021. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 339.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Washington County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 339.002. Regulatory Act: Somerville Reservoir

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of the land and water area of the Somerville Reservoir in Washington County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 339.003 to 339.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 339.011. Deer

The open deer season in Washington County when a person may hunt wild buck deer is the same period as the open deer season as established by the commission for Burleson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 339.012. Squirrel

Squirrel may be hunted at any time in Washington County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 339.013 to 339.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 339.021. Minnows

(a) No person may catch minnows from the public water of Washington County for the purpose of transporting them from Washington County for sale.

(b) No person may sell outside Washington County minnows taken from the public water of Washington County.

(c) The transportation from Washington County of more than 200 minnows at one time or the transportation from Washington County of any minnows by a commercial minnow dealer or his agent is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 340. WEBB COUNTY

Section

- 340.001. Regulatory Act: Applicability.
- 340.002. Certain Methods of Taking Game Prohibited.

§ 340.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Webb County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 340.002. Certain Methods of Taking Game Prohibited

Sections 62.003, 62.005, and 66.004 of this code apply in Webb County and the provisions of those sections prevail over provisions of the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 341. WHARTON COUNTY**§ 341.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wharton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 342. WHEELER COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

342.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

342.011. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 342.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wheeler County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 342.002 to 342.010 reserved for expansion]

SUBCHAPTER B. BIRDS**§ 342.011. Quail**

(a) No person may hunt quail in Wheeler County except during the open season beginning on December 1 and extending through January 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 343. WICHITA COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

343.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

343.011. Minnows.

343.012. Fish Sale.

343.013. Leaving Fish to Die.

343.014. Injuring Fish.

343.015. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 343.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wichita County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 343.002 to 343.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 343.011. Minnows**

(a) No person may catch minnows from the water of Wichita County for the purpose of sale outside of Wichita County.

(b) No person may sell outside Wichita County minnows caught in Wichita County.

(c) No person may transport from Wichita County for the purpose of sale minnows caught in Wichita County.

(d) The transportation from Wichita County at one time of more than 50 minnows caught in Wichita County constitutes prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.012. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy a bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, above the dam, up the valley of the Big Wichita River to the storage dam in Baylor County, and up the river valley from the dam as far as the water is impounded by the dam, or in any water in Lake Wichita in Wichita County, or in any water impounded by the dam across Holliday Creek forming Lake Wichita, or in any of the irrigation canals connected with Lake Kemp or the diversion dam, or in any of the water in laterals leading from the canals in Wichita County, or in the lateral, canal, or drainage ditch leading from the South Side Canal from Diversion Lake from a point in the South Side Canal in Section 16, of Denton County school lands, League No. 4, Wichita County, Texas, to Holliday Creek and thence down Holliday Creek to Lake Wichita in Wichita County, or in any of the water of Buffalo Creek Reservoir, Lake Iowa Park, or Old City Lake, located in Wichita County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the fish were caught, where he is found in possession of them, or where the fish were bartered or sold, or offered for sale or barter, or purchased.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Section 343.012(a) of this code, a bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without an intent to eat the fish or leave any minnows without an intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.014. Injuring Fish

(a) No person may injure or destroy fish by using dynamite, powder, or other explosive or poison in any of the water described in Section 343.012(a) of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.015. Special Charge

District judges of the judicial districts of Wichita County shall give a special charge on Sections 343.012 through 343.014 of this code to the grand juries of Wichita County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 344. WILBARGER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

344.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

344.011. Minnows.

344.012. Fish Sale.

Section

344.013. Leaving Fish to Die.

344.014. Injuring Fish.

344.015. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 344.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wilbarger County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 344.002 to 344.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 344.011. Minnows

(a) No person may catch minnows in Wilbarger County for the purpose of transporting them from Wilbarger County for sale.

(b) The transporting of more than 200 minnows caught in Wilbarger County to another county is prima facie evidence of a violation of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.012. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy a bass, perch, crappie, catfish, or any other fish, except minnows, taken from any water in laterals leading off from irrigation canals connected with Lake Kemp or Diversion Lake or from those irrigation canals in Wilbarger County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in a county where the fish were caught, where the person was in possession of them, or where the fish were sold, bartered, offered for sale or barter, or purchased.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Section 344.012(a) of this code, a bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die

without an intent to eat the fish or leave any minnows without an intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.014. Injuring Fish

(a) No person may injure or destroy fish by using dynamite, powder, or other explosive or poison in any of the water described in Section 344.012(a) of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and by confinement in the county jail for not more than one year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.015. Special Charge

District judges of the judicial districts of Wilbarger County shall give a special charge on Sections 344.012 through 344.014 of this code to the grand juries of Wilbarger County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 345. WILLACY COUNTY

§ 345.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Willacy County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 346. WILLIAMSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
346.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 346.011. Minnow Transport.
- 346.012. Fish Sale.
- 346.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 346.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Williamson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 346.002 to 346.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 346.011. Minnow Transport

(a) Except as provided in Subsection (b) of this section, no person may transport minnows caught in Williamson County into another county.

(b) A person may transport from Williamson County not more than 150 minnows to another county for personal use, or may transport from Williamson County to another county any number of minnows raised in a fish hatchery.

(c) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with, nor a part of, any stream, and used either in whole or in part for the propagation of minnows.

(d) Possession of more than 500 minnows by a person at one time is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 346.012. Fish Sale

(a) No person may sell or offer to sell a bass, white perch, crappie, or catfish caught in the streams of Williamson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 346.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, or lagoons, or tanks, in Williamson County a catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without an intent to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 347. WILSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
347.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

347.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 347.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wilson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 347.002 to 347.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 347.011. Fish Sale

(a) No person may sell or barter or offer for sale or barter a bass, perch, crappie, or catfish caught from the fresh water of Wilson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 348. WINKLER COUNTY

§ 348.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Winkler County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 349. WISE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
349.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

349.011. Minnows.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 349.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wise County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 349.002 to 349.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 349.011. Minnows

(a) No person may sell minnows caught in Wise County outside of Wise County.

(b) No person may transport from Wise County for the purpose of sale minnows caught in Wise County.

(c) The transportation from Wise County of more than 200 minnows at one time by any person or the transportation from Wise County of any minnows by a commercial minnow dealer is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 350. WOOD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
350.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

350.011. Fish Sale.
350.012. Sale of White Perch and Crappie Outside County.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 350.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wood County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 350.002 to 350.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 350.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale fish caught from the fresh water of Wood County.

(b) Licensed commercial fishermen may sell drum, shad, carp, suckers, gar, and buffalo fish caught from the Sabine River forming the boundary between Smith and Wood Counties.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 350.012. Sale of White Perch and Crappie Outside County

(a) No operator or owner of a private fish hatchery in Wood County may sell white perch or crappie for the purpose of stocking water outside Wood County.

(b) The owner or operator of a fish hatchery in Wood County is not prohibited from selling fish for the purpose of stocking water in Wood County and the Commissioners Court of Wood County and any person may purchase white perch and crappie for that purpose from a private fish hatchery.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 351. YOAKUM COUNTY

§ 351.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Yoakum County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 352. YOUNG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

352.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

352.011. Minnows.

352.012. Fish Sale.

352.013. Fish Sale: Possum Kingdom Lake.

352.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 352.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Young County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 352.002 to 352.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 352.011. Minnows

(a) No person may catch minnows from the water of Young County for the purpose of barter or sale in a county other than Young, Jack, Stephens, or Palo Pinto.

(b) No person may transport for the purpose of sale from Young County to any county other than Jack, Stephens, or Palo Pinto counties any minnows caught in Young, Jack, Stephens, or Palo Pinto counties.

(c) The transportation of any minnows from Young County to a county other than Jack, Stephens, or Palo Pinto counties by a commercial bait dealer or an agent of a dealer constitutes prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 352.012. Fish Sale

(a) No person may sell, barter, offer for sale or barter, or buy a bass, crappie, perch, catfish, or any other fish, except minnows, caught in Young County.

(b) Subsection (a) of this section does not apply to Lake Possum Kingdom or its backwater in Young County or to the Clear Fork of the Brazos River in Young County.

(c) A person alleged to have violated this section may be prosecuted in Young County, where the

person was found to be in possession of the fish, or where the fish were sold or bought.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or bought in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 352.013. Fish Sale: Possum Kingdom Lake

(a) No person may sell, barter, offer for sale or barter, or buy fish caught from Lake Possum Kingdom or its backwater.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 352.014. Leaving Fish to Die

(a) No person may knowingly throw, place, or deposit on the banks or grounds within 500 feet of any water to which Section 352.012 of this code applies a bass, crappie, white perch, bream, sunfish, drum, catfish, or other edible fish and leave it to die without an intent to eat the fish or to leave a minnow to die without an intent to use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$2 nor more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 353. ZAPATA COUNTY

§ 353.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Zapata County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 354. ZAVALA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

354.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

354.011. Minnows.

354.012. Fish Sale.

354.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 354.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Zavala County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 354.002 to 354.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 354.011. Minnows

(a) No person may possess at one time in Zavala County more than 500 minnows.

(b) No person may transport from Zavala County minnows for the purpose of sale.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 354.012. Fish Sale

(a) No person may sell or offer to sell a bass, white perch, crappie, or catfish caught in the streams of Zavala County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 354.013. Leaving Fish to Die

(a) No person may throw, place, or deposit on the bank or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Zavala County a catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave it to die, without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

DISPOSITION TABLE

Showing where provisions of former articles of the Penal Code of 1925 and Civil Statutes and the unclassified laws of the General and Special Laws of Texas are covered in the Parks and Wildlife Code.

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DISPOSITION TABLE

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TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

Chapter	Section
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TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

§ 1.07. Definitions

(a) In this code:

[See Compact Edition, Volume 1 for text of (1) to (9)]

(9.1) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

[See Compact Edition, Volume 1 for text of (10) to (b)]

[Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 1, eff. Sept. 1, 1975.]

Saving provisions. Section 17 of the 1975 Act provided:

"Sec. 17. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

CHAPTER 2. BURDEN OF PROOF

§ 2.05. Presumption

When this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

[Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 2, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 2.06. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

§ 6.01. Requirement of Voluntary Act or Omission

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 3, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

§ 7.22. Criminal Responsibility of Corporation or Association

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

(b) A corporation or association is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

- (1) a majority of the governing board acting in behalf of the corporation or association; or
- (2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 4, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 7.24. Defense to Criminal Responsibility of Corporation or Association

It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) of this code that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 341, § 5, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

§ 8.07. Age Affecting Criminal Responsibility

(a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended,¹ except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(b) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended, except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(c) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

(d) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 24, eff. Sept. 1, 1975.]

¹ Civil Statutes, art. 6701-4. Acts 1975, 64th Leg., p. 912, ch. 342, § 16 and Acts 1975, 64th Leg., p. 2159, ch. 693, § 26 repealed Penal Code (1925), art. 30, as amended by Acts 1973, 63rd Leg., p. 1484, ch. 544, § 2.

For saving provisions see note set out under Section 1.07.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER D. PROTECTION OF PROPERTY

§ 9.44. Use of Device to Protect Property

The justification afforded by Sections 9.41 and 9.43 of this code applies to the use of a device to protect land or tangible, movable property if:

- (1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device. [Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 6, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

§ 15.01. Criminal Attempt

(a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third degree, the offense is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 478, ch. 203, § 4, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"(a) Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

CHAPTER 16. CRIMINAL INSTRUMENTS

§ 16.01. Unlawful Use of Criminal Instrument

(a) A person commits an offense if:

(1) he possesses a criminal instrument with intent to use it in the commission of an offense; or

(2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For the purpose of this section, "criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specially designed, made, or adapted for use in the commission of an offense.

(c) An offense under Subsection (a)(1) of this section is one category lower than the offense intended.

An offense under Subsection (a)(2) of this section is a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 7, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 21. SEXUAL OFFENSES

Section

21.13. Evidence of Previous Sexual Conduct [NEW].

§ 21.02. Rape

[See *Compact Edition, Volume 1 for text of (a)*]

(b) The intercourse is without the female's consent under one or more of the following circumstances:

(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;

(2) he compels her to submit or participate by any threat, communicated by actions, words, or deeds, that would prevent resistance by a woman of ordinary resolution, under the same or similar circumstances, because of a reasonable fear of harm;

(3) she has not consented and he knows she is unconscious or physically unable to resist;

(4) he knows that as a result of mental disease or defect she is at the time of the intercourse incapable either of appraising the nature of the act or of resisting it;

(5) she has not consented and he knows that she is unaware that sexual intercourse is occurring;

(6) he knows that she submits or participates because she erroneously believes that he is her husband; or

(7) he has intentionally impaired her power to appraise or control her conduct by administering any substance without her knowledge.

[See *Compact Edition, Volume 1 for text of (c)*]

[Amended by Acts 1975, 64th Leg., p. 476, ch. 203, § 1, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"(a) Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

§ 21.04. Sexual Abuse

[See *Compact Edition, Volume 1 for text of (a)*]

(b) The intercourse is without the other person's consent under one or more of the following circumstances:

(1) the actor compels the other person to submit or participate by force that overcomes such earnest resistance as might be reasonably expected under the circumstances;

(2) the actor compels the other person to submit or participate by any threat, communicated by actions, words, or deeds, that would prevent resistance by a person of ordinary resolution, under the same or similar circumstances, because of a reasonable fear of harm;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the deviate sexual intercourse incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that deviate sexual intercourse is occurring;

(6) the actor knows that the other person submits or participates because of the erroneous belief that he is the other person's spouse; or

(7) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge.

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

[Amended by Acts 1975, 64th Leg., p. 477, ch. 203, § 2, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"(a) Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

§ 21.09. Rape of a Child

(a) A person commits an offense if he has sexual intercourse with a female not his wife and she is younger than 17 years.

(b) It is a defense to prosecution under this section that the female was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual intercourse.

(c) It is an affirmative defense to prosecution under this section that the actor was not more than two years older than the victim.

(d) An offense under this section is a felony of the second degree.

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 8, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 21.13. Evidence of Previous Sexual Conduct

(a) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct may be admitted under Sections 21.02 through 21.05 of this code (rape, aggravated rape, sexual abuse, and aggravated sexual abuse) only if, and only to the extent that, the judge finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(b) If the defendant proposes to ask any question concerning specific instances, opinion evidence, or reputation evidence of the victim's sexual conduct, either by direct examination or cross-examination of any witness, the defendant must inform the court out of the hearing of the jury prior to asking any such question. After this notice, the court shall conduct an in camera hearing, recorded by the court reporter, to determine whether the proposed evidence is admissible under Subsection (a) of this section. The court shall determine what evidence is admissible and shall accordingly limit the questioning. The defendant shall not go outside these limits nor refer to any evidence ruled inadmissible in camera without prior approval of the court without the presence of the jury.

(c) The court shall seal the record of the in camera hearing required in Subsection (b) of this section for delivery to the appellate court in the event of an appeal.

(d) This section does not limit the right of the state or the accused to impeach credibility by showing prior felony convictions nor the right of the accused to produce evidence of promiscuous sexual conduct of a child 14 years old or older as a defense to rape of a child, sexual abuse of a child, or indecency with a child. If evidence of a previous felony conviction involving sexual conduct or evidence of promiscuous sexual conduct is admitted, the court shall instruct the jury as to the purpose of the evidence and as to its limited use.

[Added by Acts 1975, 64th Leg., p. 477, ch. 203, § 3, eff. Sept. 1, 1975.]

Subsection 7(b) of the 1975 amendatory act provided:

"(b) Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act."

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

§ 25.05. Criminal Nonsupport

Acts 1975, 64th Leg., p. 912, ch. 342, § 16, repealed Penal Code (1925), arts. 602 and 602-A, as amended by Acts 1973, 63rd Leg., p. 603, ch. 257, §§ 1, 2 and art. 602-B, as added by § 3 of the 1973 Act.

For saving provisions see note set out under Section 1.07.

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 31. THEFT

§ 31.01. Definitions

In this chapter:

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

(5) "Appropriate" means:

(A) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

[See *Compact Edition, Volume 1 for text of (6) to (8)*]

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 9, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 31.03. Theft

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent; or

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another.

[See *Compact Edition, Volume 1 for text of (c)*]

(d) An offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than \$5;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is \$5 or more but less than \$20; or

(B) the value of the property stolen is less than \$5 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if the value of the property stolen is \$20 or more but less than \$200;

(4) a felony of the third degree if:

(A) the value of the property stolen is \$200 or more but less than \$10,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$10,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or

(C) the value of the property stolen is less than \$200 and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the second degree if the value of the property stolen is \$10,000 or more;

(6) a felony of the second degree regardless of the value, if the property was stolen by threat to commit, in the future, a felony offense against the person or property of the person threatened or another.

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 10, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 32. FRAUD

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

§ 32.42. Deceptive Business Practices

[See *Compact Edition, Volume 1 for text of (a) and (b)*]

(c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section is:

(1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or

(2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.

(d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1350, ch. 508, §§ 1 and 2, eff. Sept. 1, 1975.]

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

§ 36.01. Definitions

In this chapter:

(1) "Coercion" means a threat, however communicated:

(A) to commit any offense;

(B) to inflict bodily injury on the person threatened or another;

(C) to accuse any person of any offense;

(D) to expose any person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(5) "Pecuniary benefit" means money, property, commercial interests, or other similar benefit the primary significance of which is economic gain; but does not include contributions made and reported in accordance with law.

(6) "Vote" means to cast a ballot in an election regulated by law.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.02. Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) An offense under this section is a felony of the second degree.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.07. Compensation for Past Official Behavior

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer

any pecuniary benefit on a public servant for the public servant's having exercised his official powers or performed his official duties in favor of the actor or another.

(b) A public servant commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any pecuniary benefit for having exercised his official powers or performed his official duties in favor of another.

(c) An offense under this section is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.08. Gift to Public Servant by Person Subject to His Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from any person.

(g) An offense under this section is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.10. Non-Applicable

Sections 36.07 (Compensation for Past Official Behavior), 36.08 (Gift to Public Servant), and 36.09 (Offering Gift to Public Servant) of this code do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(A) not more than one honorarium is received from the same person in a calendar year; and

(B) not more than one honorarium is received for the same service; and

(C) the value of the honorarium does not exceed \$250;

(D) the honorarium, regardless of amount, is reported in the financial statement filed under Chapter 421, Acts of the 63rd Legislature, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), if the recipient is required to file a financial statement under that Act; and

(E) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest and reported as required by law; or

(5) a benefit to a public servant required to file a financial statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$20 is reported in the financial statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection

with the office which are nonreimbursable by the state or political subdivision.

(6) Subsection (5) of Section 36.10 of this Act does not apply to those public servants designated in Section 36.08(f) of this Act 30 days prior to or during a regular session of the Texas Legislature.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 39. ABUSE OF OFFICE

Section

39.04. Public Disclosure by Public Servant [NEW].

§ 39.04. Public Disclosure by Public Servant

(a) For purposes of this section:

(1) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer of government; or

(B) a candidate for nomination or election to public office.

(2) "Public disclosure" means the filing of an affidavit with the county clerks of the counties wherein the property to be acquired is located and wherein the public servant resides within 10 days prior to the acquisition, setting forth the following:

(A) name of the public servant;

(B) the public office, public title, or job designation with which the public servant is connected;

(C) a full and complete description of the property;

(D) a full description of the nature, type, and amount of interest in the property, including but not limited to the percent ownership interest in the property;

(E) the date the public servant acquired an interest in the property;

(F) a verification by the public servant, reading, "I do solemnly swear that the above and foregoing statement, filed herewith, is of my own personal knowledge in all things true and correct, and fully shows the information required to be reported by me pursuant to Section 39.04, Texas Penal Code"; and

(G) an acknowledgement of the same type as required for the recording of deeds

in the deed records of the county clerk's office.

(3) "Property" means both real and personal.

(4) "Acquired" means by purchase or condemnation.

(5) "Public funds" mean any funds collected by or through any government.

(b) A public servant commits an offense if he fails to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds provided such public servant has actual notice of the acquisition or intended acquisition.

(c) If the public servant fails to file the affidavit provided for herein within the time period prescribed, his intent to commit the offense provided herein shall be presumed.

(d) An offense under this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 1361, ch. 518, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable."

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

§ 42.11. Cruelty to Animals

(a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;

(3) abandons unreasonably an animal in his custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or

(6) causes one animal to fight with another.

[See Compact Edition, Volume 1 for text of (b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 12, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 42.12. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER B. OBSCENITY

§ 43.21. Definitions

In this subchapter:

(1) "Obscene" means having as a whole a dominant theme that:

(A) appeals to the prurient interest of the average person applying contemporary community standards;

(B) depicts or describes sexual conduct in a patently offensive way; and

(C) lacks serious literary, artistic, political, or scientific value.

(2) "Material" means a book, magazine, newspaper, or other printed or written material; a picture, drawing, photograph, motion picture, or other pictorial representation; a play, dance, or performance; a statue or other figure; a recording, transcription, or mechanical, chemical, or electrical reproduction; or other article, equipment, or machine.

(3) "Prurient interest" means an interest in sexual conduct that goes substantially beyond customary limits of candor in description or representation of such conduct. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

(4) "Distribute" means to transfer possession, whether with or without consideration.

(5) "Commercially distribute" means to transfer possession for valuable consideration.

(6) "Sexual conduct" means:

(A) any contact between any part of the genitals of one person and the mouth or anus of another person;

(B) any contact between the female sex organ and the male sex organ;

(C) any contact between a person's mouth or genitals and the anus or genitals of an animal or fowl; or

(D) patently offensive representations of masturbation or excretory functions.

[Amended by Acts 1975, 64th Leg., p. 372, ch. 163, § 1, eff. Sept. 1, 1975.]

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

§ 46.01. Chapter Definitions

In this chapter:

[See Compact Edition, Volume 1 for text of (1) to (5)]

(6) "Illegal knife" means a:

(A) knife with a blade over five and one-half inches;

(B) a hand instrument designed to cut or stab another by being thrown;

(C) dagger, including but not limited to a dirk, stiletto, and poniard;

(D) bowie knife;

(E) sword; or

(F) spear.

[See Compact Edition, Volume 1 for text of (7) to (11)]

[Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 13, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 46.03. Non-Applicable

The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties as a peace officer, a member of the armed forces or national guard, or a guard employed by a penal institution;

(2) on his own premises or premises under his control;

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity if the weapon is a type commonly used in the activity; or

[Text of subd. (5) added by Acts 1975, 64th Leg., p. 109, ch. 49, § 1]

(5) who is a guard or messenger of an armored-car company, bank, or financial institution while actually employed in the protection, shipment, transportation, receipt, or delivery of money, other guards or messengers, bullion, bonds, securities, or other valuable things, if:

(A) he is licensed to carry a weapon if a license is required by law;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view.

[Text of subd. 5 added by Acts 1975, 64th Leg., p. 1330, ch. 494, § 2]

(5) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view.

[Amended by Acts 1975, 64th Leg., p. 109, ch. 49, § 1, eff. April 15, 1975; Acts 1975, 64th Leg., p. 918, ch. 342, § 14, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1330, ch. 494, § 2, eff. July 19, 1975.]

For saving provisions of Acts 1975, 64th Leg., ch. 342, see note set out under Section 1.07.

§ 46.06. Prohibited Weapons

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

(2) a machine gun;

(3) a short-barrel firearm;

(4) a firearm silencer;

(5) a switchblade knife; or

(6) knuckles.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio.

(e) An offense under this section is a felony of the second degree unless it is committed under Subsection (a)(5) or (a)(6) of this section, in which event, it is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 918, ch. 342, § 15, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

§ 48.01. Smoking Tobacco

(a) A person commits an offense if he is in possession of a burning tobacco product or smokes tobacco in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or

intrastate bus, as defined by Section 4(b) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance and/or public place and that an offense is punishable by a fine not to exceed \$200.

(c) All conveyances and public places set out in Subsection (a) of Section 48.01 shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a) if the person is in possession of the burning tobacco product or smokes tobacco exclusively within an area designated for smoking tobacco or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 744, ch. 290, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"The provisions of this Act shall not preempt any ordinance adopted by a government entity now or in the future which prohibits the possession of lighted tobacco products or prohibits the smoking of tobacco within the jurisdiction of said governmental entity."

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TITLE 11. OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

CHAPTER EIGHT. TEXAS LIQUOR CONTROL ACT

I. INTOXICATING LIQUORS

Article

666-21e. Importation and Taxation of Liquor Bottled in Metric Containers; Rules and Regulations [NEW].

II. MALT LIQUORS

667-2b. Designation of Territorial Limits for Sale and Distribution of Brands of Beer; Sales by and between Distributors [NEW].

I. INTOXICATING LIQUORS

Art. 666-16. Surety Company Bond Required; Amount

All bonds required by this Act shall be executed by a surety company duly authorized and qualified to do business in this state. The Commission shall not cancel any surety bond until said surety company shall have paid and discharged in full all of its liabilities upon said bond to the state to the date of said cancellations. The holders of all permits, except Carriers, Local Cartage, Wine and Beer Retailers, Non-resident Sellers and Manufacturer's Agents as defined in Section 15½ of Article I of this Act,¹ and Agents as defined in Section 15(10) of Article I of this Act,² shall be required to make bonds in sums of not less than One Thousand Dollars (\$1,000) and not exceeding Twenty-Five Thousand Dollars (\$25,000).

The Commission in its discretion may fix the amount of bond which shall be required for each class of permittees. All bonds required of permittees shall be payable to the State of Texas conditioned that so long as the applicant holds such permit unrevoked he will not violate any of the laws of this state relative to the traffic in, transportation, sale, or delivery of liquor or any of the valid rules or regulations of the Commission, and in the case of such permittees as are required to account for taxes and fees that such permittees will account for and pay all permit fees and taxes levied by this Act. All bonds required of permittees shall be payable in Travis County, Texas. In all instances where other permits are required, incidental to the operation of a business for which a basic permit is procured, the Commission may in its discretion accept one bond to support all such permits and in such amounts as it

may require. No bond shall be required of any retail licensee or retail permittee who is not responsible for the primary payment of any alcoholic beverage excise tax to the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 579, ch. 235, § 1, eff. May 20, 1975.]

¹ Article 666-15½.

² Article 666-15, subsec. (10).

Art. 666-20b. Mixed Beverage Permittee, Refill of Containers Prohibited; Invalidation of Identification Stamp Required; Facilities for Invalidation; Use of Automatic Measuring Device; Consumption on Premises Required.

(a) No Mixed Beverage Permittee may refill with any substance a container which contained distilled spirits on which the tax prescribed in Section 21, Article I,¹ of this Act has been paid.

(b) A Mixed Beverage Permittee or any person employed by the permittee who empties a bottle containing distilled spirits on which the tax prescribed in Section 21, Article I, of this Act has been paid, shall immediately after emptying the bottle invalidate the identification stamp on the bottle in the manner provided by rule or regulation of the Commission or Administrator.

(c) Every Mixed Beverage Permittee shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the invalidation of identification stamps on bottles so that persons emptying distilled spirits bottles may immediately invalidate the identification stamps on them.

(d) Any Mixed Beverage Permittee, his officer, agent, or employee, who is found in possession of an emptied distilled spirits bottle which contained distilled spirits on which the tax prescribed in Section 21, Article I, of this Act has been paid, on which the identification stamp has not been invalidated is guilty of a separate violation of this Section for each bottle.

(e) An empty distilled spirits bottle which has locked on it an automatic measuring and dispensing device of a type approved by the Administrator or Commission, so as to prevent the refilling of the bottle without unlocking and removing the device from the bottle, is not required to have its identification stamp invalidated as required in Subsections (a) through (d) of this Section, but the stamp shall be invalidated immediately upon the unlocking and removal of the device. Subsection (d) of this Section does not apply to the possession of an empty distilled

spirits bottle until the device has been unlocked and removed from the bottle.

(f) No holder of a Mixed Beverage Permit shall sell any alcoholic beverage to any other holder of a Mixed Beverage Permit or to any other person, except for consumption on the licensed premises of the selling permit holder, or as provided in Subsection (g) of this section.

(g) No holder of a Mixed Beverage Permit shall permit any person to take any alcoholic beverages purchased on the licensed premises from the premises where sold; provided, however, where a person orders wine with his food and has a portion of the open container remaining, he shall have the right to remove same from the premises.

[Amended by Acts 1975, 64th Leg., p. 1806, ch. 546, § 1, eff. Sept. 1, 1975.]

¹ Article 666-21.

Art. 666-20d. Gross Receipts Tax on Mixed Beverage and Private Club Permittees; Collection and Disposition; Procedures; Violations; Penalties; Permits Restricted

[See Compact Edition, Volume 1 for text of (a) to (l)]

(m) If two or more establishments operated under a permit or permits named in Subsection (a) of this section are located in the same county and are under the same or substantially the same ownership, the holder or holders of the permits may apply to the Administrator, on a form furnished by the Administrator for that purpose, for permission to keep all required records for those establishments at a single location in the county. The single location need not be the licensed premises of one of the establishments. If the Administrator decides to approve the application, he must do so in writing and may impose any conditions regarding the keeping of the records that he finds appropriate. If records are kept at a single location under this subsection, the records for each establishment must still be kept separately.

[Amended by Acts 1975, 64th Leg., p. 1378, ch. 527, § 1, eff. Sept. 1, 1975.]

Art. 666-21e. Importation and Taxation of Liquor Bottled in Metric Containers; Rules and Regulations

The Texas Alcoholic Beverage Commission is hereby directed to adopt rules and regulations permitting liquor bottled in containers sized under the metric system to be imported into this state and to collect taxes on liquor so bottled at the same rate and under the same provisions as taxes are presently collected under Section 21 of this article¹ and for that purpose the Texas Alcoholic Beverage Commission is further directed to compute, upon the basis of the taxes levied and imposed by Subsection (1) of

Section 21 of this article, and to convert to table form the amount of tax which, at the same rate, will be due on each specified category of liquor as and when the alcoholic beverage industry converts from the United States standard gallon system of measurement to the metric system so that taxes can be uniformly imposed regardless of the container size. [Amended by Acts 1975, 64th Leg., p. 116, ch. 53, § 1, eff. April 18, 1975.]

¹ Article 666-21.

Art. 666-58. Renewal of Mixed Beverage Permit Held by Corporation; Change of Ownership; Rules and Regulations; Application for Original Permit

(a) A mixed beverage permit held by a corporation may not be renewed if the Commission or Administrator finds that legal or beneficial ownership of over fifty percent (50%) of the stock of the corporation has changed since the original permit was issued.

(b) The Commission or Administrator may adopt reasonable rules and regulations in accordance with the provisions of this Section.

(c) A corporation which is barred from renewing a permit because of this Section may file an application for an original permit and may be issued an original permit if otherwise qualified.

(d) This Section does not apply to a change in corporate control brought about by the death of a shareholder if his surviving spouse or descendants are his successors in interest.

(e) This Section does not apply to a change in corporation control brought about when legal or beneficial ownership of over fifty percent (50%) of the stock of the corporation has been transferred to a person who possesses the qualifications required for other applicants for permits and is or has been an officer of the corporation since the original permit was issued.

[Amended by Acts 1975, 64th Leg., p. 371, ch. 162, § 1, eff. Sept. 1, 1975.]

II. MALT LIQUORS

Art. 667-2b. Designation of Territorial Limits for Sale and Distribution of Brands of Beer; Sales by and between Distributors

(a) Each holder of a manufacturer's or nonresident manufacturer's license shall designate territorial limits in this state within which the brands of beer manufactured by such manufacturer may be sold by general, local, or branch distributor's licensees.

(b) Each holder of a general, local, or branch distributor's license shall enter into a written agreement with each manufacturer from whom the distributor purchases beer for distribution and sale in

Texas setting forth the nonexclusive territorial limits within which each brand so purchased may be distributed and sold. A copy of the agreement, and any amendments to it, shall be filed with the administrator.

(c) Nothing contained in Subsections (a) and (b) of this section limits or alters the right of any holder of a general, local, or branch distributor's license to sell beer to any other holder of a general, local, or branch distributor's license; provided, however, a distributor who has purchased beer from another distributor may distribute and sell the beer only within a territory for which the manufacturer of the brand has designated it may be sold by a distributor.

(d) Nothing contained in Subsections (a), (b), and (c) of this section limits or alters the right of any holder of a retail license or permit to purchase beer at the licensed premises of any holder of a general, local, or branch distributor's license and to transport such beer to his licensed premises; provided, however, the beer so purchased may be sold by a retailer only within a territory for which the manufacturer

of the brand has designated it may be sold by a distributor.

[Amended by Acts 1975, 64th Leg., p. 41, ch. 20, § 1, eff. Sept. 1, 1975.]

TITLE 13. OFFENSES AGAINST PUBLIC PROPERTY

CHAPTER SIX. GAME, FISH AND OYSTERS

Arts. 871 to 978n-2. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(1), eff. Sept. 1, 1975

This Chapter 6 of Title 13 of the Texas Penal Code of 1925, consisting of articles 871 to 978n-2, was repealed by § 2(a)(1) of Acts 1975, 64th Leg., p. 1804, ch. 545, enacting the Parks and Wildlife Code, effective September 1, 1975. Section 2(b) of the 1975 Act also repealed the special laws cited in notes under article 978j.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Parks and Wildlife Code.

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CODE OF CRIMINAL PROCEDURE

PART I. CODE OF CRIMINAL PROCEDURE OF 1965

CHAPTER TWO. GENERAL DUTIES OF OFFICERS

Art. 2.12. Who are Peace Officers

The following are peace officers:

- (1) sheriffs and their deputies;
- (2) constables and deputy constables;
- (3) marshals or police officers of an incorporated city, town, or village;
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
- (6) law enforcement agents of the Alcoholic Beverage Commission;
- (7) each member of an arson investigating unit of a city, county or the state;
- (8) any private person specially appointed to execute criminal process;
- (9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;
- (10) officers commissioned by the Board of Control;
- (11) law enforcement officers commissioned by the Parks and Wildlife Commission;
- (12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier; and
- (13) municipal park and recreational patrolmen and security officers.

[Amended by Acts 1975, 64th Leg., p. 480, ch. 204, § 1, eff. Sept. 1, 1975.]

CHAPTER THREE. DEFINITIONS

Art. 3.01. Words and Phrases

All words, phrases and terms used in this Code are to be taken and understood in their usual acceptance in common language, except where specially defined.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 1, eff. June 19, 1975.]

Saving provisions. Section 7 of the 1975 Act provided:

"Sec. 7. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final."

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

LIMITATION AND VENUE

CHAPTER TWELVE. LIMITATION

Art. 12.01. Felonies

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

- (1) no limitation: murder and manslaughter;
- (2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

- (3) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson;

- (4) three years from the date of the commission of the offense: all other felonies.

[Amended by Acts 1975, 64th Leg., p. 478, ch. 203, § 5, eff. Sept. 1, 1975.]

Subsection 7(c) of the 1975 amendatory act provided:

(c) Section 5 of this Act applies to the prosecution of criminal offenses committed not more than one year before the effective date of this Act.

CHAPTER THIRTEEN. VENUE

Article

13.20. Venue by Consent [NEW].

Art. 13.20. Venue by Consent

The trial of all felony cases, without a jury, may, with the consent of the defendant in writing, his attorney, and the attorney for the state, be held in any county within the judicial district or districts for the county where venue is otherwise authorized by law.

[Added by Acts 1975, 64th Leg., p. 242, ch. 91, § 1, eff. Sept. 1, 1975.]

AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

CHAPTER TWENTY-ONE. INDICTMENT AND INFORMATION

Art. 21.09. Description of Property

If known, personal property alleged in an indictment shall be identified by name, kind, number, and ownership. When such is unknown, that fact shall be stated, and a general classification, describing and identifying the property as near as may be, shall suffice. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 2, eff. June 19, 1975.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

CHAPTER TWENTY-SIX. ARRAIGNMENT

Article

26.055. Contribution from State for Defense of Certain Prisoners [NEW].

Art. 26.055. Contribution from State for Defense of Certain Prisoners

Sec. 1. A county in which a facility of the Texas Department of Corrections is located shall pay from its general fund only the first \$250 of the aggregate sum allowed and awarded by the court for attorneys' fees, investigation, and expert testimony under Article 26.05 toward defending a prisoner committed to that facility who is being prosecuted for an offense committed in that county while in the custody of the department if the prisoner was originally committed for an offense committed in another county.

Sec. 2. If the fees awarded for court-appointed counsel in a case covered by Section 1 of this article exceed \$250, the court shall certify the amount in excess of \$250 to the Comptroller of Public Accounts of the State of Texas. The comptroller shall issue a

warrant to the court-appointed counsel in the amount certified to the comptroller by the court.

[Added by Acts 1975, 64th Leg., p. 168, ch. 72, § 1, eff. Sept. 1, 1975.]

Art. 26.13. Plea of Guilty

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of punishment attached to the offense; and

(2) the fact that any recommendation of the prosecuting attorney as to punishment is not binding on the court.

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 3, eff. June 19, 1975.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

CHAPTER THIRTY. DISQUALIFICATION OF THE JUDGE

Art. 30.03. County Judge Disqualified, Absent or Disabled

Sec. 1. When the judge of the county court or county court at law, or of any county criminal court, is disqualified in any criminal case pending in the court of which he is judge, the parties may by consent agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the practicing attorneys of the court present may elect from among their number a special judge who shall try the case. The election of the special judge shall be conducted in accordance with the provisions of Article 1887, et seq., V.A.C.S.

Sec. 2. In the event a county judge or the regular judge of a county court at law created in a county is absent, or is for any cause disabled from presiding, a special judge, who is an attorney, may be appointed by the commissioners court of the county.

Sec. 3. The special judge so appointed must possess those qualifications required of the regular judge of the court and, when appointed shall serve

for the period of time designated by the order of appointment but in no event beyond that period of time the regular judge is absent or disabled.

[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 1, eff. June 19, 1975.]

Art. 30.04. Special Judge to Take Oath

The attorney agreed upon, elected, or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.

[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 2, eff. June 19, 1975.]

Art. 30.05. Record Made by Clerk

When a special judge is agreed upon by the parties, elected, or appointed as herein provided, the clerk shall enter in the minutes as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified, absent, or disabled to try the cause;
2. That such special judge (naming him) was by consent of the parties agreed upon, or elected or appointed;
3. That the oath of office prescribed by law was duly administered to such special judge.

[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 3, eff. June 19, 1975.]

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-FIVE. FORMATION OF THE JURY

Article

35.24. [Repealed].

Art. 35.16. Reasons for Challenge for Cause

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That he is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to pay a poll tax or register to vote shall not be a disqualification;
2. That he has been convicted of theft or any felony;
3. That he is under indictment or other legal accusation for theft or any felony;
4. That he is insane or has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service, or that he is legally blind and

either the court or the state in its discretion or the defendant or the prospective juror in his discretion is not satisfied that he is fit for jury service in that particular case;

5. That he is a witness in the case;
6. That he served on the grand jury which found the indictment;
7. That he served on a petit jury in a former trial of the same case;
8. That he has a bias or prejudice in favor of or against the defendant;
9. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged without further interrogation by either party or the court. If he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged;
10. That he cannot read or write.

No juror shall be impaneled when it appears that he is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection, "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 475, ch. 202, § 2, eff. Sept. 1, 1975.]

Art. 35.24. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, Art. 2122.

CHAPTER THIRTY-SIX. THE TRIAL BEFORE THE JURY

Art. 36.14. Charge of Court

Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. The requirement that the objections to the court's charge be in writing will be complied with if the objections are dictated to the court reporter in the presence of and with the consent of the court, before the reading of the court's charge to the jury, and are subsequently transcribed, endorsed with the court's ruling and official signature, and filed with the clerk in time to be included in the transcript. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge.

[Amended by Acts 1975, 64th Leg., p. 617, ch. 253, § 1, eff. Sept. 1, 1975.]

CHAPTER THIRTY-EIGHT. EVIDENCE IN CRIMINAL ACTIONS

Article

38.07. Testimony in Corroboration of Victim of Sexual Offense. [NEW].

Art. 38.07. Testimony in Corroboration of Victim of Sexual Offense

A conviction under Chapter 21, Penal Code,¹ is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within six months after the date on which

the offense is alleged to have occurred. The court shall instruct the jury that the time which lapsed between the alleged offense and the time it was reported shall be considered by the jury only for the purpose of assessing the weight to be given to the testimony of the victim.

[Added by Acts 1975, 64th Leg., p. 479, ch. 203, § 6, eff. Sept. 1, 1975.]

¹ Penal Code, § 21.01 et seq.

Subsection 7(b) of the 1975 amendatory act provided:
(b) Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act.

PROCEEDINGS AFTER VERDICT

CHAPTER FORTY-TWO. JUDGMENT AND SENTENCE

Art. 42.01. Judgment

Sec. 1. A "judgment" is the declaration of the court entered of record, showing:

1. The title and number of the case;
2. That the case was called for trial and that the parties appeared;
3. The plea of the defendant;
4. The selection, impaneling and swearing of the jury;
5. The submission of the evidence;
6. That the jury was charged by the court;
7. The return of the verdict;
8. The verdict;
9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or in case of acquittal, that the defendant be discharged;
10. That the defendant be punished as has been determined.

Sec. 2. The judge may order the clerk of the court, the prosecuting attorney, or the attorney or attorneys representing any defendant to prepare the judgment, or the court may prepare the same.

Sec. 3. The provisions of this Article shall apply to both felony and misdemeanor cases.

[Amended by Acts 1975, 64th Leg., p. 245, ch. 95, § 1, eff. Sept. 1, 1975.]

Art. 42.07. Reasons to Prevent Sentence

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence cannot be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation

of which, legally authenticated, he shall be discharged.

2. That the defendant is incompetent to stand trial; and if evidence be shown to support a finding of incompetency to stand trial, no sentence shall be pronounced, and the court shall proceed under Article 46.02 of this code;

3. Where there has not been a motion for a new trial or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions and either or both motions may be immediately entered and disposed of, although more than ten days may have elapsed since the rendition of the verdict; and

4. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity.

[Amended by Acts 1975, 64th Leg., p. 1102, ch. 415, § 3, eff. June 19, 1975.]

Art. 42.12. Adult Probation and Parole Law

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

B. Probations

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. In all cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. Where there is a conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten

years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury.

If probation is granted by the jury the court may impose only those conditions which are set forth in Section 6 hereof.

[See Compact Edition, Volume 1 for text of 3b and 3c]

Sec. 3d. (a) When in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation on reasonable terms and conditions as the court may require and for a period as the court may prescribe not to exceed 10 years. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 8 of this Article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. The court may dismiss the proceedings and discharge the defendant prior to

the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

[See Compact Edition, Volume 1 for text of 5 to 6a]

Sec. 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of imprisonment not to exceed 30 days or one-third of the sentence whichever is lesser.

(b) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

[See Compact Edition, Volume 1 for text of 7]

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, modify, or revoke the probation. The court may continue the hearing for good cause shown by either the defendant or the state. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation, or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted.

[See Compact Edition, Volume 1 for text of 9 to 11]

Sec. 11a. The provisions of Sections 6a, 10, and 11 of this Article also apply to Article 42.13.

C. Paroles

[See Compact Edition, Volume 1 for text of 12 to 14]

Sec. 14A. (a) To aid and assist the Board of Pardons and Paroles in parole matters, provision is hereby made for the appointment of parole commissioners.

(b) There shall be appointed no less than six commissioners.

(c) One-third of the commissioners shall be appointed by the governor; one-third of the commissioners by the Chief Justice of the Supreme Court of Texas; and one-third of the commissioners by the Presiding Judge of the Texas Court of Criminal Appeals. One of the commissioners appointed by each of the appointing authorities shall reside in Walker County.

(d) Each commissioner shall hold office for a term of six years; provided that of the commissioners first appointed, the commissioners appointed by one of the appointing authorities shall serve for two years; the commissioners appointed by one of the appointing authorities shall serve for four years; and the other one-third of the commissioners shall serve for six years. Prior to appointment, the appointing authority shall draw lots for the length of the first term for his respective appointees. All terms shall begin on September 1, 1975.

(e) In matters of parole decisions, the commissioners shall have the same duties and authority as the board members. A parole panel, as hereinafter provided, may recommend the granting, denying, or revocation of parole, and may conduct parole revocation hearings. The commissioners may interview inmates for parole consideration, and they shall perform their duties as directed by the board in its rules and regulations affecting these commissioners.

(f) The board may provide and promulgate a written plan for the administrative review of actions taken by a parole panel.

(g) The commissioners shall be compensated while holding office at a salary to be set by the legislature. They shall be reimbursed for their expenses in the same manner and in the same amount as are board members.

(h) The board members shall continue to exercise their responsibility for the administrative operation of the board of pardons and paroles.

(i) In matters of parole decisions, the board members and commissioners may act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the

board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by a majority vote. In parole matters, those functions given to the board throughout Article 42.12, Code of Criminal Procedure, 1965, as amended, may be enlarged and extend to the parole panels, as provided by board rules. The powers of the board and the board members can be delegated by the board to the parole panels and to the commissioners as needed for the convenience of and assistance to the board.

(j) In case of a vacancy among the parole commissioners, the appointing authority who appointed the commissioner now absent shall fill the vacancy with another appointment, and the person so appointed shall continue in office for the unexpired portion of the term for which the commissioner so vacating his office has been appointed.

[See Compact Edition, Volume 1 for text of 15 to 35]

[Amended by Acts 1975, 64th Leg., p. 263, ch. 110, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 572, ch. 231, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 909, ch. 341, § 4, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1243, ch. 467, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1244, ch. 468, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2150, ch. 692, § 1, eff. Sept. 1, 1975.]

For saving provisions of Acts 1975, 64th Leg., p. 909, ch. 341, see note set out under art. 3.01.

Art. 42.13. Misdemeanor Probation Law

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

Probation Authorized in Misdemeanor Cases

Sec. 3. (a) A defendant who has been found guilty of a misdemeanor wherein the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200.00 or by both such fine and imprisonment may be granted probation if:

(1) he applies by written motion under oath to the court for probation before trial;

(2) he has not been granted probation nor been under probation under this Act or any other Act in the preceding 5 years; provided that the court may grant probation regardless of the prior probation of the defendant, except for a like offense within the last 5 years;

(3) he has paid all costs of his trial and so much of any fine imposed as the court directs; and

(4) the court believes that the ends of justice and the best interests of society and of the defendant will be served by granting him probation.

(b) If a defendant satisfies all the requirements of Section 3(a)(1), (2), (3) and (4) of this Article, and the jury hearing his case recommends probation in its

verdict, the court must grant the defendant probation. The court may grant the defendant probation regardless of the recommendation of the jury or the prior conviction of the defendant, except for a like offense within the last five years. The court may, however, extend the term of the probationary period to any length of time not exceeding the maximum time of confinement allowed by law. In the event probation is revoked in accordance with Section 6, the judgment of the court shall not prescribe any penalty in excess of that imposed by the jury.

(c) A defendant's application for probation must be made under oath and must also contain statements (1) either that he has never before been convicted in this or another jurisdiction of a felony or of a misdemeanor for which the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200 or by both such fine and imprisonment, or, if he has been so convicted, setting forth such fact and specifying the time and place of such conviction, the nature of the offense for which he was convicted, and the final punishment assessed therein; and (2) that he has not been granted probation nor been under probation under this Article or any other Article in the preceding five years, or if he has been granted probation or been under probation in the preceding five years, setting forth such fact and specifying the time and place of such probation, and the nature of the offense for which he was placed on probation. The application may contain what other information the court directs.

(d) When a defendant has applied for probation, the court during the trial of his case must receive competent evidence concerning the defendant's entitlement to probation.

[See Compact Edition, Volume 1 for text of 4 to 8]

[Amended by Acts 1975, 64th Leg., p. 910, ch. 341, § 5, eff. June 19, 1975.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

CHAPTER FORTY-THREE. EXECUTION OF JUDGMENT

Art. 43.18. Executioner

The Director of the Texas Department of Corrections, or in case of his death, disability or absence, the Warden of the Huntsville Unit of the Texas Department of Corrections, shall be the executioner. In the event of the death or disability or absence of both the Director of the Texas Department of Corrections and the Warden of the Huntsville Unit of the Texas Department of Corrections, the executioner shall be that person appointed by the Board of Directors of the Texas Department of Corrections for that purpose.

[Amended by Acts 1975, 64th Leg., p. 911, ch. 341, § 6, eff. June 19, 1975.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

MISCELLANEOUS PROCEEDINGS

CHAPTER FORTY-SIX. INSANITY
AS DEFENSE

Article

46.03. Insanity Defense [NEW].

Art. 46.02. Incompetency to Stand Trial

Incompetency to Stand Trial

Sec. 1. (a) A person is incompetent to stand trial if he does not have:

(1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; or

(2) a rational as well as factual understanding of the proceedings against him.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

Raising the Issue of Incompetency to Stand Trial

Sec. 2. (a) The issue of the defendant's incompetency to stand trial shall be determined in advance of the trial on the merits if the court determines there is evidence to support a finding of incompetency to stand trial on its own motion or on written motion by the defendant or his counsel filed prior to the date set for trial on the merits asserting that the defendant is incompetent to stand trial.

(b) If during the trial evidence of the defendant's incompetency is brought to the attention of the court from any source, the court must conduct a hearing out of the presence of the jury to determine whether or not there is evidence to support a finding of incompetency to stand trial.

Examination of the Defendant

Sec. 3. (a) At any time the issue of the defendant's incompetency to stand trial is raised, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health or mental retardation to examine the defendant with regard to his competency to stand trial and to testify at any trial or hearing on this issue, but the court may not order the defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination without the consent of the head of that facility.

(b) If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to exami-

nation, the court may order him to custody for examination for a reasonable period not to exceed 14 days.

(c) The court shall advise any expert appointed pursuant to this section of the nature of the offense with which the defendant is charged and the meaning of incompetency to stand trial.

(d) A written report of the examination shall be submitted to the court within 21 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney. The report shall include a description of the procedures used in the examination, the examiner's observations and findings pertaining to the defendant's competency to stand trial, and recommended treatment. If the examiner concludes that the defendant is incompetent to stand trial, the report shall include the examiner's observations and findings about whether there is a substantial probability that the defendant will attain the competence to stand trial in the foreseeable future.

(e) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A facility operated by the Texas Department of Mental Health and Mental Retardation which accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such expenses incurred as are reasonably necessary and incidental to the proper examination of the defendant.

(f) No statement made by the defendant during the examination or hearing on his competency to stand trial may be admitted in evidence against the defendant on the issue of guilt in any criminal proceeding.

(g) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(h) The experts appointed under this section to examine the defendant with regard to his competency to stand trial also may be appointed by the court to examine the defendant with regard to the insanity defense pursuant to Section 3 of Article 46.03 of this code, but separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

Incompetency Hearing

Sec. 4. (a) If the court determines that there is evidence to support a finding of incompetency to stand trial, a jury shall be impaneled to determine the defendant's competency to stand trial. This determination shall be made by a jury that has not

been selected to determine the guilt or innocence of the defendant.

(b) The defendant is entitled to counsel at the competency hearing. If the defendant is indigent and the court has not yet appointed counsel to represent the defendant, the court shall appoint counsel prior to the competency hearing.

(c) If the defendant is found competent to stand trial, the court shall dismiss the jury that decided the issue and may continue the trial on the merits before the court or with the jury selected for that purpose.

(d) If the issue of incompetency to stand trial is raised other than by written motion in advance of trial pursuant to Subsection (a) of Section 2 of this article and the court determines that there is evidence to support a finding of incompetency to stand trial, the court shall set the issue for determination immediately or at any time prior to the sentencing of the defendant. If the competency hearing is delayed until after a verdict on the guilt or innocence of the defendant is returned, the competency hearing shall be held as soon thereafter as reasonably possible, but a competency hearing may be held only if the verdict in the trial on the merits is "guilty." If the defendant is found incompetent to stand trial after the beginning of the trial on the merits, the court shall declare a mistrial in the trial on the merits. A subsequent trial and conviction of the defendant for the same offense is not barred and jeopardy does not attach by reason of a mistrial under this section.

(e) Instructions submitting the issue of incompetency to stand trial shall be framed to require the jury to state in its verdict:

(1) whether the defendant is incompetent to stand trial; and

(2) if found incompetent to stand trial, whether there is no substantial probability that the defendant will attain the competency to stand trial within the foreseeable future.

(f) If the jury is unable to agree on a unanimous verdict after a reasonable opportunity to deliberate, the court shall declare a mistrial of the incompetency hearing, discharge the jury, and impanel another jury to determine the incompetency of the defendant to stand trial.

Incompetency Dispositions

Sec. 5. (a) When a defendant has been determined incompetent to stand trial, and unless it is determined there is no substantial probability that the defendant will attain competency to stand trial in the foreseeable future, the court shall enter an order committing the defendant to the maximum security unit of Rusk State Hospital, to the maxi-

imum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation, to an agency of the United States operating a mental hospital, or to a Veterans Administration hospital for a period not to exceed 12 months and placing him in the custody of the sheriff for transportation to the facility to be confined therein for further examination and treatment toward the specific objective of attaining competency to stand trial. A transcript of all medical testimony received by the jury shall be forthwith prepared by the court reporter and shall accompany the patient to the facility.

(b) No person shall be committed to a mental health or mental retardation facility under this section except on competent medical or psychiatric testimony.

(c) The facility to which the defendant is committed shall develop an individual program of treatment and shall report on the defendant's progress towards achieving competency to the court at least every 90 days.

(d) Nothing in this section precludes the court from allowing the defendant to be released on bail if the court determines that the defendant can be adequately treated on an outpatient basis for the purpose of attaining competency to stand trial.

(e) The head of a facility to which a person has been committed pursuant to Subsection (a) of this section shall promptly notify the committing court:

(1) when he is of the opinion that the defendant has attained competency to stand trial; or

(2) when he is of the opinion that there is no substantial probability that the defendant will attain the competency to stand trial in the foreseeable future; or

(3) 14 days prior to the expiration of 12 months following the date of the commitment order.

(f) On notification to the committing court under Subsection (e) of this section, the sheriff of the county in which the committing court is located shall forthwith transport the defendant to the committing court.

(g) When the head of a facility to which the defendant is committed discharges the defendant and the defendant is returned to court, a final report shall be filed with the court documenting the applicable reason therefor under Subsection (e) of this section, and the court shall furnish copies to the defense counsel and the prosecuting attorney. If the defendant has no counsel and the court determines that the defendant is indigent, the court shall appoint counsel to represent him. When the report is filed with the court, the court is authorized to make a determination based solely on the report

with regard to the defendant's competency to stand trial, unless the prosecuting attorney or the defense counsel objects in writing or in open court to the findings of the report within 15 days from the time the report is served on the parties. In the event of objection, the issue shall be set for a hearing before the court or, on motion by the defendant, his counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury. The hearing shall be held within 30 days following the date of objection unless continued for good cause.

(h) If the defendant is found competent to stand trial, criminal proceedings against him may be resumed. If the defendant is found incompetent to stand trial, the court shall proceed under Section 6 of this article or shall release the defendant. No defendant who has been committed to a facility under Subsection (a) of this section may be recommitted to a facility under that subsection in connection with the same offense.

(i) If the charges pending against a defendant are dismissed, the committing court shall send a copy of the order of dismissal to the head of the facility in which the defendant is held and the defendant shall then be discharged.

Civil Commitment

Sec. 6. (a) If a defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent in the foreseeable future, or if the defendant has been previously committed to a facility under Subsection (a) of Section 5 of this article and it appears to the court that the defendant requires observation or treatment in a mental health or mental retardation facility for his own welfare and protection or the protection of others, the court shall transfer the defendant to the appropriate court for civil commitment proceedings and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health or mental retardation facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise the defendant shall be discharged.

(b) A person committed to a mental health or mental retardation facility as a result of the proceedings initiated pursuant to Subsection (a) of this section shall be committed to the maximum security unit of Rusk State Hospital or the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 30 days following commitment, the

person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dangerous by a review board with the Texas Department of Mental Health and Mental Retardation.

(c) A transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings shall be prepared forthwith by the court reporters and shall accompany the patient to the mental health or mental retardation facility.

(d) The head of a mental health or mental retardation facility to which a person has been committed or transferred as a result of the proceedings initiated pursuant to Subsection (a) of this section and who has received written notice from a prosecuting attorney that criminal charges are pending against the person shall notify the prosecuting attorney in writing at least 14 days prior to the discharge of the person. A written report as to the competency of the person to stand trial shall accompany the notice.

(e) On written notice by the head of a mental health or mental retardation facility that in his opinion a person who has been civilly committed to that facility and against whom criminal charges are pending is competent to stand trial, or on good cause shown by the defendant, his counsel, or the prosecuting attorney, the court in which the criminal charges are pending may hold a hearing to determine the competency of the defendant to stand trial. The hearing shall be before a jury unless waived by agreement of the parties. The order setting the hearing shall order the defendant placed in the custody of the sheriff for transportation to the court. The court may appoint disinterested experts to examine the defendant in accordance with the provisions of Section 3 of this article. If the defendant is found to be competent to stand trial, the proceedings on the criminal charges may be continued. If the defendant is found incompetent to stand trial and is under an order of commitment to a mental health or mental retardation facility, the court shall order him placed in the custody of the sheriff for transportation to that facility.

Time Credited

Sec. 7. The time a person charged with a criminal offense is confined in a mental health or mental retardation facility pending trial shall be credited to the term of his sentence on subsequent sentencing or resentencing.

[Amended by Acts 1975, 64th Leg., p. 1095, ch. 415, § 1, eff. June 19, 1975.]

Art. 46.03. Insanity Defense

The Insanity Defense

Sec. 1. (a) The insanity defense provided in Section 8.01 of the Penal Code shall be submitted to the jury only if supported by competent evidence.

(b) When the insanity defense is submitted, the trier of facts shall determine and include in the verdict or judgment or both whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

(c) A defendant who has been found not guilty by reason of insanity shall stand acquitted of the offense charged and may not be considered a person charged with a criminal offense.

Raising the Insanity Defense

Sec. 2. (a) A defendant planning to offer evidence of the insanity defense shall file a notice of his intention to offer such evidence with the court and the prosecuting attorney:

(1) at least 10 days prior to the date the case is set for trial; or

(2) if the court sets a pretrial hearing before the 10-day period, the defendant shall give notice at the hearing; or

(3) if the defendant raises the issue of his incompetency to stand trial before the 10-day period, he shall at the same time file notice of his intention to offer evidence of the insanity defense.

(b) Unless notice is timely filed pursuant to Subsection (a) of this section, evidence on the insanity defense is not admissible unless the court finds that good cause exists for failure to give notice.

Examination of the Defendant

Sec. 3. (a) If notice of intention to raise the insanity defense is filed under Section 2 of this article, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health or mental retardation to examine the defendant with regard to the insanity defense and to testify thereto at any trial or hearing on this issue, but the court may not order the defendant to a state mental hospital for examination without the consent of the head of the state mental hospital.

(b) If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to examination, the court may order him to custody for a reasonable period for examination.

(c) The court shall advise any expert appointed under this section of the nature of the offense with which the defendant is charged and the elements of the insanity defense.

(d) A written report of the examination shall be submitted to the court within 21 days of the order of examination and the court shall furnish copies of the report to the defense counsel and prosecuting attorney. The report shall include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense.

(e) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A state mental hospital that accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such expenses incurred as are reasonably necessary and incidental to the proper examination of the defendant.

(f) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(g) The experts appointed under this section to examine the defendant with regard to the insanity defense also may be appointed by the court to examine the defendant with regard to his competency to stand trial pursuant to Section 3 of Article 46.02 of this code, provided that separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

Civil Commitment

Sec. 4. (a) If a defendant is found not guilty by reason of insanity in the trial of a criminal offense and it appears to the court that the defendant requires observation or treatment in a mental health or mental retardation facility for his own welfare and protection or the protection of others, the court shall transfer the defendant to the appropriate court for civil commitment proceedings and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant shall be committed to a mental health or mental retardation facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise the defendant shall be discharged.

(b) A person committed to a mental health or mental retardation facility as a result of the pro-

ceedings initiated pursuant to Subsection (a) of this section shall be committed to the maximum security unit of Rusk State Hospital or the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 30 days following commitment, the person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dangerous by a review board within the Texas Department of Mental Health and Mental Retardation.

(c) A transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings shall be prepared forthwith by the court reporters and shall accompany the patient to the mental health or mental retardation facility. [Added by Acts 1975, 64th Leg., p. 1100, ch. 415, § 2, eff. June 19, 1975.]

CHAPTER FORTY-NINE. INQUESTS UPON DEAD BODIES

Art. 49.25. Medical Examiners

[See Compact Edition, Volume 1 for text of 1 to 10]

Waiting Period Between Death and Cremation

Sec. 10a. The body of a deceased person shall not be cremated within forty-eight hours after the time of death as indicated on the regular death certificate, unless the death certificate indicates death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or unless the time requirement is waived in writing by the county medical examiner or, in counties not having a county medical examiner, a justice of the peace.

[See Compact Edition, Volume 1 for text of 11 to 13]

[Amended by Acts 1975, 64th Leg., p. 1826, ch. 562, § 1, eff. Sept. 1, 1975.]

CHAPTER FIFTY-ONE. FUGITIVES FROM JUSTICE

Article

51.14. Interstate Agreement on Detainers [NEW].

Art. 51.14. Interstate Agreement on Detainers

This article may be cited as the "Interstate Agreement on Detainers Act." This agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II.

As used in this agreement: (a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

ARTICLE III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in Paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of Paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final dispo-

sition referred to in Paragraph (a) hereof shall void the request.

ARTICLE IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Paragraph (a) of Article V hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in Paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in Paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executing authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Paragraph (e) of Article V hereof, such indictment, information, or complaint shall not be of any further force or effect, and the

court shall enter an order dismissing the same with prejudice.

ARTICLE V.

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) proper identification and evidence of his authority to act for the state into whose temporary custody this prisoner is to be given;

(2) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI.

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this

agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX.

(a) This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) As used in this article, "appropriate court" means a court of record with criminal jurisdiction.

(c) All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce this article and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

(d) Any prisoner escapes from lawful custody while in another state as a result of the application of this article shall be punished as though such escape had occurred within this state.

(e) The governor is empowered to designate the officer who will serve as central administrator of and information agent for the agreement on detainees pursuant to the provisions of Article VII hereof.

(f) Copies of this article, upon its enactment, shall be transmitted to the governor of each state, the Attorney General and the Secretary of State of the United States, and the council of state governments. [Added by Acts 1975, 64th Leg., p. 920, ch. 343, § 1, eff. June 19, 1975.]

PART II. MISCELLANEOUS PROVISIONS

Chapter	Article
101. Collection of Money	1001
102. Taxation of Costs	1009
103. Costs Paid by the State	1018
104. Costs Paid by Counties	1037
105. Costs to be Paid by Defendant	1061

The Texas Code of Criminal Procedure enacted in 1965, expressly saved from repeal certain

enumerated articles which had theretofore appeared in the Code of Criminal Procedure of 1925, as amended and supplemented. See Article 54.02 of the 1965 Code.

Included in the articles saved from repeal were articles 944 through 951, 1009 through 1035, 1037, through 1056, 1058 through 1064, and 1075 through 1082. These articles are incorporated herein as Part II. Articles 944 through 951 have been renumbered as 1001 through 1008. The remainder appear under the same numbers assigned to them in the 1925 Code.

CHAPTER ONE HUNDRED ONE. COLLECTION OF MONEY

- Article 1001. Reports of Money Collected.
- 1002. Contents of Report.
- 1003. Report of Collections for County.
- 1004. What Officers to Report.
- 1005. Report to Embrace All Moneys.
- 1006. Money Collected Paid to Treasurer.
- 1007. Commissions on Collections.
- 1008. Commissions to Other Officers.

Art. 1001. Reports of Money Collected

All officers charged by law with collecting money in the name or for the use of the State shall report in writing under oath to the respective district courts of their several counties, on the first day of each term, the amounts of money that have come to their hands since the last term of their respective courts aforesaid.

[1925 C.C.P.]

Art. 1002. Contents of Report

Such report shall state:

1. The amount collected.
2. When and from whom collected.
3. By virtue of what process collected.
4. The disposition that has been made of the money.
5. If no money has been collected, the report shall so state.

[1925 C.C.P.]

Art. 1003. Report of Collections for County

A report, such as is required by the two preceding articles, shall also be made of all moneys collected for the county, which report shall be made to each regular term of the commissioners court for each county.

[1925 C.C.P.]

Art. 1004. What Officers to Report

The officers charged by law with the collection of money, within the meaning of the three preceding

articles, and who are required to make the reports therein mentioned, are: District and county attorneys, clerks of the district and county courts, sheriffs, constables, and justices of the peace.
[1925 C.C.P.]

Art. 1005. Report to Embrace All Moneys

The moneys required to be reported embrace all moneys collected for the State or county other than taxes.
[1925 C.C.P.]

Art. 1006. Money Collected Paid to Treasurer

Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same.
[1925 C.C.P.]

Art. 1007. Commissions on Collections

The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected.
[1925 C.C.P.]

Art. 1008. Commissions to Other Officers

The sheriff or other officer, except a justice of the peace or his clerk, who collects money for the State or county, except jury fees, under any provision of this Code, shall be entitled to retain five per cent thereof when collected.
[1925 C.C.P.; Acts 1929, 41st Leg., p. 240, ch. 105, § 1.]

**CHAPTER ONE HUNDRED TWO.
TAXATION OF COSTS**

Article

- 1009. Fee Books.
- 1010. Fee Book Shall Show What.
- 1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty.
- 1011. Extortion.
- 1012. Costs Payable in Money.
- 1013. When Costs Payable.
- 1014. Bill of Costs to Accompany Appeal.
- 1015. Taxing After Payment.
- 1016. Costs Retaxed.
- 1017. Fee Book Evidence.

Art. 1009. Fee Books

Each clerk of a court, county judge, justice of the peace, sheriff, constable and marshal, shall keep a fee book and enter therein all fees charged for service rendered in any criminal action or proceeding; which book may be inspected by any person interested in such costs.
[1925 C.C.P.]

Art. 1010. Fee Book Shall Show What

The fee book shall show the number and style of the action or proceeding in which the costs are charged, and shall name the officer or person to whom such costs are due, and state each item of costs separately.
[1925 C.C.P.; Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty

Sec. 1. Each fee officer within this State collecting fines and fees in criminal cases shall be furnished, by the county, in addition to the fee books now provided by law, duplicate official receipts in book form, each of which receipts shall bear a distinct number, and a facsimile of the official seal of the county. Whenever any money is received by any such officer in his official capacity, to be applied on the payment of any fine or costs in any case, the person paying said money shall be given a receipt showing the amount, date, style of case, number of case and purpose for which paid, which receipt shall show the name of the person paying and the official signature of the receiving officer.

Sec. 2. At the close of each month's business the receipt book shall be delivered to the County Auditor and the County Auditor shall thoroughly check said receipt book to see that proper disposition has been made of the money collected, and after such audit, the receipt books shall be returned to the officer, if any portion of the book is unused; but if all the book is used it shall be retained by the County Auditor. Such books shall be open to public inspection.

Sec. 3. Any officer who shall fail or refuse to comply with any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction therefor, may be fined not to exceed Two Hundred Dollars (\$200.00), and may be removed from office upon petition of the County or District Attorney; and the principal of any office shall be responsible for the failure of his Deputies to comply herewith, insofar as the remedy of removal from office shall apply; but the Deputy so failing or refusing to comply herewith shall be liable for the fine herein provided.

[Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1011. Extortion

No item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided by law.
[1925 C.C.P.]

Art. 1012. Costs Payable in Money

All costs in criminal actions or proceedings are due and payable in money.
[1925 C.C.P.]

Art. 1013. When Costs Payable

No costs shall be payable by any person until there be produced, or ready to be produced, unto the person chargeable with the same, a written bill containing the items of such costs, signed by the officer to whom such costs are due or by whom the same are charged.
[1925 C.C.P.]

Art. 1014. Bill of Costs to Accompany Appeal

When a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a complete bill of all costs that have accrued therein, certified to and signed by the proper officer of the court from which the same is forwarded.
[1925 C.C.P.]

Art. 1015. Taxing After Payment

No further costs shall be taxed against or collected from a defendant after he has paid the costs taxed against him at the time of such payment, unless otherwise adjudged by the court upon a proper motion filed for that purpose.
[1925 C.C.P.]

Art. 1016. Costs Retaxed

Whenever costs have been erroneously taxed against a defendant, he may have the error corrected, and the costs properly taxed, upon filing a written motion for that purpose in the court in which the case is then or was last pending. Such motion may be made at any time within one year after the final disposition of the case in which the costs were taxed, and not afterward. Notice of such motion shall be given to each party to be affected thereby, as in the case of a similar motion in a civil action.
[1925 C.C.P.]

Art. 1017. Fee Book Evidence

The items of costs taxed in an officer's fee book shall be prima facie evidence of the correctness of such items.
[1925 C.C.P.]

CHAPTER ONE HUNDRED THREE. COSTS PAID BY THE STATE**Article**

- 1018. Defendant Liable for Costs.
- 1019. Conviction for Misdemeanor.
- 1019a. Fees in Felony Cases Against Same Defendant.
- 1020. Fees in Examining Court.
- 1021. District Attorneys of Two or More Counties.
- 1022. If there are Several Defendants.
- 1023. Fees in Trust Cases.
- 1024. Attorney for Dallas and Harris Counties.
- 1025. Fees to District and County Attorneys.
- 1026. Fees of District Clerk.
- 1027. Officers Not to be Paid Fees until Case Finally Disposed Of.
- 1028. Sheriff Due Fees after Approval.
- 1029. Fees to Sheriff or Constable.
- 1030. Fees to Sheriff or Constable.
- 1030a. Fugitives from Justice; Allowance to Sheriffs and Deputies for Expenses.
- 1031. Services by Officer Other Than Sheriff.
- 1032. Sheriff Shall Not Charge Fees, When.
- 1033. Officer Shall Make Out Cost Bill.
- 1034. Judge to Examine Bill, etc.
- 1035. Duty of Comptroller.

Art. 1018. Defendant Liable for Costs

When the defendant is convicted, the costs and fees paid by the State under this title shall be a charge against him, except when sentenced to death or to imprisonment for life, and when collected shall be paid into the State Treasury.
[1925 C.C.P.]

Art. 1019. Conviction for Misdemeanor

If the defendant is indicted for a felony and upon conviction his punishment is by fine or confinement in the county jail, or by both such fine and confinement in the county jail or convicted of a misdemeanor, no costs shall be paid by the State to any officer. All costs in such cases shall be taxed, assessed and collected as in misdemeanor cases.
[1925 C.C.P.; Acts 1931, 42nd Leg., p. 338, ch. 205, § 1.]

Art. 1019a. Fees in Felony Cases Against Same Defendant

In all felony cases where any officer is allowed fees payable by the State for services performed either before or after indictment, including examining trials before magistrates and habeas corpus proceedings, no officer shall be entitled to fees in more than five cases against the same defendant; provided, however, that where defendants are indicted and tried separately after severance of their cases, said officers shall be entitled to fees in five cases against each of said defendants, the same as if indicted and tried separately for separate offenses; provided further, that cases in which the same defendant has previously been indicted, tried, and convicted prior to the date of any act or acts for which said defendant is again apprehended, indicted, and/or tried shall not be computed in determining the number of cases

against such defendant in which such officers are entitled to collect fees.

[Acts 1931, 42nd Leg., p. 334, ch. 200, § 1; Acts 1935, 44th Leg., p. 697, ch. 297, § 1.]

Art. 1020. Fees in Examining Court

In each case where a County Judge or a Justice of the Peace shall sit as an examining court in a felony case, they shall be entitled to the same fees allowed by law for similar services in misdemeanor cases to Justices of the Peace, and ten cents for each one hundred words for writing down the testimony, to be paid by the State, not to exceed Three and No/100 (\$3.00) Dollars, for all his services in any one case.

Sheriffs and Constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in County Court to be paid by the State, not to exceed Four and No/100 (\$4.00) Dollars in any one case, and mileage actually and necessarily traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the State any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants of arrest or capiases are served or could have been served on the same defendant on any one day.

District and County Attorneys, for attending and prosecuting any felony case before an examining court, shall be entitled to a fee of Five and no/100 (\$5.00) Dollars, to be paid by the State for each case prosecuted by him before such court. Such fee shall not be paid except in cases where the testimony of the material witnesses to the transaction shall be reduced to writing, subscribed and sworn to by said witnesses; and provided further that such written testimony of all material witnesses to the transaction shall be delivered to the District Clerk under seal, who shall deliver the same to the foreman of the grand jury and take his receipt therefor. Such foreman shall, on or before the adjournment of the grand jury, return the same to the clerk who shall receipt him and shall keep said testimony in the files of his office for a period of five years.

The fees mentioned in this Article shall become due and payable only after the indictment of the defendant for an offense based upon or growing out of the charge filed in the examining court and upon an itemized account, sworn to by the officers claiming such fees, approved by the Judge of the District Court, and said County or District Attorney shall present to the District Judge the testimony transcribed in the examining trial, who shall examine the same and certify that he has done so and that he finds the testimony of one or more witnesses to be material; and provided further that a certificate from the District Clerk, showing that the written testimony of the material witnesses has been filed with said District Clerk, in accordance with the preceding paragraph, shall be attached to said account before such District or County Attorney shall be entitled to a fee in any felony case for services performed before an examining court.

Only one fee shall be allowed to any officer mentioned herein for services rendered in an examining trial, though more than one defendant is joined in the complaint, or a severance is had. When defendants are proceeded against separately, who could have been proceeded against jointly, but one fee shall be allowed in all cases that could have been so joined. No more than one fee shall be allowed to any officer where more than one case is filed against the same defendant for offenses growing out of the same criminal act or transaction. The account of the officer and the approval of the District Judge must affirmatively show that the provisions of this Article have been complied with.

[1925 C.C.P.; Acts 1933, 43rd Leg., p. 219, ch. 99.]

Art. 1021. District Attorneys of Two or More Counties

District Attorneys in all judicial districts composed of two counties or more, shall receive from the State as pay for their services the sum of \$500.00 per annum, and in addition thereto, shall receive from the State as pay for their services; the sum of \$20.00 for each day they attend the Session of the District Court in their respective districts in the necessary discharge of their official duties, and \$20.00 for each day used in necessarily going to and coming from the District Court in one county to the District Court in another county in their respective districts in the necessary discharge of their official duties, and in attending any Session of said Court; and \$20.00 per day for each day they represent the State at examining trials, inquest proceedings and habeas corpus proceedings in vacation; said \$20.00 per day to be paid upon the sworn account of the District Attorney, approved by the District Judge, who shall certify that the attendance of said District Court for the number of days mentioned in his account was necessary, after which said account shall be recorded in the Minutes of the District Court; provided that the

maximum number of days for which compensation is allowed shall not exceed one hundred and seventy-five days in any one year. All commissions and fees allowed District Attorneys under the provisions hereof, in the districts composed of two or more counties, shall, when collected, be paid to the District Clerk of the County of his residence, who shall pay the same over to the State Treasurer.

[1925 C.C.P.; Acts 1927, 40th Leg., p. 350, ch. 236, § 1.]

Art. 1022. If there are Several Defendants

If there be more than one defendant in a case, and they are tried jointly, but one fee shall be allowed the district or county attorney. If the defendants sever, and are tried separately, a fee shall be allowed for each final conviction, except in habeas corpus cases, in which cases only one fee shall be allowed, without regard to the number of defendants or whether they are tried jointly or separately.

[1925 C.C.P.]

Art. 1023. Fees in Trust Cases

For every conviction obtained under the provisions of the anti-trust laws, the State shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars. If both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney, and one hundred and fifty dollars to the district attorney.

[1925 C.C.P.]

Art. 1024. Attorney for Dallas and Harris Counties

In addition to the fees allowed by law to other district attorneys for other services, the Criminal District Attorney of Dallas county and the Criminal District Attorney of Harris county shall each receive the following fees:

For all convictions of felony when the defendant does not appeal or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, thirty dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, twenty dollars.

[1925 C.C.P.]

Art. 1025. Fees to District and County Attorneys

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district or county attorney shall receive the following fees:

For all convictions of felony when the defendant does not appeal, or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, twenty-four dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, sixteen dollars.

In each county where less than 3000 such votes have been so cast, such attorney shall receive thirty dollars for each such conviction of felony other than homicide, and fifty dollars for each such conviction of felonious homicide, and twenty dollars for each such habeas corpus case.

[1925 C.C.P.]

Art. 1026. Fees of District Clerk

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district clerk or criminal district clerk shall receive the following fees: Eight dollars for each felony case finally disposed of without trial or dismissed, or tried by jury whether the defendant be acquitted or convicted; eight cents for each one hundred words in each transcript on appeal or change of venue; eighty cents for entering judgment in habeas corpus cases, and eight cents for each one hundred words for preparing transcript in habeas corpus cases. In no event shall the fees in habeas corpus cases exceed eight dollars in any one case. In each county where less than 3000 such votes have been so cast, such clerk shall receive ten dollars for each felony case so disposed of, and ten cents for each one hundred words in such transcripts, and one dollar for entering judgment in each habeas corpus. The district clerk of any county shall receive fifty cents for recording each account of the sheriff.

[1925 C.C.P.]

Art. 1027. Officers Not to be Paid Fees until Case Finally Disposed Of

In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a felony, and the punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees to any officer, except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. Provided the provisions of this Article shall not be construed as affecting in any way the provisions of Article 1019, Code of Criminal Procedure, as amended by Chapter 205, General Laws, Regular Session, Forty-second Legislature; Provided this shall not

apply to examining trial fees to County Attorneys and/or Criminal District Attorneys.

[1925 C.C.P.; Acts 1931, 42nd Leg., p. 338, ch. 205; Acts 1933, 43rd Leg., p. 308, ch. 119.]

Art. 1028. Sheriff Due Fees after Approval

All fees accruing under the two succeeding articles shall be due and payable at the close of each term of the district court, after being duly approved, except as provided for in subdivisions 7 and 8 of said articles, which shall be paid when approved by the judge under whose order the writ was issued.

[1925 C.C.P.]

Art. 1029. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election 3000 votes or more, the sheriff and constable shall receive the following fees:

1. For executing each warrant of arrest or *capias*, for making arrest without warrant when so authorized by law, the sum of one dollar, and in all cases five cents per mile for each mile actually and necessarily traveled in going to the place of arrest; and for conveying each prisoner to jail, he shall receive the mileage provided in subdivision 4.

2. For summoning or attaching each witness, fifty cents.

3. For summoning a jury in each case where a jury is actually sworn in, two dollars.

4. For removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expenses, when traveling by railroad, ten cents. When traveling otherwise than by railroad, fourteen cents; provided that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed eight cents per mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case or series of cases against the same defendant, or in companion cases, or otherwise; when it is possible to serve process on them in the same neighborhood or vicinity during the same trip, he shall not charge mileage for serving such witnesses to or from the County seat, but shall charge only one mileage and for such additional miles only as are actually and necessarily travelled in summoning each additional witness.

6. For service of criminal process, not otherwise provided for, the sum of five cents a mile

going and returning shall be allowed. If two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying witnesses attached by him to any court, or in habeas corpus proceedings out of his county, or when directed by the judge from any other county to the court where the case is pending, one dollar and fifty cents per day for each day actually and necessarily consumed in going to and returning from such courts, and his actual and necessary expenses by the nearest practical route, or nearest practical public conveyance, the amount to be stated by him in an account which shall show the place where the witnesses were attached, the distance to the nearest railroad station, and miles actually traveled to each court; if horses or vehicles are used, from whom hired and price paid and length of time consumed and paid out for feeding horses, and to whom; if meals and lodgings are provided from whom and when, and price paid; provided that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. No item for expenses shall be allowed, unless the officer present with his account to the officer whose duty it is to approve the same, a written receipt for each item of account, except as to such items as are furnished by the officer himself. When meals and lodgings are furnished by the officer in person, conveying the witness, he shall be allowed to receive not exceeding twenty-five cents per meal, and twenty-five cents per night for lodging. Each said receipt shall be filed with the clerk of the court approving such accounts. Said accounts shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest place of serving the attachment, giving his name and residence, and that said witness made oath in writing before said magistrate; certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and should it appear to the court that the witness is willing and able to give bond, the sheriff shall not be entitled to any compensation for conveying such witness. All accounts for fees in criminal cases, by sheriffs, shall be sworn to by the said officer, and shall state that said account is true, just

and correct in every particular, and be presented to the judge, who shall during such term of court, carefully examine such account and, if found to be correct, in whole or in part, shall so certify and allow the same for such amount as he may find to be correct. If allowed by him in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court. The clerk shall certify to the original account, and shall show that the same has been recorded, and said account shall then become due, and the same shall constitute a voucher on which the Comptroller is authorized to issue a warrant, if such account, when presented to the Comptroller, shall be accompanied by a certified copy under the hand and seal of the district clerk, of the returns made on the process for which such officer is claiming fees, corresponding to the amount so claimed in his account. The minutes of the court above provided for, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving the writ for the attachment of such a witness shall take bond for the appearance of such witness, he shall be entitled to receive from the State one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that the said bond is in proper form, and has been executed by the witness with one or more good and solvent sureties; and said bond shall in no case be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any account. When no inquest or examining trial has been held at which sufficient evidence is taken upon which to find an indictment, which fact shall be certified by the grand jury, or when the grand jury shall state to the district judge that an indictment cannot be procured except upon testimony of nonresident witnesses, the district judge may have attachments issued to other counties for witnesses not to exceed the number for which the sheriff may receive pay as provided for by law, to testify before grand juries; provided, that the judge shall not approve the accounts of any sheriff for more than one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury, in which case the sheriff shall receive the same compensation as he does for conveying attached witnesses before the court. Subdivision 7 of this article shall apply to the officers affected thereby in all counties in Texas.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 4 when removing such prisoner out of the county, under an order issued by a district or appellate judge. [1925 C.C.P.; Acts 1933, 43rd Leg., p. 144, ch. 69.]

Art. 1030. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election less than 3000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:

1. For executing each warrant of arrest or *capias*, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 4 shall be allowed; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For executing each warrant of arrest or *capias*, or for making arrest without warrant, when authorized by law, three dollars and fifteen cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying prisoners to jail, mileage as provided for in subdivision 4 shall be allowed; and one dollar shall be allowed for the approval of a bond.

2. For summoning or attaching each witness, fifty cents; provided that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For summoning or attaching each witness, fifty cents, and where a bond is required of said witness, for the approval of said bond, one dollar.

3. For summoning jury in each case, where jury is actually sworn in, two dollars.

4. For removing a prisoner, for each mile going and coming, including guards and all other expenses, when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same vicinity or neighborhood, during the

same trip; he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this subdivision; and his accounts shall show the facts; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents; provided, that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and the miles actually traveled in accordance with this subdivision; and his accounts shall show the facts.

6. To officers for service of criminal process not otherwise provided for, the sum of five cents a mile going and returning, shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rules prescribed in subdivision 5 shall apply; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: To officers for service of criminal process not otherwise provided for, the sum of ten cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying a witness attached by him to any court, or grand jury, or in habeas corpus proceeding out of his county, or when directed by the judge from any other county, to the

court where the case is pending, one dollar per day for each day actually and necessarily consumed in going and returning from such court, and his actual necessary expenses, by the nearest practicable route or nearest practicable public conveyance, the amount to be stated by him in an account, which shall show the place at which the witness was attached, the distance to the nearest railroad station, and miles actually traveled to reach the court; if horses or vehicles are used, from whom hired, and price paid, and length of time consumed, and the amount paid out for feeding horses, and to whom; if meals and lodging were provided, from whom and when and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. Said account shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before such magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect or shall show that the witness refused to make the affidavit and, should it appear to the court that the witness was able and willing to give bond the sheriff shall not be entitled to any compensation for conveying such witness; and said account shall be sworn to by the officer, and shall state that said account is true, just and correct in every particular, and present same to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such an amount as he may find to be correct; and, if by him allowed, in whole or in part, he shall so certify; and such account with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book to be kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court; and the clerk shall certify to the original account and shall show that the same has been so recorded; and said account shall then become due, and the same shall constitute a voucher, on which the Comptroller is authorized to issue a warrant; and such minutes of the court, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for

perjury, in case said affidavit shall be wilfully false. When the officer receiving a writ for the attachment of such witness shall take a bond for the appearance of any such witness he shall be entitled to receive from the State, one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that said bond is in proper form, and has been executed by the witness with one or more good or solvent securities; and said bond shall, in no case, be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any such account.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge.

[1925 C.C.P.]

Art. 1030a. Fugitives from Justice; Allowance to Sheriffs and Deputies for Expenses

Sec. 1. Every sheriff, or deputy sheriff, in any county of this State, who shall hereafter arrest, or cause to be arrested, any person, or persons indicted for a criminal offense of the grade of a felony, in the county where such officer is the duly acting sheriff, or deputy sheriff, shall be paid the sum of five cents (5¢) per mile from the state line and return thereto, along the nearest practicable route, to the point where such person or persons has been, or will be, placed under arrest, and in addition thereto, such officer, or officers, shall be paid, not to exceed Five Dollars (\$5) per day, per person, for hotel bills, meals and other expenses necessarily contracted in the performance of such official duty.

Sec. 2. The Comptroller of Public Accounts of the State of Texas is authorized and directed to pay, out of any fund or funds, provided for such purpose, upon the presentment of a duly itemized and verified mileage, per diem and expense account of any such officer, approved by the District Judge of the District where such official duty was performed as provided in the preceding Section, all of such account due, provided that only one (1) claim for mileage shall be paid for any such trip, and further providing that not more than two (2) such officers shall draw per diem and expense accounts for one (1) of such trips.

Sec. 3. In the event the Comptroller of Public Accounts of the State of Texas certifies that no funds are available for the payment of such per diem mileage and expense account, as specified in the preceding Section, then upon presentment of such itemized account duly verified by such officer and approved by the District Judge of the Judicial District in which such county is located, the Commis-

sioners Court is authorized, within its discretion, to pay out of any fund or funds not otherwise pledged, such mileage per diem and expense accounts.

Sec. 4. It is further specifically provided that if the county of the sheriff or deputy sheriff making said trip is operating on a fee basis and no State funds are available, then and in that event, the Commissioners Court is authorized, within its discretion, to pay out of any available funds the mileage and per diem not in excess of the amounts stated in Section 1 of this Act, to said sheriff or deputy sheriff from the county seat to the state line and return.

Sec. 5. The compensation herein provided for the sheriff or any deputy sheriff of the county shall be allowable to such officer as expenses of office, and shall not be included in his compensation, and/or salary paid him, as now authorized by law.

Sec. 6. The provisions of this Act shall be severable, and if any section, subsection, sentence, clause or word of the same shall be held unconstitutional, or invalid for any reason, the same shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have been adopted, had such invalid provision not been included therein.

Sec. 7. It is not the intention of the Legislature by the passage of this Act to repeal any existing law providing for the reimbursement of traveling expenses and this Act is cumulative of all other statutes on this subject.

[1925 C.C.P.]

Art. 1031. Services by Officer Other Than Sheriff

When services have been rendered by any peace officer other than a sheriff, such as are enumerated in the two preceding articles, such officer shall receive the same fees therefor as are allowed the sheriff. The same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and when received by such sheriff, he shall pay the same to such peace officer.

[Acts 1941, 47th Leg., p. 669, ch. 412.]

Art. 1032. Sheriff Shall Not Charge Fees, When

A sheriff shall not charge fees for arrests made by rangers, or mileage for prisoners transported by rangers, or mileage or other fees for transporting a witness under attachment issued from another county, unless such witness refuses to give bail for his appearance, or files an affidavit with such sheriff of his inability to give bail.

[1925 C.C.P.]

Art. 1033. Officer Shall Make Out Cost Bill

Before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court shall each make out a bill of the costs claimed to be due them by the State, respectively, in the felony cases tried at that term; the bill shall show:

1. The style and number of each case.
2. The offense charged against the defendant.
3. The term of the court at which the case was disposed of.
4. The disposition of the case, and that the case was finally disposed of, and no appeal taken.
5. The name and number of defendants; and, if more than one, whether they were tried jointly or separately.
6. Where each defendant was arrested, or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served.
7. The court shall inquire whether there have been several prosecutions for a transaction that is but one offense in law. If there is more than one prosecution for the same transaction, or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees to sheriffs, clerks and district and county attorneys in but one prosecution.
8. Where the defendants in a case have severed on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case as tried; but only such additional fees shall be allowed as are caused by the severance.

[1925 C.C.P.]

Art. 1034. Judge to Examine Bill, etc.

The District Judge, when any such bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and such approval shall be conditioned only upon, and subject to the approval of the State Comptroller as provided for in Article 1035 of this Code, and the Judge's approval shall so state therein; and such bill, with the action of the Judge thereon, shall be entered on the minutes of said Court; and immediately on the rising of said Court, the Clerk thereof shall make a certified copy from the minutes of said Court of said bill, and the action of the Judge thereon, and send same by registered letter to the Comptroller. Provided the bill herein referred to shall before being

presented to such District Judge, be first presented to the County Auditor, if such there be, who shall carefully examine and check the same, and shall make whatever recommendations he shall think proper to be made to such District Judge relating to any item or the whole bill.

Fees due District Clerks for recording sheriff's accounts shall be paid at the end of said term; and all fees due District Clerks for making transcripts on change of venue and on appeal shall be paid as soon as the service is performed; and the Clerk's bill for such fees shall not be required to show that the case has been finally disposed of. Bills for fees for such transcripts shall be approved by the District Judge as above provided, and with the same conditions, and when approved shall be recorded as part of the minutes of the last preceding term of the Court. [1925 C.C.P.; Acts 1931, 42nd Leg., p. 239, ch. 143, § 1.]

Art. 1035. Duty of Comptroller

The Comptroller upon the receipt of such claim, and said certified copy of the minutes of said Court, shall closely and carefully examine the same, and, if he deems the same to be correct, he shall draw his warrant on the State Treasurer for the amount found by him to be due, and in favor of the officer entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall file the same away, if found to be correct, and issue a certificate in the name of the officer entitled to the same, stating herein the amount of the claim and the character of the services performed. All such claims or accounts not sent to or placed on file in the office of the Comptroller within twelve (12) months from the date the same becomes due and payable shall be forever barred.

[1925 C.C.P.; Acts 1931, 42nd Leg., p. 239, ch. 143, § 2.]

CHAPTER ONE HUNDRED FOUR. COSTS PAID BY COUNTIES

Article

- 1037. County Liable for Costs.
- 1038. Food and Lodging of Jurors.
- 1039. Juror May Pay His Own Expenses.
- 1040. Allowance to Sheriff for Prisoners.
- 1041. Guards and Matrons.
- 1041a. Chief Jailer or Turnkey.
- 1041b. Vacations for Jailers, Jail Guards and Matrons.
- 1042. Sheriff Reimbursed.
- 1043. Sheriff Shall Present Account.
- 1044. Judge Shall Examine Account.
- 1045. Judge Shall Give Sheriff Draft.
- 1046. Account for Keeping Prisoners.
- 1047. Court to Examine Account.
- 1048. Expenses of Prisoner from Another County.
- 1049. Draft to Sheriff.
- 1050. In Case of Change of Venue.
- 1051. Account in Change of Venue.
- 1052. Fees of Judge and Justice of the Peace.
- 1053. Inquest Fee.
- 1054. Pay for Inquest.

- 1055. Half Costs Paid Officers.
- 1056. Repealed.
- 1057. Repealed.
- 1058. Pay of Bailiffs.
- 1058a. Bailiffs of Court of Civil Appeals.
- 1059. Certificates for Pay.
- 1060. Receivable for Taxes.

Art. 1037. County Liable for Costs

Each county shall be liable for all expense incurred on account of the safe keeping of prisoners confined in jail or kept under guard, except prisoners brought from another county for safe keeping, or on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping. [1925 C.C.P.]

Art. 1038. Food and Lodging of Jurors

The Sheriff of each County shall, with the approval of the Commissioners Court, provide food and lodging for jurors empaneled in a felony case and jurors so empaneled shall be paid as other jurors are paid, in addition to such food and lodging. [1925 C.C.P.; Acts 1953, 53rd Leg., p. 918, ch. 380, § 1.]

Art. 1039. Juror May Pay His Own Expenses

A juror may pay his own expenses and draw his script; but the county is responsible in the first place for all expense incurred by the sheriff in providing suitable food and lodging for the jury, not to exceed two dollars a day. [1925 C.C.P.]

Art. 1040. Allowance to Sheriff for Prisoners

For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

1. For the safekeep of each prisoner for each day the sum of fifteen cents, not to exceed the sum of two hundred dollars per month.

2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office.

3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper.

4. For reasonable funeral expenses in case of death.

[1925 C.C.P.]

Art. 1041. Guards and Matrons

The sheriff shall be allowed for each guard or matron necessarily employed in the safekeeping of prisoners Two Dollars and Fifty Cents (\$2.50) for each day. No allowance shall be made for the board of such guard or matron, nor shall any allowance be made for jailer or turnkey, except in counties having a population in excess of forty thousand (40,000) inhabitants according to the last preceding Federal Census. In such counties of forty thousand (40,000) or more inhabitants, the Commissioners Court may allow each jail guard, matron, jailer and turnkey Four Dollars and Fifty Cents (\$4.50) per day; provided that in counties having a population in excess of seventy thousand (70,000) inhabitants and less than two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court of such counties may allow each jail guard, jailer, matron and turnkey a salary of not to exceed One Hundred and Eighty-seven Dollars and Fifty Cents (\$187.50) per month; provided further that, in counties having a population in excess of two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, each jail guard, matron, jailer, jail bookkeeper and turnkey shall be paid not less than One Hundred and Seventy-five Dollars (\$175) per month.

[1925 C.C.P.; Acts 1937, 45th Leg., p. 7, ch. 7, § 1; Acts 1941, 47th Leg., p. 843, ch. 518, § 1; Acts 1945, 49th Leg., p. 205, ch. 158, § 1; Acts 1947, 50th Leg., p. 166, ch. 104, § 1.]

Art. 1041a. Chief Jailer or Turnkey

In all counties in this State having a population of one hundred and forty-five thousand (145,000) inhabitants and not more than three hundred thousand (300,000) inhabitants according to the last or any future Federal Census, the Commissioners Court shall allow the chief jailer and/or turnkey who has the care and custody of persons in the County Jail, not to exceed Eight Dollars (\$8) per day, and shall allow each assistant jailer and/or turnkey who has the care and custody of prisoners in the County Jail, not to exceed Six Dollars and Fifty Cents (\$6.50) per day, and not to exceed four (4) assistant jailers and/or turnkeys and a matron for each jail.

[Acts 1933, 43rd Leg., 1st C.S., p. 151, ch. 51, § 1; Acts 1947, 50th Leg., p. 1011, ch. 429, § 1.]

Art. 1041b. Vacations for Jailers, Jail Guards and Matrons

Every member of the sheriff's department assigned to duty as jailer, jail guard, or jail matron at any county jail in any city of more than twenty-five thousand (25,000) inhabitants shall be allowed fifteen (15) days vacation in each year with pay, not more than two (2) members to be on vacation at the same time; provided that the provisions of this Section of this Act shall not be applied to any such jailer, jail guard, or jail matron in any city of more than twenty-five thousand (25,000) inhabitants, unless such members shall have been regularly employed as such jailer, jail guard, or jail matron for a period of at least one year.

Each preceding Federal Census shall determine the population.

The sheriff having supervision of the county jail shall designate the days upon which each jailer, jail guard, or jail matron shall be allowed to be on vacation.

The sheriff having supervision of the county jail in any such city who violates any provision of this Article shall be fined not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100).
[Acts 1937, 45th Leg., p. 247, ch. 129, § 1.]

Art. 1042. Sheriff Reimbursed

The sheriff shall pay the expenses of jurors impaneled in cases of felony (except when they are paid by the juror himself), the expenses of employing and maintaining a guard, and to support and take care of all prisoners, for all of which, he shall be reimbursed by the proper county according to the rates fixed in the two preceding articles.
[1925 C.C.P.]

Art. 1043. Sheriff Shall Present Account

At each term of the district court of his county, the sheriff may present to the district judge presiding his accounts for all expenses incurred by him for food and lodging of jurors in case of trials for felony during the term at which his account is presented. Such account shall state the number and style of the cases in which the jurors were impaneled, and specify by name each juror's expenses paid by such sheriff, and the number of days the same were paid, and shall be verified by the affidavit of such sheriff.
[1925 C.C.P.]

Art. 1044. Judge Shall Examine Account

Such account shall be carefully examined by the district judge; and he shall approve it, or so much thereof as he finds correct. He shall write his approval of said account, specifying the amount for which it is approved, date and sign the same officially, and shall cause the same to be filed in the office of the district clerk of the county liable therefor.
[1925 C.C.P.]

Art. 1045. Judge Shall Give Sheriff Draft

The district judge shall give the sheriff a draft upon the county treasurer of the proper county for the amount of each account allowed by him; and the same, when presented to such treasurer, shall be paid in like manner as jury certificates are paid.
[1925 C.C.P.]

Art. 1046. Account for Keeping Prisoners

At each regular term of the commissioners court, the sheriff shall present to such court his account verified by his affidavit for the expense incurred by him since the last account presented for the safe-keeping and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment.
[1925 C.C.P.]

Art. 1047. Court to Examine Account

The commissioners court shall examine such account and allow the same, or so much thereof as is reasonable and in accordance with law, and shall order a draft issued to the sheriff upon the county treasurer for the amount so allowed. Such account shall be filed and kept in the office of such court.
[1925 C.C.P.]

Art. 1048. Expenses of Prisoner from Another County

If the expenses incurred are for the safe-keeping and maintenance of a prisoner from another county, the sheriff shall make out a separate account therefor, and submit the same to the county judge of his county, who shall carefully examine the same, write thereon his approval for such amount as he finds correct and sign and date such approval officially.
[1925 C.C.P.]

Art. 1049. Draft to Sheriff

The account mentioned in the preceding article shall then be presented to the commissioners court of the county liable for the same, at a regular term of such court; and such court shall, if the charges therein be in accordance with law, order a draft issued to the sheriff upon the county treasurer for the amount allowed.
[1925 C.C.P.]

Art. 1050. In Case of Change of Venue

In all causes where indictments have been presented against persons in one county and such causes have been removed by change of venue to another county, and tried therein, the county from which such cause is removed shall be liable for all

expenses incurred for pay for jurors in trying such causes.

[1925 C.C.P.]

Art. 1051. Account in Change of Venue

The county commissioners of each county at each regular meeting shall ascertain whether, since the last regular meeting, any person has been tried for crime upon a change of venue from any other county. If they find such to be the case they shall make out an account against such county from which such cause was removed showing the number of days the jury in such case was employed therein, and setting forth the amount paid for such jury service; such account shall then be certified to as correct by the county judge of such county, under his hand and seal, and be, by him, forwarded to the county judge of the county from which the said cause was removed; which account shall be paid in the same manner as accounts for the safe keeping of prisoners.

[1925 C.C.P.]

Art. 1052. Fees of Judge and Justice of the Peace

Five Dollars (\$5) shall be paid to the County Judge or Judge of the Court at Law and Four Dollars (\$4) shall be paid to the Justice of the Peace for each criminal action tried and finally disposed of before him. Such Judge or Justices shall present to the Commissioners Court of his county at a regular term thereof a written account specifying each criminal action in which he claims such fee certified by such Judge or Justice to be correct and filed with the County Clerk. The Commissioners Court shall approve such account for such amounts as they find to be correct and order a draft to be issued on the County Treasurer in favor of such Judge or Justice for the amount due said Judge or Justice from the county. The Commissioners Court shall not however pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney or his assistant, Criminal District Attorney or his assistant and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in their judgment there was sufficient evidence in said cause to demand a trial of the same. All fees provided herein which are paid to officers who are compensated on a salary basis shall be paid into the Officers Salary Fund.

[1925 C.C.P.; Acts 1929, 41st Leg., 1st C.S., p. 155, ch. 55, § 1; Acts 1949, 51st Leg., p. 917, ch. 496, § 1; Acts 1953, 53rd Leg., p. 852, ch. 344, § 1.]

Art. 1053. Inquest Fee

A Justice of the Peace shall be entitled, for an inquest on a dead body, including certifying and

returning the proceeding to the proper court, the sum of Ten Dollars (\$10), to be paid by the county. When an inquest is held over the dead body of a State penitentiary convict, the State shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the Commissioners Court of the county in which the inquest may be held and by the General Manager of the Texas Prison System.

[1925 C.C.P.; Acts 1947, 50th Leg., p. 745, ch. 369, § 5.]

Art. 1054. Pay for Inquest

Any officer claiming pay for services mentioned in the preceding article shall present to the commissioners court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant. If such account be found correct the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him. Such account shall be filed and kept in the office of the county clerk.

[1925 C.C.P.]

Art. 1055. Half Costs Paid Officers

The county shall not be liable to the officer and witness having costs in a misdemeanor case where defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine out on the county roads or on any county project. And to pay such half of costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated.

[1925 C.C.P.; Acts 1937, 45th Leg., p. 1323, ch. 488, § 1; Acts 1939, 46th Leg., p. 143, § 1.]

Art. 1056. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, Art. 2122.

Art. 1057. Repealed by Acts 1945, 49th Leg., p. 371, ch. 239, § 4

Art. 1058. Pay of Bailiffs

Each grand jury bailiff appointed as such bailiff shall receive as compensation for his services the sum of Five (\$5.00) Dollars for each day he may serve, and each riding grand jury bailiff appointed in counties of a population of one hundred fifty thousand (150,000) or more, according to the last Federal Census, shall receive as compensation for his services the sum of Six (\$6.00) Dollars for each day he may serve, and shall further receive One (\$1.00) Dollar per day for automobile expense and upkeep; provided, however, that not more than ten (10) such bailiffs shall be employed at any one time; and providing further, that the sheriff or deputy sheriff attending any County or District Court in counties

of over three hundred fifty thousand (350,000), according to the last preceding Federal Census shall be paid the sum of Six (\$6.00) Dollars for each day the sheriff or deputy sheriff shall serve in any of such said courts as bailiffs, and One (\$1.00) Dollar per day as automobile expense and upkeep for each day he may use said automobile.

The compensation herein provided for shall be paid from the General or Jury Fund of the county affected, as may be determined by the Commissioners Court thereof, upon sworn accounts showing the Court in which or the Grand Jury for which, said Bailiff, Sheriff, or Deputy Sheriff serves, with a statement showing the dates on which the service was performed and the amounts due. No such claim shall be paid until approved by the foreman of the Grand Jury or the Judge of the Court for which the service was performed, and said claim shall be presented to the Commissioners Court or to the County Auditor in counties having a County Auditor, and shall be allowed in the manner provided by law for so much thereof as may be found due, and no warrant in payment of the amount due shall be paid unless countersigned by the County Auditor, if any.

[1925 C.C.P.; Acts 1927, 40th Leg., p. 320, ch. 217, § 1; Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1; Acts 1931, 42nd Leg., p. 222, ch. 130, § 1; Acts 1935, 44th Leg., p. 476, ch. 192, § 1; Acts 1947, 50th Leg., p. 781, ch. 388, § 1.]

Art. 1058a. Bailiffs of Court of Civil Appeals

That the Commissioners court of any county, having a population of 210,000 or more, in which is located a Court of Civil Appeals having its quarters in the County Court House, is authorized to pay out of its General Fund, not exceeding fifty dollars per month, to the Bailiff of such Court of Civil Appeals, or other employee of said Court designated by it, as additional compensation for his services as Custodian of the Court Room, Judges Chambers and Library of such Court of Civil Appeals.

[Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1.]

Art. 1059. Certificates for Pay

The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the proper clerk or the justice of the peace, stating the service, when and by whom rendered, and the amount due therefor.

[1925 C.C.P.]

Art. 1060. Receivable for Taxes

Drafts drawn and certificates issued under the provisions of this chapter may be transferred by delivery, and shall without further action or acceptance by any authority, except registration by the county treasurer, be receivable from the holder thereof at par for all county taxes.

[1925 C.C.P.]

CHAPTER ONE HUNDRED FIVE. COSTS TO BE PAID BY DEFENDANT

1. IN DISTRICT AND COUNTY COURTS

Article

- 1061. District and County Attorneys.
- 1062. Joint Defendants.
- 1063. Attorney Appointed.
- 1064. District and County Clerks.
- 1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee.

2. JURY AND TRIAL FEES

- 1075. Jury Fee in Justice Court.
- 1076. Several Defendants.
- 1077. Jury Fee Collected.

3. WITNESS FEES

- 1078. Fees of Witnesses.
- 1079. Taxed Against Defendant.
- 1080. No Fees Allowed.
- 1081. Witness Record.
- 1082. Witness Liable for Costs.

4. CRIMINAL JUSTICE PLANNING FUND

- 1083. Criminal Justice Planning Fund.

1. IN DISTRICT AND COUNTY COURTS

Art. 1061. 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).

[1925 C.C.P.; Acts 1955, 54th Leg., p. 1112, ch. 410, § 1.]

Art. 1062. Joint Defendants

Where several defendants are tried together, but one fee shall be allowed and taxed in the case for the district or county attorney. Where the defendants sever and are tried separately, a fee shall be allowed and taxed for each trial.

[1925 C.C.P.]

Art. 1063. Attorney Appointed

An attorney appointed by the court to represent the State in the absence of the district or county attorney shall be entitled to the fee allowed by law to the district or county attorney.

[1925 C.C.P.]

Art. 1064. Fees of District and County Clerks

(1) The clerks of the county courts, county courts at law and district courts shall be allowed the following fees:

(a) A fee of Fifteen Dollars (\$15.00) in each cause filed in said courts: for filing complaints, information, for docketing and taxing costs for each defendant, for issuing original writs, issuing subpoenas, for swearing and impaneling a jury, receiving and recording verdict, for filing each paper entered in this cause, for swearing witnesses and for all other clerical duties in connection with such cause in county and district courts.

(b) A fee of One Dollar (\$1.00) per page or part of a page, to be paid at the time each order is placed, for issuing each certified copy, transcript or any other paper authorized, permitted, or required, to be issued by said county clerk or clerk of county courts or clerk of district courts.

[1925 C.C.P.; Acts 1967, 60th Leg., p. 2010, ch. 743, § 1, eff. Aug. 28, 1967.]

Art. 1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee

In any county having a population of not less than 53,500, nor more than 53,800, according to the last preceding federal census, the clerk of the county court is entitled to a fee of \$5 for the administrative costs of handling temporary support orders issued pursuant to Article 604, Penal Code of Texas, 1925, as amended. The fee shall be taxed against the defendant at the time the order is entered against him.

[Acts 1971, 62nd Leg., p. 2371, ch. 732, § 1, eff. June 8, 1971.]

2. JURY AND TRIAL FEES

Art. 1075. Jury Fee in Justice Court

If the defendant is convicted in a criminal action tried by a jury in a justice court, a jury fee of three dollars shall be taxed against him.

[1925 C.C.P.]

Art. 1076. Several Defendants

Only one jury fee shall be taxed against several defendants tried jointly. A jury fee shall be taxed in each trial if they sever and are tried separately.

[1925 C.C.P.]

Art. 1077. Jury Fee Collected

A jury fee shall be collected as other costs in a case, and the officer collecting it shall forthwith pay it to the county treasurer of the county where the conviction was had.

[1925 C.C.P.]

3. WITNESS FEES

Art. 1078. Fees of Witnesses

Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial.

[1925 C.C.P.]

Art. 1079. Taxed Against Defendant

Upon conviction, the costs accruing from the attendance of witnesses shall be taxed against the defendant, upon the affidavit of such witness, or of some credible person, stating the number of days that such witness has attended upon the court in the case, and the number of miles he has traveled in going to and returning from the place of trial. The affidavit shall be filed with the papers in the case.

[1925 C.C.P.]

Art. 1080. No Fees Allowed

No fees shall be allowed to a person as witness fee unless such person has been subpoenaed, attached or recognized as a witness in the case.

[1925 C.C.P.]

Art. 1081. Witness Record

Each clerk of the district and county court or county court at law, and each justice of the peace, shall keep a book, in which shall be entered the number and style of each criminal action in their respective courts, and the name of each witness subpoenaed, attached or recognized to testify therein, showing whether on the part of the State or the defendant.

[1925 C.C.P.]

Art. 1082. Witness Liable for Costs

In any criminal case where a witness has been subpoenaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the court why he failed to obey the subpoena.

[1925 C.C.P.]

4. CRIMINAL JUSTICE PLANNING FUND

Art. 1083. Criminal Justice Planning Fund

Purpose

Sec. 1. The purpose of this Act is to create and establish a special fund to be known as the Criminal Justice Planning Fund to provide the State and local funds required by Public Law 90-351, Title I, Omnibus Crime Control and Safe Streets Act of 1968, as amended,¹ to provide for costs of court as the source of these funds, and to provide that the costs to be

borne in part by those who necessitate the establishment and maintenance of the criminal justice system.

142 U.S.C.A. § 3701 et seq.

Creation

Sec. 2. There is hereby created and established a special fund to be known as the Criminal Justice Planning Fund.

Costs Upon Conviction in Certain Misdemeanor Cases; Traffic Violations

Sec. 3. (a) The sum of \$2.50 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each misdemeanor case in which original jurisdiction lies in courts whose jurisdiction is limited to a maximum fine of \$200.00 only.

(b) Convictions arising under the traffic laws of this State are specifically included and are those defined in:

(1) Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), known as the "Driver's License Law"; and

(2) Chapter 421, Acts of the 50th Legislature, 1947, as amended (Article 6701d, Vernon's Texas Civil Statutes) known as the "Uniform Act Regulating Traffic on Highways," except laws regulating pedestrians and the parking of motor vehicles.

Costs Upon Conviction in Misdemeanor and Felony Cases

Sec. 4. The sum of \$5.00 shall be taxed as costs of court in addition to other taxable court costs, upon conviction in each misdemeanor case and the sum of \$10.00 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each felony case in all cases in which original jurisdiction lies in courts whose jurisdiction is limited to fines and/or confinement in a jail or the department of corrections.

Collection of Costs

Sec. 5. The costs due the State under this Act shall be collected along with and in the same manner as other fines or costs are collected in the case.

Officers Collecting Costs; Separate Records; Deposits

Sec. 6. (a) The officer collecting the costs due under this Act in cases in municipal court shall keep separate records of the funds collected as costs under this Act, and shall deposit the funds in the municipal treasury.

(b) The officer collecting the costs due under this Act in justice, county and district courts shall keep

separate records of the funds collected as costs under this Act, and shall deposit the funds in the county treasury.

(c) The officer collecting the costs due under this Act in county courts on appeal from justice or municipal courts shall keep separate records of the funds collected under this Act, and shall deposit the funds in the county treasury.

Custodians of Funds; Quarterly Remittance; Service Fee

Sec. 7. The custodians of the municipal and county treasuries with whom funds collected under this Act are deposited shall keep records of the amount of funds collected under this Act which are on deposit with them, and shall on the first day of January, April, July and October of each year remit to the Comptroller of Public Account funds collected under this Act during the preceding quarter. The municipal and county treasuries are hereby authorized to retain five percent (5%) of funds collected under this Act as a service fee for said collection.

Special Fund Deposits

Sec. 8. The Comptroller of Public Accounts shall deposit the funds received by him in a Special Fund to be known as the Criminal Justice Planning Fund.

Appropriation of Funds; Simultaneous Expenditure with Federal Funds

Sec. 9. The funds so deposited in the Criminal Justice Planning Fund are hereby appropriated to the expenditure of State and local matching funds required by Public Law 90-351, Title I, Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Omnibus Crime Control Act of 1970 and determined by the appropriations of Congress to carry out the provisions of said Act. The expenditure of Criminal Justice Planning Funds shall be simultaneous with the expenditure of federal funds.

Appropriation of Unexpended Balance of Funds Authorized

Sec. 10. The Legislature may appropriate the unexpended balance of the Criminal Justice Planning Funds for the preceding biennium for the improvement and upgrading of the criminal justice system as defined in the aforementioned federal Act.

Officers Collecting Funds; Reports

Sec. 11. All officers collecting funds due as costs under this Act shall file the reports required under Articles 1001 and 1002, Code of Criminal Procedure, 1965.

[Acts 1971, 62nd Leg., p. 2855, ch. 935, §§ 1 to 11, eff. Aug. 30, 1971.]

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§ 5.173. Cancellation in Whole

If no part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole as provided by this subchapter. [Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.174. Commission to Initiate Proceedings

When the commission finds that its records do not show that any water has been beneficially used under a permit, certified filing, or certificate of adjudication during the past 10 years, it shall initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.175. Notice

(a) At least 30 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of water rights pursuant to Section 5.303 of this code in the same watershed.

(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made, and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county. [Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.176. Hearing

The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the

purposes authorized by the permit, certified filing, or certificate of adjudication during the 10-year period.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.177. Commission Finding; Action

At the conclusion of the hearing, if the commission finds that no water has been beneficially used for authorized purposes during the 10-year period, the appropriation is deemed to have been wilfully abandoned, of no further force and effect, and the commission shall cancel the permit, certified filing, or certificate of adjudication.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.178. Cancellation in Part

If some part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, certified filing, or certificate of adjudication is subject to partial cancellation, as provided by this subchapter, to the extent of the 10 years' nonuse.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.179. Commission May Initiate Proceedings

When the commission finds that its records do not show proof that some portion of the water has been used during the past 10 years, it may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.180. Notice

The commission shall give notice of the hearing as provided by Section 5.175 of this code.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.181. Hearing

The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an

opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.182. Commission Finding; Action

(a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication to the extent that it finds that:

(1) any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period;

(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

(1) the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication;

(2) the purpose to which the water is to be applied;

(3) the priority of the purpose; and

(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.183. Reservoir

If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir, for domestic, livestock, or recreation purposes.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.184. Municipal Certified Filing

Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during

the 10-year period immediately preceding the institution of cancellation proceedings.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.185. Effect of Commission Inaction

Failure of the commission to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, certified filing, or certificate of adjudication in whole or in part.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

§ 5.186. Subsequent Proceedings on Same Water Right

Once cancellation proceedings have been initiated against a particular permit, certified filing, or certificate of adjudication and a hearing has been held, the commission shall not initiate further cancellation proceedings against the same permit, certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing.

[Amended by Acts 1975, 64th Leg., p. 49, ch. 27, § 1, eff. March 27, 1975.]

See note under Section 5.171.

SUBCHAPTER G. WATER RIGHTS ADJUDICATION ACT

§ 5.306. Notice of Adjudication

[See *Compact Edition, Volume 1* for text of (a) and (b)]

(c) The notice shall also be sent by first-class mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the commission.

[Amended by Acts 1975, 64th Leg., p. 1882, ch. 595, § 1, eff. Sept. 1, 1975.]

§ 5.312. Notice of Preliminary Determination; Copies

[See *Compact Edition, Volume 1* for text of (a)]

(b) The commission shall also send notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission.

[See *Compact Edition, Volume 1* for text of (c)]

[Amended by Acts 1975, 64th Leg., p. 1882, ch. 595, § 2, eff. Sept. 1, 1975.]

SUBTITLE B. WATER DEVELOPMENT
CHAPTER 11. WATER DEVELOPMENT BOARD

SUBCHAPTER D. PLANNING

Section
11.108. Studies of Bays and Estuaries [NEW].

SUBCHAPTER C. DUTIES OF EXECUTIVE DIRECTOR AND STAFF

§ 11.062. Studies, Investigations, Surveys

(a) The staff shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

(b) The staff shall:

- (1) determine suitable locations for future water facilities including reservoir sites;
- (2) locate land best suited for irrigation;
- (3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;
- (4) examine and survey reservoir sites; and
- (5) investigate the effects of fresh water inflows upon the bays and estuaries of Texas.

(c) The staff shall keep full and proper records of its work, observations, data, and calculations, all of which are the property of the state.

(d) In performing its duties under this section, the staff shall assist the commission in carrying out the purposes and policies stated in Section 6.054 of this code.

[Amended by Acts 1975, 64th Leg., p. 926, ch. 344, § 3, eff. June 19, 1975.]

SUBCHAPTER D. PLANNING

§ 11.108. Studies of Bays and Estuaries

The board shall carry out comprehensive studies of the effects of fresh water inflows upon the bays and estuaries of Texas, which studies shall include the development of methods of providing and maintaining the ecological environment thereof suitable to their living marine resources. The studies shall be completed and the results published by December 31, 1979. The Texas Water Rights Commission, the Texas Water Quality Board, the General Land Office, the Parks and Wildlife Department, and the Texas Coastal and Marine Council are authorized and directed to assist and cooperate in all possible ways with the board in this undertaking.

[Added by Acts 1975, 64th Leg., p. 925, ch. 344, § 4, eff. June 19, 1975.]

Sections 5 and 6 of the 1975 Act provided:

"Sec. 5. There is hereby appropriated to the Texas Water Development Board \$250,000 for fiscal year 1976 and any unexpended balances for fiscal year 1977 in addition to funds appropriated to the board in the General Appropriations Act for bay and estuary studies and fresh water inflow needs of those systems."

"Sec. 6. Any law in conflict with the provisions of this Act is specifically repealed to the extent the same is in conflict."

CHAPTER 14. WEATHER MODIFICATION

SUBCHAPTER A. GENERAL PROVISIONS

§ 14.002. Definitions

As used in this chapter, unless the context requires a different definition:

(1) "board" means the Texas Water Development Board;

(2) "weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere;

(3) "operation" means the performance of weather modification and control activities entered into for the purpose of producing, or attempting to produce, a certain modifying effect within one geographical area over one continuing time interval not exceeding four years; and

(4) "research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

[Amended by Acts 1975, 64th Leg., p. 1394, ch. 538, § 1, Sept. 1, 1975.]

SUBCHAPTER C. LICENSES AND PERMITS

§ 14.061. Issuance of Permit

(a) The board, in accordance with its regulations, and upon a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area, may issue a weather modification permit to each applicant who:

- (1) holds a valid weather modification license;
- (2) pays the permit fee;
- (3) publishes a notice of intention and submits proof of publication as required by this chapter; and
- (4) furnishes proof of financial responsibility.

(b) The Board shall, if requested by at least 25 persons, hold at least one public hearing in the area where the operation is to be conducted prior to the issuance of a permit.

[Amended by Acts 1975, 64th Leg., p. 1394, ch. 538, § 2, eff. Sept. 1, 1975.]

§ 14.063. Scope of Permit

A separate permit is required for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. The board shall not issue a permit for a contracted operation unless it covers a continuous period not to exceed four years.

[Amended by Acts 1975, 64th Leg., p. 1395, ch. 538, § 3, eff. Sept. 1, 1975.]

SUBTITLE C. WATER QUALITY CONTROL

CHAPTER 21. WATER QUALITY BOARD

SUBCHAPTER C. POWERS AND DUTIES

Section

21.0971. Pump-out Facilities for Boat Sewage [NEW].

21.098. Hearings on Protection of Edwards Aquifer From Pollution [NEW].

SUBCHAPTER D. REGIONAL AND AREA-WIDE SYSTEMS

21.2041. Inclusion at a Later Time [NEW].

SUBCHAPTER H. CRIMINAL PROSECUTION

21.5531. Criminal Penalty for Violation of Private Sewage Facility Order [NEW].

SUBCHAPTER K. COASTAL OIL AND HAZARDOUS SPILL PREVENTION AND CONTROL [NEW]

21.801. Short Title.

21.802. Policy.

21.803. Definitions.

21.804. Administrative Provisions.

21.805. Texas Coastal Protection Fund.

21.806. Removal of Accidental Discharge.

21.807. Exemptions.

21.808. Penalties.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 21.039. Biennial Reports

The board shall make biennial written reports to the governor and to the legislature and shall include in each report a statement of its activities, suggestions for amending existing laws, and suggestions for new laws that should be enacted.

[Amended by Acts 1975, 64th Leg., p. 1026, ch. 393, § 1, eff. June 19, 1975.]

SUBCHAPTER C. POWERS AND DUTIES

§ 21.083. Private Sewage Facilities

[See Compact Edition, Volume 1 for text of (a) to (f)]

(g) The board may delegate the licensing function and the administration of the licensing system to the executive director or to any local government whose boundaries include the area or which has been designated by the board under Sections 21.201-21.205 of this code as the agency to develop a regional waste disposal system which includes the area or to any district or authority created and existing under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, which owns or operates a dam or reservoir project within the area regulated.

[See Compact Edition, Volume 1 for text of (h) to (j)]

[Amended by Acts 1975, 64th Leg., p. 1890, ch. 601, § 1, eff. June 19, 1975.]

§ 21.0971. Pump-out Facilities for Boat Sewage

(a) In this section:

(1) "Boat" means the same as defined in Section 21.097(a), Water Code.

(2) "Boat pump-out station" means any private or public shoreside installation either independent of or in addition to an organized waste collection, treatment, and disposal system used to receive boat sewage.

(3) "Shoreside installation" means marinas and other installations servicing boats on fresh water of Texas.

(4) "Fresh water" means as geographically implied all of the surface lakes, streams, and reservoirs of the state, exclusive of the extent of ordinary tidal action on this water.

(b) After a public hearing and after making every reasonable effort to bring about the establishment of an adequate number of boat pump-out stations on fresh water, the board may enter an order requiring the establishment of boat pump-out stations by a local government that has any jurisdiction over at least a portion of the fresh water or over land immediately adjacent to the fresh water.

(c) If a local government is authorized to issue authorization for the operation of shoreside installations, the local government may require the installation and operation of boat pump-out stations where necessary. The local government shall require the installation and operation of boat pump-out stations if required by the board.

(d) A local government responsible for establishing boat pump-out stations may issue bonds or may use general revenue funds from normal operations to finance the construction and operation of the pump-out facilities. Pump-out stations established as a result of this Act will be self-sustaining with respect to costs and revenues collected from users of said facilities and local governments are authorized to levy reasonable, appropriate charges or fees to recover cost of installation and operation of the

pump-out stations. Nothing in this Act is to be construed to require any local government to rebate to the State of Texas funds collected pursuant to this program.

(e) The hearings required by this section and other acts of the board in carrying out the provisions of this section shall be handled as provided in the rules of the board.

[Added by Acts 1975, 64th Leg., p. 858, ch. 327, § 1, eff. Sept. 1, 1975.]

§ 21.098. Hearings on Protection of Edwards Aquifer From Pollution

(a) As used in this section, "Edwards Aquifer" means that portion of an arcuate belt of porous waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively and as defined in the most recent order of the board adopting rules for the protection of the quality of the potable underground water in those counties.

(b) Annually, the board shall hold a public hearing in either Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays county, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the board should take to protect the Edwards Aquifer from pollution.

(1) Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the rules of the board.

(2) The hearings examiner, appointed by the board or the executive director of the board, shall convene the public hearing at an hour convenient for the public to attend, but not later than 10:00 a.m. of the day set for the public hearing, and shall close the public hearing no later than 6:00 p.m. of the same day.

[Added by Acts 1975, 64th Leg., p. 2371, ch. 730, § 1, eff. Sept. 1, 1975.]

[Sections 21.099 to 21.200 reserved for expansion]

SUBCHAPTER D. REGIONAL AND AREA-WIDE SYSTEMS

§ 21.204. Actions Available to Board After Designating Systems

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

(b) Before exercising the authority granted in this section, the board shall find affirmatively:

(1) that there is an existing or proposed regional or area-wide system designated under Section 21.203 of this code which is capable, or which in the reasonably foreseeable future will

be capable, of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the board under this section;

(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service;

(3) that it is feasible for the service to be provided on the basis of waste collection, treatment and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest; and

(4) that inclusion of the person or persons who are the subject of an action taken by the board under this section will not suffer undue financial hardship as a result of inclusion in a regional or area-wide system.

(A) An action taken by the board under Section 21.2041 of this code, excluding any person or persons from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system, shall be subject to a review at a later time determined by the board in accordance with the criteria set out in this section, not to exceed three years from the date of exclusion.

(B) If a person or persons excluded from a regional or area-wide system fail to operate the excluded facilities in a manner that will comply with its permits, the permits shall be subject to cancellation after review by the board and the facilities may become a part of the regional or area-wide system.

[Amended by Acts 1975, 64th Leg., p. 1043, ch. 406, § 1, eff. June 19, 1975.]

§ 21.2041. Inclusion at a Later Time

Any person or persons who are the subject of an action taken by the board under Section 21.204 of this code, and who are excluded from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system, may be added to the system at a later time under the provisions of Section 21.204 of this code.

[Added by Acts 1975, 64th Leg., p. 1043, ch. 406, § 2, eff. June 19, 1975.]

§ 21.5531. Criminal Penalty for Violation of Private Sewage Facility Order

(a) A person who violates any rule or regulation adopted by the board under Section 21.083 of this

code or adopted by a county under Section 21.084 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day that a violation occurs constitutes a separate offense.

(b) Jurisdiction for prosecution of a suit under this section is in the justice of the peace courts.

(c) Venue for prosecution of a suit under this section is in the justice of the peace precinct in which the violation is alleged to have occurred.

[Added by Acts 1975, 64th Leg., p. 1891, ch. 602, § 1, eff. June 19, 1975.]

SUBCHAPTER K. COASTAL OIL AND HAZARDOUS SPILL PREVENTION AND CONTROL [NEW]

§ 21.801. Short Title

This subchapter may be cited as the Texas Oil and Hazardous Substances Spill Prevention and Control Act.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. Any law in conflict with the provisions of this Act is specifically repealed to the extent the same is in conflict."

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of the Act which can be given effect without the invalid provision or applications and to the extent the provisions of this Act are declared to be severable."

§ 21.802. Policy

It is the policy of this state to prevent the spill or discharge of oil and other hazardous substances into the coastal waters of the state, and to cause the removal of such discharges without undue delay.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

§ 21.803. Definitions

As used in this subchapter:

(a) "Board" means the Texas Water Quality Board.

(b) "Coastal land or water" means any land or water in the coastal area as defined herein.

(c) "Coastal area" refers to the geographic area comprising all counties of Texas having any tidewater shoreline, including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(d) "Discharge or spill" means an act or omission by which oil or hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, emptied, or dumped onto or into coastal waters of this state, or by which such substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal water in this state. The term "discharge" or "spill" shall not include any discharge which is authorized by a permit issued

pursuant to federal law or any other law of this state.

(e) "Fund" means the Texas Coastal Protection Fund.

(f) "Harmful quantity" means that quantity of oil or hazardous substance the discharge or spill of which is determined to be harmful to the public health or welfare by the administrator of the Environmental Protection Agency, pursuant to the Federal Water Pollution Control Act, and the Texas Water Quality Board.

(g) "Hazardous substance" means any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act¹ and by the Texas Water Quality Board.

(h) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(i) "Person" includes an individual, firm, corporation, association, and a partnership.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

¹ 33 U.S.C.A. § 1251 et seq.

§ 21.804. Administrative Provisions

(a) The Texas Water Quality Board shall administer this Act. The board shall cooperate with other agencies, departments, and subdivisions of this state and of the United States as provided herein in implementing this subchapter.

(b) The board may issue rules and regulations necessary and convenient to carry out the purposes of this subchapter. Such rules and regulations as have heretofore been promulgated shall continue in force until amended or rescinded by the board.

(c) The board shall enforce the provisions of this subchapter and any rules and regulations given effect pursuant to Subsection (b) of this section.

(d) The board may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

(e) The board shall solicit the assistance of, and cooperate with, local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of oil and hazardous substance spills and discharges.

(f) The board and the State Highway Department, in cooperation with the governor and the United States Coast Guard, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the State Highway Department may be diverted and utilized for spill and discharge cleanup as provided for in this

subchapter. Under the agreement the following conditions shall be met:

(1) The board and the State Highway Department shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose.

(2) Personnel, equipment, and materials may be diverted only with the approval of the board and the State Highway Department, acting through their designated agents, or by action of the governor.

(3) All expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the fund, subject to reimbursement as provided in this subchapter.

(4) Subsequent to such activities a full report of all expenditures and significant actions shall be prepared and submitted to the governor, the Legislative Budget Board, and the state auditor. This report shall be reviewed by the board.

(g) The board shall develop and revise from time to time written action and contractual plans with the designated on-scene coordinator provided for by federal law.

(h)(1) In developing rules, regulations, and plans hereunder, and in engaging in cleanup activities, the board shall recognize the authority of the pre-designated United States Coast Guard on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The board shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

(2) Nothing in this subchapter shall prevent the board from acting independently if no on-scene coordinator is present and no action is being taken by an agency of the federal government.

(3) The board shall seek reimbursement from the designated agencies of the government for the reasonable costs incurred in cleanup operations, including, but not limited to, costs of personnel, equipment, the use of equipment, and supplies.

(i) The board shall, after appropriate investigation, prepare a report on the discharge or spill, and this report shall provide the following information:

(1) a description of the incident, including location, amount, and characteristics of the material discharged or spilled and the prevailing weather conditions;

(2) the time and duration of discharge or spill and the time and method by which the discharge or spill was reported;

(3) the action taken, and by whom, to contain and clean up the discharge or spill;

(4) an assessment of both the short-term and long-term environmental impact of the accidental discharge or spill;

(5) the estimated cost of cleanup operations and the source of payment of these costs;

(6) an evaluation of the principal causes of the discharge or spill and an assessment of how similar incidents might be prevented in the future; and

(7) a description of any legal action being taken to levy penalties or collect damages.

(j) This subchapter is cumulative of all other powers of the Texas Water Quality Board.

(k) In the event that a discharge or spill presents or threatens to present an occurrence of disaster proportions, the governor shall utilize the authority granted him under the Texas Disaster Act of 1973 (Article 6889-6, Vernon's Texas Civil Statutes) to make available and bring to bear all resources of the state to prevent or lessen the impact of such a disaster.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

§ 21.805. Texas Coastal Protection Fund

(a) There is hereby created the Texas Coastal Protection Fund. This fund shall not exceed \$5 million, exclusive of fines and penalties received hereunder.

(b) The fund shall consist of money appropriated to it by the legislature and any fines or other reimbursement to the fund provided for under this subchapter. It is the intent of the legislature that the state attempt to recover money spent from the fund according to the following priority:

(1) direct reimbursement from the federal government as provided for by federal law for costs incurred in cleanup operations;

(2) in the event that federal reimbursement is not available, the state shall seek to recover cleanup costs from the responsible party. If the responsible party refuses to pay, the state shall initiate legal action to collect such actual costs, provided, however, that such recovery may not exceed \$5 million;

(3) if federal reimbursement occurs but is insufficient to repay the fund, the state shall take action to collect the remainder from the responsible party as provided in Paragraph (2) of this subsection.

(c) Money in the fund may be expended only for the purpose of obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills, including restoration of beaches and marine resources.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

§ 21.806. Removal of Accidental Discharge

(a) Any person discharging or spilling oil or hazardous substances into coastal waters shall immediately undertake all feasible actions to abate and remove the discharge or spill subject to applicable federal and state requirements.

(b) In the event that the responsible party is unwilling, or, in the opinion of the board, is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the board may undertake the removal of such discharge or spill and may retain agents for such purposes who shall operate under the direction of the board.

(c) Any discharge or spill of oil or hazardous substance, the source of which is unknown, occurring in coastal waters or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter coastal waters, may be removed by or under the direction of the board. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, upon the board's approval, from the fund, subject to the authority of the board to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of such party is discovered.

(d) In any activity undertaken pursuant to this section, the board shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act,¹ and with Section 21.804(h) of this subchapter.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

¹ 33 U.S.C.A. § 1251 et seq.

§ 21.807. Exemptions

(a) No person shall be held liable hereunder for any accident resulting from an act of God, act of war, third party negligence, or an act of government.

(b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state except as specifically provided in Section 21.805(b)(2) of this subchapter.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

§ 21.808. Penalties

(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the Texas Water Quality Board.

(b) Any person who violates any provision of this subchapter or of a board rule, regulation, or order issued pursuant to this subchapter is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation.

(c) Any person operating, in charge of, or responsible for a facility or vessel which causes a discharge or spill as defined in this subchapter and fails to report said spill or discharge upon discovery thereof shall be guilty of a Class A misdemeanor.

(d) Any person who knowingly falsifies records or reports concerning the prevention or cleanup of a discharge or spill of oil or hazardous substance as provided for in this Act is guilty of a felony of the third degree.

(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and removed by the responsible party in accordance with the rules, regulations, and orders of the board.

[Added by Acts 1975, 64th Leg., p. 900, ch. 336, § 1, eff. June 19, 1975.]

CHAPTER 22. DISPOSAL WELLS

SUBCHAPTER E. CIVIL AND CRIMINAL REMEDIES

§ 22.101. Civil Penalty

(a) A person who violates any provision of this chapter, any rule or regulation of the board or the commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in any sum not exceeding \$5,000 for each day of noncompliance and for each act of noncompliance.

(b) The action may be brought by the board or the commission in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides.

[Amended by Acts 1975, 64th Leg., p. 1887, ch. 599, § 1, eff. Sept. 1, 1975.]

CHAPTER 25. REGIONAL WASTE DISPOSAL

SUBCHAPTER B. REGIONAL WASTE DISPOSAL SYSTEMS

§ 25.031. Rates

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Notwithstanding any provision of this chapter or any other law to the contrary, a district may use the proceeds of bonds issued for the purpose of constructing a waste disposal system or systems, and payable wholly or in part from ad valorem taxes, for the purchase of capacity in, or a right to have the wastes of the district treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency, and a district may issue bonds payable whol-

ly or in part from ad valorem taxes specifically for such purpose if a majority of the resident electors of the district have authorized the governing body of the district to issue bonds for that purpose or for the purpose of constructing a waste disposal system or systems. The bonds shall be issued in accordance with the provisions of, and shall be subject to the same terms and conditions of, the laws authorizing the district to issue bonds for the purpose of constructing waste collection, treatment, and disposal systems, except as otherwise provided in this subsection.

[Amended by Acts 1975, 64th Leg., p. 1044, ch. 406, § 3, eff. June 19, 1975.]

Section 1 of the 1975 amendatory act amended Section 21.204(b), § 2 added Section 21.2041, and § 4 thereof provided:

"(a) In this section, 'district' has the meaning given it in Section 25.003, Water Code."

"(b) All elections receiving a majority favorable vote heretofore held by a district and all proceedings, governmental acts, orders, resolutions, contracts, and other instruments heretofore adopted or executed by the governing body of a district, authorizing the use of bond proceeds or the issuance of bonds for the purpose of the purchase of capacity in, or the right to have the wastes of the district treated in, a system owned or to be owned exclusively or partly by another public agency are in all things validated, ratified, approved, and confirmed. This section does not apply to a matter involved in litigation on the effective date of this Act if the litigation is ultimately determined against its validity, nor does it validate any matter that on the effective date of this Act has been nullified by a final judgment of a court of competent jurisdiction."

TITLE 4. GENERAL LAW DISTRICTS

CHAPTER 50. PROVISIONS GENERALLY APPLICABLE TO DISTRICTS

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section 50.025. Service on Districts [NEW].

SUBCHAPTER I. NOTICE

50.303. Posting Notice in the District [NEW].

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 50.024. Disqualification of Members of Governing Boards

(a) A person is disqualified from serving as a member of a governing board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other

professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the governing board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the governing board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a member of a governing board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 600, ch. 248, § 1, eff. May 20, 1975.]

§ 50.025. Service on Districts

The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon the district may be served.

[Added by Acts 1975, 64th Leg., p. 1838, ch. 568, § 1, eff. June 19, 1975.]

SUBCHAPTER I. NOTICE

§ 50.303. Posting Notice in the District

(a) Any district created under this title or by special act of the legislature, which is providing or proposing to provide, as the district's principal function, water and sewer services, or either of these services to household users, shall, within 30 days after the effective date of this section or the creation of the district, post signs indicating the existence of the district at at least two principal entrances to the district.

(b) The size and exact location of and the information contained on the signs shall be determined by the commission.

[Added by Acts 1975, 64th Leg., p. 246, ch. 96, § 1, eff. Sept. 1, 1975.]

[Sections 50.304 to 50.330 reserved for expansion]

SUBCHAPTER K. AUDIT OF DISTRICTS

§ 50.371. Duty to Audit

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

(b) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

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

[Amended by Acts 1975, 64th Leg., p. 624, ch. 255, § 1, eff. Sept. 1, 1975.]

§ 50.374. Filing of Audit

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Copies of the audit shall be filed in the office of the district and with the city secretary or other designated official in whose extraterritorial jurisdiction the district is located, and if the district is not located within the extraterritorial jurisdiction of a city, the audit shall be filed with the clerk of the county in which the district is located; provided, however, this subsection shall not apply to any district which is located within all or parts of more than two counties; however, each such district shall file a copy of its annual audit report with the county clerk of each county within which the district is located. The commission shall require each district to file with the commission an affidavit stating that all copies of the audit have been filed under this subsection. The affidavit shall be filed within 10 days after all copies of the audit are filed with the bodies designated under this subsection.

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

(e) The commission shall file with the attorney general the names of any districts that do not comply with the provisions of this section.

(f) Any district that violates the provisions of this section is subject to a civil penalty of not less than \$50 nor more than \$100 a day for each act of violation and for each day a violation continues. Before a district is subject to the penalty provided in this subsection, it must willfully continue to violate this section after receipt of written notice of violation from the commission sent by certified mail, return receipt requested.

[Amended by Acts 1975, 64th Leg., p. 247, ch. 97, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 624, ch. 255, § 1, eff. Sept. 1, 1975.]

CHAPTER 51. WATER CONTROL AND IMPROVEMENT DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 51.0721. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a dis-

qualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a director and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 601, ch. 248, § 2, eff. May 20, 1975.]

§ 51.0731. Election Date for Certain Directors

The election date for directors of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district shall be the first Saturday in April.

[Amended by Acts 1975, 64th Leg., p. 625, ch. 256, § 1, eff. Sept. 1, 1975.]

§ 51.184. Preference in Use of Water

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The board may implement the action prescribed in Subsection (b) or in Subsections (b) and (c) above, and shall obtain necessary amendments to the district's permit, certified filing, or certificate of adjudication in the manner provided in Section 5.1211 of this code.

[Amended by Acts 1975, 64th Leg., p. 1250, ch. 473, § 1, eff. June 19, 1975.]

Section 2 of the 1975 Act provided:

"No action or proceeding commenced prior to the effective date of this Act and no right accrued by actual change prior to the effective date of this Act shall be affected by the enactment of this Act."

Section 3 thereof, the emergency provision, provided in part:

"The fact that a recent decision of the Austin Court of Civil Appeals may have limited the primary jurisdiction of the Texas Water Rights Commission to supervise and regulate changes in water rights and may have affected the jurisdiction of the commission to regulate and cancel water rights, and to administer the Water Rights Adjudication Act, creates an emergency " " " ."

SUBCHAPTER I. GENERAL FISCAL PROVISIONS

§ 51.356. Selection of Depository

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

(b) The depository shall execute a good and sufficient bond or security that will be the same as provided by law for a county depository approved by the board to fully protect the district and to guarantee the preservation of the funds and the accountability of the depository as provided by law. The bond or security shall be recorded in the district office and kept in a fireproof vault or safe.

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

[Amended by Acts 1975, 64th Leg., p. 166, ch. 223, § 1, eff. May 20, 1975.]

CHAPTER 53. FRESH WATER SUPPLY DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 53.0631. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district or to a member of the board or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any other director, or the manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a supervisor and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 602, ch. 248, § 3, eff. May 20, 1975.]

CHAPTER 54. MUNICIPAL UTILITY DISTRICTS

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

Section

54.0161. Review of Creation by County [NEW].

SUBCHAPTER D. POWERS AND DUTIES

54.2271. County Standards [NEW].

SUBCHAPTER F. ISSUANCE OF BONDS

54.5161. Review of Bond Projects by Counties [NEW].

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

§ 54.016. Consent of City

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

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district within 120 days after receipt of a written request, a majority of the electors in the area proposed to be included

in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

[See Compact Edition, Volume 1 for text of (c) to (f)]

[Amended by Acts 1975, 64th Leg., p. 247, ch. 98, § 1, eff. Sept. 1, 1975.]

§ 54.0161. Review of Creation by County

(a) If all or part of a proposed district is to be located outside the extraterritorial jurisdiction of a city, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court in the event a review is done.

(b) In the event of a review, the commissioners court shall submit to the commission, at least 10 days before the date set for the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners think would assist the commission in making a final determination on the petition.

(c) In passing on a petition under this subchapter, the commission shall consider the written opinion submitted by the county commissioners.

[Added by Acts 1975, 64th Leg., p. 1293, ch. 485, § 1, eff. Sept. 1, 1975.]

§ 54.021. Granting or Refusing Petition

(a) After the hearing of the petition if it is found that the petition conforms to the requirements of Section 54.015 of this code and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

(1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and

(3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

- (A) land elevation;
- (B) subsidence;
- (C) groundwater level within the region;
- (D) recharge capability of a groundwater source;
- (E) natural run-off rates and drainage;
- (F) water quality; and
- (G) total tax assessments on all land located within a district.

(c) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(d) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall so find by its order and deny the petition.

(e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested notice of hearings as provided in Section 54.019 of this code.

[Amended by Acts 1975, 64th Leg., p. 1292, ch. 484, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 54.1021. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district or to a member of the board or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any other director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a devel-

oper of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as director and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 600, ch. 248, § 4, eff. May 20, 1975.]

§ 54.103. Election of Directors; Term of Office
[See Compact Edition, Volume 1 for text of (a)]

(b) On the first Saturday in April following the confirmation election, an election shall be held in a district for the election of two directors who shall be elected to serve two years. On the first Saturday in the second April, following the confirmation elec-

tion, an election shall be held in the district for the election of three directors who shall be elected to serve two years. Thereafter, on the first Saturday in April of each following year, there shall be an annual election of two directors in one year and three directors in the next year in continuing sequence.

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

[Amended by Acts 1975, 64th Leg., p. 263, ch. 109, § 1, eff. Sept. 1, 1975.]

§ 54.2271. County Standards

Construction work of a district located wholly or partly outside the extraterritorial jurisdiction of a city shall meet standards established by the commissioners court of the county in which the district is located to protect local drainage and to prevent flooding in flood-prone areas.

[Added by Acts 1975, 64th Leg., p. 1294, ch. 485, § 2, eff. Sept. 1, 1975.]

SUBCHAPTER F. ISSUANCE OF BONDS

§ 54.5161. Review of Bond Projects by Counties

(a) Before the commission gives final approval on any bond issue for the purpose of financing a project of a district located wholly or partly outside the extraterritorial jurisdiction of a city, the commission shall notify the county commissioners of the county in which the district is located that an application has been filed and give the county an opportunity within 30 days after notification to examine all information on file and submit a written opinion from the commissioners court stating any findings, conclusions, or other information that the commissioners court considers important to the commission's final determination.

(b) In passing on the approval of a bond issue under this section, if a written opinion is submitted by the commissioners court, the commission shall consider the written opinion before taking final action.

[Added by Acts 1975, 64th Leg., p. 1294, ch. 485, § 3, eff. Sept. 1, 1975.]

CHAPTER 56. DRAINAGE DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Section

56.0641. Election Procedures [NEW].

56.0642. Applicability to Special Law Districts [NEW].

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 56.064. Election of Directors

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The first elected directors of the district hold office until the next regular election for state and county officers, and subsequent directors of the district are elected every two years at the general election except as otherwise provided by Subsection (e).

(e) The first elected directors of the districts in Calhoun, Galveston, Matagorda, and Victoria Counties hold office until April 15 of the next succeeding odd-numbered year or until their successors have qualified. Subsequent directors of the district are elected every two years on the first Saturday in April in each odd-numbered year, for a term of two years beginning on April 15 following the election. [Amended by Acts 1975, 64th Leg., p. 1847, ch. 575, §§ 1 and 2, eff. Sept. 1, 1975.]

Section 5 of the 1975 amendatory act provided:

"In all drainage districts subject to this Act, the directors elected at the general election held on November 5, 1974, continue to hold office under the provisions of Article XVI, Section 17, of the Texas Constitution, until the directors chosen at the election on April 2, 1977, have qualified."

§ 56.0641. Election Procedures

(a) In those districts referred to in Subsection (e) of Section 56.064, until otherwise ordered by the board of directors, the three persons receiving the highest number of votes at each election are elected. By order made before the 60th day preceding an election for directors, the board of directors in those districts referred to in Subsection (e) of Section 56.064 may order that the election of directors for that district shall be by position or place, designated as Place No. 1, Place No. 2, and Place No. 3. The order shall designate the place numbers in relation to the directors then in office, and these place designations shall be observed in all future elections. The person receiving the highest number of votes for each position or place is elected. Once the board of directors has adopted the place system for election, neither that board nor their successors may rescind the action.

(b) A person wishing to have his name printed on the ballot as a candidate for director in those districts referred to in Subsection (e) of Section 56.064 shall file a signed application with the secretary of the board of directors not later than 5 p.m. of the 31st day preceding the election.

(c) The board of directors in those districts referred to in Subsection (e) of Section 56.064 shall order the election, appoint the election judges, canvass the returns, and declare the results of the election. In other respects, the procedures for conducting the election and for voting are as specified in the Texas Election Code. The expenses of holding the election shall be paid out of the construction and maintenance fund of the district.

[Added by Acts 1975, 64th Leg., p. 1847, ch. 575, § 3, eff. Sept. 1, 1975.]

§ 56.0642. Applicability to Special Law Districts

Subsection (e) of Section 56.064 and Section 56.0641 of this code apply to drainage districts created or governed by special law where the special law expressly adopts the provisions of Section 56.064 of this code or its predecessor statute (Article 8119, Revised Civil Statutes of Texas, 1925) or repeats its provisions, without change in substance, as those provisions existed at the time the special law was enacted; but they do not apply to any district established, reestablished, or otherwise affected by special law where the special law contains specific provisions relating to the method of selecting the governing body of the district which were at variance with the provisions of Section 56.064 of this code or its predecessor at the time the special law was enacted. [Added by Acts 1975, 64th Leg., p. 1848, ch. 575, § 4, eff. Sept. 1, 1975.]

SUBCHAPTER D. POWERS AND DUTIES

§ 56.119. Eminent Domain

(a) Any district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through public and private lands necessary for making canals, drains, levees, and improvements in the district and for making necessary outlets thereto in any county in the state. A district which is not operating under Article XVI, Section 59, of the Texas Constitution may not condemn property used for cemetery purposes. No district may condemn right-of-way through any part of any incorporated city without the consent of the lawful authorities.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 253, ch. 102, § 1, eff. April 30, 1975.]

CHAPTER 60. NAVIGATION DISTRICTS—GENERAL PROVISIONS

SUBCHAPTER C. ADDITIONAL POWERS AND DUTIES OF CERTAIN DISTRICTS

§ 60.038. Sale or Lease of Land

(a) A district may sell or lease all or any part of land owned by it, whether the land is acquired by gift or purchase, in settlement of any litigation, controversy, or claim in behalf of the district, or in any other manner, except that lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925,¹ or granted by the State of Texas in any general or special act, may be sold only to the State of Texas or exchanged with the State of Texas for other lands

or exchanged for adjacent littoral land as authorized by Section 61.117 of this code.

(b) Land which is sold or leased shall be declared surplus land and shall not be needed for use by the district in connection with the development of a navigation project.

(c) Sale or lease of land shall be made as provided by Sections 60.039–60.042 of this code.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 1, eff. May 27, 1975.]

¹ Repealed; see, now, §§ 61.115 to 61.117.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas."

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

CHAPTER 61. ARTICLE III, SECTION 52, NAVIGATION DISTRICTS

SUBCHAPTER D. POWERS AND DUTIES

§ 61.116. Lease of State Owned Lands and Flats

(a) Any district organized under this chapter or any special law or any general law under which navigation districts may be created may apply for a lease from the State of Texas of the surface estate of any lands and flats belonging to the state which are covered or partly covered by the water of any of the bays or other arms of the sea; however, any navigation district created after the effective date of this Act may not lease the surface estate of any such lands or flats which are located within 10 miles of the boundary of any navigation district in existence on the effective date of this Act, without first receiving the written approval of the district now in existence. The words "navigation district," "district," or "districts" as used in Sections 61.116, 61.117, and 60.038 of the Texas Water Code shall apply to any incorporated city in this state which owns and operates wharves, docks, and other marine port facilities.

(b) The state, through the School Land Board, may lease these state owned lands or flats to eligible navigation districts only for purposes reasonably related to the promotion of navigation. The term "navigation" as used herein refers to marine commerce and immediately related activities, including but not limited to port development; channel construction and maintenance; commercial and sport fishing; recreational boating; industrial site locations; transportation, shipping, and storage facilities; pollution abatement facilities; and all other activities necessary or appropriate to the promotion of marine commerce; but specifically does not refer to residential development.

(c) In making application for a lease of state owned lands or flats, the district shall include the following information:

(1) a description of the lands or flats sought to be leased;

(2) a plan showing how it proposes to utilize the land and a timetable indicating approximately when such utilization will take place;

(3) a draft environmental impact statement assessing the effect of the proposed use on the environment, which statement shall generally conform to the requirements of the National Environmental Policy Act,¹ until such time as the legislature shall impose different requirements; however, a draft environmental impact statement shall not be required if the proposed use requires no dredging, filling, or bulkheading. If the proposed use does require dredging, filling, or bulkheading, but² the lease shall be processed as provided in Subsections (d), (e), and (f) of this section without the filing of a draft environmental impact statement if the applicant so requests in writing; but in such a case, the School Land Board shall include in the lease provisions requiring (i) that the draft environmental impact statement required by federal law be filed with the School Land Board before the district makes any use of such lands or flats which requires dredging, filling, or bulkheading; (ii) that approval of such use be obtained from the School Land Board after copies of the summary of the draft environmental impact statement and a description of the proposed use are circulated for comment and a hearing held as provided in Subsections (d) and (e) of this section and the School Land Board shall be authorized to give its approval to make such amendments to the lease as may then be deemed necessary by it as a result of information developed in the draft environmental impact statement; and (iii) that the lease shall cease to be effective at a time specifically stated in the lease unless prior to that time accord concerning environmental issues has been reached between the district and the School Land Board;

(4) proof satisfactory to the board establishing the public convenience and necessity for acquisition of lands sought to be leased.

(d) Upon receipt of an application and accompanying information, the School Land Board shall submit copies thereof to the member agencies of the Interagency Council on Natural Resources and the Environment and all other appropriate state agencies for review and comment. In addition, the board shall submit for review and comment the proposed terms and conditions of the lease. The board shall allow 30 days for such review and comment, and may extend the review period for an additional 30 days upon written request by the executive director of any state agency.

(e) Following the expiration of the period provided for review and comment, or following the expiration of the 30 day extension of such period, if applicable, the School Land Board shall cause a hearing to be held in the county in which the land proposed to be leased is located. Notice of the hearing shall be given by publication for at least three days, not less than two weeks nor more than four weeks prior to the hearing, in the daily paper having the greatest circulation in the county. Members of the board or their designated representatives shall conduct the hearing, at which any party may offer testimony in support of or in opposition to the application, and the board shall consider the record of the hearing in making a decision on the application.

(f) After submission of all evidence, the School Land Board shall authorize the issuance or denial of the proposed lease and shall determine the reasonable cost to the district, term of years, special limitations, if any, and other conditions necessary to best serve the interest of the general public. In establishing the consideration to be paid to the state for the lease, due weight shall be given to the depth of the water over the submerged land, its proximity to development activities, and its proposed use. Final action shall be taken by the board no more than 60 days following the public hearing.

(g) The funds derived from the lease shall be paid to the General Land Office for transfer to the proper funds of the state.

(h) Districts may sublease lands leased from the state under the provisions of this section to third parties for activities reasonably related to navigation, but such sublease shall be subject to the approval of the School Land Board according to the procedures, requirements, and criteria set forth in Subsections (c) and (d) of Section 61.116 of this code; provided, however, that no approval by the School Land Board shall be required if the sublease is for a purpose contemplated by the district and approved by the board in the district's original lease. It is further provided that no environmental impact statement shall ever be necessary for any sublease which requires no dredging, filling, or bulkheading, and which would not have a substantial impact upon the environment, or which requires only insubstantial dredging, filling, or bulkheading, as determined by the board; nor shall a district in obtaining approval for a sublease under any circumstances be required to reveal the name of the tenant to whom the sublease is to be made.

(i) If lands or flats leased from the state under the provisions of this section are utilized by the district or its sublessee for any purpose or use not approved by the School Land Board, the district shall be given notice and an opportunity to change and correct the use. If the use is not changed and

corrected within a reasonable time after receipt of such notice, the lease may be terminated by the School Land Board and the lands or flats shall revert to the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 2, eff. May 27, 1975.]

¹ 42 U.S.C.A. § 4321 et seq.

² So in enrolled bill.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas."

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

§ 61.117. Limitations on Sales and Use of State Lands and Flats

(a) The State of Texas shall retain its rights in all mines and minerals, including oil, gas, and geothermal resources, in and under the land, together with the right to enter the land for the purpose of development when it leases land under Section 61.116 of this code.

(b) All leases of land under Section 61.116 are subject to oil, gas, or mineral leases in existence at the time of the lease to the district.

(c) Any land which has been franchised or leased or is being used by any navigation district or by the United States for the purpose of navigation, industry, or other purpose incident to the operation of a port shall not be entered or possessed by the State of Texas or by anyone claiming under the State of Texas for the purpose of exploring for oil, gas, or other minerals except by directional drilling. No easement, lease, or permit may be granted on land which has been leased to a navigation district which will interfere with the proposed use of the land by the navigation district, and the prior approval of the navigation district shall be obtained for such purpose.

(d) No surface drilling location may be nearer than 660 feet and special permission from the Commissioner of the General Land Office is necessary to make any surface location nearer than 2,160 feet, measured at right angles from the nearest bulkhead line designated by a navigation district or the United States as the bulkhead line or from the nearest dredged bottom edge of any channel, slip, or turning basin which has been dredged, or which has been authorized by the United States as a federal project for future construction, whichever is nearer.

(e) In the event land is leased to a navigation district for construction of a navigation project, the School Land Board may in the lease designate the district to be the agent of the State of Texas with authority to grant to the United States of America such easements for dredging and disposal of dredged material as may be required for federal participation in the project. In designating the district to be the agent of the State of Texas for the purpose of

granting spoil easements, the board may include a requirement that the district obtain the approval of the board before granting any such easement. Such approval may be given in the form of accepting a master plan for spoil disposal.

(f) Districts which, prior to the enactment of this provision, have obtained patents to state owned lands or flats under Article 8225, Revised Civil Statutes of Texas, 1925,¹ or under any general or special act, and which still claim title to any such lands or flats, may not hereafter dispose of any such lands or flats which were conveyed to them by the State of Texas and may not lease such lands or flats for a use for which districts are not authorized to lease their other lands; however, in the event a district possesses lands it finds to be in excess of its needs, it may sell such surplus lands or flats back to the State of Texas for the same consideration as originally paid to the state or exchange them for other lands with the State of Texas. It is further provided that the limitation on resale of lands or flats acquired from the State of Texas shall not prevent a district from exchanging such lands or flats for land, or rights in land, of an adjacent littoral owner for the purpose of adjusting or straightening the boundary between such lands. All such exchanges made after December 31, 1973, shall be subject to the approval of the School Land Board.

(g) Any district which, prior to the effective date of this Act has maintained, and which at the effective date of this Act is maintaining, any channel, dredged material disposal site, or other navigational aid or improvement on state owned lands to which the district holds no patent or lease from the state shall notify the General Land Office of the boundaries of such submerged land used by furnishing a map or other drawing acceptable to the General Land Office.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 3, eff. May 27, 1975.]

¹ Repealed.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas."

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

CHAPTER 62. ARTICLE XVI, SECTION 59, NAVIGATION DISTRICTS

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

§ 62.153. Duties of District Treasurer

The district treasurer shall:

- (1) open an account for all funds received by him for the district and all district funds which he pays out;

(2) pay out money on vouchers signed by the chairman of the commission, any two members of the commission, or the commissioners court, or any two of any number of persons delegated by the commission with authority to sign vouchers, provided that the commission may, in such delegation, limit the authority of such persons and may require that each furnish a fidelity bond in such amount as the commission shall specify and subject to commission approval;

(3) carefully preserve all orders^e for the payment of money; and

(4) render a correct account to the commissioners court of all matters relating to the financial condition of the district as often as required by the commissioners court.

[Amended by Acts 1975, 64th Leg., p. 1915, ch. 618, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

NUMERICAL TABLE OF SPECIAL LAWS PERTAINING TO WATER

The tabulation below lists the special laws from the 64th Legislature pertaining to water arranged numerically in Vernon's Texas Civil Statutes classification order or, where not so classified, in order of legislative enactment by subject matter.

Civ.St.Art.	Laws Citation	Subject Matter
7621d—2	1969, ch. 409 1971, ch. 202 1973, ch. 258 1973, ch. 466 1975, ch. 443	Gulf Coast Waste Disposal Authority
8161b	1947, ch. 437 1961, ch. 482 1975, ch. 453	— —Powers, compensation, etc., counties of 150,000 to 350,000
8194 note	1961, ch. 520 1975, ch. 663	Nueces County Drainage and Conservation District No. 2, validation
8198 note	1963, ch. 197 1967, ch. 25 1975, ch. 279	Port of Port Arthur Navigation District of Jefferson County
8248 to 8257	1920, 4th C.S., p. 3 1923, p. 42 1975, ch. 297	—Pilots
Districts Created and/or Validated Pursuant to Const. Art. 16, § 59		
8280—101	1929, 2nd C.S., ch. 13 1931, 1st C.S., ch. 5 1935, ch. 19 1935, 1st C.S., ch. 368, § 14 1953, ch. 194, §§ 1, 2 1973, ch. 240	Brazos River Authority —Creation; powers, etc.
8280—101 note	1934, 4th C.S., ch. 3 1935, 1st C.S., ch. 368 1953, ch. 194, §§ 3 to 5 1975, ch. 152	—Donation of taxes; bonds, etc.
8280—106	1933, 1st C.S., ch. 75 1935, 1st C.S., ch. 410 1969, ch. 432 1975, ch. 433	Guadalupe-Blanco River Authority
8280—107	1934, 4th C.S., ch. 7 1935, 1st C.S., ch. 405 1937, ch. 350 1939, Spec.L., p. 1048 1941, ch. 398 1949, ch. 61 1951, ch. 90 1955, ch. 165 1959, ch. 327 1962, 3rd C.S., ch. 11 1965, ch. 124 1967, ch. 655 1967, ch. 678 1971, ch. 174 1971, ch. 298	Lower Colorado River Authority

TABLE OF SPECIAL LAWS

Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
8280—107	1971, ch. 820 1973, ch. 268, § 1 1973, ch. 271 1975, ch. 74	Lower Colorado River Authority
8280—115	1935, 1st C.S., ch. 427 1937, 2nd C.S., ch. 20 1939, Spec.L., p. 1074 1943, ch. 390 1945, ch. 305 1971, ch. 695 1975, ch. 699	Nueces River Authority
8280—119	1937, ch. 276 1939, Spec.L., p. 1083 1953, ch. 60 1957, ch. 504 1959, ch. 37 1961, ch. 233 1969, ch. 836 1975, ch. 301 1975, ch. 604	San Antonio River Authority
		Harris County Flood Control District
8280—120	1937, ch. 360 1967, ch. 631 1975, ch. 593	—Creation, powers, etc.
8280—135	1949, ch. 282 1950, 1st C.S., ch. 45 1957, ch. 144 1969, ch. 362 1975, ch. 249	Trinity Bay Conservation District
8280—141	1951, ch. 62 1969, ch. 122 1975, ch. 90	North Texas Municipal Water District
8280—145	1951, ch. 373 1954, 1st C.S., ch. 24 1971, ch. 737 1975, ch. 639	San Patricio Municipal Water District
8280—147	1953, ch. 78 1959, ch. 375 1959, 2nd C.S., ch. 28 1975, ch. 193	Northeast Texas Municipal Water District —Creation; power, etc.
8280—160	1954, 1st C.S., ch. 35 1957, ch. 73 1961, ch. 174 1965, ch. 555 1973, ch. 172 1975, ch. 75	Green Belt Municipal and Industrial Water Authority
8280—212	1957, 1st C.S., ch. 25 1961, ch. 134 1967, ch. 646 1975, ch. 465	Ecleto Creek Watershed District
8280—213	1957, 1st C.S., ch. 26 1961, ch. 64 1971, ch. 208 1975, ch. 464	Hondos Creek Watershed Improvement District
8280—228	1959, ch. 279 1961, ch. 504 1967, ch. 570 1969, ch. 715 1969, ch. 856 1975, ch. 217	Red River Authority of Texas

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Civ.St.Art.	Laws Citation	Subject Matter
8280—256	1961, ch. 364 1975, ch. 463	Escondido Watershed District
8280—257	1961, ch. 405 1965, ch. 542 1975, ch. 210	Upper Leon Pines Municipal Water District
8280—293	1963, ch. 312 1965, ch. 599 1969, ch. 136 1975, ch. 655	Lake Cities Municipal Utility Authority
		Northwest Harris County Public Utility District
8280—537	1971, ch. 647 1975, ch. 461	—No. 3
—	1973, ch. 438 1975, ch. 115	Palo Duro River Authority
—	1975, ch. 36	Matador Water District
—	1975, ch. 201	Farmers Branch-Carrollton Flood Control District
—	1975, ch. 249	Parker County Utility District
—	1975, ch. 284	Harris-Galveston Control Subsidence District
—	1975, ch. 437	Alvarado Water Authority
—	1975, ch. 742	West Cedar Creek Municipal Utility District

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TEXAS BUSINESS CORPORATION ACT

PART ONE

Art. 1.02. Definitions

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

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

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 1, eff. Sept. 1, 1975.]

PART TWO

Art. 2.19. Certificates Representing Shares

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

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

the limitation or denial of preemptive rights contained in the articles of incorporation, or (2) shall conspicuously state on the face or back of the certificate that (a) such a statement is set forth in the articles of incorporation on file in the office of the Secretary of State and (b) the corporation will furnish a copy of such statement to the record holder of the certificate without charge on request to the corporation at its principal place of business or registered office.

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

F. Repealed by Acts 1975, 64th Leg., p. 305, ch. 134, § 22, eff. Sept. 1, 1975.

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

H. Repealed by Acts 1975, 64th Leg., p. 305, ch. 134, § 22, eff. Sept. 1, 1975.

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

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

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

C. Any restriction on the transfer or registration of transfer of a security of a corporation, if reasona-

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

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

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

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

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

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

- (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; and
- (c) return the other duplicate original to the corporation or its representative.

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

F. A corporation that is a party to an agreement restricting the transfer of its shares or other securi-

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, §§ 4 and 5, Sept. 1, 1975.]

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

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

- (1) a statement that it is a close corporation;
- (2) a statement that no shares of any class and no securities evidencing the right to acquire shares of the close corporation shall be issued by means of any public offering, solicitation, or advertisement;

(3) a statement that all of the issued shares of each class and all of the issued securities evidencing the right to acquire shares of the close corporation shall be subject to one or more of the restrictions on transfer permitted by Articles 2.22 or 2.30-2 of this Act, and if such restrictions on transfer are being imposed on the articles of incorporation or in an agreement permitted by this Act to be set forth in full in or made a part of the articles of incorporation, the statement shall be followed either by (i) the provisions of the articles of incorporation or amendment thereto that impose such restrictions, (ii) the agreement if it is being set forth in full in the articles of incorporation, or (iii) a reference to such agreement if it is being made a part of the articles of incorporation; and

(4) a statement that all of the issued shares of all classes, excluding treasury shares, and all of

the issued securities evidencing the right to acquire shares of the close corporation shall be held of record by no more than a specified number of persons, not exceeding thirty-five (35) in the aggregate. To determine the number of holders of record for purposes of this definition, shares and securities evidencing rights to acquire shares which are held (1) by husband and wife as (a) community property, (b) joint tenants (with or without right of survivorship), or (c) tenants by the entirety, or (2) by an estate of a decedent or an incompetent, or (3) by an express trust, partnership, association, or corporation created or organized and existing other than for the primary purpose of holding shares or securities evidencing rights to acquire shares in a close corporation, shall be treated as held by one person. Nothing in this definition shall be deemed to affect the right of any corporation which has not elected to be a close corporation as provided in this Article, or its shareholders, directors, or officers to exercise any power or right, granted or permitted by any provision of this Act. To the extent not inconsistent with any provision of this Act dealing specifically with a close corporation, all other provisions of this Act shall apply to a close corporation.

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

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

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

E. If an existing corporation desires to become a close corporation, it shall adopt articles of amendment in the manner provided by this Act which state that it has elected to become a close corporation and which make such other amendments to its articles of

incorporation as may be required in order that the articles of incorporation, as so amended, shall set forth the matters required of a close corporation by this Act. The articles of amendment may include any other matter permitted to be set forth in the articles of incorporation of a close corporation by this Act and, to the extent not inconsistent with its status as a close corporation, any other matter that may be set forth in articles of incorporation. The election to become a close corporation and any amendments in connection therewith shall be approved by the affirmative vote of the holders of all of the outstanding shares of each class, whether or not entitled to vote thereon by the articles of incorporation.

F. If a close corporation desires to terminate its status as a close corporation, it shall adopt articles of amendment in the manner provided by this Act which state that it has elected to terminate its status as a close corporation and which delete the provisions required or permitted to be set forth in the articles of incorporation of a close corporation under this Act that are not permitted for corporations generally. Such election to terminate its status as a close corporation and amendments required in connection therewith shall be approved 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 articles of incorporation, unless a greater or lesser vote is required or permitted by the articles of incorporation for such termination. Any provision of the articles of incorporation requiring a greater vote for such termination shall not be amended, repealed, or modified by any vote less than that required to terminate the corporation's status as a close corporation. Any provision restricting the transfer of the shares or other securities evidencing the right to acquire shares contained in or made part of the articles of incorporation pursuant to Article 2.30-2 of this Act, shall remain in effect to the extent not prohibited by other provisions of this Act whether or not thereafter contained in or made a part of the articles of incorporation or bylaws unless, in connection with the adoption of articles of amendment to terminate the corporation's status as a close corporation, a resolution is adopted or an agreement is entered into terminating or amending such restrictions on transfer by the number or percentage of shareholders and/or security-holders (whether or not entitled to vote in the case of a resolution) required by the articles of incorporation, bylaws or agreement for termination or amendment of such restrictions on transfer.

G. If the articles of incorporation of a close corporation expressly so state and if each certificate representing its issued and outstanding shares so conspicuously states, the business and affairs of such close corporation shall be managed by the sharehold-

ers of the close corporation rather than by a board of directors, and the following provisions shall apply:

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

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

(3) Any action required or permitted by this Act to be taken by the board of directors of a corporation shall or may be taken by action of the shareholders of such close corporation at a meeting thereof or in the manner permitted by this Act without a meeting. Any such action taken shall be on the basis of the vote, cast in person or by proxy, by the holders of shares having a majority of the total voting power of all outstanding shares entitled to vote with respect to such action, unless the articles of incorporation either in general or on specified matters provide (a) for a greater vote or (b) for a vote on the basis of one or some other specified number of votes per such shareholder. In addition, any action consented to by all the shareholders shall be binding upon the corporation. Such consent may be evidenced (a) by the full knowledge of such action by all the shareholders and their failure to object thereto in a timely manner or (b) a consent in writing to such action in accordance with Article 9.10 of this Act or any other writing executed by or on behalf of all the shareholders reasonably evidencing such consent or (c) by any other means reasonably evidencing such consent.

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

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

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

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

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

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

(3) If within the sixty (60) day period provided in Subsection (1)(b) of this Section, the situation which threatened the status of such corporation as a close corporation is not remedied, the corporation's status as a close corporation shall thereafter be terminated, unless its status as a close corporation has been stayed by a court of competent jurisdiction pending final adjudication in a proceeding under Article 2.30-3 or in any other proceeding that will result in the

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

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

or in behalf of such corporation, before the effective date of the 1975 amendment to this Article 2.30-1, shall be invalidated or otherwise affected by such corporation electing to become a close corporation in the manner provided by this Article.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 6, eff. Sept. 1, 1975.]

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

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

(1) Management of the business and affairs of the corporation whether by the board of directors in a manner otherwise than provided in this Act or by one or more of the shareholders or one or more other parties to be selected by the shareholders;

(2) Restrictions on the transfer of shares or other securities more restrictive than otherwise would be permitted to be imposed by Article 2.22, if not manifestly unreasonable;

(3) Exercise or division of voting requirements or power beyond those that would otherwise be permitted by this Act;

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

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

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

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

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

B. Such shareholders' agreement shall either (1) be set forth in or made part of the original or amended articles of incorporation; or (2) be set forth in or made part of the bylaws of the corporation, provided such bylaws and a counterpart of the agreement be placed on file by the corporation at its

principal place of business and its registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person, or by agent, attorney, or accountant, as are the books and records of the corporation. If the agreement is set forth in or made part of the original articles of incorporation, all of the parties to the agreement at the time of incorporation who shall have subscribed to shares of the corporation shall serve as incorporators of the close corporation. If set forth in or made part of an amendment to the articles of incorporation, the provisions of this Act for amendment of the articles of incorporation shall be complied with. In addition, such amendment shall have been adopted by an affirmative vote of all of the subscribers to shares if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. If set forth in or made part of the bylaws of the corporation either when originally adopted or later amended, such provision of the bylaws shall have been adopted, amended, or ratified by an affirmative vote of all the subscribers to shares, if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. Once such agreement has been set forth in or made part of the articles of incorporation or bylaws as provided herein, it may not be amended or removed therefrom, unless otherwise provided by the articles of incorporation or the bylaws, as the case may be, except by the affirmative vote or consent of all of the subscribers to shares, if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. If these provisions are not complied with, such agreement, even though otherwise enforceable among the parties thereto, shall not be enforceable by any party thereto who is knowingly responsible for such noncompliance nor against any transferee of shares except one who has actual knowledge of the existence of the agreement or who has acquired his shares by gift, bequest, or inheritance from a party to the agreement.

C. Each certificate representing shares issued by a close corporation whose shareholders have entered into an agreement permitted by this Article shall (1) set forth conspicuously a full or summary statement of such agreement on the face of the certificate; or (2) set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate; or (3) if the agreement has been set forth in or made part of the articles of incorporation, conspicuously state on the face or back of the certificate that such shares are subject to an agreement among all the shareholders of the close corporation and that the corporation will furnish to the record holder of the certificate without charge upon written request to the corporation at its

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 7, eff. Sept. 1, 1975.]

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, §§ 8, 9, eff. Sept. 1, 1975.]

Art. 2.36. Executive and Other Committees

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

a revocation thereof, amending, altering, or repealing the bylaws of the corporation or adopting new bylaws for the corporation, filling vacancies in the board of directors or any such committee, electing or removing officers or members of any such committee, fixing the compensation of any member of such committee, or altering or repealing any resolution of the board of directors which by its terms provides that it shall not be so amendable or repealable; and, unless such resolution, the articles of incorporation, or the bylaws of the corporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of shares of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 13, eff. Sept. 1, 1975.]

Art. 2.43. Removal of Officers

A. Any officer or agent or member of a 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 or member of a committee shall not of itself create contract rights.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 10, eff. Sept. 1, 1975.]

PART THREE

Art. 3.01. Incorporators

A. Any natural person of the age of eighteen (18) years or more, or any partnership, corporation, association, trust, or estate (without regard to place of residence, domicile, or organization) may act as an incorporator of a corporation by signing, verifying, and delivering in duplicate to the Secretary of State articles of incorporation for such corporation.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 11, eff. Sept. 1, 1975.]

Art. 3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;

(4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class, or that such shares are to be without par value;

(5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

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

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

(9) If a corporation elects to become a close corporation as defined and governed by this Act any provision required or permitted by this Act to be stated in articles of incorporation of a close corporation, or setting out in full or making a part of the articles of incorporation an agreement among subscribers permitted by Article 2.30-2, but any such provision shall be preceded by a statement that the provision shall be subject to the corporation remaining a close corporation as defined by this Act;

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

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

(12) The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting

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

(13) The name and address of each incorporator.

[See Compact Edition, Volume 2 for text of B]
[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 12, eff. Sept. 1, 1975.]

PART FOUR

Art. 4.01. Right to Amend Articles of Incorporation

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

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.

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

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

C. Repealed by Acts 1975, 64th Leg., p. 305, ch. 134, § 22, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, §§ 14, 22, eff. Sept. 1, 1975.]

Art. 4.03. Class Voting on Amendments

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

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

(1) Increase or decrease the aggregate number of authorized shares of such class.

(2) Increase or decrease the par value of the shares of such class.

(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

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

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

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

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

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 15, eff. Sept. 1, 1975.]

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.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 16, eff. Sept. 1, 1975.]

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

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

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.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 17, eff. Sept. 1, 1975.]

PART SIX

Art. 6.01. Voluntary Dissolution by Incorporators or Directors

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

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

(a) The name of the corporation.

(b) The date of issuance of its certificate of incorporation.

(c) That none of its shares has been issued.

(d) That the corporation has not commenced business.

(e) That the amount, if any, actually paid on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(f) That no debts of the corporation remain unpaid.

(g) That a majority of the incorporators or directors elect that the corporation be dissolved.

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 18, eff. Sept. 1, 1975.]

PART EIGHT

Art. 8.02. Powers of Foreign Corporation

A. A foreign corporation which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the 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.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 19, eff. Sept. 1, 1975.]

Art. 8.05. Application for Certificate of Authority

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

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

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

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

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

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

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

(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.

[See Compact Edition, Volume 2 for text of B]
[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 20, eff. Sept. 1, 1975.]

PART TEN

Art. 10.01. Filing and Filing Fees

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

(1) Filing articles of incorporation of a domestic corporation and issuing a certificate of incorporation, One Hundred Dollars (\$100.00).

(2) Filing articles of amendment of a domestic corporation and issuing a certificate of amendment, One Hundred Dollars (\$100.00).

(3) Filing articles of merger or consolidation, whether the surviving or new corporation be a domestic or foreign corporation, Two Hundred Dollars (\$200.00).

(4) Filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing such a certificate of authority, Five Hundred Dollars (\$500.00).

(5) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing such an amended certificate of authority, One Hundred Dollars (\$100.00).

(6) Filing a copy of an amendment or supplement to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State, One Hundred Dollars (\$100.00).

(7) Filing restated articles of incorporation of a domestic corporation, Two Hundred Dollars (\$200.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) Maintaining a record of service of any process, notice or demand upon the Secretary of State as agent for foreign and domestic corporations and for any foreign association, joint stock company, partnership, or nonresident natural person, Ten Dollars (\$10.00).

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

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

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 21, eff. Sept. 1, 1975.]

TITLE 32

CORPORATIONS

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

1A. COOPERATIVES

Art. 1396-50.01. Cooperative Association Act

Short Title

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

Definitions

Sec. 2. In this Act:

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

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

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

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

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

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans from members shall not be construed as "membership capital."

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

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

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

Applicability of Texas Non-Profit Corporation Act

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

Who May Incorporate

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

Purposes

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

Powers

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

(1) own and hold membership in and share capital of other associations or corporations, and own and exercise ownership rights in bonds or other obligations;

(2) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(3) exercise all powers not inconsistent with this Act that are necessary or convenient for the accomplishment of its purposes, and to that end the enumeration of powers in this section is not exclusive; and

(4) not engage, either directly or indirectly, in insurance companies of every type or character

as the insurance business is defined and regulated by the Insurance Code, as amended, health maintenance organizations, or prepaid legal service corporations.

Registered Office and Registered Agent

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

Articles of Incorporation; Contents

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

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

(1) a statement of the purpose or purposes for which the association is formed;

(2) the name of the association, which must include the word "cooperative" or an abbreviation or derivative of it;

(3) the term of existence of the association, which may be perpetual;

(4) the location and street address of the initial registered office of the association and the initial registered agent at that address;

(5) the names and street addresses of the incorporators of the association;

(6) the names and street addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) a statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) if organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value, if any, of the shares, and the rights, preferences, and restrictions of each type of share;

(9) the method by which a surplus is distributed on dissolution of the association, in conformity with the requirements of Section 38 of this Act for division of surplus.

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

Filing, Certificate of Incorporation, Organization Meeting

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

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

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

Amendments

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

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

Adoption of By-laws

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

Contents of By-laws

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

(1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;

(2) the time, place and manner of calling and conducting meetings;

(3) the number or percentage of the members constituting a quorum;

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

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

(6) the method of distributing the net savings;

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

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

Meetings

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

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

Notice of Meetings

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

Meetings by Units of the Membership

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

One Member—One Vote

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

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

Proxy

Sec. 17. No member may vote by proxy.

Voting By Mail

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

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

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

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

Application of Voting Provisions in This Act to Voting by Mail

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

Application of Voting Provisions in This Act to Voting by Delegates

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

Directors

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

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

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

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

Officers

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

Removal of Directors and Officers

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

Referendum

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

Limitations on the Return on Capital

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

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

Eligibility and Admission to Membership

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

Subscribers

Sec. 27. A natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association

shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Share and Membership Certificates: Issuance and Contents

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

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

Transfer of Shares and Membership: Withdrawal

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

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

Share and Membership Certificates: Recall

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

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value,

together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Certificates: Attachment

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

Liability of Members

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

Expulsion

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

Allocation and Distribution of Net Savings

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

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

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching coop-

eration, and a portion may also be allocated to funds for the general welfare of the members of the association;

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

(4) the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage as follows:

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

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

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

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

Recordkeeping

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

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

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

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

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

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

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

Annual Report

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

- (1) the name and principal address of the association;
- (2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;
- (3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;
- (4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and
- (5) the receipts, expenditures, assets, and liabilities of the association.

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

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

Notice of Delinquent Reports

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

secretary of state or any member may notify the association of the delinquency by registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Dissolution

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

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

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

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

Use of Name "Cooperative"

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

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

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

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

Promotion Expenses

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

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

False Reports

Sec. 41. A person, firm, corporation, or association that maliciously and knowingly spreads false reports about the management or finances of any association commits a misdemeanor punishable by a fine of not less than \$25 and not more than \$200, or

by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Existing Cooperative Groups

Sec. 42. Any group operating on a cooperative basis on the effective date of this Act may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this Act. If it elects to secure the benefits of this Act, it shall amend its articles and by-laws to conform with this Act. A certified copy of the amended articles shall be filed and recorded with the secretary of state and a fee of \$5 shall be paid.

Foreign Corporations and Associations

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

Exemption From Taxes

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

Exemption

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

Effect of Invalidity of Part of This Act

Sec. 46. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection or section 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 or section of this Act so adjudged to be invalid or unconstitutional.

[Acts 1975, 64th Leg., p. 814, ch. 318, §§ 1 to 46, eff. Sept. 1, 1975.]

CHAPTER TEN. PUBLIC UTILITIES

8. MISCELLANEOUS PROVISIONS

Article

1446c. Public Utility Regulatory Act [NEW].

9. TRADE ZONES

1446.5. Amarillo Trade Zone Corporation [NEW].

2. TELEPHONE AND TELEGRAPH

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

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

4. GAS AND LIGHT

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

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

Joint Powers Agency

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

(b) Public entities which establish a joint powers agency may, by concurrent ordinances, provide for the re-creation of such agency by the addition and deletion, either or both, of a public entity so long as

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

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

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

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

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

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

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

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

(i) To the payment of obligations issued by it, the agency may pledge the revenues of all or part of its electric facilities, including or not including those thereafter acquired, as the agency may determine, but the expense of operation and maintenance, including salaries, labor, materials, and repairs necessary to render efficient service, of the facilities whose revenues are so encumbered and pledged shall be a first lien on and charge against such revenues.

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

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

(l) Prior to delivery thereof, all obligations 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 agency issuing same, 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 and the sale and delivery of the bonds or notes to the purchaser, they shall be incontestable.

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

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

(o) The agency may adopt, and from time to time amend, rules and regulations to govern the operation of the agency, its employees, facilities, and service, but contracts for the construction of improvements

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

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

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

(r) Bonds and notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967).³

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

affairs of municipal corporations, or with any home-rule charter provisions, then the provisions of this Act shall control.

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

[Amended by Acts 1975, 64th Leg., p. 337, ch. 143, § 1, May 8, 1975.]

¹ Article 1106 et seq.

² Article 701 et seq.

³ Business and Commerce Code, § 8.101 et seq.

Section 2 of the 1975 amendatory act provided:

"Sec. 2. Nothing in this Act shall be construed to violate any provision of the federal or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the agency shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof."

8. MISCELLANEOUS PROVISIONS

Art. 1446c. Public Utility Regulatory Act

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short Title

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

Legislative Policy and Purpose

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

Definitions

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

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

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation,

or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applicability of Administrative Procedure and Texas Register Act

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

¹ Article 6252-13a.

ARTICLE II. ORGANIZATION OF COMMISSION

Creation of Commission; Appointment and Terms; Chairman

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

sioner to hold office for a term of six years. Each commissioner shall hold office until his successor is appointed and qualified. At its first meeting following the biennial appointment and qualification of a commissioner, the commission shall elect one of the commissioners chairman.

Qualifications; Oath and Bond; Prohibited Activities

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

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

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

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

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

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

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

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

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

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

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

Vacancies

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

Employees

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

(b) The commission shall employ:

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

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

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

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

(5) a general counsel.

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

The duties of the general counsel include:

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

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

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

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

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

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

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

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

Salary

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

Office; Meetings

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

Seal

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

Quorum

Sec. 12. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy or disqualification shall prevent the remaining commissioner or commissioners from exercising all the powers of the commission.

Orders; Transcript and Exhibits; Public Records

Sec. 13. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits

in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Annual Report

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

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

Attorney General to Represent Commission

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

ARTICLE III. JURISDICTION

General Power; Rules; Hearings

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

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

Sec. 17. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient,

the governing body of each municipality shall have exclusive original jurisdiction over all electric, water, and sewer utility rates, operations, and services provided by an electric, water, and sewer utility within its city or town limits.

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

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

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

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

Telecommunications Utilities

Sec. 18. Subject to the limitations imposed in this Act, and for the purpose of regulating rates, operations, and services so that such rates may be just, fair, and reasonable, and the services adequate and efficient, the commission shall have exclusive original jurisdiction over the business and property of all telecommunications utilities in this state.

Gas Utilities

Sec. 19. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and

reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits.

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

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

Municipally Owned Utilities

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

ARTICLE IV. MUNICIPALITIES

Franchises

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

Local Utility Service; Exempt and Nonexempt Areas

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

Rate Determination

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

Authority of Governing Body; Cost Reimbursement

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

Assistance by Commission or Railroad Commission

Sec. 25. The commission or the railroad commission may advise and assist municipalities upon re-

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

Appeal

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

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

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

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

(e) The commission or railroad commission shall hear such appeal de novo and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken.

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

Records of Public Utility; Rates, Methods and Accounts

Sec. 27. (a) Every public utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission or railroad commission uniform accounts of all business transacted. The commission or railroad commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such public utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as

the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission or railroad commission may be necessary to carry out any of the provisions of this Act. In the case of any public utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission or railroad commission; provided, however, that the commission or railroad commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission or railroad commission for a public utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that public utility or class of utilities.

(b) The commission or railroad commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each public utility, and shall require every public utility to carry a proper and adequate depreciation account in accordance with such rates and methods and with such other rules and regulations as the commission or railroad commission prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

(c) Every public utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such public utility, to the extent that such merchandise is not integral to the provision of utility service.

(d) Every public utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the commission or railroad commission, and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of such methods as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion such benefits between consumers and the public utilities accordingly. Where any portion of the investment tax credit has been retained by a public utility, that same amount

shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code.

(f) For the purposes of this section, "public utility" includes "municipally owned utility."

Powers of Commission and Railroad Commission

Sec. 28. (a) The commission and the railroad commission shall have the power to:

(1) require that public utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any public utility and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body.

(b) On the request of the governing body of any municipality, the commission or railroad commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

Inspections; Examination Under Oath; Compelling Production of Records; Inquiry into Management and Affairs

Sec. 29. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any public utility within its jurisdiction. The regulatory authority may examine under oath, or it may

authorize the person conducting such investigation to examine under oath, any officer, agent, or employee of any public utility in connection with such investigation. The regulatory authority may require, by order or subpoena served on any public utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by that public utility outside the state, or verified copies in lieu thereof if the commission or railroad commission so orders. Any public utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b)(1) A member, agent, or employee of the regulatory authority may enter the premises occupied by a public utility to make inspections, examinations, and tests and to exercise any authority provided by this Act.

(2) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(3) The public utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

(c) The regulatory authority may inquire into the management and affairs of all public utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

Reporting of Advertising or Public Relations Expenses

Sec. 30. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses shall not in any case be allowed as costs or expenses for rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Unlawful Rates, Rules and Regulations

Sec. 31. It shall be unlawful for any utility to charge, collect, or receive any rate for public utility service or to impose any rule or regulation other than as herein provided.

Filing Schedule of Rates, Rules and Regulations

Sec. 32. Every public utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate juris-

diction of the regulatory authority and which are in force at the time for any public utility service, product, or commodity offered by the utility. Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, public utility service, product, or commodity furnished by such utility.

Office of Public Utility; Records; Removal From State

Sec. 33. Every public utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission or railroad commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission or railroad commission.

Communications by Public Utilities With Regulatory Authority; Regulations and Records

Sec. 34. (a) The regulatory authority shall prescribe regulations governing communications by public utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the public utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of Service

Sec. 35. (a) Every public utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any

public utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the public utility or until changed by the regulatory authority as herein provided.

Examination and Test of Equipment

Sec. 36. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any public utility and may enter any premises occupied by any public utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the duties aforesaid.

(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

Power to Insure Compliance; Rate Regulation

Sec. 37. Subject to the provisions of this Act, the commission or railroad commission is hereby vested with all authority and power of the State of Texas to insure compliance with the obligations of public utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and serv-

ices and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

Just and Reasonable Rates

Sec. 38. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the commission or railroad commission may treat two or more municipalities served by a public utility as a single class wherever the commission or railroad commission deems such treatment to be appropriate.

Fixing Overall Revenues

Sec. 39. In fixing the rates of a public utility the regulatory authority shall fix its overall revenues at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

Fair Return; Burden of Proof

Sec. 40. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be on the public utility.

Components of Adjusted Value of Invested Capital and Net Income

Sec. 41. The components of adjusted value of invested capital and net income shall be determined according to the following rules:

(a) Adjusted Value of Invested Capital. Utility rates shall be based upon the adjusted value of property used by and useful to the public utility in providing service including where necessary to the financial integrity of the utility construction work in progress at cost as recorded on the books of the utility. The adjusted value of such property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority shall have the discretion to determine a reasonable balance that reflects not less than 60% nor more than 75% original cost, that is, the actual money cost, or the actual money value of

any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor, less depreciation, and not less than 25% nor more than 40% current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the public utility to attract new capital in determining a reasonable balance.

(b) Separations and Allocations. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(c) Net Income. By "net income" is meant the total revenues of the public utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(2) Income Taxes. If the public utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the public utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a public utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the public utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The

investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

(3) Expenses Disallowed. The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

Unreasonable or Violative Existing Rates; Investigating Costs of Obtaining Service from Another Source

Sec. 42. Whenever the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any public utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the public utility; and such rates shall constitute the legal rates of the public utility until changed as provided in this Act. Whenever a public utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such public utility.

Statement of Intent to Change Rates; Major Changes; Hearing; Suspension of Rate Schedule; Determination of Rate Level

Sec. 43. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35 day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the Regulatory Authority any schedule modifying or resulting in a change in any rates then in force, the Regulatory Authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The Regulatory Authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the Regulatory Authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the Regulatory Authority finds that a longer time will be required for a final determination, the Regulatory Authority may further extend the period for an additional 30 days. If the Regulatory Authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the Regulatory Authority. This approval is subject to the authority of the Regulatory Authority thereafter to continue a hearing in progress. The Regulatory Authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the Regulatory Authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the Regulatory Authority shall establish a temporary rate. The Regulatory Authority shall give preference to the hearing and decision of questions arising under this

section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the Regulatory Authority finds the rates to be unreasonable or in any way in violation of any provision of law, the Regulatory Authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

Rates for Areas Not Within Municipality

Sec. 44. Public utility rates for areas not within any municipality shall not exceed without commission or railroad commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable Preference or Prejudice as to Rates or Services

Sec. 45. No public utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Equality of Rates and Services

Sec. 46. No public utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the public utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon the

effective date of this Act may be continued until schedules are filed. Nothing in this Act shall prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Discrimination; Restriction on Competition

Sec. 47. No public utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the public utility, nor may any public utility engage in any other practice that tends to restrict or impair such competition.

Payments in Lieu of Taxes

Sec. 48. No payments made in lieu of taxes by a public utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a public utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the public utility is owned.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

Definitions

Sec. 49. For the purposes of this article only: (a) "Retail public utility" means any person, corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail utility service.

(b) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation under the jurisdiction of the Railroad Commission.

Certificate Required

Sec. 50. Beginning one year after the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail

public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Exceptions for Extension of Service

Sec. 51. (a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Application; Maps; Evidence of Consent

Sec. 52. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

(c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Prior Construction or Operation

Sec. 53. On application made to the commission within six months after the effective date of this Act, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility actually providing service to any geographical area on the effective date of this Act, or to any person or corporation actively engaged on the effective date of

this Act in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

Notice and Hearing; Issuance or Refusal; Factors Considered

Sec. 54. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 53, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

Area Included Within City, Town or Village

Sec. 55. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the public utili-

ty 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Article 11.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended.

Contracts Valid and Enforceable

Sec. 56. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

Preliminary Order for Certificate

Sec. 57. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Continuous and Adequate Service; Discontinuance, Reduction or Impairment of Service

Sec. 58. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

- (1) nonpayment of charges;
- (2) nonuse; or
- (3) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to such conditions, restrictions, and limitations as the commission shall prescribe.

Sale, Assignment or Lease of Certificate

Sec. 59. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Interference with Other Public Utility

Sec. 60. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

Improvements in Service; Interconnecting Service; Extended Area Toll-free Telephone Service

Sec. 61. After notice and hearing, the commission may:

- (1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;
- (2) order two or more public utilities to establish specified facilities for the interconnecting service; and
- (3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided.

Revocation or Amendment of Certificate

Sec. 62. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

Report of Sale, Merger, etc.; Investigation; Disallowance of Transaction

Sec. 63. No public utility may sell, acquire, lease, or rent any plant as an operating unit or system in

this state for a total consideration in excess of \$100,000 or merge or consolidate with another public utility operating in this state unless the public utility reports such transaction to the commission or railroad commission within a reasonable time. On the filing of a report with the commission or railroad commission, the commission or railroad commission shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission or railroad commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission or railroad commission finds that such transactions are not in the public interest, the commission or railroad commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the public utility by construction.

Purchase of Voting Stock in Another Public Utility; Report

Sec. 64. No public utility may purchase voting stock in another public utility doing business in Texas, unless the utility reports such purchase to the commission or railroad commission.

Loans to Stockholders; Report

Sec. 65. No public utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports the transaction to the commission or railroad commission within a reasonable time.

Gas Reserve Rights: Approval of Sale, Conveyance, etc.

Sec. 66. No gas utility may sell, convey, bank, or assign rights to gas reserves to a utility or, where not in conflict with federal law, to an interstate pipeline without prior approval of the railroad commission.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

Jurisdiction Over Affiliated Interests

Sec. 67. The commission or railroad commission shall have jurisdiction over affiliated interests having transactions with public utilities under the jurisdiction of the commission or railroad commission to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions.

Disclosure of Substantial Interest in Voting Securities

Sec. 68. The commission or railroad commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any public utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

ARTICLE X. JUDICIAL REVIEW

Right to Judicial Review; Evidence

Sec. 69. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

Costs and Attorneys' Fees

Sec. 70. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant public utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

Action to Enjoin or Require Compliance

Sec. 71. Whenever it appears to the commission or railroad commission that any public utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission or railroad commission entered or adopted under the provisions of this Act, or that any public utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission or railroad commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission or railroad commission against such public utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

Penalty Against Public Utility or Affiliated Interest

Sec. 72. (a) Any public utility or affiliated interest that knowingly violates a provision of this Act,

fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or railroad commission or decree or judgment of a court, shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each offense.

(b) A public utility or affiliated interest commits a separate offense each day it continues to violate the provisions of Subsection (a) of this section.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the commission, or railroad commission, in a court of competent jurisdiction to recover the penalty under this section.

Penalty for Violating Section 6 of This Act

Sec. 73. (a) Any member of the commission, or any officer or director of a public utility or affiliated interest, shall be subject to a civil penalty of \$1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

(b) Any person, other than an officer or director of a public utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of \$500 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

Personal Penalty

Sec. 74. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any public utility or any officer, director, agent, or employee thereof or any other corporation or person.

Contempt Proceedings

Sec. 75. If any person fails to comply with any lawful order of the commission or railroad commis-

sion or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission or railroad commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of Fines and Penalties

Sec. 76. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission or railroad commission and paid by the commission or railroad commission to the state treasury to be placed in the general revenue fund.

Venue

Sec. 77. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

Assessments Upon Public Utilities

Sec. 78. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

Payment Dates; Delinquency

Sec. 79. All assessments shall be due on August 31 of each year. Any public utility may instead make quarterly payments due on August 31, November 30, February 28, and May 31 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of six percent per annum on the assessment and penalty due.

Payment into General Revenue Fund

Sec. 80. All fees, penalties, and interest paid to the commission under the provisions of this article shall be paid into the general revenue fund.

Approval of Budget

Sec. 81. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

Accounting Records; Audit

Sec. 82. The commission shall keep such accounting records as required by the state auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

Complaint by Any Affected Person

Sec. 83. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Record of Proceedings; Right to Hearing

Sec. 84. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

Judicial Stay or Suspension of Order, Ruling or Decision.

Sec. 85. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

Amendment

Sec. 86. [Amends art. 6252-9b, § 2(5)(A)].

Assumption of Jurisdiction

Sec. 87. (a) The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on January 1, 1976, except as provided in Subsection (b) of this section.

(b) The regulatory authority shall assume jurisdiction over rates and service of public utilities on September 1, 1976.

Effective Date

Sec. 88. This Act shall become effective on September 1, 1975, and the commission shall thereupon begin organization and the gathering of information as provided in this Act.

Liberal Construction

Sec. 89. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

Repealer; Prior Rules and Regulations to Remain in Effect

Sec. 90. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas,

1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes) and all other laws and parts of laws in conflict with this Act are repealed effective September 1, 1976.

(b) All rules and regulations promulgated by regulatory authorities in the exercise of their jurisdiction over public utilities, as defined in this Act, shall remain in effect until such time as the commission or railroad commission promulgates provisions applicable to the exercise of the commission's or railroad commission's jurisdiction over public utilities.

Severability

Sec. 91. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 2327, ch. 721, §§ 1 to 91, eff. Sept. 1, 1975.]

9. TRADE ZONES

Art. 1446.5. Amarillo Trade Zone Corporation

The Amarillo Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near Amarillo, Potter, and Randall counties, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Amarillo, Potter, and Randall counties, and other subzones, subject to the requirements of federal law and regulations of the Foreign-Trade Zones Board.

[Acts 1975, 64th Leg., p. 1929, ch. 628, § 1, eff. Sept. 1, 1975.]

CHAPTER SEVENTEEN. TRUST COMPANIES AND INVESTMENTS

Art. 1513a. Creation of Trust Company; Purposes

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

Supervision of Banking Commissioner; Annual Statement; Examination of Trust Companies; Penalties

Sec. 2. (a) Such corporations shall be subject to supervision by the Banking Commissioner of Texas and shall file with the Banking Commissioner of Texas on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities, together with a fee of \$50 for filing; which statement when so filed shall not be open to the public but shall be for the information of the

Banking Commissioner and his employees. The Banking Commissioner may, for good cause shown, extend the time for filing such statement for not more than 60 days. The Banking Commissioner, or his authorized assistants or representative, shall not make public the contents of said statement, or any information derived therefrom, except in the course of some judicial proceeding in this state.

(b) The Banking Commissioner of Texas shall have authority to examine or cause to be examined each such corporation annually or more often if he deems it necessary. Such corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination and a fee not exceeding \$50 per day per person engaged in such examination. If such corporation has not sold in Texas, and does not offer for sale or sell in Texas, any of its securities which have been registered or with respect to which a permit authorizing their sale has been issued under the Securities Act, as presently in force or hereafter amended, the Banking Commissioner of Texas, in lieu of an examination, shall accept the financial statement filed by such corporation pursuant to the first paragraph of this Section. Such fees, together with all other fees, penalties and revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

[See Compact Edition, Volume 2 for text of 2(c) to 7]

[Amended Acts 1975, 64th Leg., p. 1368, ch. 523, §§ 1, 2, eff. Sept. 1, 1975.]

CHAPTER EIGHTEEN. MISCELLANEOUS

Art. 1528c. Telephone Cooperative Act

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

Powers of Corporation

Sec. 4. Each corporation shall have power:

- (1) To sue and be sued, complain and defend, in its corporate name;
- (2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;
- (3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;
- (4) To furnish, improve and expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members, provided, however, that, without regard to said ten per centum (10%) limitation, telephone service may be made available by a corporation through intercon-

nection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users; and provided, further, that a corporation which acquires existing telephone facilities may continue service to persons, not in excess of forty per centum (40%) of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the by-laws; provided there shall be no duplication of services where reasonably adequate telephone services are available.

(5) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, telephone lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized; provided that no cooperative shall furnish local telephone exchange service within the boundaries of any incorporated or unincorporated city, town or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, except where the governing body (the City Council of an incorporated area and Commissioners Court in an unincorporated area) after published notice and public hearing determines the population of such incorporated or unincorporated city, town or village has decreased below one thousand five hundred (1,500) inhabitants since taking and publishing the last preceding Federal Census, which order shall be entered of record in the official minutes of said governing body and shall be accepted as a true and correct determination of such population for all purposes hereunder unless contest thereof be filed within sixty (60) days from date of such order, or the official entry thereof, by any company or person at interest or living in the affected area, in a court of competent jurisdiction, in which event the question shall abide the result of such contest; and provided further that the corporation may continue to furnish telephone exchange service within the boundaries of any incorporated or unincorporated city, town, or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the latest Federal Census, if the area was previously receiving local telephone exchange service from the corporation prior to

the time that the area increased in population to more than one thousand five hundred (1,500) inhabitants or the area became annexed to an incorporated city, town, or village having a population in excess of one thousand five hundred (1,500) inhabitants; and provided further that this Subsection shall not be considered as a limitation or expansion of the provisions of Subsection (4) of Section 4.

(6) To connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(7) To make its facilities available to persons furnishing telephone service within or without this State;

(8) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(9) To issue membership certificates as hereinafter provided;

(10) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its real or personal property, assets, franchises, or revenues;

(11) To construct, maintain and operate telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject, however, to the same restrictions and obligations required of electric transmission cooperatives in House Bill No. 393, Acts of the Fifty-first Legislature, Regular Session.¹

(12) To exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of such power by other corporations constructing or operating telephone lines, facilities or systems.

(13) To conduct its business and exercise its powers within or without this State;

(14) To adopt, amend and repeal by-laws;

(15) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted; and

(16) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized.

[See Compact Edition, Volume 2 for text of 5 to 13]

Board of Directors

Sec 14.

[See Compact Edition, Volume 2 for text of 14(a) & (b)]

(c) Instead of electing all the directors annually, the by-laws may provide that the directors, other than those named in the articles of incorporation to serve until the first annual meeting of the members, shall be elected by the members for a term not to exceed three (3) years. If a term other than one (1) year is provided by the by-laws, then a staggered term will be provided with one-half ($\frac{1}{2}$) of the directors (or the number nearest thereto) being elected annually when a two (2) year term is provided, and one-third ($\frac{1}{3}$) of the directors (or the number nearest thereto) being elected annually when a three (3) year term is provided. Thereafter, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election.

[See Compact Edition, Volume 2 for text of 14(d) to 34]

[Amended by Acts 1975, 64th Leg., p. 343, ch. 145, § 1, eff. May 8, 1975; Acts 1975, 64th Leg., p. 344, ch. 146, § 1, eff. May 8, 1975.]

¹ Article 1436a.

Art. 1528e. Professional Corporations Act

[See Compact Edition, Volume 2 for text of 1 to 7]

Name

Sec. 8. A professional corporation may adopt any name that is not contrary to the law or ethics regulating the practice of the professional service rendered through the professional corporation. A professional corporation may use the initials "P.C." in its corporate name in lieu of the word, or in lieu of the abbreviation of the word, "corporation," "company," or "incorporated."

[See Compact Edition, Volume 2 for text of 9 to 20]

[Amended by Acts 1975, 64th Leg., p. 243, ch. 92, § 1, eff. April 30, 1975.]

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

Subd. 3. Upon petition of fifteen or more resident citizens of any one county to the Secretary of State, the Secretary of State shall, or may at any time upon his own initiative, appoint inspectors to observe all functions, activities, or procedures conducted pursuant to the election laws of this State. Any such inspectors shall be subject to the direction of and responsible to the Secretary of State and he may terminate any appointment at any time. Any such inspectors may be present at, observe, and take reasonable steps to evidence all activities, functions, and procedures (except for the marking of any ballot by a voter, unless being assisted by an election officer) at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. The Secretary of State or any member of his staff may, upon the initiative of the Secretary of State alone, whether any violation of election laws is suspected or not, be present at, observe, and take reasonable steps to evidence any activities, functions, and procedures at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. Any inspectors appointed under this provision shall report to the Secretary of State any violations of law observed and the Secretary of State may refer the violation to the Attorney General or a prosecuting attorney for appropriate action.

[Amended by Acts 1975, 64th Leg., p. 2074, ch. 681, § 1, eff. June 20, 1975.]

Art. 1.05. Ineligibility

Subd. 1. No person shall be eligible to be a candidate for, or to be elected or appointed to, any public elective office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state, is not mentally incompetent as determined by a court, has not been convicted of a felony for which

he has not been pardoned or had his full rights of citizenship restored by other official action, and will be 18 years of age or older on the commencement of the term to be filled at the election or on the date of his appointment, and unless he will have resided in this state for a period of 12 months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independent or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

Subd. 2. The foregoing requirements do not apply to any office for which the Constitution or statutes of the United States or of this state prescribe the exclusive qualifications for the office or prescribe qualifications in conflict herewith, and in such case the provisions of such other laws control.

Subd. 3. A home-rule city by charter may prescribe for its elective officers different age and residence requirements from those prescribed in Subdivision 1 of this section, but a charter may not set a minimum age greater than 21 years or a minimum length of residence in the state or city greater than 12 months next preceding the election.

Subd. 4. Except as provided in Section 104 of this code (Article 8.22, Vernon's Texas Election Code), no ineligible candidate shall ever have his

name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election.

Subd. 5. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state.

[Amended by Acts 1975, 64th Leg., p. 2080, ch. 682, § 1, eff. Sept. 1, 1975.]

Art. 1.05-1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 1.08a. Bilingual Election Materials in English and Spanish

Elections and Areas in Which Bilingual Materials are Required

Subd. 1. (a) In every general, special, or primary election, by whatever authority held, which is held within a county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the federal census specified in Paragraph (b) of this subdivision, the election materials enumerated in Subdivision 3 of this section shall be printed in both English and Spanish for use at the polling place in each election precinct that is not exempt from this requirement under Subdivision 2. In the elections of a political subdivision that includes territory in more than one county, the bilingual materials must be used in each precinct that includes territory lying within a county to which this subdivision applies unless the precinct is exempt under Subdivision 2.

(b) The census used for determining the percentage of persons of Spanish origin or descent is the last preceding federal decennial census for which the enumeration date was more than two years before January 1 of the calendar year in which the election is held.

Election Precincts Exempt from Requirement

Subd. 2. (a) An election precinct situated in a county to which Subdivision 1 applies is exempt from the requirement for bilingual election materials if official census information or other information shows that persons of Spanish origin or descent comprise less than five percent of the inhabitants of the precinct. The authority holding the election has

the burden of establishing entitlement to the exemption. Unless otherwise ordered by a court of competent jurisdiction, the officer or body responsible for obtaining the supplies for the election is relieved of the duty to furnish bilingual materials for those precincts for which there has been filed with the clerk or secretary of the political subdivision responsible for the expenses of the election, at least 30 days before the date of the election, a certificate executed by the presiding officer of the governing body of the political subdivision and approved by the governing body, identifying the precinct or precincts for which the exemption is claimed, together with an abstract of the official census information or other information relied on to support the exemption and a map or maps showing the precinct boundaries and the boundaries of the census enumeration areas referred to in the abstract. An authenticated copy of the resolution or other document evidencing the governing body's approval must be filed with the certificate.

(b) A new certificate and new supporting information must be filed following each decennial census. The supporting information must be revised following a change in election precinct boundaries, and a revised certificate must be filed if the certificate on file no longer correctly reflects the exempt precincts.

(c) In the case of a primary election held by a political party, the exempt precincts are those reflected in a certificate executed by the county judge or the secretary of state and filed in the office of the county clerk. The secretary of state is authorized to file a certificate for a county whenever the county judge has not filed a certificate by the 60th day before the date of the primary or whenever the certificate on file does not correctly reflect the exempt precincts.

Enumeration of Required Bilingual Materials; Preparation of the Materials

Subd. 3. (a) At each polling place where election materials in English and Spanish are required, the following materials shall be provided in bilingual form:

(1) Instruction cards for the information of voters shall be printed in both English and Spanish, either on separate cards to be posted side by side or on the same card with the Spanish text alongside the English text.

(2) Where voting machines or voting devices are used, a Spanish translation of the instructions for operating the machines or devices shall be posted in the compartment or booth that the voter occupies.

(3) All ballots and ballot labels may be printed with all ballot instructions, office titles, and

propositions appearing in both Spanish and English. If the bilingual listing on the face of the ballot is not utilized, then a Spanish translation of the ballot shall be posted in each compartment or booth, and a statement shall be placed on the face of the ballot in Spanish to inform the voter that the Spanish translation is posted in the compartment or booth; and where paper ballots are used and booths are not provided for all voters, copies of the Spanish translation shall also be made available at the table where the voter selects his ballot, and a sign printed in Spanish shall be displayed at the table, informing the voter that he may take a copy of the Spanish translation for his use in preparing his ballot.

(4) All affidavit forms or other forms that voters are required to sign may have a Spanish translation printed beneath the English text or on the reverse side of the printed matter appearing on the form. If this translation is not utilized, then a Spanish translation of the affidavit shall be made available, and a statement shall be placed on the affidavit in Spanish that a Spanish translation is available upon request.

(b) The secretary of state shall prepare the Spanish translation for all bilingual materials required by Subdivisions 3 and 4 of this section, except ballot forms for local elections. The secretary of state shall prepare the Spanish translation of the ballot propositions for proposed constitutional amendments and other measures submitted by the legislature if the legislature fails to provide a Spanish text. The officer having the duty to make up the ballot for a local election shall prepare the Spanish translation of ballot material if the governing body of the political subdivision fails to provide a Spanish text.

Bilingual Materials for Absentee Voting

Subd. 4. In any countywide election, or in any election held in a political subdivision other than a county, in which bilingual election materials are required at any polling place in the county or other political subdivision, the absentee voting materials shall be printed in both English and Spanish. The forms for applying for an absentee ballot, the ballot envelopes and carrier envelopes, and any other instructions or forms furnished to the voters shall be printed in English with a Spanish translation on the face of the instrument or furnished separately along with the instrument. All ballots and ballot labels used for absentee voting shall be printed in the manner described in Subdivision 3; and whenever the Spanish translation of ballot propositions is printed separately from the ballot, a copy of the translation shall be furnished to each voter who votes by mail. In the conduct of absentee voting by personal appearance, any other materials enumerat-

ed in Subdivision 3 which are used in the voting shall be in bilingual form.

Optional Use of Bilingual Materials

Subd. 5. In any election held in a county to which Subdivision 1 of this section does not apply, or at any polling place where bilingual materials are not made mandatory under Subdivision 1, the governing body of the political subdivision responsible for the costs of the election may require the use of bilingual ballots and such other items of election materials enumerated in Subdivisions 3 and 4 as the governing body specifies, for any or all of the polling places as specified by the governing body; and the election officers of the political subdivision shall furnish bilingual materials in accordance with the resolution, ordinance, or other document by which their use is required. The governing body may provide for use of the bilingual materials on a continuing basis or on an election-by-election basis, as it sees fit.

[Added by Acts 1975, 64th Leg., p. 511, ch. 213, § 1, eff. May 16, 1975.]

Art. 1.08b. Encouragement to Vote of Non-English-Speaking Citizens

[Text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18]

It is the intent of the legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.

The presiding judge of a voting precinct in which the election materials provided in Section 8a of this code¹ are required to be used shall make reasonable efforts to appoint election clerks who are fluent in both English and Spanish.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, eff. June 20, 1975.]

¹ Article 1.08a.

For text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, see art. 1.08b, post

Art. 1.08b. Verification of Petition Signatures

[Text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2]

Whenever an application or petition of a candidate or a political party for a place on a ballot, or any other instrument authorized or required by this code, contains more than 1,000 signatures or names which need verification, the officer with whom the instrument is filed (including officers of political parties as well as public officers) may employ any reasonable statistical sampling method in determining whether the instrument contains the required number of names meeting the prescribed qualifications for

signers or for names which may be listed thereon. However, in no event may the sample be less than one percent of the total number of names appearing on the instrument.

[Added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, see art. 1.08b, ante

CHAPTER TWO. TIME AND PLACE

Article

2.01b. Dates for Holding General and Special Elections [NEW].

2.01c. Joint Elections of Political Subdivisions [NEW].

2.06a. Municipal and School District Election Dates [NEW].

2.06-1. [Expired].

Art. 2.01. Time and Place

A general election shall be held on the first Tuesday after the first Monday in November, A.D. 1964, and every two years thereafter, at such places as may be prescribed by law after notice as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing therefor. In all elections, general, special, or primary, the polls shall be open from seven o'clock a. m. to seven o'clock p. m.; provided, that in any county having a population of one million or more, according to the last preceding federal census, the polls may be opened one hour earlier at six o'clock a. m. on order of the commissioners court of such county entered in the minutes thereof. The foregoing authority of the commissioners court shall extend to all elections held within the county, by whatever authority the election may be ordered, but the court may exercise this authority with respect to such elections as it deems necessary or desirable without advancing the opening hour for other elections, subject to the requirement that the court's order must apply uniformly to comparable types of elections held on the same day; and the order shall specify the elections to which it applies. The election shall be held for one day only.

All persons who are within the polling place and all persons who are waiting to enter the polling place at seven o'clock p. m. shall be allowed an opportunity to present themselves for voting in the same manner as if they had appeared and offered themselves for voting during regular voting hours. The presiding judge shall take necessary precautions to prevent voting by any person not present and waiting to vote at the time for official closing of the polls. If feasible, all persons waiting to vote at the time for official closing of the polls shall be required to enter the polling place, and the door to the polling place shall be closed and locked, and each such person shall remain inside the polling place until he has voted. If such procedure is not feasible, numbered identification cards or tokens shall be distrib-

uted to identify those persons waiting to vote at the time for official closing of the polls.

[Amended by Acts 1975, 64th Leg., p. 2075, ch. 681, § 2, eff. June 20, 1975.]

Art. 2.01b. Dates for Holding General and Special Elections

[Text of article effective from Jan. 1, 1976 to Jan. 23, 1978]

(a) Except as provided in Subsections (b) and (e) of this section, every general (regular) or special election held by the state or by any county, city, school district, water district, or any other political subdivision or agency of this state must be held on one of the following dates: the third Saturday in January, the first Saturday in April, the second Saturday in August, or the first Tuesday after the first Monday in November. Provided, however, that in even-numbered years the only issues which may be included on the ballot of the election held on the first Tuesday after the first Monday in November shall be the election of state and county officers and amendments to the constitution of this state submitted to the voters by the legislature. This requirement does not apply to runoff elections, elections held under Chapter 467, Acts of the 44th Legislature, 2nd Called Session, 1935, as amended,¹ bond elections, or to the biennial party primary elections held to nominate candidates for public office. An election held on an unauthorized date is void.

(b) When a vacancy in office is to be filled at a special election, the election must be called for a date specified in Subsection (a) unless the governor finds the existence of an emergency that warrants calling the election for an earlier date. When the governing body of a political subdivision wishes to call an emergency special election to fill a vacancy, the governing body shall submit a request to the governor for permission to call the election, and the governor may grant permission if he finds that an emergency exists.

(c) The date of the general (regular) elections of the political subdivisions of this state shall be as follows: an election which by preexisting law is set for a date falling in the month of December, January, or February shall be held on the third Saturday in January; an election which is set for a date falling in the month of March, April, May, or June shall be held on the first Saturday in April; an election which is set for a date falling in the month of July, August, or September shall be held on the second Saturday in August; and an election which is set for a date falling in the month of October or November shall be held on the first Tuesday after the first Monday in November. Provided, however, that in even-numbered years the only issues which may be included on the ballot of the election held on

the first Tuesday after the first Monday in November shall be the election of state and county officers and constitutional amendments submitted to the people by the legislature. The elections of political subdivisions which by preexisting law fall in the months of October or November in even-numbered years shall be held on the third Saturday in January. The governing body of local political subdivisions whose elections by preexisting law fall annually in the month of October or November shall be allowed to choose for their permanent election day any of the above four election dates. The filing deadline for candidates, the dates for canvassing the returns of the election, the date for commencement of terms of office filled at the election, and any other date incidental to the election shall fall on the date that has the same relationship to the date of the election as provided under the preexisting law. Where by preexisting law the terms of office are set to commence on a specified calendar date and the date of the election is changed by this section, the governing board of the political subdivision shall set the date on which the terms begin until otherwise provided by law. A runoff election, when required, shall be held on a date that provides the same time interval with relation to the main election as provided under the preexisting law.

(d) When under the provisions of Subsection (c) the beginning date for a term of office is changed to fall on an earlier date, the current term on the effective date of this section is shortened accordingly, and the holder of the current term shall surrender the office to his successor on the beginning date of the succeeding term or as soon thereafter as the successor has qualified. When the beginning date is changed to fall on a later date, the incumbent in office at the expiration of the current term as set by preexisting law shall continue to perform the duties of the office, as required by Section 17 of Article XVI of the Texas Constitution, until the successor has qualified for the succeeding term.

(e) When a preexisting law requires that a special election be called within a specified time period after the occurrence of a certain event, the election shall be called for a date authorized in Subsection (a) of this section that falls within that time period; or if there is no authorized date within the period that allows sufficient time to comply with other requirements of law, the election shall be called for the first authorized date after its expiration, except that the election shall be called for some other date within the time period where the constitution requires it. [Added by Acts 1975, 64th Leg., p. 2295, ch. 715, § 1, eff. Sept. 1, 1975.]

¹ Penal Auxiliary Laws, arts. 666-1 et seq., 666-32 et seq. Section 2 of the 1975 Act added art. 2.01c; § 3 thereof provided:

"Sec. 3. (a) This Act shall take effect on January 1, 1976.

(b) This Act shall no longer be in effect after the first Monday after the third Saturday in January, 1978."

Art. 2.01c. Joint Elections of Political Subdivisions

[Text of article effective from Jan. 1, 1976 to Jan. 23, 1978]

(a) When two or more political subdivisions of this state are holding elections on the same day in all or part of the same territory, the governing bodies of any two or more of the political subdivisions may agree to hold their elections jointly in the election precincts that can be served by common polling places. When any other statute makes a joint election mandatory, a joint election must be held in accordance with the terms of the statute; and if any other political subdivisions are holding elections in any part of the same territory, any or all of them may also join in the agreement for a joint election.

(b) When a joint election is to be held, a resolution reciting the terms of the agreement, including the method for allocating the expenses for the election, shall be adopted by the governing body of each of the participating political subdivisions. The agreement may provide for use of a single ballot form at each polling place, to contain all the offices or propositions to be voted on at that polling place, or for separate ballot forms; provided, however, that no voter shall be given a ballot containing any office or proposition on which the voter is ineligible to vote. One set of election officers may be appointed to conduct the joint election, and any person who is qualified to serve as an election officer in the election of any one of the participating political subdivisions may be appointed to serve in the joint election. Poll lists, tally lists, return forms, and other records for the various elections may be combined in any manner convenient and adequate to record and report the results of each election. Where paper ballots or punchcard ballots are used, one set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs for the joint election. Returns on joint or separate forms may be made to, and the canvass made by, each officer, board, or body designated by law to receive and canvass the returns for each election, or one of such officers, boards, or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authority. Where other records are combined, the officer designated by law to be the custodian of the records for any participating subdivision may be designated in the agreement to be the custodian of the combined records. Where the counted ballots for more than one subdivision are deposited in a single ballot box, the officer designated by law to be the custodian of the voted ballots for any one of the subdivisions may be designated in the agreement to be the custodian.

[Added by Acts 1975, 64th Leg., p. 2297, ch. 715, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act added art. 2.01b; § 3 thereof provided:
 "Sec. 3. (a) This Act shall take effect on January 1, 1976.
 "(b) This Act shall no longer be in effect after the first Monday after the third Saturday in January, 1978."

Art. 2.04. County Election Precincts Formed by Commissioners Court

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

(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more congressional districts or state senatorial districts or state representative districts, nor out of the parts of two or more such districts. If in September of any year there exists any election precinct in the county which does not comply with the foregoing requirements, the commissioners court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Paragraph (a) of this section. Subject to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in counties of less than 100,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 100 but not less than 50 voters; and provided further, that in counties of less than 50,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 50 voters upon the petition of 25 or more registered voters within the county. In precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code,¹ the maximum number of voters shall be 3000. There shall be a minimum of one election precinct wholly contained within each commissioners precinct.

[See Compact Edition, Volume 2 for text of (c) to (e)]

[Amended by Acts 1975, 64th Leg., p. 265, ch. 112, § 1, eff. Sept. 1, 1975.]

¹ Articles 7.14, 7.15.

Art. 2.06a. Municipal and School District Election Dates

In counties where voting machines or electronic voting systems are used, all municipal and school district elections in which candidates are running for office, including without limitation, elections in home-rule cities and independent, municipal, and county school districts, otherwise scheduled to be held within 14 days of the date on which a proposed

amendment or amendments to the Constitution of Texas are to be submitted to a vote of the electorate, may be held on the same date as the constitutional amendment election if the governing body of the municipality or the school district so provides. If the governing body changes the date of the elections as authorized by this Act, it may set the date of any second or runoff primary which may be necessary for any date not earlier than the 14th day after the first election and not later than the latest date which would have been permissible if the date of the first election had not been changed. This Act shall make no change in the term of office or commencement thereof in any election affected hereby. [Added by Acts 1975, 64th Leg., p. 2108, ch. 688, § 1, eff. Sept. 1, 1975.]

Art. 2.06-1. Expired

CHAPTER THREE. OFFICERS OF ELECTION

Art. 3.07. Service, Duties, and Privileges of Watchers

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) Each watcher appointed in accordance with this code shall be permitted, but not required, to sit conveniently near the judges or clerks so that he can observe the conduct of the election, including but not limited to the reading of the ballots, the tallying and counting of the votes, the making out of the returns, the locking of the ballot boxes, their custody and safe return. He shall also be permitted to be present when assistance is given by any election judge in the marking of the ballot of any voter not able to mark his own ballot, to see that the ballot is marked in accordance with the wishes of the voter, but he must remain silent except in cases of irregularity or violation of the law. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. The watcher shall call the attention of officers holding the election to any fraud, irregularity or mistake, illegal voting attempted, or other failure to comply with the laws governing such election at the time it occurs, if practicable and if he has knowledge thereof at the time, and such complaint shall be reduced to writing and a copy delivered to the election judge. Preventing a poll watcher from observing any activity including, but not limited to, the tallying of ballots at any polling place, place of canvass, or central counting station shall constitute a Class A misdemeanor.

[See Compact Edition, Volume 2 for text of (e) to (h)]

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 3, eff. June 20, 1975.]

CHAPTER FOUR. ORDERING ELECTIONS**Art. 4.10. Vacancy: Application to Get on Ballot**

Subd. 1. (a) Any person desiring his name to appear upon the official ballot at any special election held for the purpose of filling a vacancy, when no party primary has been held, may do so by presenting his application to the proper authority. Such application shall set forth:

- (1) The name of the office sought;
- (2) His occupation, his postoffice address, and the county of his residence;
- (3) His age, place of birth, kind of citizenship, and length of residence in the county and state.

(b) In any special election for a statewide or district office which is regularly filled at the general election for state and county officers, the application shall also set forth the candidate's political party affiliation or shall state that the candidate is not affiliated with any political party.

Subd. 2. Such application must be filed not later than 5 p. m. of the 31st day before any such special election, and shall not be considered filed unless it has actually been received by the officer with whom it is to be filed.

Subd. 3. (a) The application must be filed with the Secretary of State in the case of a statewide or district special election. It must be accompanied with a fee of \$1,000 for a statewide office, including without limitation the office of United States Senator, a fee of \$500 for the district office of United States Representative, a fee of \$400 for the district office of State Senator, and a fee of \$200 for the district office of State Representative; or, in lieu of the filing fee, the application must be accompanied with a petition signed by at least 5,000 registered voters of the state in the case of a statewide office, and by at least 500 registered voters of the district in the case of a district office. A petition must show the address, voter registration number, and date of signing for each signer. No person may sign the petition of more than one candidate for the same office, and if a person signs the petition of more than one candidate, the signature is void as to all such petitions. A petition may be in multiple parts. To each part, which may consist of one or more sheets, there must be attached the affidavit of some registered voter, giving his address and voter registration number, and stating that each signature appearing in that part of the petition was affixed in the presence of the affiant and that to the best knowledge and belief of the affiant each signature is genuine and each person signing was a registered voter at the time of signing. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are

registered voters. Fees received under this subdivision shall be deposited in the general revenue fund of the state.

(b) Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state, or of the district in the case of a district vacancy, directing that the name of the applicant be printed on the official ballot.

(c) The party affiliation of the candidate shall be printed on the official ballot following the name of the candidate. If the candidate has stated in his application that he is not affiliated with any political party, the word "Independent" shall be printed on the ballot following the candidate's name. In other respects, the ballot shall be printed as indicated in Section 61 of this code (Article 6.05, Vernon's Texas Election Code) for a special election in which no party nomination has been made.

Subd. 4. The application must be filed with the city secretary or clerk in the case of a municipal special election. A home-rule city by charter may require that the application be accompanied with a reasonable filing fee or a petition of voters in lieu of the filing fee.

[Amended by Acts 1975, 64th Leg., p. 356, ch. 151, § 1, eff. Sept. 1, 1975.]

CHAPTER FIVE. SUFFERAGE

Article

- 5.13c. Voter Registration Forms in Spanish [NEW].
- 5.15b. Service Program of Secretary of State; Copies of Master State Voter File [NEW].
- 5.18b. [Repealed]
- 5.22b. [Repealed]
- 5.22c. [Repealed]

Art. 5.01. Classes of Persons Not Qualified to Vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under 18 years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned.

[Amended by Acts 1975, 64th Leg., p. 2082, ch. 682, § 3, eff. Sept. 1, 1975.]

Art. 5.02. Qualifications and Requirements for Voting

(a) Every person subject to none of the foregoing disqualifications who is a citizen of the United States and a resident of this state and is eighteen years of age or older, and who has complied with the registration requirements of this code, is a qualified

voter. No person may vote in an election held by a county, municipality, or other political subdivision unless he is a resident of the subdivision on the day of the election; and, except, as expressly permitted by some other provision of this code or another statute of this state, no person may vote in an election precinct other than the one in which he resides. The provisions of this section, as modified by Section 35 of this code (Article 5.03, Vernon's Texas Election Code), apply to all elections, including general, special, and primary elections, whether held by the state, by a county, municipality, or other political subdivision of the state, or by a political party.

(b) All citizens of this state who are otherwise qualified by law to vote at any election of this state or any district, county, municipality, or other political subdivision, shall be entitled and allowed to vote at all such elections. The Secretary of State shall, by directive, implement the policies stated herein throughout the elective procedures and policies by or under authority of this state. Enforcement of any directive of the Secretary of State pursuant to this section may be by injunction obtained by the Attorney General.

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 4, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2082, ch. 682, § 4, eff. Sept. 1, 1975.]

Art. 5.05. Absentee Voting

Who May Vote Absentee

Subd. 1. (a) Any qualified voter of this state who expects to be absent from the county of his residence on the day of the election, or who will be 65 years of age or older on the day of the election, or who because of sickness, physical disability, confinement in jail, or religious belief cannot appear at the polling place in the election precinct of his residence on the day of the election, may nevertheless cause his vote to be cast at any election held in this state by compliance with the applicable method herein provided for absentee voting. If a voter's religious belief prohibits him from voting during any part of the time during which the polls are open on the day of the election, he shall nevertheless be entitled to vote absentee even though the prohibition does not operate throughout the entire time that the polls are open. A voter who is confined in jail is entitled to vote absentee if at the time of applying for an absentee ballot he is:

- (1) serving a misdemeanor sentence which extends through election day;
- (2) being held for trial after a denial of bail;
- (3) being held without bail pending the appeal of a felony conviction; or

(4) being held for trial or pending an appeal on a bailable charge but he expects not to have been released on bail by the date of the election.

(b) Absentee voting shall be conducted by two methods:

- (1) voting by personal appearance at the clerk's office, and
- (2) voting by mail.

All voters coming within the foregoing provisions of this subdivision may vote by personal appearance at the clerk's office if they are able to make such appearance within the period for absentee voting. Where the ground for voting absentee is confinement in jail, it is not mandatory that the voter be allowed to make a personal appearance, but the officer in charge of the jail, in his discretion, is authorized to make the necessary arrangements to permit the voter to vote by personal appearance.

(c) The following persons, and no other, may vote by mail:

(i) Qualified voters who will be 65 years of age or older on the day of the election, or who because of sickness or physical disability, or because of religious beliefs, cannot appear at the polling place on the day of the election. The application for an absentee ballot shall be made not more than sixty days before the day of the election. It must be mailed to the clerk, and the clerk shall preserve the envelope in which it is received. If the application is delivered to the clerk by any method other than by mailing it to him, the ballot shall be void and shall not be counted. The voter shall state in his application the address to which the ballot is to be mailed to him, which must be either his permanent residence address or the address at which he is temporarily living. If the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any address other than one of the foregoing, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(ii) Qualified voters who, before the beginning of the period for absentee voting, make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours for the entire period of absentee voting. The voter must state in his application that he expects to be absent from the county of his residence on election day and during the clerk's regular office hours for the entire period for absentee voting. The application shall be made not more than sixty days before the day

of the election, and may be mailed to the clerk or delivered to him by the voter in person, but the clerk shall not furnish a ballot to the voter by any method other than by mailing it to him. Applications made under this paragraph may be mailed either from within or without the county of the voter's residence, but in every case the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the carrier envelope in which the ballot is returned to the clerk is postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iii) Qualified voters who, after the beginning of the period for absentee voting, apply for an absentee ballot on the ground of expected absence from the county and who are absent from such county at the time of applying for an absentee ballot and expect to be absent from such county during the clerk's regular office hours for the remainder of the period for absentee voting. The voter must state in his application that he is absent from the county at the time of making the application and expects to be absent on election day and during the clerk's regular office hours for the remainder of the period for absentee voting. The clerk shall not mail a ballot to any such voter unless the envelope in which the application is received is postmarked from a point outside the county, and the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the envelope in which the application is received and the carrier envelope in which the ballot is returned to the clerk are each postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iv) Qualified voters who are confined in jail under one of the circumstances listed in the first paragraph of this subdivision. The application for an absentee ballot shall be made not more than twenty days before the day of the election. It must be enclosed in an envelope and either mailed to the clerk or delivered to him by the jailer or one of his deputies or assistants, who shall place his signature on the envelope at the time of its delivery. The clerk shall preserve the envelope in which the application is received. If the application is delivered to the clerk by any method other than as expressly authorized herein, the ballot shall be void and shall not be counted. The clerk shall mail the ballot to the voter in care of the jail where he is confined; and if the ballot is furnished to the voter by any method other than by mailing it to

him, or if it is mailed to any other address, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(d) An application for an absentee ballot to be voted by mail shall state the applicant's permanent address and the address to which the absentee ballot is to be mailed to the applicant, and shall also state the address to which his voter registration certificate is to be mailed back to him.

Application for Ballot

Subd. 2. (a) A voter desiring to vote absentee shall make written application for an official ballot to the county clerk of the county of his residence, which application shall be signed by the voter, or by a witness at the direction of the voter if for any reason the voter is unable to sign his name. The application shall state the ground on which the applicant is entitled to vote absentee, and in case of an application by mail, it shall also state the additional information required by Subdivision 1 of this section.

(b) The application shall be accompanied by the voter registration certificate of the voter, or in lieu thereof, his statement in writing that same has been lost or mislaid, has been left at the voter's home (where he is applying from a temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. If the ground of application is sickness or physical disability by reason of which the voter cannot appear at the polling place on election day, a certificate of a duly licensed physician or chiropractor or accredited Christian Science practitioner certifying to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

This is to certify that I have personal knowledge of the physical condition of _____, and that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the _____ day of _____, 19__.

Witness my hand at _____, Texas, this _____ day of _____, 19__.

(Signature of Practitioner)

(c) Expected or likely confinement for childbirth on election day shall be sufficient to entitle a voter to vote absentee on the ground of sickness or physical disability, and a physician executing a certificate for a pregnant woman may state in the certificate that because of pregnancy and possible delivery she will be or may be unable to appear at the polling place on election day.

Any person who requests a physician, chiropractor, or Christian Science practitioner to execute a certificate for another person without having been directed by such other person to do so, and any physician, chiropractor, or Christian Science practitioner who knowingly executes a certificate except upon the request of the voter named therein or upon request of someone at the voter's direction, or who knowingly delivers a certificate except by delivering it to the voter in person or by mailing it to the voter at his permanent residence address or the address at which he is temporarily living, or who knowingly falsifies a certificate, is guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars or imprisoned in the county jail for not more than thirty days, or both so fined and imprisoned.

(d) A voter who gives false information in his application for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code). Printed application forms furnished to voters by the county clerk shall contain the following statement immediately preceding the space for the voter's signature: "I certify that the information given in this application is true, and I understand that the giving of false information in the application is a crime." An informal application need not contain the statement, but a voter who gives false information is subject to the criminal penalty regardless of whether the statement appears on the application.

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

Voting by Personal Appearance in County-wide Elections

Subd. 3a. (a) In a county-wide election, or in an election less than county-wide where the authority holding the election has provided that absentee voting by personal appearance shall be conducted on a voting machine or that absentee paper ballots shall be counted by a special canvassing board, upon receipt of an application for an absentee ballot to be voted by personal appearance, if the clerk is satisfied as to the right of the applicant to vote, the clerk shall place a notation on the list of registered voters showing that the particular person has voted absentee and shall enter the voter's name on a poll list of absentee voters. He shall note the number of the voter's registration certificate on the application, and shall return the certificate to the voter. The application shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots.

(b) In the conduct of absentee voting under this subdivision, the clerk shall possess the same power as a presiding judge with respect to examination and acceptance of a voter. If the right of an applicant

to vote is challenged, the procedure prescribed in Section 91 of this Code (Article 8.09, Vernon's Texas Election Code) shall be followed.

(c) Where paper ballots are used for absentee voting, after a voter has been accepted, the clerk shall furnish the voter with an official ballot which has been prepared in accordance with law for use in such election. The voter shall then and there, in the office of the clerk, mark his ballot and detach and sign the ballot stub, and shall deposit the ballot in a ballot box and the stub in a stub box in the manner provided in Section 97 of this Code (Article 8.15, Vernon's Texas Election Code). The ballots shall be deposited in a ballot box locked with two locks, the keys of one of which shall be kept during the period for absentee voting by the sheriff and the keys of the other by the county clerk. The stubs shall be deposited in a stub box prepared in accordance with Section 97 of this Code (Article 8.15, Vernon's Texas Election Code).

(d) Where a voting machine is used for absentee voting by personal appearance, after a voter has been accepted, he shall then be permitted to cast his ballot on the voting machine. Returns of absentee votes cast on a voting machine shall be made under the appropriate provision of Section 79 of this Code (Article 7.14, Vernon's Texas Election Code).

Voting by Personal Appearance in Election Less Than County-wide

Subd. 3b. (a) In an election less than county-wide in which absentee paper ballots are to be sent to the regular polling places for counting, upon receipt of an application for an absentee ballot to be voted by personal appearance, the clerk shall thereupon furnish to the voter the following absentee voting supplies:

(1) One official ballot which has been prepared in accordance with law for use in such election.

(2) One ballot envelope, which shall be a plain envelope, without any markings except the words "Ballot Envelope" printed on the face thereof, followed by the instructions contained in this subdivision and Subdivision 4 for marking the ballot, for placing it in the carrier envelope, and for returning a ballot to be voted by mail, together with a statement of the deadline for placing the ballot in the mail and for delivery to the clerk's office in that election, the text of the provisions in Subdivision 15 of this section which relate to assistance to the voter in preparing his ballot, and the text of Section 330 of this code (Article 15.30, Vernon's Texas Election Code). The textual material may be continued onto the reverse side of the envelope if necessary.

(3) One carrier envelope, upon the face of which there shall appear the words "Carrier Envelope for Absentee Ballot" and the name, official title, and post-office address of the county clerk, upon the other side there shall appear spaces for showing the nature and date of the election and the number or name of the election precinct in which the voter resides (which the clerk shall fill in before he furnishes the supplies to the voter), and a certificate in substantially the following form:

"I certify that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person and that I did not use any memorandum or device to aid me in the marking of the ballot.

(Signature of voter)

By: _____

(Signature of person who assisted voter. See Ballot Envelope for restrictions and penalties.)

(b) The voter shall then and there, in the office of the clerk, mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope, and deliver the carrier envelope to the clerk. The clerk shall note the number of the voter's registration certificate on the application, and shall return the certificate to the voter.

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

Voting by Mail

Subd. 4. (a) The period for absentee voting by mail shall begin on the twentieth day preceding the date of the election. An application for an absentee ballot to be voted by mail must be received in the clerk's office not later than the close of business on the fourth day preceding election day. In county-wide elections and in elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, the marked ballot must be received in the clerk's office before one o'clock p. m. on election day, except that in an election in which the offices of president and vice president of the United States appear on the ballot, the deadline for receipt of the ballot in the clerk's office is the official time of closing of the polls on the day of the election. In all other elections which are less than county-wide, the marked ballot must be received in the clerk's office before ten o'clock a. m. on the second day

preceding election day. The ballot may be marked by the voter at any time after he receives it.

(b) On the twentieth day preceding election day, or as soon thereafter as possible, the clerk shall mail an official ballot, ballot envelope, and carrier envelope, as described in Subdivision 3b of this section, to each voter who has theretofore made application for a ballot in compliance with this section. On applications which are received between the twentieth day and the fourth day preceding election day, the clerk shall forthwith mail the absentee voting supplies to the voter.

(c) The voter shall mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot, and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope. The carrier envelope shall then be mailed, postage prepaid, to the county clerk.

(d) As soon as practicable after receipt of the carrier envelope containing the marked ballot, the clerk shall note the number of the voter's registration certificate on the application, and shall mail the certificate to the voter at the address given in the application for returning the certificate to the voter, or if no such address is given, to the voter's permanent address.

[See Compact Edition, Volume 2 for text of 4a to 5]

Counting of Ballots in County-wide Elections

Subd. 6. (a) In all countywide elections, and in elections less than countywide where the authority holding the election has provided that absentee paper ballots shall be counted by a special canvassing board, on the day of the election the ballot box and stub box used for absentee voting by personal appearance, the keys to the ballot box, the jacket envelopes containing the ballots voted by mail and accompanying papers, the poll list for absentee voting on which the clerk has entered the names of persons voting by personal appearance, and the list of registered voters used by the county clerk, shall be delivered to a special canvassing board consisting of a presiding judge and two or more election clerks appointed in the same manner as provided for appointment of the election officers for regular polling places at that election. The county clerk shall deliver the ballots to the canvassing board at such hour as the presiding judge shall direct, but not earlier than the hour at which the polls are opened and not later than the hour specified in Subdivision 4 of this section as the deadline for returning the marked ballots to the clerk's office. If delivered before the deadline, the clerk shall deliver in like manner to the board, immediately following the deadline, all ballots

received by mail before the deadline which have not previously been delivered to the board.

(b) This special canvassing board shall open the jacket envelopes, announce the voter's name, and ascertain in each case if he is qualified to vote at that election and if he has complied with all applicable provisions of this section to entitle his ballot to be cast. On ballots voted by mail, the board shall compare the signatures on the application and the carrier envelope, and in case the board finds that the signatures correspond, that the application and the certificate on the carrier envelope are duly executed, that the voter is a qualified elector, and that he has voted in a manner authorized in this section, they shall enter his name on the official poll list (on which voters voting by mail shall be listed separately from those who have voted by personal appearance) and shall open the carrier envelope so as not to deface the certificate thereon, and shall place the sealed ballot envelope in the ballot box and the stub in the stub box. The carrier envelope, application, and accompanying papers shall be replaced in the jacket envelope and returned to the county clerk at the same time the voted ballots are returned, and shall be preserved for the length of time provided by law for the preservation of the voted ballots.

[See Compact Edition, Volume 2 for text of 6(c) to 14a]

Assistance to Voter; Use of English Language

Subd. 15. (a) No assistance shall be given a voter in marking his absentee ballot except where the voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him physically unable to write or to see or to operate the voting equipment. If a voter who is voting by personal appearance is entitled to assistance, he may be assisted by the clerk or a deputy clerk or by any qualified voter of the political subdivision in which the election is held, selected by the voter. If a voter who is voting by mail is entitled to assistance, he may be assisted by any person 18 years of age or older, selected by the voter. The person assisting the voter shall not suggest, by word or sign or gesture, how the voter shall vote, and shall confine the assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming the candidates and the political parties to which they belong, and the person shall prepare the ballot as the voter directs. Where any assistance is rendered in marking an absentee ballot other than as allowed in this subdivision, the ballot shall not be counted but shall be void for all purposes.

(b) In absentee voting by personal appearance at the clerk's office, any voter unable to speak or understand the English language may communicate

with the clerk in some other language, and if the clerk is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the county. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the clerk: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by the clerk and each question, answer, or statement addressed to the clerk by the voter." When any language other than the English language is used either by the voter or by the clerk, any watcher present shall be entitled to request and receive a translation into the English language of anything spoken in some other language.

[See Compact Edition, Volume 2 for text of 16 to 18]

[Amended by Acts 1975, 64th Leg., p. 2082, ch. 682, §§ 5 to 11, eff. Sept. 1, 1975.]

Art. 5.05a. Repealed by Acts 1975, 64th Leg. p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.05b. Voting by Former Residents of State in Presidential Elections

Former Residents Eligible to Vote

Subd. 1. A former resident of this state who has become a legal resident of another state of the United States or of the District of Columbia may vote for presidential and vice presidential electors in the county of his former residence if:

(1) on the day of the election he will not have resided in the state of his present residence for a period of 30 days and will not be eligible to vote in that state, and

(2) he otherwise possesses the substantive qualifications of an elector in this state, as defined in Section 34 of this code (Article 5.02, Vernon's Texas Election Code), except the requirement of residence, and

(3) at the time of his removal he was registered as a voter in this state, and

(4) he complies with the provisions of this section.

Application for Presidential Ballot

Subd. 2. (a) A person eligible to vote under the provisions of this section may vote either by personal appearance or by mail. The voter shall make a written, signed application to the county clerk of the county of his former residence for a ballot permitting him to vote for president and vice president only, on a form to be prescribed by the secretary of state and furnished by the county clerk.

Procedure for Voting by Mail

Subd. 3. When a voter desires to vote a ballot by mail, the procedure for absentee voting by mail in a countywide election shall be followed insofar as it can be made applicable and is not inconsistent with this section. The clerk shall mail the voter a ballot from which the clerk has stricken all offices and propositions other than the offices of president and vice president, together with a ballot envelope and a carrier envelope containing such markings and instructions as the secretary of state prescribes. When the election officer checks the voter's name on the list of registered voters and enters his name on the poll list, the officer shall add a notation that the voter is voting under this section, in the presidential race only. The ballots cast under this section shall be counted and return made thereof along with and on the same forms as the other absentee ballots.

Procedure for Voting by Personal Appearance

Subd. 4. A voter may vote by personal appearance at the clerk's office at any time that the office is open to the public, beginning on the 20th day preceding the election and ending on the day of the election. When the voter appears in person, the clerk shall furnish him with a ballot, ballot envelope, and carrier envelope prepared in accordance with Subdivision 3 of this section, and the ballot shall be processed and counted along with the absentee ballots voted by mail.

Cancellation of Registration

Subd. 5. When the registrar receives a list of registered voters containing a notation that a voter has voted under this section, he shall cancel the registration if it is still in the active file in his records.

[Amended by Acts 1975, 64th Leg., p. 2089, ch. 682, § 12, eff. Sept. 1, 1975.]

Art. 5.05c. Voting Limited Ballot After Removal to Another County

Definition of Limited Ballot

Subd. 1. The term "limited ballot" is used to mean a ballot listing only the offices and propositions on which a voter is entitled to vote under the procedure outlined in this section during a period not exceeding 90 days after his removal from one county to another county within the state. The term includes the ballot for any election at which the voter is entitled to vote, even though at some special or runoff elections the ballot may be identical with the full ballot for that election. For the purposes of this section, the day of arrival in the county of new residence is counted as the first day after removal.

Who is Eligible to Vote a Limited Ballot

Subd. 2. (a) Where a registered voter moves from one county to another county in the state, during the first 90 days after the removal he is entitled to vote, under the procedure outlined in this section, on all offices, questions, or propositions to be voted on by the electors throughout the state, if on the day of the election (1) he would have been eligible to vote in the county of his former residence except for the removal, and (2) a registration in the county of new residence has not become effective. He may also vote on all district offices for any district of which he was a resident before the removal and continues to be a resident after the removal. The term "district office" refers to the district offices which are regularly filled at the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). After a new registration in the county of new residence becomes effective, he must thereafter vote under the normal procedures for voters registered in that county. In no event may he vote under the procedure outlined in this section after 90 days following the removal.

(b) Voting rights and registration requirements in other elections after removal from one county to another are governed by Subdivision 3 of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code).

Application for Limited Ballot; Procedure for Voting

Subd. 3. A person who is entitled to vote a limited ballot, as described in Subdivision 2 of this section, shall be permitted to vote upon making a written, signed application for a limited ballot to the county clerk of the county of his residence at the time of the election, upon an official application form to be prescribed by the Secretary of State and furnished by the county clerk. The voter shall state in his application that he was registered in the county of his former residence at the time of his removal, and he shall accompany his application with his voter registration certificate from that county or shall state in his application that the certificate has been lost or misplaced. The procedure for voting a limited ballot shall be similar to the procedure for absentee voting. If the voter meets the requirements of Section 37 of this code (Article 5.05, Vernon's Texas Election Code) for voting an absentee ballot by mail, he shall be permitted to vote the limited ballot by mail under the procedure for absentee voting by mail upon submitting both an application for a limited ballot and an application for an absentee ballot. Otherwise, he shall vote by personal appearance during the period for absentee voting by personal appearance and under the procedure for voting by personal appearance in countywide elections insofar as it can be made applicable and is not

inconsistent with this section. Ballots cast under this section shall be counted and return made there-of along with and on the same forms as the absentee ballots.

[See Compact Edition, Volume 2 for text of 4 and 5]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 14, eff. Nov. 5, 1975.]

Art. 5.05d. General Provisions on Voting by Persons Lacking Full Voting Rights

Lists of Applicants to be Posted

Subd. 1. The county clerk shall post at a conspicuous place in his office, for public inspection, a complete list of persons who have applied for a ballot under Section 37b or 37c of this code (Article 5.05b or 5.05c, Vernon's Texas Election Code), stating thereon the applicant's name, address, precinct of residence, the section of this code under which the application was made, and the date on which the ballot was delivered or mailed, which list shall be kept up from day to day. The names of persons voting under Section 37c shall be included on the precinct lists of absentee voters which the clerk furnishes to the presiding judges of the election, as provided in Subdivision 11 of Section 37 of this code (Article 5.05, Vernon's Texas Election Code), with a notation by each name to indicate that the voter received a limited ballot under Section 37c.

Preservation of Applications; Inspection

Subd. 2. Applications and accompanying papers received pursuant to Sections 37b and 37c of this code (Articles 5.05b and 5.05c, Vernon's Texas Election Code) shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots and shall be open to public inspection under the same rules as apply to applications for absentee ballots.

[Amended by Acts 1975, 64th Leg., p. 2090, ch. 682, § 13, eff. Sept. 1, 1975.]

Art. 5.07. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.08. Rules for Determining Residence

[See Compact Edition, Volume 2 for text of (a) to (l)]

(m) Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 5.10a. Persons Entitled to Register

A person is entitled to register as a voter in the precinct in which he has his legal residence (i. e., domicile), as defined in Section 40 of this code (Article 5.08, Vernon's Texas Election Code), if:

(1) on the date of applying for registration he is a citizen of the United States and is subject to none of the disqualifications, other than nonage, stated in Section 33 of this code (Article 5.01, Vernon's Texas Election Code); and

(2) within 60 days after applying for registration he will be 18 years of age or older.

However, no person may vote at any election unless he fulfills all the qualifications of an elector for that election.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. May 27, 1975.]

Art. 5.11a. Initial Registration Period for Permanent Registration

[Text of article effective until March 2, 1976]

Subd. 1. An initial registration period for permanent registration shall begin on November 5, 1975, and shall continue through January 31, 1976. Between November 5, 1975, and December 15, 1975, the registrar shall mail by forwardable mail an application for registration to each person who was eligible to vote in the constitutional amendments election on November 4, 1975. Included on or accompanying each application shall be a statement informing the voter that his current registration will expire on March 1, 1976, and that he must complete the application for a new registration and return it to the registrar by January 31, 1976, in order to be registered to vote as of March 1, 1976. A registration for an application submitted under this provision shall take effect on March 1, 1976. Certificates shall be issued during February of 1976 to persons applying for registration under this provision. Applications received by the registrar after January 31, 1976, shall be treated in accordance with Section 45a of this code (Article 5.13a, Vernon's Texas Election Code). Registrations in effect as of October 1, 1975, and registrations which become effective after that date but before March 1, 1976, shall remain in force through February 29, 1976, but not thereafter. Each voter whose registration becomes effective after November 4, 1975, but before March 1, 1976, shall be issued an initial certificate valid for the remainder of the voting year ending on February 29, 1976, and a certificate valid for voting in the two year period beginning on March 1, 1976.

Subd. 2. This section expires on March 2, 1976. [Amended by Acts 1975, 64th Leg., p. 751, ch. 296, § 2, eff. Nov. 5, 1975.]

Art. 5.13a. Mode of Applying for Registration; Period for Which Registration is Effective

Subd. 1. Registration shall be conducted at all times the registrar's office is open for business. A person may apply for registration in person or by mail. Each applicant shall submit to the registrar of

the county in which he resides a written application which supplies all the information required by Section 45b of this code (Article 5.13b, Vernon's Texas Election Code). The Secretary of State shall prescribe the application form. He may prescribe one or more forms for use in counties using electronic data processing methods for issuing voter registration certificates and a different form for use in counties not using those methods, but the registrar in each county shall accept any application made upon any form prescribed by the Secretary of State which supplies all the necessary information for registration. In addition to other requirements, the application form shall contain the following statement: "I understand that the giving of false information to procure the registration of a voter is a felony." It shall also contain a space for recording the number of the voter's registration certificate.

Subd. 2. The application shall be signed by the applicant or his agent. However, if the person making the application is unable to sign his name either because of physical disability or illiteracy, he shall affix his mark, if able to do so, which shall be attested by a witness, whose signature and address shall be shown on the application. If a person making the application is physically unable to make a mark, the witness shall so state on the application.

Subd. 3. The husband, wife, father, mother, son, or daughter of a person entitled to register may act as agent for such person in applying for registration, without the necessity of written authorization therefor, may sign for the applicant, and may receive the registration certificate. However, none of these persons may act as agent unless he is a qualified elector of the county. No person other than those mentioned in this subdivision may act as agent for a person in applying for registration. Except as permitted in this subdivision, a person who wilfully acts as agent for another in applying for registration or in obtaining a registration certificate is guilty of a Class B misdemeanor.

Subd. 4. A registration becomes effective on the 30th day after the date on which the registrar receives the application or on the day that the registrant attains the age of 18 years (the day before his 18th birthday), whichever is later. An application by mail is deemed to have been received by the registrar when it is actually placed into the possession of the registrar or his agent by a post-office employee, or is deposited in the registrar's mail box, or is left at the usual place of delivery for the registrar's official mail. If the registrar is unable to determine the exact date on which the application is deposited in his mail box, he shall treat it as having been deposited on the date of the last previous removal of mail from the box. Every registration of a voter which becomes effective on or after March 1,

1976, shall continue in effect until cancelled under some provision of this code.

Subd. 5. Any person who applies for registration of any person, or who signs an application purporting to be the application for registration of any person, either real or fictitious, other than the person making the application or affixing the signature, or someone for whom he may lawfully act as agent, or someone who is unable to sign and who requests him to sign for such other person, is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 751, ch. 296, § 3, eff. Nov. 5, 1975.]

Art. 5.13b. Information on Application

Required Information

Subd. 1. An application form for voter registration shall provide that the following required information be furnished by the applicant:

(1) The applicant's first name, middle name (if any), and surname. If the applicant is a married woman using her husband's surname, she shall furnish her first name, maiden name, and husband's surname.

(2) The applicant's sex.

(3) The month, day, and year of the applicant's birth, and city or county and state, or foreign country, where the applicant was born.

(4) A statement that the applicant is a citizen of the United States.

(5) If a naturalized citizen, the court of naturalization, or its location.

(6) A statement that the applicant is a resident of the county.

(7) If the applicant is currently registered in another county, the name of that county and the applicant's last residence address in that county.

(8) The registrant's complete current permanent residence address (including apartment number, if any); or, if none, a concise description of the location of the registrant's residence;

(9) The address to which the registration certificate is to be mailed, but only if mail cannot be delivered to the registrant's permanent residence.

(10) If the application is made by an agent, a statement of the agent's relationship to the applicant.

Optional Information

Subd. 2. The application form shall contain a space for showing the election precinct in which the applicant resides, but an application is not deficient

for failure to list the number or name of the precinct or for listing an incorrect number or name where the applicant's correct permanent residence address is given. It shall also contain a space for the applicant's social security number and telephone number, but an application is not deficient for failure to list these numbers. However, should it be made possible for the state to require that a registrant provide his social security number when applying for a registration certificate, the providing of such a number by all those applicants who possess such a number may be made mandatory by directive of the Secretary of State in the exercise of his authority pursuant to the provisions of Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code). The registrar shall not transcribe, copy, or record any telephone number furnished on an application for registration. [Amended by Acts 1975, 64th Leg., p. 752, ch. 296, § 4, eff. Nov. 5, 1975.]

Art. 5.13c. Voter Registration Forms in Spanish

The secretary of state shall prescribe a voter registration application form that is printed in Spanish. In each county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the last preceding federal decennial census, the registrar shall keep a supply of these, and shall keep a notice in Spanish posted at the place in his office where voter registration is conducted, stating that application forms in Spanish are available. Registrars in other counties may also use this form if they wish to do so. Every registrar in the state is required to accept and process applications that are tendered to him on the bilingual form, in the same manner as other applications.

[Added by Acts 1975, 64th Leg., p. 513, ch. 213, § 2, eff. May 16, 1975.]

Art. 5.14a. Registration Certificate Forms; Issuance of Certificates; Information Required on Certificate

Registration Certificate Forms

Subd. 1. (a) The form for a voter registration certificate shall be prescribed by the Secretary of State. He may prescribe one or more forms for use in counties using electronic data processing methods for issuing certificates and a different form for use in counties not using those methods. A certificate form prescribed by the Secretary of State shall be valid for use only during a two-year period, such two-year period to begin on March 1 of even-numbered years, unless rescinded by the Secretary of State.

(b) The registration certificates for each county may be numbered or labeled in any manner which will enable the registrar to efficiently and accurately maintain the voter registration rolls. However,

the Secretary of State may establish a standardized numbering or labeling system and require its adoption by the various counties.

Issuance of Certificates

Subd. 2. (a) When a properly executed application is received by the registrar, he shall make out an initial registration certificate in duplicate and shall mail the original copy to the voter at his regular mailing address, or if none, at his permanent residence address, in time for him to receive it before his registration becomes effective. The registrar may also deliver the original copy to the voter personally, or to an agent making the application under Section 45a of this code (Article 5.13a, Vernon's Texas Election Code). The duplicate copy shall be retained by the registrar. At the time he prepares the initial registration certificate, the registrar shall enter the certificate number in an appropriate space on the voter's application for registration.

(b) Between November 1 and the succeeding December 15 of each year in which no general election is held, beginning in 1977, the registrar shall prepare and mail to each registered voter in the county as of the preceding October 31 a registration certificate for use during the succeeding two voting years. The certificate shall be mailed to the permanent residence address shown on the voter's registration application; or, if provided, the mailing address. It shall not be sent in the same envelope as the voter's tax statement. Attached to or made a part of the registration certificate shall be adequate space for the voter to insert any change of information other than that printed on the certificate. If the voter has noted such changes, the notice shall be signed and affirmed by the voter and returned to the registrar for correction of the records and issuance of a corrected certificate to the voter.

The registration certificate or envelope containing the certificate shall be marked with a direction to the postal authorities not to forward it to any other address and to return it to the registrar if the addressee is no longer at that address, with the reason for nondelivery and address correction information to be furnished to the registrar. The registrar may make whatever arrangements with the postal authorities he deems suitable for handling the payment for the address correction service. In the event the certificate is returned and such forwarding address is received, the registrar shall mail to the registrant at such forwarding address a notice that his registration will be cancelled unless he certifies to the registrar by February 1 his current residence address or certifies to the registrar such other relevant information which would be determinative of his right to retain his current registered status.

If the voter replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no reply is received by February 1 the registrar shall cancel the voter's registration. Where the registration certificate is returned and no forwarding address information is available, that person's registration shall be cancelled if the voter has not otherwise provided information to the registrar by February 1 of that voting year. The notice shall also inform the voter of the need to obtain a corrected registration certificate if any of the information appearing on his current certificate is incorrect. The notice shall state that the voter's registration will be cancelled if the registrar does not receive an appropriate reply by February 1 of that voting year. If the voter replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no appropriate reply is received by February 1 of that voting year, the registrar shall cancel the voter's registration, and shall send notice thereof to the voter in the same manner as the notice. Except that, if a notice is returned to the registrar as undeliverable or no forwarding information is available, the registrar shall cancel the voter's registration.

(c) Each voter whose registration becomes effective after October 31 of an odd-numbered year, beginning with 1977, but before the following March 1 shall be issued an initial certificate valid for the remainder of that voting year and a certificate valid for use during the two-year period beginning the following March 1.

(d) A registrar of voters who knowingly issues, mails, or delivers a registration certificate to a person other than the applicant therefor or his lawful agent as provided in Section 45a of this code (Article 5.13a, Vernon's Texas Election Code), is guilty of a felony of the third degree.

(e) Any person whose registration is cancelled under the provision of this section shall be required to reregister in the same manner as an initial registrant. The secretary of state shall prescribe forms for the various documents required by this section.

Information Required on Certificate

Subd. 3. (a) Each certificate shall show the voter's name, permanent residence address, mailing address if any, sex, election precinct number, and if an initial certificate, the effective date of the registration. It shall contain a blank space for political party affiliation of the voter, to be completed as provided in Section 179a, of this code (Article 13.01a, Vernon's Texas Election Code). It shall not show the voter's telephone number or social security number. The certificate shall have a place for the voter's signature, and shall contain or be accompanied by a written instruction to the voter that the certificate is to be signed by the voter personally immedi-

ately upon receipt, if the voter is able to sign his name. Each certificate shall clearly indicate the two-year period for which it is issued, and shall contain a statement that the voter shall receive a new certificate every two years so long as such voter does not become disqualified under some provision of the election laws. Each certificate shall contain a statement giving notice that voting by use of the certificate by any person other than the person in whose name the certificate is issued is a felony. Voting by use of certificate which has been issued to another is hereby expressly made a felony of the third degree.

(b) Each certificate may contain a notice to the voter to correct and return the certificate to the registrar in case any of the information thereon changes or is incorrect. It may be accompanied by a more detailed explanation of the registrant's rights and duties under this code, including, but not limited to: a statement that his registration is permanent unless cancelled under some provision of the election laws; the procedure by which he will receive a new certificate every two years; the need to reregister if he moves to another county; the period during which he may vote a limited ballot after removal from the county; the need to notify the registrar to transfer his registration if he moves to a new precinct within the county; the period during which he may vote in his old precinct after removal to another precinct within the county; his right to vote without a certificate; and the procedure for obtaining a replacement for a lost certificate.

[Amended by Acts 1975, 64th Leg., p. 753, ch. 296, § 5, eff. Nov. 5, 1975.]

Art. 5.15a. Registration Files

Subd. 1. (a) The applications on which registration certificates are issued shall be filed in an active application file and shall remain in that file as long as the registration continues in effect. The active application file shall be maintained in alphabetical order by voter name for the entire county, except that if the registrar regularly obtains a list of registrants in that order through use of electronic data processing equipment, he may keep the file in numerical order by certificate number.

(b) The registrar shall also maintain an inactive application file. The registrar shall place in alphabetical order into this file all applications which are rejected. He shall also transfer to a separate inactive file the application of each voter whose registration is cancelled. The registrar shall enter on the application form the date on which the registration is rejected or the date on which the registration is cancelled before filing an application in the inactive file. The application shall be kept in the inactive file for a period of two years from the date of

rejection or cancellation, after which it may be destroyed.

Subd. 2. (a) After the registrar adds a voter's name to the list of registered voters from the duplicate registration certificate, he shall file the duplicate in an active duplicate registration certificate file. An active file shall be maintained in numerical order for the entire county.

(b) When a registration is cancelled, the registrar shall enter the date of and reason for cancellation on the duplicate certificate and shall transfer it to an inactive file arranged numerically for each voting year. The duplicate shall be kept in the inactive file for a period of two years from the date of cancellation, after which it may be destroyed.

Subd. 3. Applications and duplicate registration certificates may be removed from the registrar's office temporarily, under proper safeguards, for use in preparing registration certificates, lists of registered voters, and other registration papers by electronic data processing methods, but they may not be removed for any other purpose. Except as permitted in the preceding sentence, the applications, and the duplicate registration certificates shall be kept in the registrar's office at all times in a place and in such a manner as to be properly safeguarded. The files shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alteration, mutilation, or removal.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 6, eff. Nov. 5, 1975.]

Art. 5.15b. Service Program of Secretary of State; Copies of Master State Voter File

Subd. 1. The secretary of state is hereby authorized to provide a service program to assist registrars in efficiently maintaining accurate and current lists of registered voters. Such service program shall provide for, but is not limited to:

(a) obtaining initial lists of registered voters and other necessary information from the registrars of voters in order to create master files of such information;

(b) obtaining periodic information from registrars and from any other available sources for the following purposes:

- (1) to maintain the master files,
- (2) to aid in the determination of the proper status of persons on the lists of registered voters,
- (3) to aid in the determination of the proper registration information to be associated with each registrant;

(c) conducting the various procedures necessary or proper for the implementation of the service program by utilization of automatic data processing equipment or by other means;

(d) furnishing information which may be useful to the registrars in the performance of their duties;

(e) contracting with political subdivisions of this state to provide such other services as are necessary to the performance of the duties of election officials. Fees collected through such contracts shall be retained by the secretary of state to defray expenses of the service program.

Subd. 2. Implementation of this program shall be by directive of the secretary of state. The secretary of state shall make a full report to the legislature which convenes in January of 1977 of all steps taken to implement this program. He shall include in his report a description of any difficulties encountered and his recommendations, if any, for corrective legislation.

Subd. 3. Each March 1 and September 1 the secretary of state shall prepare a copy of the master state voter file on magnetic tape, which shall include each voter's county, voting precinct number, name, permanent residence address, mailing address if any, sex, year of birth, and registration number. It shall not include any voter's social security number or telephone number. The secretary of state shall furnish a copy of this tape to any person requesting it. Each person requesting a copy shall submit an affidavit that the information obtained will be used only for the purpose of informing voters about candidates for public office or about public issues, and will not be used to advertise or promote commercial products or services. The secretary of state shall provide the copy within 15 days of the date on which he receives the request. He shall exact a uniform charge against each person to whom he furnishes a copy of the tape. The charge shall not be greater than an amount deemed sufficient to reasonably reimburse the secretary of state for his actual expense in furnishing the copy, and in any event shall not exceed five cents per hundred names furnished.

Subd. 4. Any person who uses information obtained under Subdivision 3 of this section for any purpose other than informing voters about candidates for public office or about public issues is guilty of a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 750, ch. 296, § 7, eff. May 27, 1975.]

Sections 17 and 18 of the 1975 Act provided:

"Sec. 17. The secretary of state is hereby authorized to utilize any funds previously appropriated for the biennium ending August 31, 1975, for the purpose of publication of constitutional amendment explanatory statements, but which have not and will not be expended for that purpose, in connection with the implementation of the service program described in Section 7 of this Act.

"Sec. 18. Sections 1, 7, and 17 of this Act take effect immediately upon passage or as soon thereafter as permitted by law. All other sections preceding this section take effect on November 5, 1975."

**Art. 5.16a. Correction of Errors on Certificates;
Lost Certificates**

Correction of Error

Subd. 1. When after issuance of a registration certificate it is discovered that an error has been made in filling out the blanks on the certificate through mistake of the registrar or through mistake of the voter in supplying the information, the voter may present the certificate to the registrar for correction and the registrar shall issue a corrected certificate and correct the information on the registration records on file in his office.

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

Replacement of Lost Certificate

Subd. 6. (a) If a voter to whom a registration certificate has been issued presents to the registrar his signed statement that the certificate has been lost or destroyed, the registrar shall issue to the voter a replacement certificate as a single-copy document, showing the same registration number and the same information as shown on the original certificate. The registrar shall make a notation on the face of the certificate showing it to be a replacement. He shall attach the statement to the voter's application.

A person who states in a request for a replacement certificate that his registration certificate has been lost or destroyed, knowing the statement to be false, is guilty of a Class A misdemeanor.

(b) A replacement certificate issued after October 31 in an odd-numbered year shall be valid for use during the two-year period beginning on the following March 1. But it shall bear a notation that it may be used beginning on the date of issuance, except that a corrected replacement certificate shall be dated for use beginning on the 30th day following receipt by the registrar of the voter's old certificate or statement of loss.

[See Compact Edition, Volume 2 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 8, eff. Nov. 5, 1975.]

**Art. 5.18a. Change of Residence; Cancellation or
Transfer of Registration**

Change of Residence Within Precinct

Subd. 1. A registered voter who changes his place of residence within the election precinct shall give written notice to the registrar of the change of address and obtain a corrected certificate as provided in Subdivision 1 of Section 48a of this code (Article 5.16a, Vernon's Texas Election Code).

Change of Residence to Another Precinct Within County

Subd. 2. A registered voter who changes his residence to another election precinct within the county may vote a full ballot in the precinct of his former residence, if otherwise qualified, during the first 90 days after the removal, but not thereafter, in any election in which there is listed on the ballot any office or proposition on which he is eligible to vote at his new residence.

If he obtains a transfer of his registration to the precinct of his new residence during the 90-day period, he may vote only in the precinct of his new residence after the 29th day following the transfer. He may not vote in the precinct of his new residence before the 30th day following the transfer.

To obtain a transfer of his registration, the voter shall present the registrar with a written, signed request that his registration be transferred to the precinct of his new residence. Upon receiving a request for transfer, the registrar shall make the necessary changes on the registration records in his office and shall issue a new corrected registration certificate to the voter. He shall attach the request to the registrant's original application.

Change of Residence to Another County

Subd. 3. (a) A registered voter who moves from one county to another within the State must reregister in the county of his new residence in the same manner as an initial registrant. However, during the first 90 days after removal the voter may vote a limited ballot, as provided in Section 37c of this code (Article 5.05c, Vernon's Texas Election Code), if a reregistration in the county of new residence has not become effective.

(b) Where a registered voter who resides in a municipality or other political subdivision which is situated in more than one county moves from one county to another within the political subdivision, if the election precincts of the political subdivision are so constituted that the voter lives in the same precinct, he may continue to vote on the registration in the county of former residence at elections held by that political subdivision so long as that registration continues in effect. If he resides in a different precinct, during the first 90 days after the removal he may continue to vote in the precinct of his former residence at elections held by the political subdivision, on the registration in the county of former residence, if a reregistration in the county of new residence has not become effective.

Notification to Registrar in County of Former Residence

Subd. 4. When the registrar receives an application for registration of a voter who is registered in some other county, he shall notify the registrar of

that county, giving him the voter's name, former registration certificate number if known, former residence address. Upon receipt of notice, the registrar of the county wherein the voter was formerly registered shall cancel the registration in that county.

Subd. 5. (a) The registrar may utilize any means available to determine whether a registered voter's current legal residence may be other than that indicated as the voter's legal residence on the registration records.

(b) Upon receiving information indicating that a registrant has a residence other than that shown on the registrant's registration records, or that indicates the existence of any grounds of disqualification other than death, the registrar shall send a notice to such person by forwardable mail at the permanent residence address or, if provided, the mailing address on the registrant's registration application and any new address of the registrant, if known, requesting a verification of the registrant's current residence address, or other relevant information which would be determinative of the registrant's right to retain his current registered status, and providing information of the necessity for the registrant to amend the registration records subsequent to a change in legal residence or to provide information establishing his right to retain his current registered status. The notice shall state that the registrant's registration will be cancelled if the registrar does not receive an appropriate reply within 60 days from the date on which the notice is mailed. If the registrant replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no reply is timely received, the registrar shall cancel the registration. Notice of such cancellation shall be sent to the registrant at the new address, if it is known; otherwise, it shall be sent to the residence of mailing address on the registration records. If the notice mailed to the permanent residence address on the registrant's application is returned to the registrar with no forwarding address information available, the registrar shall cancel the registration.

(c) In the event the registrar cancels a voter's registration pursuant to Paragraph (b) of this subdivision, such voter may, within 10 days after the date of cancellation by the registrar, request, in writing, a hearing before the registrar. The registrar, upon notice to the voter, shall conduct a hearing within five days of receipt of the request from the voter, or at any later time upon the consent of the voter. The registrar shall then determine whether to cancel the registration. The voter may appeal from a decision to cancel his registration to a district court of the county of registration within 29 days after the registrar's decision, and the decision of the district court

shall be final. A voter who appeals a cancellation of his registration under the provisions of this paragraph may continue to vote until a final decision is made cancelling his registration.

Subd. 6. The Secretary of State shall prescribe forms for the various documents required by this section. However, the registrar may also accept and use forms other than those prescribed by the Secretary of State.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 10, Nov. 5, 1975.]

Art. 5.18b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.18d. Change of Name

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

Subd. 2. If otherwise qualified, a voter whose name is changed is eligible to vote under the new registration at any election held more than 29 days after the registrar makes the change on the registration records. He may vote under the former registration at any election held within 29 days after the new registration, upon making an affidavit that his certificate of registration under the former name has been surrendered to the registrar. The voter shall sign the form for the affidavit of a lost certificate, and the election officer shall add a notation in explanation of the circumstances.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 11, eff. Nov. 5, 1975.]

Art. 5.19a. List of Registered Voters

(1) Before the first day of March each year, the registrar shall prepare for each election precinct of the county a certified list of registered voters who, as of the 30th day prior to March 1 are entitled to registration for the voting year in which March 1 falls. Each precinct list shall be arranged alphabetically by the names of the voters and showing each voter's name, residence address, sex, date of birth and registration number. The registrar shall deliver to each board, executive committee, or other authority having the duty of furnishing supplies for any general, special, or primary election to be held within the county during the voting year for which the list is prepared, one set of such lists for all precincts in the county if any election which may be held by such authority is countywide, and one set of such lists for all precincts wholly or partially within the boundaries of the particular political subdivision if all elections which may be held by such authority are less than countywide. The registrar shall also furnish to each such authority an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list. When a runoff election is held, before the first day

of absentee voting in the runoff election the registrar shall prepare a supplemental list of the voters who will have been registered for 29 days on the day of the election and whose names do not appear on the original list or the supplemental list prepared for the first election. With each supplemental list the registrar shall also furnish a list of persons whose registration information has been changed or corrected or whose registration has been cancelled or transferred to another precinct since preparation of the last set of lists. The authority shall furnish to the presiding judge in each precinct the original and supplemental lists of voters in his precinct at the time it furnishes other election supplies. Prior to the opening of the polls, the presiding judge shall strike from the registration list the names of persons whose registration has been cancelled or transferred to another precinct, and shall correct the list for persons whose registration information has been changed or corrected.

[See Compact Edition, Volume 2 for text of (2) to (5)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 12, eff. Nov. 5, 1975.]

Art. 5.19b. Reimbursement of County by State

Subd. 1. Before April 1 of each year, the registrar shall submit to the Comptroller of Public Accounts a certified statement of the total number of new registrants, together with the total number of registration certificates which were cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), during the 12-month period ending February 1 of the year in which the statement is submitted. Before April 1 of each even-numbered year, the registrar shall include, in addition to the above statement, a certified statement of the total number of registered voters shown on the precinct registration lists as of March 1 of that year.

Subd. 2. Before June 1 of the year in which the statement is submitted, the Comptroller shall issue a warrant to each county in the aggregate of the following amounts:

- (1) 40 cents multiplied by the total number of new registrants, and
- (2) 40 cents multiplied by the number of voter registration certificates cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), as shown by the certified statement required by Subdivision 1 of this section, and
- (3) when the total number of registered voters is supplied in accordance with Subdivision 1 of this section, 40 cents multiplied by the difference between the total number of registered

voters and the total number of new registrants under this Act during the two 12-month periods prior to the statement in each county. However, before issuing a warrant the Comptroller may require additional proof to substantiate the certified statement.

Subd. 3. If the secretary of state determines that the registrar of any county has not substantially complied with the provisions of this code, he shall so notify the comptroller. The comptroller shall then withhold from such county the warrant provided for in Subdivision 2 of this section until notified by the secretary of state that the registrar is in compliance with this code.

Subd. 4. The disbursements prescribed by this section shall be made from the general revenue fund as provided by legislative appropriations. All money received by a county under this section shall be deposited in the county treasury in a special fund to be used for defraying expenses of the registrar's office in the registration of voters. None of the money shall be deemed to be fees of office or be retained by the registrar as fees in counties where the registrar is compensated on a fee basis.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 13, eff. Nov. 5, 1975.]

Art. 5.20a. Deputy Registrars

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

Subd. 5. No voter registrar shall refuse to deputize any person to register voters because of sex, race, creed, color, or national origin or ancestry. No bona fide resident of the county shall be excluded from serving as deputy by the registrar.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 79, eff. June 20, 1975.]

Art. 5.22b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.22c. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

CHAPTER SIX. OFFICIAL BALLOT

Art. 6.01. Official Ballot

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed

names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear more than once upon the official ballot, except (a) as a candidate for two or more offices permitted by the Constitution to be held by the same person; or (b) when a candidate has been duly nominated for the office of President or Vice-President of the United States and also for an office requiring a state-wide vote for election. The name of no candidate of any political party that cast 20 percent or more of the votes for governor at the last preceding general election for that office shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as otherwise provided in this code.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 14, eff. Sept. 1, 1975.]

Art. 6.04. Removing or Substituting Names on Printed Ballots

Subd. 1. If the ballots for an election have already been printed when notice of a substitute nomination for an office is received, instead of having new ballots printed, the official board charged with the duty of furnishing the supplies for the election may make the necessary change in either of the following methods: (1) by having the ballots overprinted to blot or line out the name of the former nominee and to print above, below, or alongside it the name of the new nominee, if space on the ballot permits use of this method, or (2) by printing pasters or stickers bearing the name of the new nominee, to be pasted over the name of the former nominee.

Subd. 2. If after the ballots are printed it becomes necessary to remove the name of a nominee for whom a substitute nomination has not been made or to remove the name of an independent candidate in order to comply with Section 233 of this code, instead of having new ballots printed, the officer or board charged with the duty of furnishing the supplies for the election may make the change either by having the ballots overprinted to blot out the name of the candidate (and also the square beside the name in the case of paper ballots) or by furnishing blank pasters or stickers to be pasted over the name and square.

Subd. 3. When pasters are used, a paster shall be affixed to each ballot before the presiding judge of the precinct, or the absentee voting clerk, endorses

his name on the ballot for identification, or before the opening of the polls where the voting is by use of a voting machine or a voting device to which ballot labels are attached. As used in this section, the term "ballots" includes ballot labels.

[Amended by Acts 1975, 64th Leg., p. 2103, ch. 685, § 1, eff. Sept. 1, 1975.]

Art. 6.05b. Order of Party Columns on the Ballot

In any election held at the expense of the county, in which party columns appear on the official ballot, the columns shall be arranged in the following order, beginning on the left-hand side of the ballot:

(1) columns of parties with state organization which have nominated candidates to be voted on at the election, arranged in the order of the number of votes cast throughout the state for each party's candidate for Governor at the last preceding general election for that office, with the party whose candidate for Governor received the highest vote being placed in the first column;

(2) columns of parties without state organization which have nominated candidates to be voted on at the election;

(3) a column for independent candidates;

(4) a column for write-in candidates.

If there is no independent or nonpartisan candidate whose name is to be printed on the ballot, the column for independent candidates shall be omitted.

Where voting machines are used in the election and the columns on the ballot are arranged horizontally, the columns shall appear on the ballot in the order herein provided, beginning at the top of the ballot instead of on the left-hand side.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 15, eff. Sept. 1, 1975.]

Art. 6.07. Constitutional Amendments and Other Questions

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

Subd. 2. A notice of each proposed constitutional amendment shall be published, under the authority of the Secretary of State, as required by Section 1, Article XVII, Constitution of Texas. The Secretary of State shall contract with the eligible newspapers for the publication of the notices; shall furnish affidavit forms, in duplicate, to be executed by the owner, editor or publisher of the newspaper, when two publications have been made; shall furnish one approved copy of each executed affidavit to the Comptroller, who shall then authorize the Treasurer to issue a 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 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 deems it more expeditious or economical, he may make a written contract with any state-wide association of daily and weekly newspapers in Texas for the publication of the notices of such constitutional amendments in newspapers eligible to publish them. Such association shall cause such notices to be published in the eligible newspapers in the manner required by the Constitution; shall furnish such materials as are necessary for a correct and uniform publication of such notices; shall furnish affidavit forms, in duplicate, to such newspapers, to be executed by the owner, editor, or publisher thereof, when two publications have been made; shall make an itemized report to the Secretary of State showing the names of all the newspapers in which such notices 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 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 notices 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 notices, furnish one approved copy of the executed affidavit of the general manager of the association to the Comptroller, who shall authorize the Treasurer to issue a warrant in the amount specified to the association. The Comptroller and Treasurer shall forthwith perform their duties in this connection, so that undue length of time shall not elapse between publication and payment therefor. The Legislature shall appropriate a sufficient fund for such publication, such fund to be estimated by the Secretary of State.

Subd. 2a. (a) Where the Secretary of State contracts directly with the newspapers for publication of notices of proposed constitutional amendments, each newspaper which publishes a notice is entitled to be paid for the publication an amount computed at the rate of 85 percent of the newspaper's published national rate for advertising per column inch if the Secretary of State furnishes to the newspaper a copy of the notice in the form of a camera-ready paste-up proof, a matrix, or a printing plate, and an amount computed at the full rate of the newspaper's published national rate for advertising per column inch if the Secretary of State does not furnish a copy of the notice in that form.

(b) Where the Secretary of State contracts with a state-wide association of newspapers for the publication of the notices, the association is entitled to be

paid an amount equal to the sum of the cost of publication in each newspaper, computed at the full rate of each newspaper's national rate for advertising per column inch. The commission retained by the association shall be on a percentage basis uniformly applied to all newspapers, and the percentage shall be stipulated in the contract between the Secretary of State and the association.

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

[Text of subdivision 4 effective until Dec. 31, 1975]

Subd. 4. (a) Notwithstanding any other provisions of this article, the amendments revising one or more articles of the Constitution of Texas that are proposed by Senate Joint Resolution No. 11 as passed by the regular session of the 64th Legislature are to be printed and numbered on the official ballot in the order in which the propositions are numbered by that resolution.

(b) This subdivision is enacted as a temporary law and expires on December 31, 1975.

[Amended by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, eff. May 13, 1975; Acts 1975, 64th Leg., p. 2091, ch. 682, § 16, eff. Sept. 1, 1975.]

Publicizing amendments proposed by Acts 1975, 64th Leg., SJR No. 11. Acts 1975, 64th Leg., p. 1181, ch. 440, §§ 1 to 4 provided:

"Sec. 1. As required in Section 1 of Article XVII of the Texas Constitution the secretary of state shall publish notice and send copies to the county clerks of the constitutional amendments contained in Senate Joint Resolution No. 11 as passed by the Regular Session of the 64th Legislature.

"Sec. 2. (a) In addition to the constitutional requirements contained in Section 1 of Article XVII, the secretary of state may prepare a tabloid explaining the constitutional amendments contained in Senate Joint Resolution No. 11 as passed in the Regular Session of the 64th Legislature. The secretary of state may request the assistance of the attorney general and the Texas Legislative Council in preparing the information to be included in the tabloid.

"(b) The tabloid shall be printed in two versions: an English language version and a Spanish language version.

"(c) Not later than 30 days before November 4, 1975, the secretary of state shall distribute the English language version by mailing a copy, postage prepaid, by United States mail, to each noncommercial postal patron, except that in cities of over 100,000 population according to the 1970 census, the English language version shall be mailed to each residential postal patron.

"(d) The secretary of state shall make the Spanish language version readily available to the Spanish-speaking people of Texas. Information concerning the availability of the Spanish language version and how to request copies is to be printed, in Spanish, on the front of the English language version.

"Sec. 3. The secretary of state may prepare a 'side-by-side' comparison of the major provisions of the constitutional amendments contained in Senate Joint Resolution No. 11 as passed in the Regular Session of the 64th Legislature and the corresponding provisions of the constitution as it exists on May 1, 1975. The secretary of state may make the side-by-side comparison available to the general public on request.

"Sec. 4. There is hereby appropriated to the secretary of state out of the General Revenue Fund for the biennium ending August 31, 1975, the sum of \$600,000 for the purpose of implementing this Act."

CHAPTER SEVEN. ARRANGEMENT AND EXPENSES OF ELECTION

Art. 7.14. Providing for Voting Machines

[See *Compact Edition, Volume 2 for text of 1 to 14*]

Manner of Voting

Sec. 15. But one voter shall be admitted at a time, and no voter shall be permitted to keep the curtain of the machine closed longer than two minutes. However, if a voter is unable to read the language in which the ballot is printed or if because

of some bodily infirmity he is physically unable to operate the machine or to see, he may be assisted by two election officials, or by a person selected by the voter, who shall operate the machine so as to vote the ballot in accordance with the voter's wishes, and he shall be permitted to keep the curtain of the machine closed no longer than five minutes. The provisions of Section 95 of this Code shall govern the assistance rendered under this section insofar as they can be made applicable.

[See Compact Edition, Volume 2 for text of 16 to 17]

Making Out the Returns and Proclamation of the Result
Sec. 18.

[See Compact Edition, Volume 2 for text of 18(a) and (b)]

(c) If the machine is provided with a device which produces a printed record of the numbers registered on the counters, the procedure outlined herein shall be followed in lieu of the procedure set out above for preparation of the statements of canvass. The presiding judge, in the presence of at least two clerks and two watchers of opposed interest (if such there be) and of any other person lawfully present who wishes to observe, shall take the necessary steps to secure a printed record from each machine. Ample opportunity shall be given to all persons lawfully entitled to be present at the polling place to examine the printed record. The printed record shall then be signed by the presiding judge and two clerks and by two watchers of opposed interest (if such there be), certifying that the printed record was obtained from the machine designated thereon, and the certified printed record shall constitute the official statement of canvass for that machine.

[See Compact Edition, Volume 2 for text of 18(d), 19 to 25]

[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, §§ 17, 18, eff. Sept. 1, 1975.]

Art. 7.15. Providing for Electronic Voting Systems

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

Subd. 2. As used in this section, unless otherwise specified:

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

(b) "Automatic tabulating equipment" or "tabulating equipment" means any apparatus which automatically examines and counts voted ballots and tabulates the results.

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

(d) "Ballot card" means a card which is used in conjunction with ballot labels and which is marked or pierced by the voter in the process of voting an official ballot.

(e) "Ballot labels" means a booklet or one or more pages or sheets of paper or other material containing the names of offices, candidates and parties, and statements of measures to be voted on, and which is used in conjunction with ballot cards.

(f) "Ballot" may refer to paper ballots which are counted by automatic tabulating equipment and which contain the matters to be voted on and the voter marks, stamps, or otherwise indicates his choices directly on the ballot itself, or it may refer to ballot cards, ballot labels, or combinations of ballot cards and ballot labels, or it may refer to ordinary manually-counted paper ballots, depending on the context.

[See Compact Edition, Volume 2 for text of 2(g)]
Examination and Approval of Electronic Voting Systems

Subd. 3.

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

(b) Before making and filing his report, the Secretary of State shall require the system to be examined by three examiners to be appointed by the Secretary of State for such purpose, one of whom shall be expert in patent law, one of whom shall be expert in electronic data processing, and one of whom shall be expert in election law and procedure, and shall require from them a written report on their examination, which shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive one hundred and fifty dollars as his compensation and expenses in making the examination and report. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any electronic voting system. When a system has been approved, every improvement or change must be filed with the Secretary of State. The Secretary of State may, at any time, in his discretion, reexamine an electronic voting system. Any electronic voting system not approved as herein provided cannot be used at any election in this state.

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

Adoption by Commissioners Court

Subd. 5. (a) The commissioners court of any county in the state may adopt one or more kinds of approved electronic voting systems for use in elections in part or all of the election precincts in the county or in part or all of the conduct of absentee voting, or both. If a particular system is not adopted for use throughout the county, the commissioners court shall designate the precincts in which such system is to be used, and any other authorized method of voting may be used in the remaining precincts. In any precinct designated for use of a particular electronic voting system, the voting in that precinct may be supplemented by use of some other authorized method of voting when in any election it appears that the number of available units of the system designated for use in that pre-

cinct is inadequate for that election; and the officer or board charged with the duty of furnishing supplies of the election may make such supplementation under those conditions.

(b) The commissioners court at any time may rescind or modify its previous order or orders adopting any electronic voting system and may discontinue use of the system altogether.

(c) The electronic voting system adopted by the commissioners court shall be used at the biennial general elections for state and county officers in precincts and for absentee voting as designated by the court for use of such system. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting for the particular election shall be by use of such system or by some other authorized method of voting. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities and other political subdivisions, and by the county executive committee of the party holding the election in primary elections of political parties.

[See Compact Edition, Volume 2 for text of 5(d)]
Experimental Use of Electronic Voting Systems

Subd. 6. The commissioners court of any county in the state may secure, for experimental use in elections in one or more precincts or for absentee voting, without formal adoption thereof, any kind of electronic voting system approved by the Secretary of State, and its use at any election in designated precincts or for absentee voting within the period specified by the commissioners court for experimental use of such electronic voting system shall be as valid for all purposes as if it has been formally adopted; provided, however, that the period for experimental use shall not exceed two years from the date of the order authorizing its use.

[See Compact Edition, Volume 2 for text of 7 and 8]

Absentee Voting

Subd. 9. (a) When an electronic voting system has been adopted by the commissioners court, then the system may be used in any election for absentee voting by personal appearance or by mail, or both. The authority charged with holding the election may within its discretion determine by proper resolution or order whether or not an electronic voting system will be used for absentee voting by personal appearance or by mail, or both, at such election. If an electronic voting system is to be used for such absentee voting and more than one kind of system has been adopted by the commissioners court, the authority shall specify what kind is to be used.

(b) If the authority holding the election determines that an electronic voting system shall be used for absentee voting, the necessary ballots and voting equipment shall be provided in the clerk's office. The procedure for absentee voting where ordinary paper ballots are used shall be followed insofar as it can be made applicable. If an electronic voting system is used for voting by personal appearance and the absentee ballots voted by mail are counted manually, such ballots shall be counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code), except that the county clerk shall deliver the ballots to the canvassing board when the presiding judge so directs. The board shall also prepare the voted electronic voting system ballots for delivery to the central counting station in the manner provided in Subdivision 19 of this section, and such ballots shall be delivered to the central counting station and there tabulated, as provided in Subdivisions 19 and 20 of this section. The presiding judge of the central counting station shall add and attach the results of any manually counted ballots and attach the results of any write-in votes to the tabulation made on the automatic tabulating equipment, and shall make returns showing the totals thus obtained.

(c) When absentee ballots voted by personal appearance or by mail are to be marked with an ordinary pen or pencil in the manner that ordinary paper ballots are marked, and the absentee ballots are to be counted manually, the ballots shall be handled in the manner provided in Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code) for the handling of absentee paper ballots, and shall be counted and tallied by a special canvassing board in the same way that ordinary paper ballots are tallied.

[See Compact Edition, Volume 2 for text of 9(d) and (e) to 10a]
Form of the Ballot

Subd. 11.

[See Compact Edition, Volume 2 for text of 11(a) to (b)(4)]

(5) In elections in which party columns appear on the ordinary paper ballot, the following method of showing party affiliations may be used in lieu of party columns. The title of each office shall be printed on the ballot followed by the names of the candidates for that office and their party affiliations, if any. Provision shall be made at the head of the ballot for voting a straight party ticket, and the candidate of the party which is printed in the first party column on ordinary paper ballots shall be printed in the first position under the office title, the candidate of the party which is printed in the second column on ordinary paper ballots shall be print-

ed in the second position, and so on. Uncontested races may be listed separately from contested races under the heading "Uncontested Races," and may be voted on as a bloc.

(c) This paragraph (c) shall govern the form of the ballot to be used with electronic voting systems in which the names of offices, candidates and parties and statements of measures to be voted on are set forth on ballot labels and the voter records his vote by marking or punching a ballot card which is used in conjunction with the ballot labels.

(1) Ballot cards may be of such size, composition, texture and color (other than yellow, which shall be used for sample ballots only) and may be printed in any type of ink or combinations of ink that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Ballot labels may be of such size, composition, texture and color (other than yellow) that will be suitable for the intended manner of use. Printing on the ballot label shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) Ballot cards may contain printed code marks or prepunched holes to assure that the card is properly positioned in the voting device, if the ballot labels are attached to a voting device, or to assure that the card is placed in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The names of candidates, offices, parties and statements of issues to be voted on may be printed on two or more ballot labels. Where all candidates for the same office or all party columns cannot conveniently be placed on the same face of the same label, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other parties appear on the following page or pages. If the ballot is printed on more than one ballot label, different tints of paper, other than yellow, may be used for different pages of the ballot labels, and other suitable means may be adopted to facilitate the use of the ballot labels with the ballot card. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and a space for voting a straight ticket.

[See Compact Edition, Volume 2 for text of 11(c)(4) and (5)]

(6) If the number of candidates and/or propositions to be voted upon in any election exceeds the capacity of one ballot card, the ballot may be divided into parts and a different ballot card

used for each of the separate parts, but in all cases where more than one card is necessary to accommodate the entire ballot, the names of all candidates for any particular office shall be placed on the same part. A separate voting device shall be provided for each part at each polling place. Each ballot card shall bear the ballot number, and other appropriate provisions may be made for identifying the related ballot cards. In lieu of using separate ballot parts for listing the ballot, uncontested races may be listed separately under the heading "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one in which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races may be voted on as a bloc.

[See Compact Edition, Volume 2 for text of 11(c)(7)]

(8) A separate write-in ballot, which may be in the form of a card, ballot, or envelope which the voter places with his ballot or ballot card after voting, shall be provided to permit voters to vote for a person whose name does not appear on the ballot.

(d) This paragraph (d) shall apply to the form of the ballot for all electronic voting systems.

[See Compact Edition, Volume 2 for text of 11(d)(1)]

(2) The statement of propositions and measures submitted to the voters may be abbreviated on the ballot if necessary, provided there is displayed at the polling place the verbatim statement on each proposition or measure as it appears on paper ballots. Abbreviation of matter to be voted on throughout the state shall be done by the Secretary of State.

Preparation of Ballot and Program

Subd. 11a. (a) The ballots to be used at an election shall be prepared and procured under the same regulations as ordinary paper ballots, except that the officer responsible for making up the ballot may determine the number of ballots or ballot cards needed for the election based on the turnout for similar elections in the past and shall confer with the programmer for that election before ordering the ballots printed, to make sure that the ballot is properly prepared for counting by means of the electronic tabulating equipment which will be used.

(b) The authority charged with the duty to provide ballots shall select a competent person to pro-

pare the program for the electronic tabulating equipment. The programmer may be one of the persons appointed or approved by the commissioners court under Paragraph (b), Subdivision 20 of this section or some other person, but if the program is prepared by anyone other than the tabulation supervisor, it must be submitted to the tabulation supervisor for his approval at least 10 days before the election.

[See Compact Edition, Volume 2 for text of 12 and 13]

Assistance to Voter

Subd. 14. If a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the voting equipment or to see, he may be assisted by two election officers, or by a person selected by the voter, who shall mark the ballot in accordance with the voter's wishes. The provisions of Section 95 of this code¹ govern the assistance rendered insofar as they can be made applicable.

¹ Article 8.13.

[See Compact Edition, Volume 2 for text of 15 to 17]

Procedure while Polls are Open

Subd. 18. (a) At any time after the expiration of one hour after the voting has begun, the presiding judge may direct the receiving officers to deliver ballot box No. 1 to the clerks preparing the ballots for the central counting station, who shall immediately deliver in its place ballot box No. 2, which shall be opened and examined and securely closed and locked; and until the boxes are again interchanged, the voters shall deposit their ballots in box No. 2. In this manner, ballot boxes No. 1 and No. 2 may be interchanged periodically as directed by the presiding judge, but the box for receiving the ballots shall not be exchanged and the ballots shall not be removed from it at any time before the polls are closed unless there are more than 10 ballots in the box. Once the box for receiving the ballots is delivered to the clerks preparing the ballots for the central counting station, they shall remove the voted ballots from the ballot box and carry out the procedures prescribed in Subdivision 19 of this section preparatory to making the ballots, envelopes, and other materials ready for delivery to the central counting station.

(b) The authority holding the election may in its discretion also provide that voted ballots of designated precincts shall be delivered by authorized election officials, in the presence of watchers, to a central counting station at stated intervals during the day and that the processing of such ballots in accordance with the procedures prescribed in Subdivision 20 may begin prior to the close of the polls. Such processing may be limited by the authority holding

the election to procedures preparatory to the counting and tabulating of ballots, or the authority holding the election may also permit the preliminary counting and tabulating of ballots with automatic tabulating equipment; but in no event shall any results be disclosed prior to the close of the polls, and all persons connected with the handling and tabulating of the ballots shall be subject to the provisions of Section 105 of this code (Article 8.23, Vernon's Texas Election Code) with respect to revealing information as to the results of the election.

[See Compact Edition, Volume 2 for text of 19 to 24]

[Amended by Acts 1975, 64th Leg., p. 2068, ch. 680, §§ 1 to 10, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2093, ch. 682, § 19, eff. Sept. 1, 1975.]

CHAPTER EIGHT. CONDUCTING ELECTIONS AND RETURNS THEREOF

Article

8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman [NEW].

Art. 8.08. Procedure for Accepting Voter; Signature Roster

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

Subd. 4. Notwithstanding any other provision of this code which prescribes a criminal penalty, an election officer who knowingly violates any provision of this section shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not more than 90 days, or be both so fined and imprisoned.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 20, eff. June 20, 1975.]

Art. 8.13. Aid to Voter

Subd. 1. Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same because of the voter's inability to read the language in which the ballot is printed or because of some bodily infirmity which renders the voter physically unable to write or to see, in which case two officers of such election shall assist the voter (with the aid of an interpreter, when necessary), they having first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; that they will confine their assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming candidates and the political parties to which they belong; and that they will prepare the voter's ballot as such voter directs. If the election is a general election, the election

officers who assist such voters shall be of different political parties, if there be such officers present. One or more watchers may be present when the assistance herein permitted is being given by election officers, but each watcher must remain silent except in cases of irregularity or violation of the law.

Subd. 2. Instead of being assisted by two election officers as hereinabove provided, a voter who is entitled to assistance may select any qualified voter residing in the precinct to assist him, and no other person shall be permitted to be present while the ballot is being prepared. Before assisting the voter, the person selected shall take the following oath, which shall be administered by one of the election officers: "I solemnly swear that I will not suggest, by word or sign or gesture, how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions to be voted on and to naming candidates and the political parties to which they belong; and I will prepare the voter's ballot as the voter directs."

Subd. 3. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes.

[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, § 20, eff. Sept. 1, 1975.]

Art. 8.17. Bystanders Excluded

From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges, and watchers, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, inspectors, and watchers.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 17, eff. June 20, 1975.]

Art. 8.22. Death or Ineligibility of Candidate Before Election

(a) When the name of a deceased or ineligible candidate is printed on the ballot for a general or special election, as provided in Section 233 of this code,¹ the votes cast for him shall be counted and return made thereof; and if he receives a plurality of the votes cast for the office where a plurality is sufficient for election, or if he receives a majority of the votes cast for the office where a majority is required for election, the vacancy shall be filled as in the case of a vacancy occurring after the election. If he is one of the two highest candidates in an election where a majority is required and no one has a majority, the two candidates with the highest votes other than the deceased or ineligible candidate

shall be certified as the two highest candidates for the runoff election.

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

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 2, eff. Sept. 1, 1975.]

¹ Article 13.56.

Art. 8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman

Not later than February 1 following each general election for state and county officers, the chairman of the county executive committee of each political party with a state organization that had nominees on the general election ballot shall send to the state chairman of the party a list of the names of the party's nominees who were elected to county and precinct offices in that county at that election, and the office to which each was elected.

[Added by Acts 1975, 64th Leg., p. 2107, ch. 687, § 1, eff. Sept. 1, 1975.]

CHAPTER THIRTEEN. NOMINATIONS

Article

13.08c. Funding [NEW].

13.58a. Presidential Primaries; Selection of Delegates to National Nominating Conventions of Parties Holding Primaries [NEW].

Art. 13.01a. Who Are Members of Organized Party

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

(4) An applicant for party affiliation shall become a qualified member of a political party which is holding primary elections when he has voted within that party's primary or has taken part in a convention of that party prior to a primary. At the head of the signature roster for each primary election there shall be printed the following statement: "I swear that I have not voted at a primary election or participated in a convention of any other political party during this voting year." The presiding judge or another election officer designated by him shall place each voter under oath and require him to swear to this statement before he signs the roster. The first time a voter presents his voter registration certificate at a primary election, the election officer shall stamp the appropriate party designation within the party affiliation space on the face of the certificate. If the voter is voting on a statement of a lost registration certificate, the presiding judge shall issue to him a certificate of his having voted, in the following form:

Date _____

_____ have voted on this date in the
(Name of Voter)

primary election of the _____ Party.

Presiding Judge, Precinct No. _____,
_____ County, Texas.

When a voter votes by absentee ballot in a primary election, the county clerk shall stamp the appropriate party designation on the voter's registration certificate; of if the voter is voting on a statement of a lost or unreturned certificate, the clerk shall deliver or mail to the voter, at the time specified by law for returning a registration certificate to an absentee voter, a certificate of his having voted by absentee ballot in the primary.

(5) To become qualified to participate in any party convention of a party which does not hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in the convention shall present to the precinct chairman his affidavit that he has not participated in the primary or convention of any other party during that voting year. Thereupon, the precinct chairman shall stamp the appropriate party designation on the voter's registration certificate if the voter presents it, and if the registration certificate is not presented, the chairman shall issue to the voter a certificate in the following form:

Date _____
 _____ has affiliated with the _____
 (Name of Voter)
 Party for the current year.

 Precinct Chairman, Precinct No. _____,
 _____ County, Texas.

Each precinct chairman is authorized to administer the oath required by this subsection. Within 10 days after the precinct convention, he shall arrange the affidavits in alphabetical order and deliver them to the county clerk. If he receives an affidavit after the date of the precinct convention, he shall deliver it to the county clerk within 10 days after he receives it. The county clerk shall keep the affidavits on file in alphabetical order within each precinct for a period of two years after the end of the voting year in which they are filed. The county clerk shall maintain a separate file for each political party.

(6) A voter registration certificate which has been stamped with a party designation, a certificate of having voted in a primary election, or a certificate of party affiliation issued by a precinct chairman, all as provided in this section, shall serve as evidence that the person whose name appears on the certificate is affiliated with the party designated on the certificate and is therefore eligible to participate in that party's conventions.

[See Compact Edition, Volume 2 for text of (7) and (8)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 15, eff. Nov. 5, 1975.]

¹ West's Tex.Stats. & Codes '75 Supp.—38

Art. 13.07a. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.08. Conduct of the Primary Elections

(a) The primary election held by a political party pursuant to Sections 180 and 181 of this code (Articles 13.02 and 13.03, Vernon's Texas Election Code) shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in this code.

(b) In order for a candidate to have his name placed on the ballot for the general primary election, his application for a place on the ballot must be accompanied by a filing fee or a nominating petition in compliance with Subsection (c) or (d) of this section.

(c) The schedule of fees for either a full term or an unexpired term for the various offices is as follows:

All statewide offices	\$1,000
United States representative	1,000
State senator	600
State representative	300
Member, state board of education ..	100
Chief justice or associate justice, court of civil appeals	500
District judge or judge of any court having status of a district court as classified in Section 61c of this code	500
District attorney or criminal district attorney	500
All county offices, as classified in Section 61c, ¹ except county surveyor and inspector of hides and animals	200
County surveyor or inspector of hides and animals	100
County commissioner,	
County of 200,000 or more inhabitants	500
County under 200,000 inhabitants	200
Justice of the peace or constable,	
County of 200,000 or more inhabitants	400
County under 200,000 inhabitants	150
Public weigher	100

No fee shall be charged for any office of a political party.

(d) In lieu of the payment of a filing fee, a candidate may file a nominating petition which may be in multiple parts and must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide office, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the number of votes cast in the

territory for that party's candidate for governor in the last preceding gubernatorial general election. However, in no event shall the number required be more than 500; and if two percent of the votes cast in the territory was less than 25, the number required is the lesser of 25 signatures or 10 percent of the number of votes cast.

Where a candidate is running in a district, county, or precinct which has been created or the boundaries of which have been changed since the last gubernatorial general election, he may request that the secretary of state in the case of a district or county office, or the county clerk of the county in which the precinct is situated in the case of a precinct office, make an estimate in advance of the filing deadline of the number of votes cast for that party's candidate for governor within that territory at the last gubernatorial election. Not later than the 15th day after receiving such a request, the officer shall make the estimate and notify the candidate, and also the officer with whom the candidate files his application. The estimate shall be used as the official basis for computing the number of signatures required on a petition. If an advance estimate is not requested, the officer with whom the petition is filed shall make the estimate, whenever necessary, before he acts on the sufficiency of the petition. In every instance, the candidate may challenge the accuracy of the estimate, and if he is dissatisfied with the final decision of the officer he may appeal the decision to any district court having jurisdiction in the territory involved.

The following statement shall appear at the head of each page of the petition: "I know the contents of this petition. I am a qualified voter eligible to vote in the forthcoming primary election of the (fill in name) Party for the office for which (fill in name) is a candidate. I have not signed the petition of a candidate who is running for any office² the primary of any other party. I understand that by signing this petition I become ineligible to affiliate with any other party or to participate in the primary elections, conventions, or other party affairs of any other party, including a party which is not holding a primary election, during the voting year in which this election is held, and that I am guilty of a misdemeanor if I attempt to do so."

To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is

prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

The petition must show the following information with respect to each signer: His address (including his street address if residing in a city, and his rural route address if not residing in a city), his current voter registration certificate number (also showing the county of issuance if the office includes more than one county), and the date of signing. The secretary of state shall prescribe a form for the petition before the 30th day prior to the filing deadline and provide copies of that form to the state chairman and the county chairmen of each party holding a primary election. However, a candidate may use any other form which complies with the requirements of this section. It is the specific intent of the legislature that there shall be no requirement for the administering of an oath to any person signing a petition under the provisions of this section.

A petition filed under this section shall be filed with the same officer with whom an application for a place on the ballot for the office being sought is to be filed and must be filed at the same time as such an application.

(e) The fees paid to the county chairman and received from the state chairman pursuant to the provisions of Section 190 (Article 13.12, Vernon's Texas Election Code), and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 (Article 13.18, Vernon's Texas Election Code), and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying costs. The remaining costs incurred shall be borne by the state except as otherwise provided by procedures outlined in the Texas Election Code. Within five days after the regular filing deadline, the chairman of the state executive committee shall forward to the secretary of state all filing fees for statewide offices collected pursuant to Subsection (c) of this section and an itemized listing of such fees. At the same time, the state chairman shall also forward all filing fees for district offices collected pursuant to Subsection (c) of this section to the county chairman for each county lying partially or wholly within such district. The amount forwarded to each county chairman shall be equal to the quotient obtained upon dividing the appropriate filing fee by the number of counties in the district of the candidate paying the fee. The secretary of state shall deposit the fees forwarded to him in a suspense account with the state treasurer.

(f) In each county in which voting machines or an electronic voting system has been adopted, the county commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding \$16 per unit for voting machines adopted under Section 79 (Article 7.14, Vernon's Texas Election Code), and not exceeding \$3 per unit for voting equipment adopted under Section 80 (Article 7.15, Vernon's Texas Election Code); provided, however, that the county commissioners court shall not be required to provide voting machines or equipment for use in any election precinct in which fewer than 100 votes were cast in the preceding first or general primary or runoff primary election. The maximum amount fixed in this subsection includes the lease price for the use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station; but all actual expenditures incidental and necessary to operation of the central counting station in counting the ballots are payable out of the primary fund.

(g) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with absentee voting or any other services rendered by the county clerk in the primary elections, except for voting machines and/or punch card units used in conducting the absentee voting or any other services for which reimbursement is specifically authorized by law.

(h) The secretary of state is authorized to promulgate rules under which compensation is limited to polling places at which voters of more than one election precinct cast their votes, notwithstanding the provisions of Section 10(g) (Article 2.02(g), Vernon's Texas Election Code). The rules for such common polling places shall provide for adequate public notice by the county chairman to the voters in election precincts affected by the application of such rules and shall provide for an adequate number of polling places taking into account all other relevant factors including distances of polling places from parts of the precincts served, estimated voter turnout, and geographic or other boundaries. However, the secretary of state may not require that there be less than one polling place for each commissioner's precinct for reimbursement purposes.

(i) The secretary of state is authorized to promulgate rules in regard to the maximum number of

election clerks who may be compensated for their services at a polling place and the maximum number of other necessary office personnel employed to assist in the performance of the duties placed upon the county chairman, taking into account the number of registered voters in the election precinct or precincts, the number of votes cast in the precinct, county, or state in previous elections, the method of voting, and any other relevant factors. The secretary of state must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. The secretary of state may allow compensation for clerks and other necessary office personnel employed in excess of the applicable limits set by his rules if he finds that the employment of additional clerks or other office personnel was justified by a good cause. The total compensation paid to the county chairman and the secretary of the county executive committee (where the executive committee has named a secretary) in the performance of the duties placed upon the chairman shall not exceed five percent of the amount actually spent in holding the primary elections for the year; provided, however, that in no case shall the total compensation paid be less than \$300 nor more than \$8,000.

(j) The secretary of state is authorized to promulgate any other reasonable rules which will minimize the costs of the primary elections. The secretary of state shall furnish a copy of all rules promulgated pursuant to this section to each county chairman at least 10 days before the election to which the rules apply.

(k) The county chairman shall account for the primary fund in the manner provided in Section 196 of this code.

(l) The secretary of state shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The attorney general shall be specifically responsible for the enforcement of this section.

(m) In the event a court of competent jurisdiction declares any portion of this section or any other provision of this code relating to the financing of primary elections to be invalid, the secretary of state shall promulgate reasonable rules for the enforcement of the intent of the legislature, consistent with the court's judgment and the valid portions of the code. Such authority of the secretary of state shall include authority to promulgate a schedule of filing fees, if necessary, and that schedule shall be substituted for the statutory schedule until the legislature enacts a new schedule.

[Amended by Acts 1975, 64th Leg., p. 2046, ch. 675, § 1, eff. Sept. 1, 1975.]

¹ Article 6.05c.

² So in enrolled bill; word "in" probably omitted.

Art. 13.08a. State Financing

(a) Each county chairman of each political party in the state which is holding primary elections shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary election in his county, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary elections to and including the date of such sworn statement. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes, court decisions, and administrative rulings of this state. Any other provisions of this code notwithstanding, the secretary of state shall pay for expenditures which, in his discretion, are reasonably necessary for the proper conduct and supervision of the primary elections under the provisions of this code. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate any balance remaining from previous primary elections in the appropriate primary fund, and any amount of the fees and contributions received by the chairman for the conduct and financing of the primary elections for the particular year, and shall certify to the comptroller of public accounts the net estimated amount which is payable out of the state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a second or runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the secretary of state a sworn itemized estimate of the costs of the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows, and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the secretary of state a sworn itemized report of the actual costs, filing fees collected, and contributions received for the primary election or elections (as the case may be) held by his party in his county. If the actual expenditure for an item exceeded the estimat-

ed amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees and contributions and the payments from the state exceeds the actual expenditures incurred, the chairman shall retain the difference in the primary fund referred to in Section 196 of this code (Article 13.18, Vernon's Texas Election Code). The exact amount of the balance in the primary fund shall be reported to the secretary of state in the actual expense report provided by this section and said amount shall be a beginning balance on hand for the next ensuing primary conducted by the chairman or his successor. If the primary fund is invested as authorized in Section 196, the beginning balance on hand for the next ensuing primary shall be the amount of the primary fund after termination of the investment.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses properly incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the state is not liable to any claimant for failure of the county chairman to pay a claim. No county chairman shall be personally liable, nor shall a county executive committee be liable for any debts incurred in the administration of the primary but unpaid because the appropriation provided by the legislature was not sufficient to cover the actual expenditures made.

(f) A county chairman may request that the secretary of state approve an expenditure for the purposes of the auditing of the expenditures made out of the primary fund; however, the secretary of state shall not be required to approve such an expenditure. The secretary of state may require an audit of the primary fund, without such a request, when, in his discretion, he believes a valid purpose will be served by such a procedure.

(g) The secretary of state shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting statements and reports to the secretary of state.

(h) Wherever the word "county chairman" is used in this section, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(i) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.

[Amended by Acts 1975, 64th Leg., p. 2050, ch. 675, § 2, eff. Sept. 1, 1975.]

Art. 13.08a-1. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.08b. Refund Upon Death of Candidate

No refund of a filing fee shall be made except to a candidate who dies or is declared ineligible to be a candidate for the office before the date of the first or general primary election, in which case the fee paid by the candidate shall be refunded to the candidate or to his estate, as appropriate.

[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 3, eff. Sept. 1, 1975.]

Art. 13.08c. Funding

Funds for the administration of the primary financing provisions of this code shall be supplied from the General Revenue Fund or any special fund which the legislature may direct by the General Appropriations Act. Said funds shall be appropriated for the 1976 primary elections and for subsequent primary elections thereafter, and shall be an amount payable from the General Revenue Fund or any special fund which the legislature may direct to pay all necessary expenses of primary elections approved by the secretary of state under the provisions of this code. The secretary of state is authorized to expend funds appropriated in the General Appropriations Act for the administration of primary elections for seasonal and part-time help, consumable supplies and materials, travel expenses, professional fees and services, and current and recurring operating expenses in an amount not to exceed \$60,000.

[Added by Acts 1975, 64th Leg., p. 2052, ch. 675, § 4, eff. Sept. 1, 1975.]

Art. 13.08c-1 to 13.08c-4. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.12a. Nomination and Election to Fill Unexpired Term

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

(ii) If the vacancy occurs on or after the fifth day preceding the regular filing deadline and

more than thirty days before the day of the general primary election, nomination for the unexpired term shall be made by primary election, and candidates shall have until the end of the twenty-fifth day preceding the day of the general primary in which to file applications for a place on the primary ballot. The applications must be received and filed in the office of the proper chairman before the deadline, and applications mailed but not actually received before the deadline shall not be accepted for filing. Except as otherwise provided herein, the application shall conform to the requirements of Article 13.12 of this Code and shall be accompanied by the filing fee or petition provided for in Article 13.08 of this Code. Immediately following the deadline for filing applications, the state chairman shall certify to the county chairman the names of candidates, if any, who have filed applications with him and paid their filing fee or filed a petition in accordance with this paragraph. Whenever the name of more than one candidate for the same office is to be placed on the ballot pursuant to the provisions of this paragraph, the county chairman shall call a meeting of the primary committee, in time to allow printing of the ballots before commencement of absentee voting in the general primary, and the primary committee shall determine by lot, in open meeting, the order in which the names of the candidates shall be printed on the ballot. If there is not more than one candidate for the same office, the county chairman shall be authorized to make any necessary changes in the ballot as previously made up by the primary committee.

[See Compact Edition, Volume 2 for text of (2)(iii) to (8)]

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 6, eff. Sept. 1, 1975.]

Arts. 13.15, 13.16. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.18. County Executive Committees

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

Subd. 5. The funds received by the county executive committee from contributions, fees and assessments paid by candidates, and expenses paid by the secretary of state shall constitute the primary fund, and any surplus remaining in the fund after payment of the necessary expenses for holding the primary elections for that year shall be retained in the primary fund, and the balance reported to the secretary of state as required by Section 186a of this code.¹ The county executive committee is authorized to invest the primary fund by deposit with any federally insured institution; provided, however,

that the required length of time of the deposit shall not extend beyond 30 days prior to the next general primary election.

[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 5, eff. Sept. 1, 1975.]

¹ Article 13.08a.

Art. 13.18a. District and Precinct Executive Committees

(1) For a district composed of more than one county or part thereof, the county chairman of each county wholly within the district shall be ex officio a member of the district executive committee for each such district of which his county is a part. When a part of a county is joined with one or more other counties or parts of counties to form a district, at a meeting of the county executive committee on the second Monday in February preceding each general primary election the precinct chairman of the election precincts included within such part of the county shall elect one of their number to serve as district committeeman; and a district committeeman shall be selected in this manner for each type of district and for each district for which any part of the county less than the whole county is joined with territory in another county or counties. The district committee thus formed shall elect its own chairman. Whenever a vacancy occurs in a district office and the district committee is empowered to name a nominee or a substitute nominee, or whenever for any other reason it becomes necessary for the district committee to meet and organize, the chairman of the state executive committee shall call a meeting of the district committee by giving notice to each member of the time and place where such meeting will be held and of the purpose of the meeting. The state chairman shall designate one member as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman. The chairman elected by the committee shall continue to act as chairman during the remainder of that term of office, and shall call any subsequent meetings of the committee which are held during that time.

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

(3) For a district composed of only a part of one county, the precinct chairmen of the election precincts included within the district shall constitute the district executive committee. At the meeting of the county executive committee on the second Monday in February preceding each general primary election, the precinct chairmen within the district shall elect one of their number to serve as chairman of the district executive committee; and a chairman shall be selected in this manner for each type of district and for each district composed of only a part of the county.

[See Compact Edition, Volume 2 for text of (4) and (5)]

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 7, eff. Sept. 1, 1975.]

Art. 13.35. Date and Place for State Convention

At the meeting of the State Executive Committee held on the second Monday in March preceding each general primary election the said committee shall decide upon the date, hour and place where the State convention of the party shall be held, said date to be any day between the first and third Tuesdays, exclusive, in September, 1976, and each two (2) years thereafter. The chairman of the State executive committee shall file with the Secretary of State a notice of the date, hour and place of holding the State convention and a copy of such notice shall be mailed to the county chairman of that party in each county in the State at least ten (10) days before the convention is held.

[Amended by Acts 1975, 64th Leg., p. 2099, ch. 683, § 1, eff. Sept. 1, 1975.]

Art. 13.38. State Convention

The state convention to announce a platform of principles and to announce nominations for Governor and other state offices, held by a political party making nominations by primary election, shall meet on a date between the first and third Tuesdays, exclusive, in September of each even-numbered year, such date and the place of said meeting to be determined by the state executive committee as provided in Section 213 of this Code,¹ and shall remain in session from day to day until all nominations are announced and the work of the convention is finished. The convention shall elect a chairman and a vice-chairman of the state executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the state, one of whom shall be a man and the other a woman, the members of the committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold office until his successor is elected; and, in case of a vacancy, a majority of the members of the committee shall fill the vacancy by electing some eligible person thereto, but such person shall be of the same sex as the vacating member and from the same senatorial district.

At any meeting of the state executive committee a person cannot hold a proxy or participate in such meeting unless he is a resident of the same senatorial district as the member giving the proxy, and no person shall be permitted to hold or vote more than one proxy.

[Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 2, eff. Sept. 1, 1975.]

¹ Article 13.35.

Art. 13.45. Nominations by Parties Receiving Less Than 20 Percent of Vote for Governor

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

Parties Receiving Less Than Two Percent of Vote for Governor

Subd. 2. (a) Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election for that office, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election for that office, may nominate candidates by conventions as provided in Sections 224 and 225 of this code,¹ but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 30 days after the date for holding the party's state convention, the lists of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,² signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election for that office; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election for that office. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition.

(b) To each person who signs the petition there shall be administered the following oath, which shall be reduced to writing and attached to the petition: "I know the contents of the foregoing petition, requesting that the names of the nominees of the _____ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party, and I will not vote in a primary election or participate in a convention of any other party during the remainder of this voting year." The petition may be in multiple parts. One certificate of the officer administering the oath may be so made as to apply to all to whom it was administered. The

petition may not be circulated for signatures until after the date of the party's precinct conventions. Any signatures obtained on or before that date are void.

(c) Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year, or any person who votes in a primary election or participates in a convention of any other party during the same voting year after having signed the petition, is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500.

(d) The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

(e) At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,³ he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements.

[Amended by Acts 1975, 64th Leg., p. 2094, ch. 682, § 21, eff. Sept. 1, 1975.]

¹ Articles 13.47 and 13.48.

² Articles 13.47 and 13.48.

³ Articles 13.45a and 13.47.

Art. 13.45a. Regulation of Party Affairs and Conventions

Subd. 1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[See Compact Edition, Volume 2 for text of 2 to 4]

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 13.46. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 13.47a. Application for Nomination; Affidavit of Intent to Run; Filing

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

Sec. 3. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

Sec. 4. The requirements of Section 1 do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing applications for a place on a primary election ballot as prescribed in Paragraph 2 of Section 190 of this code (Article 13.12, Vernon's Texas Election Code).

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, §§ 22, 28, eff. Sept. 1, 1975.]

Art. 13.50. Nonpartisan or Independent Candidate

Subd. 1. This section applies to nonpartisan or independent candidates for federal, state, district, county, and precinct offices in the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). A person may run as a nonpartisan or independent candidate for any such office, other than the offices of president, vice president, and presidential elector, by complying with this section and other applicable provisions of this code.

Subd. 2. (a) As a condition precedent to having a candidate's name printed on the official ballot as an independent candidate under this section, in addition to the application required by Subdivision 3 of this section, the person must file, by the deadline provided in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), a declaration of his intent to run as an independent candidate. The declaration shall state the person's name, occupation, county of residence, post office address, age, and the office for which he intends to run, and shall be signed and duly acknowledged by the person desiring to be a candidate. It shall be filed with the officer with whom the application required by Subdivision 3 of this section is filed.

(b) The requirements of Paragraph (a) of this subdivision do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing application for a place on a primary election ballot as prescribed in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), and do not apply to candidates for any office for which the filing deadline in a primary election is extended under the provisions of Paragraph 2a of Section 190. However, an independent candidate who is not required to file a declaration of intent under Paragraph (a) of this subdivision must file with the secretary of state or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

Subd. 3. The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided, and delivered to him within 30 days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding gubernatorial general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding gubernatorial general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed 500.

Subd. 4. No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election.

Subd. 5. In addition to the person's signature, the application shall show each signer's address, the number of his voter registration certificate, and the date of signing.

Subd. 6. Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office.

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, § 23, eff. Sept. 1, 1975.]

Art. 13.52. Consent to Run

Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state or of the district, as the case may require, and the county judge shall issue his instruction to the county clerk of the county, directing that the name of the candidate on whose favor the application is made shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that any candidate who is required by Subdivision 2, Section 227 of this code (Subdivision 2, Article 13.50, Vernon's Texas Election Code) to file a statement of intent to become an independent candidate must have filed such statement in compliance with the provisions of that subdivision, and any candidate not required to file such statement must file with the Secretary of State or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 24, eff. Sept. 1, 1975.]

Art. 13.54. Nominations by Parties Without State Organization

Any political party without a state organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor by a county convention held on the second Saturday in May of the election year, which convention shall be composed of delegates from the various election precincts in the county, elected therein at conventions held in such precincts on the first Saturday in May. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge not later than June 30 following the conventions, signed by qualified voters of the county equal in number to at least three per cent of the entire vote cast for governor in such county at the last general election for that office. No person who is affiliated with any other political party is eligible to sign the application. The application shall contain the following information with respect to each person signing it: his address, the number of his voter registration certificate, and the date of signing. The application may not be circulated for signatures until after the date of the precinct conventions, and any signatures obtained on or before that date are void. The application may be in multiple parts. To each part there shall be attached an affidavit of the person who circulated it, who must be a registered voter in the county, stating that he witnessed the

affixing of each signature, that the correct date of signing is shown on the application, and that to his best knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are qualified voters of the county.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 25, eff. Sept. 1, 1975.]

Art. 13.56. Death, Withdrawal, or Ineligibility of Candidate; Filling Vacancy in Nomination

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed and to the chairman of the executive committee having the power to fill a vacancy in such nomination, not later than the 21st day before the day of the election, a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments, whereupon the officer receiving the declaration shall take the necessary action to have the name of the nominee removed from the ballot. A nominee may not decline the nomination after the 21st day before election day.

(b) If prior to the 20th day before the day of the election, a nominee dies or declines the nomination, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. A certificate of such nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed and must set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. If the vacancy occurs on or before the 75th day before election day, the certificate must be filed not later than the 55th day before election day; if the vacancy occurs after the 75th day before election day, the certificate must be filed not later than the 20th day after it occurs, but in any event not later than the 21st day before election day. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election. The certification must be filed not later than the 15th day after the

deadline for certification by the district committee and in any event not later than the 21st day before election day.

(d) If a party nominee dies before the 24th day before election day, or if he declines the nomination or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If a nominee dies between the 24th day and the 21st day before election day, both dates included, and no one is nominated to take his place, or if a nominee dies or is declared ineligible on or after the 20th day before election day, his name may be printed on the ballot and the procedure set out in Section 104 of this code¹ shall be followed.

(e) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed, not later than the 21st day before election day, a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot. A candidate may not withdraw after the 21st day before election day.

(f) If an independent candidate in the general election for state and county officers withdraws or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If he dies after completing all the procedural requirements for candidacy and before the 20th day before election day, his name shall be printed on the ballot if he was the incumbent in the office for which he was a candidate or if no other candidate's name is to be printed on the ballot in that race; otherwise, his name shall not be printed on the ballot. If he dies or is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot. When a deceased or ineligible candidate's name is printed on the ballot, the procedure set out in Section 104 of this code shall be followed.

(g) If an independent candidate in any election other than the general election for state and county officers dies before the second day before the filing deadline for independent candidates in that election, or if he withdraws or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If he dies on or after the second day before the filing deadline or if he is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot and the procedure set out in Section 104 of this code shall be followed.

(h) When a candidate dies and his name is to be removed from the ballot under any provision of this section, the officer responsible for making up the

ballot for the election shall remove the candidate's name upon receiving reliable information of the death. However, in the case of a candidate whose name is certified to the county clerk by the secretary of state, the clerk shall not remove the candidate's name from the ballot without authorization from the secretary of state.

(i) The provisions of this section in regard to independent candidates apply to all general and special elections, by whatever authority held, except that charter provisions of a home-rule city supersede the provisions of this section. The term "independent candidate" means any candidate, not the nominee of a political party in a partisan election, who is seeking ballot position in any general or special election.

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 3, eff. Sept. 1, 1975.]

¹Article 8.22.

Art. 13.58. National Convention

(a) Any political party holding primary elections in an election year during which it desires to elect delegates to a national convention shall hold a state convention at such hour and place and on such date as may be designated by the state executive committee of the party, such date to be any day between the second and fourth Tuesdays, inclusive, following the second primary election date. Such convention shall be composed of delegates duly elected at the county and senatorial district conventions as provided for in Section 212 of this code. The chairman of the state executive committee shall notify the Secretary of State as to the date, hour and place at which the state convention will be held and shall also mail a copy of such notice to each county chairman and the temporary chairman of each senatorial district convention in the state at least ten days prior to the date of the state convention.

[See *Compact Edition, Volume 2 for text of (b)*]

[Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 3, eff. Sept. 1, 1975.]

Art. 13.58a. Presidential Primaries; Selection of Delegates to National Nominating Conventions of Parties Holding Primaries

[Text of article effective until March 1, 1977]

Parties Required to hold Presidential Primary

Subd. 1. Each political party holding primary elections in this state in an election year during which a national convention of the party will be held to nominate a candidate for president of the United States shall hold a presidential primary election in conjunction with the party's general primary election on the first Saturday in May, for the purpose of electing a portion of the delegates to represent the state at the national convention. The expenses of

the presidential primary shall be paid in the same manner as the expenses of the general primary.

Method of Selecting Delegates to National Convention

Subd. 2. (a) The voting delegates and alternates to represent this state at the national nominating convention of a political party which is required to hold a presidential primary election in this state shall be selected in accordance with the provisions of this section.

(b) At least 75 percent of the voting delegates apportioned to this state shall be elected from state senatorial districts at the presidential primary of the party, as provided in Subdivisions 4 through 7 of this section; provided, however, that the state executive committee of the party, by a vote of two-thirds of the membership, may choose to elect delegates from congressional districts. The candidates for election as delegates are those persons nominated by the delegate selection committees of the presidential candidates who qualify to participate in the presidential primary in accordance with Subdivision 3 of this section, and are pledged to the presidential candidate on whose behalf they are nominated. The state executive committee of the party shall determine the exact number of delegates to be elected at the primary, and shall apportion that number among the senatorial or congressional districts in accordance with an apportionment formula prescribed by national party rules. The percentage of voting delegates apportioned by the state executive committee of each party to be elected as provided herein shall be as close to 75 percent as mathematically practicable and permitted by national party rules.

(c) Not later than January 2 of the presidential election year, the chairman of the state executive committee of each party holding a presidential primary election shall certify to the secretary of state:

- (1) the total number of voting delegates apportioned to this state;
- (2) the number of delegates to be elected at the primary election and the number apportioned to each senatorial or congressional district for election at the primary;
- (3) the number of delegates to be selected at the state convention; and
- (4) the number of alternates apportioned to the state to be chosen at the state convention.

Method of Qualifying as Presidential Candidate

Subd. 3. (a) Any person eligible to hold the office of president of the United States may qualify to participate as a presidential candidate in the primary of the party of the candidate's choice by filing with the secretary of state, not later than 6 p. m. on the first Monday in February preceding the primary, a signed, acknowledged application accompanied by

petitions for pledged delegates signed by registered voters of each senatorial or congressional district in which the person desires to be a candidate, equal in number to not less than one percent of the total number of votes cast in the district for all candidates for governor in the last preceding general primary election of the party.

(b) The secretary of state shall prescribe the form of all applications and petitions which are to be filed pursuant to this section.

(c) A voter may not sign petitions representing a greater number of delegates than the number to be elected in the district of which he is a resident. A voter who violates these provisions commits a Class C misdemeanor.

Candidate's District Delegate Slates

Subd. 4. (a) Each presidential candidate shall be represented on the primary ballot in any senatorial or congressional district of his choice by a slate of nominees for election as delegates to the national convention in the number that the state executive committee apportions to the district for election at the primary. Each presidential candidate shall appoint a delegate selection committee in each senatorial or congressional district in which he wishes to be represented on the ballot by delegate nominees. The committee, which shall consist of not less than 10 registered voters of the senatorial or congressional district, shall choose the slate of nominees to represent the candidate on the ballot. Not later than the second Monday in February preceding the primary, the candidate shall file with the secretary of state the names and addresses of the persons appointed to the candidate's delegate selection committees. The candidate shall designate in the filed instrument one member of each committee to serve as its chairman.

(b) Not later than the third Monday in February preceding the primary, each candidate's delegate selection committees shall meet at a time set by the state executive committee of the party and at a place set in each district by the chairman of the delegate selection committee for that district, for the purpose of choosing the slates of delegate nominees to represent the candidate at the primary. Each nominee for delegate must be a qualified voter in the senatorial or congressional district for which that nominee is chosen. These committees shall be charged with the responsibility of insuring that the delegate selection process is free and open and that full opportunity for public participation is afforded; provided, however, that the delegate selection committee may require each participant to pledge himself or herself by oath to the committee's presidential candidate. These meetings shall be conducted in accordance with the rules of the respective national and state parties.

(c) All meetings of delegate selection committees of candidates of the same party shall be held at a uniform time throughout the state, and shall begin at a reasonable hour, except where it is determined by the state chairman of the party that inclement weather or unforeseen impediments would significantly reduce participation in the delegate selection process.

(d) It is a Class C misdemeanor for any individual to participate in the meetings of delegate selection committees of more than one candidate for president, or to swear falsely an oath of commitment to a candidate prior to participation in a delegate selection committee meeting.

(e) Not later than the first Monday in March, the chairman of each senatorial or congressional district delegate selection committee shall file with the secretary of state a list of names and addresses of persons chosen as delegate nominees in that senatorial or congressional district, together with the chairman's certification that each person listed has consented to become a nominee for the position.

(f) The names of a presidential candidate's delegate nominees shall not be printed on the primary ballot in any senatorial or congressional district of the state if:

(1) the presidential candidate fails to file the names of the candidate's delegate selection committees with the secretary of state within the prescribed time;

(2) the candidate's delegate selection committee in any senatorial or congressional district fails to nominate the requisite number of nominees for that district; or

(3) the chairman of any one or more of the candidate's delegate selection committees fails to file the names of the delegate nominees with the secretary of state within the prescribed time.

However, the death or withdrawal of a delegate nominee after nomination by the delegate selection committee does not disqualify a presidential candidate from participating in the primary. The chairman of each delegate selection committee shall fill vacancies in the slate of nominees in the manner provided in Subdivision 5 of this section.

(g) Not later than the second day after the first Monday in March, the secretary of state shall mail or deliver to the state chairman of each political party holding a presidential primary a certification of the names and addresses of the delegate candidates whose names are to be placed on the ballot in each senatorial or congressional district of the state in that party's primary, together with the name of the presidential candidate that each delegate candidate represents or the designation of the delegate candidate's uncommitted status. The state chairman

shall certify to the county chairmen of the party the names of the delegate candidates that are to appear on the presidential primary ballot for the various senatorial or congressional districts, together with the name of the presidential candidate that each delegate candidate represents or the designation of the delegate candidate's uncommitted status and the number of delegates to be elected in each senatorial or congressional district, at the same time that the state chairman certifies the names of candidates to appear on the general primary ballot as provided in Section 190 of this code (Article 13.12, Vernon's Texas Election Code).

Changes in Candidate's Slate Before the Primary

Subd. 5. (a) A presidential candidate may withdraw from the presidential primary by filing with the secretary of state a signed, acknowledged request that the names of the candidate's delegate nominees not be printed on the ballot, not later than the 21st day before election day. If a presidential candidate dies or withdraws before the 20th day before election day, the names of the candidate's delegate nominees shall not appear on the ballot. If a candidate dies during the 20 days before election day, the votes cast for the candidate's delegate nominees shall be counted and those who are elected become uncommitted delegates, subject to becoming pledged to some other presidential candidate as prescribed by state party rules.

(b) Any person nominated for election as delegate may withdraw as a delegate nominee by filing a signed, acknowledged declaration of withdrawal with the chairman of the delegate selection committee that made the nomination and with the secretary of state not later than the 31st day before the primary. A nominee may not withdraw during the 30 days preceding the primary. However, if elected, a delegate may resign after the election. If a delegate nominee dies or withdraws before the 30th day preceding the election, the chairman of the delegate selection committee shall select a replacement and certify the name and address of the replacement to the secretary of state within five days after the death or withdrawal. If a nominee dies during the 30 days preceding the election, the nominee's name remains on the ballot, and if the nominee receives the necessary vote for election, the vacancy is filled in the same manner as a vacancy occurring after the election.

(c) A presidential candidate may refuse to be represented by a nominee for delegate by giving written notice to the chairman of the candidate's delegate selection committee that made the nomination and to the secretary of state, not later than the 31st day before the primary, whereupon that person's name shall be replaced on the ballot under the same procedure as for a deceased or withdrawn nominee.

(d) When the secretary of state receives notice of any change in the ballot makeup for a presidential primary after the secretary of state has certified the delegate nominations to the state chairman, the secretary of state shall notify the state chairman, and the state chairman in turn shall notify the appropriate county chairmen of the change that is to be made. No change shall be made except upon authorization of the secretary of state.

The Presidential Primary Ballot

Subd. 6. (a) The names of the candidates for delegate to the national convention shall be printed as the first race on the official ballot for the general primary. The slates of the various presidential candidates shall be listed in a vertical column beneath the heading and instruction note prescribed in paragraph (b) of this subdivision, each slate appearing in the order determined by lot for the names of the presidential candidates in each county, in the same manner as the names of the candidates for nomination on the general primary ballot. The names of the delegate nominees making up each slate shall be printed on the ballot in the order certified by the secretary of state, which shall be the same order in which the chairman of the presidential candidate's delegate selection committee certified the names to the secretary of state. Alongside the name of each delegate nominee there shall be printed the name of the presidential candidate to whom the delegate nominee is pledged. A space shall separate each slate from the others.

(b) When paper ballots are used, the presidential portion of the ballot shall be in substantially the following form:

DELEGATES TO NATIONAL PRESIDENTIAL NOMINATING CONVENTION

Vote for any [3] delegates.

(The blank is to be filled in with the number allocated to the senatorial or congressional district for which the ballot is prepared.)

Delegate Candidate	Presidential Candidate
[]	delegate for (First presidential candidate)
[]	delegate for (First presidential candidate)
[]	delegate for (First presidential candidate)
[]	delegate for (Second presidential candidate)
[]	delegate for (Second presidential candidate)
[]	delegate for (Second presidential candidate)
[]	delegate for (Third presidential candidate)
Etc.	

(c) Appropriate changes shall be made in ballots for voting machines and electronic voting systems, consistent with the method of voting used.

(d) The type for all names of delegate candidates shall be of uniform style and size; provided, however, that the names of all delegate candidates shall be printed in capital and lowercase letters and the names of all presidential candidates shall be printed in capital letters. The secretary of state shall prescribe a sample ballot as a guide to the size and style of type to be used for each of the items (heading, instructions, names of candidates, etc.) to be printed on the ballot, and the state chairman shall furnish a copy of the sample ballot to each county chairman at the time of certifying to the county chairman the names to appear on the ballot.

(e) Write-in voting for delegate candidates is not permitted, and any write-in votes shall not be counted.

Canvass of Returns

Subd. 7. (a) The returns of the votes cast for delegate candidates in a presidential primary shall be canvassed by senatorial or congressional district in the same manner as the returns for district offices in the general primary. The candidates elected in each senatorial or congressional district are those who receive, respectively, the highest number of votes, the second highest number of votes, and so on in descending order, according to the number of delegates to be elected. In the event two or more delegate candidates receive the same number of votes, the winner shall be determined by lot at the meeting of the state executive committee at which the returns are canvassed.

(b) Within 48 hours after the state executive committee canvasses the returns, the state chairman shall certify to the secretary of state the number of votes received by each candidate for delegate in each senatorial or congressional district, with a breakdown of the district vote by county if the district includes territory in more than one county.

(c) Delegates elected from senatorial or congressional districts to the national convention shall be voting delegates from their senatorial or congressional districts to the state convention.

Uncommitted Delegates

Subd. 8. (a) Any group of 10 or more registered voters of a senatorial or congressional district who wish to have a slate of uncommitted delegate candidates appear on the presidential primary ballot in that district shall file a signed, acknowledged statement to that effect with the secretary of state not later than 6 p. m. on the first Monday in February preceding the primary. The statement must be accompanied by a petition signed by registered voters of the district equal in number to not less than one percent of the total number of votes cast in the district for all candidates for governor in the last

preceding general primary election of the party. Each group shall appoint a delegate selection committee, which shall consist of not less than 10 registered voters of the senatorial or congressional district and may include signers of the statement. Not later than the second Monday in February preceding the primary, the group shall file with the secretary of state the names and addresses of the persons appointed to the group's delegate selection committee, and shall designate in the filed instrument one member of the committee to serve as its chairman. The delegate selection committee shall function in all respects as a presidential candidate's delegate selection committee for a senatorial or congressional district.

(b) Any individual registered voter of a senatorial or congressional district who wishes to become an uncommitted delegate candidate but does not wish to appear on the ballot as a part of a slate of uncommitted delegate candidates shall file an application with the secretary of state not later than 6 p. m. on the first Monday in February preceding the primary. The application must be accompanied by a petition signed by registered voters of the district equal in number of not less than one percent of the total number of votes cast in the district for all candidates for governor in the last preceding general primary election of the party.

(c) Limitations on the number of petitions a voter may sign are stated in paragraph (c) of Subdivision 3 of this section.

(d) The uncommitted delegate candidates shall be so designated on the ballot, and shall be governed by the same privileges and restrictions as pledged delegate candidates insofar as they can be made applicable. The notation in Subdivision 6 of this section that a delegate candidate is running as a delegate for a particular presidential candidate shall be replaced on the ballot with the notation "Uncommitted delegate."

Selection of Delegates and Alternates at State Convention

Subd. 9. (a) The remaining number of delegates allotted to the state which were not elected at the party's presidential primary and all alternates shall be selected by the state convention of the party, in accordance with state and national party rules.

(b) Not later than the fifth day prior to the opening of the state convention, each presidential candidate and the chairman of the delegate selection committee of each uncommitted group of voters entitled to a portion of the delegates or alternates to be chosen at the state convention shall file with the state chairman of the party the names of a committee to function at the state convention for the purpose of screening and rejecting proposed delegates

and alternates to be chosen by the convention that are unacceptable to the presidential candidate or the uncommitted group. Each screening committee shall consist of not less than 10 members, one of whom shall be designated in the filed instrument as the chairman of the committee.

Pledge of Delegates and Alternates

Subd. 10. (a) By assenting to nomination on a presidential candidate's slate, each delegate candidate representing a presidential candidate in a presidential primary becomes pledged to the presidential candidate on whose slate the delegate candidate is nominated.

(b) A person who is elected as a delegate to the national convention on the slate of a presidential candidate at the primary or who is selected by the state convention as a delegate or alternate to the national convention to represent a particular presidential candidate, and who does not resign from the position, is pledged by law to support that presidential candidate at the national convention until the candidate is nominated at the convention or until the delegate or alternate is released from the pledge as follows:

(1) first nominating convention ballot: delegate or alternate shall be released from the pledge only in the event of death or withdrawal of the candidate;

(2) second nominating convention ballot: delegate or alternate may be released from the pledge by decision of the candidate;

(3) third nominating convention ballot: delegate or alternate shall be released from the pledge if the candidate has failed to receive 20 percent or more of the total vote cast on the preceding ballot; or by decision of the candidate;

(4) fourth and subsequent nominating convention ballots: delegates and alternates are by law released from any pledge.

Filling Vacancies in a Delegation

Subd. 11. (a) A delegate who resigns prior to or is absent from the national convention shall select from among the alternates of the same candidate preference or unpledged status the particular alternate to take the place of the resigned or absent delegate. If the delegate fails to select the alternate, or if, due to death or disability, a delegate is unable to select the alternate, the delegation shall fill the vacancy by selecting an alternate of the same candidate preference or unpledged status as the delegate replaced.

(b) Any delegate or alternate may resign by giving written notice to the delegation chairman and the state chairman of the party at any time before the date of the national convention.

Candidacy for Other Office

Subd. 12. Notwithstanding any other provision of law, a person's name may be printed on the primary ballot as a candidate for nomination to the office of president of the United States or as a nominee for election as delegate to the national convention of a political party, and also as a candidate for nomination to any other public office or for election to any party office.

[Added by Acts 1975, 64th Leg., p. 630, ch. 261, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided: "Section 235a, Texas Election Code, added by Section 1 of this Act, is enacted as a temporary law and expires on March 1, 1977."

CHAPTER FOURTEEN. POLITICAL FUNDS REPORTING AND DISCLOSURE ACT

Article

14.03a. Limitations on Campaign Expenditures [NEW].

14.10. Campaign Communications [NEW].

14.10A. Misleading Use of Office Title [NEW].

Art. 14.01. Definitions

As used in this chapter—

(A) "Candidate" is defined as any person who has knowingly and willingly taken affirmative action for the purpose of seeking nomination or election to any public office which is required by law to be determined by an election. Some examples of affirmative action are:

1. Filing of application for a position on a ballot.
2. Filing of application for nomination by a convention under Section 224a of this code.¹
3. Independent candidate's declaration of intent under Section 224a of this code.
4. Public announcement of a definite intent to run for office at a particular election, either with or without designating the specific office to be sought.
5. Statement of definite intent and solicitation of support through letters or other modes of communication, prior to a public announcement.
6. Solicitation of or acceptance of a contribution for use in a future election.

The filing of a designation of a campaign treasurer is not affirmative action which makes one a candidate as defined in this chapter.

(B) "Office-holder" is defined as any person serving in a public office as defined herein and any other constitutionally designated member of the Executive Department.

(C) "Corporation" is defined as every organization organized or operating under authority of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, any corporation or association organized by authority of any law of Congress or of any other state or nation than Texas, national, state, private or unincorporated banks, trust companies, building and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, cooperatives, abstract and title insurance companies, and stock companies.

(D) "Contribution" is defined as:

(1) any advance, loan, deposit, or transfer of funds, goods, services or any other thing of value, or any contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or anything of value to any candidate, or political committee, which advance or other such item is involved in an election; providing that an individual or group of persons is involved in an election upon the receipt of a contribution or the making of an expenditure which was given or made and received with the intent that it be used or held for some election and that the receipt of or making of the contribution or expenditure may occur before, during, or after an election; or as

(2) any advance, deposit or transfer of funds, goods, services or anything of value or creation of any contract or obligation, enforceable or unenforceable, to transfer any funds, goods, services or anything of value to any office-holder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision.

(E) "Expenditures" is defined as any payments made or obligations incurred

(1) by a candidate, or political committee, when such payments or obligations are involved in an election; or

(2) by an office-holder, when such payments are made in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the political subdivision.

"Involved in an election" has the same meaning as in (D) above.

(F) "Election" is defined as any election held to nominate or elect a candidate to any public office. It shall also include any election at which a measure is submitted to the people.

(G) "Public office" is defined as any office created by or under authority of the laws of the state, that is filled by the voters.

(H) "State office" is defined as any public office of the state government which is to be filled by the choice of the voters of the entire state, except presidential electors.

(I) "District office" is defined as any public office of the state government, less than state-wide, which is to be filled by the choice of the voters residing in more than one county, and the offices of State Senator, State Representative, and State Board of Education.

(J) "County office" is defined as any public office of the state or county government which is to be filled by the choice of the voters residing in only one county or less than one county, except for those offices specifically enumerated as district offices above.

(K) "Municipal office" is defined as any public office of any incorporated city, town, or village which is to be filled by the choice of the voters.

(L) "Office of a political subdivision" is defined as any public office of any political subdivision of this state which is organized as a body politic and has a governing board or body, except counties, cities, towns and villages, which is to be filled by the choice of the voters residing in that subdivision.

(M) "Measure" is defined as any proposal submitted to the people for their approval or rejection at an election, including any proposed law, Act or part of an Act of the legislature, revision of or amendment to the constitution, local, special, or municipal legislation or proposition or ballot question.

(N) "Person" is defined as an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons including any group of persons associated with a political party or element thereof.

(O) "Political committee" is defined as any group of persons

(1) formed to collect contributions or make expenditures in support for or in opposition to a candidate or candidates, whether presently identifiable or not, or a measure or measures, whether presently identifiable or not, on a ballot in a public election; or

(2) formed to collect contributions or make expenditures for office holders whether presently identifiable or not.

(P) "Specific purpose political committee" is defined as:

(1) any political committee which accepts only contributions and/or makes only expenditures in support for or in opposition to candidates who are identifiable and for whom the office(s) to be sought are known and any political committee only accepting contributions and/or making expenditures in support for or in opposition to measures which are identifiable; or

(2) any political committee which accepts only contributions and/or makes only expenditures in assisting identifiable office-holders.

(Q) "General purpose political committee" is defined as:

(1) any political committee which accepts contributions and/or makes expenditures in support for or in opposition to candidates who are indefinite in identity or for whom the office(s) to be sought are unknown and any political committee which accepts contributions and/or makes expenditures in support for or in opposition to measures which are indefinite in identity; or

(2) any political committee which accepts contributions and/or makes expenditures in assisting office-holders, who are not identified.

(R) "Political advertising" is defined as anything in favor of or in opposition to any candidate for public office or office of a political party, or in favor of or in opposition to any political party, or in favor of or in opposition to the success of any public officer, or in favor of or in opposition to any measure submitted to a vote of the people, which is communicated in any of the following forms:

(1) anything published in a newspaper, magazine, or journal or broadcast over a radio or television station in consideration of money or other thing of value; or

(2) any handbill, pamphlet, circular, flier, commercial billboard sign, bumper sticker, or similar printed material.

The term does not include nonpolitical letterheads, ordinary printed invitations to and tickets for fund-raising events or other affairs, campaign pins, buttons, fingernail files, matchbooks, emblems, hats, pencils, and similar materials.

[Amended by Acts 1975, 64th Leg., p. 2257, ch. 711, § 2, eff. Sept. 1, 1975.]

¹ Article 13.47a.

The 1975 Act, which by §§ 2 to 14 amended arts. 14.01 to 14.10, 14.13 and 14.15, provided in §§ 1, 15 to 17:

"Sec. 1. This Act shall be styled the Political Funds Reporting and Disclosure Act of 1975.

"Sec. 15. Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973.

"Sec. 16. There is hereby appropriated to the Secretary of State out of the General Revenue Fund the amount of \$204,020 for the year ending August 31, 1976, and the amount of \$147,020 for the year ending August 31, 1977, for the purpose of implementing this Act.

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

Art. 14.02. Appointment of Campaign Treasurer

(A) Notwithstanding the following subsections of this section, no designation of a campaign treasurer shall be required in order that an office-holder accept contributions or make expenditures to be reported under subsection (H)(1)(b) of Section 243.¹ Unexpended campaign contributions, as defined in Subsection (D)(1) of Section 237,² which were lawfully accepted and have been previously reported pursuant to this Code, may be used by an office-holder for expenditures in connection with the office pursuant to subsection (E)(2) of Section 237. Notwithstanding the requirement set forth in subsection (F)(1) of this section, any contribution that has been lawfully accepted and duly reported under this Code prior to the designation of a campaign treasurer may be utilized as campaign contributions after such designation.

(B) Every candidate for nomination to or election to a state or district office and every political committee in any such election or in an election involving a statewide measure shall designate a campaign treasurer by written appointment filed with the Secretary of State, and may also designate assistant campaign treasurers for each county affected by such candidacy by written appointment to be filed either with the county clerk of said county, or the Secretary of State.

(C) Every candidate for nomination to or election to a county office and every political committee in any such election or in an election involving a county measure shall designate a campaign treasurer by written appointment to be filed with the county clerk of such county.

(D) Every candidate for nomination to or election to a municipal office or an office of a political subdivision and every political committee in any such election or in an election involving a measure of a municipality or political subdivision shall designate a campaign treasurer by written appointment to be filed with the clerk or secretary of the municipality or political subdivision and, if the political subdivision extends beyond the boundaries of one county, may also designate assistant campaign treasurers for each county affected by such candidacy.

(E) Any campaign treasurer or assistant campaign treasurer designated as provided in this Sec-

tion may be removed by the candidate or political committee at any time by the written appointment of a successor filed in the manner provided for the original designations.

(F)(1) No contribution shall be accepted nor any expenditure, including the paying of any filing fee, made by a candidate or political committee until the candidate or political committee has filed the name of its campaign treasurer with the appropriate authority. If it is not otherwise possible to determine which authority is appropriate for the filing of campaign treasurer designation, then a filing with the Secretary of State shall be sufficient, but only until such time as the appropriate authority may be determined in accordance with the provisions of Subsections (a), (b), and (c) of this Section.

(2) A political committee existing prior to the effective date of this Act shall file a new designation of a campaign treasurer with the appropriate authority for that committee before accepting any additional contributions or making any additional expenditures after the effective date of this Act.

(G) It shall be unlawful for any candidate, political committee, campaign treasurer, assistant campaign treasurer, or any other person to expend funds from any unlawful contributions.

(H) Nothing in this Act shall be construed to prohibit a candidate from appointing himself or herself as the campaign treasurer.

(I) An individual intending to become a candidate for public office may file a designation of campaign treasurer before taking any affirmative action for the purpose of seeking nomination or election.

(J) A designation of a campaign treasurer shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to such designation. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the designation may show by competent evidence that the actual date of posting was to the contrary. No charge shall be made for filing designations of campaign treasurer with any authority.

[Amended by Acts 1975, 64th Leg., p. 2259, ch. 711, § 3, eff. Sept. 1, 1975.]

¹ Article 14.07.

² Article 14.01.

Art. 14.03. Campaign Contributions

(A) It shall be lawful for an individual not acting in concert with any other person to expend a sum in a campaign which shall not in the aggregate exceed \$100 per election for any lawful purpose out of his own funds to aid or defeat any candidate or meas-

ure, where the sum is not to be repaid to him. Such a sum will not be reportable to any authority unless it constitutes a contribution. If an individual not acting in concert with any person wishes to expend more than \$100 for any lawful purpose out of his own funds to aid or defeat any candidate or candidates or measures, he may do so either by making a contribution or by complying with all of the provisions of this chapter as if he were a campaign treasurer of a political committee.

(B) It shall be lawful for any individual to donate his own personal services and personal traveling expenses to aid or defeat any candidate or measure and such a donation shall not constitute a contribution or expenditure, as defined in Section 237 of this code¹ only so long as he either is not compensated or reimbursed for same.

(C) It shall be unlawful for any person to make any contribution or expenditure in the name of another or on behalf of another without revealing that fact in order that the proper disclosure may be made.

(D) Except as expressly permitted by Paragraphs (A) and (B) of this Section it shall be unlawful for any person, other than a candidate, his campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee, to make or authorize any campaign expenditure. Except as provided in Paragraphs (A) and (B) of this Section, campaign expenditures must be made by the candidate, campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 5, eff. Sept. 1, 1975.]

¹ Article 14.01.
Former article 14.03, Purposes of Expenditures, was repealed by Acts 1975, 64th Leg., p. 2261, ch. 711, § 4. Prior to repeal the article was amended by Acts 1973, 63rd Leg., p. 1103, ch. 423, § 4.
Former article 14.04 was renumbered article 14.03 and amended by § 5 of the 1975 Act.

Art. 14.03a. Limitations on Campaign Expenditures

(a) Subject to Subsection (c) of this section, no candidate in an election for a statewide office of the state government may make campaign expenditures in excess of the applicable limit, as follows:

(1) in a general primary election, 10 cents multiplied by the voting-age population of the state;

(2) in a runoff primary election, 4 cents multiplied by the voting-age population of the state;

(3) in a general election, 10 cents multiplied by the voting-age population of the state.

(b) As used in this section, "voting-age population" means the estimated voting-age population of the state as certified by the United States Secretary

of Commerce pursuant to Section 608 of Title 18, United States Code, in January of the calendar year in which the election is held.

(c) Each limitation established by Subsection (a) or Subsection (f) shall be increased by the percentum difference between the price index for the 12 months preceding the beginning of the calendar year in which the election is held and the price index for the calendar-year 1974, as certified by the United States Secretary of Labor pursuant to Section 608 of Title 18, United States Code.

(d) For the purpose of calculating the spending limits of this section and except as otherwise provided in Subsection (f), any amount spent by a candidate, his campaign treasurer, or assistant campaign treasurer, or any amount spent on behalf of a candidate by a political committee or political action committee which is supporting the candidate, is deemed to have been spent by the candidate. For the purposes of this section, a contribution which a political committee makes to a candidate is not an expenditure on behalf of the candidate.

(e) The campaign treasurer of a political committee or political action committee which is supporting a candidate may not make expenditures on behalf of the candidate in excess of a limit fixed by the candidate or his campaign treasurer in a signed statement furnished to the campaign treasurer of the political committee or political action committee before he incurs any such expenditure. The candidate or his campaign treasurer may change the limit at any time before the election if the expenditures incurred by the committee at the time of the change do not exceed the limit previously set for the committee. On each statement that a candidate files under Section 244 of this code, as amended,¹ the candidate shall list the expenditure limit that he or his campaign treasurer has set for each political committee supporting him with respect to the election to which the statement relates. Where a political committee makes an expenditure on behalf of more than one candidate, the entire amount is charged to each candidate's expenditure limit.

(f) Expenditures made by an executive committee of a political party or by any other political committee on behalf of the nominees of a political party in a general election without identifying individual candidates are not chargeable to the expenditure limits of the individual candidates.

(g) All civil and criminal penalties stated in this chapter for making an unlawful campaign expenditure apply to expenditures which are in excess of the amount permitted by this section. A candidate is liable for expenditures made by him, his campaign treasurer, or assistant campaign treasurer, in excess of the difference between the candidate's expenditure limit for the election and the aggregate of the limits that the candidate or his campaign treasurer

has fixed for political committees that are supporting him in the election. The campaign treasurer of a political committee is liable for expenditures in excess of the limit that the candidate or his campaign treasurer has fixed for the committee in the election.

[Added by Acts 1975, 64th Leg., p. 2101, ch. 684, § 1, eff. Sept. 1, 1975.]

¹ Article 14.08.

Art. 14.04. Civil Remedy

(A) Any person who makes or knowingly accepts an unlawful campaign contribution or who knowingly makes an unlawful expenditure in support of a candidate shall be civilly liable to each opposing candidate whose name appeared on the ballot in the election in which the unlawful contribution or expenditure was involved for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(B) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or expenditure not expressly supporting any candidate but opposing a particular candidate or candidates shall be civilly liable to each of such opposed candidates for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(C) Any person who knowingly makes or knowingly accepts an unlawful contribution or expenditure shall, in addition to any other penalties, be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unlawful contribution or expenditure.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 6, eff. Sept. 1, 1975.]

This article was renumbered from article 14.05 and amended by the 1975 Act.

Art. 14.05. Criminal Penalty

Any person who knowingly makes or knowingly accepts an unlawful contribution or who knowingly makes an expenditure in violation of this Chapter shall be guilty of a Class A misdemeanor unless otherwise provided by law.

[Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 7, eff. Sept. 1, 1975.]

This article was renumbered from article 14.06 and amended by the 1975 Act.

Art. 14.06. Corporations and Labor Organizations Not to Contribute

(A) Except to the extent permitted in Section 317, Texas Election Code,¹ it is unlawful for any corporation, as defined in this Act, to make a contribution or expenditure, as defined in Section 237 of this code,² or any labor organization to make a contribution or expenditure, or for any candidate, officeholder, political committee, or other person to knowingly accept any contribution prohibited by this Article except as herein expressly provided.

(B) For the purpose of this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(C) As used in this section, the phrase "contribution or expenditure" shall also include giving, lending, or paying any money or other thing of value, directly or indirectly, to any candidate, or political committee, campaign treasurer, assistant campaign treasurer, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate or of aiding or defeating the approval of any measure submitted to a vote of the people of this state or any subdivision thereof; provided, however, that nothing in this section or in Section 317, Texas Election Code, shall prevent the making of a loan or loans to any candidate, officeholder, or political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in the due course of business and is not directly or indirectly a contribution. As used in this Article, the phrase "contribution or expenditure" shall not include expenditures for the following purposes: communications, on any subject, by a corporation to its stockholders and their families or, if the corporation is an association, to its members and their families, or by a labor organization to its members and their families; non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or, if the corporation is an association, at its members and their families, or by a labor organization aimed at its members and their families; or the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization. It is provided that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in a commercial transaction.

(D) Any corporation or labor organization making or promising a gift, loan, or payment to any candidate, political committee, campaign treasurer, assistant campaign treasurer, or other person in violation of this section shall be civilly liable for double the amount or value of such loan or gift, promised or made, to each opponent of the candidate, or political committee, opposed by such gift, loan, or payment.

An opponent of the candidate is an opposing candidate whose name appeared on the ballot in the election in which the unlawful gift, loan, or payment was involved. The corporation or labor organization shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of any unlawful gift, loan, or payment to any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer.

(E) Any corporation or labor organization that violates Subsection (A), (B), or (C) of this section shall be guilty of a felony of the third degree.

(F) Every officer or director of any corporation or labor organization who shall consent to any such unlawful gift, loan, or payment or such unlawful promise to give, lend, or pay by the corporation or labor organization shall be guilty of a felony of the third degree.

(G) Any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer who knowingly accepts such unlawful gift, loan, or payment from a corporation or labor organization shall be guilty of a felony of the third degree. [Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 8, eff. Sept. 1, 1975.]

¹ Article 15.17.

² Article 14.01.

This article was renumbered from article 14.07 and repealed in its entirety, substituting new provisions therefor, by the 1975 Act.

Art. 14.07. Records and Sworn Statement

(A) Each candidate, office-holder, and political committee, or a campaign treasurer representing the same, is hereby required to keep an accurate record of contributions received, and of all expenditures made. Such record shall contain all information hereinafter required to be reported by such candidate, office-holder, or political committee.

(B) Each opposed candidate whose name is printed on the ballot, each write-in candidate taking affirmative action in an election and each political committee involved in an election concerning a candidate or measure shall file a sworn statement at each time required herein. Each office-holder and political committee as defined in Subsections (O)(2), (P)(2), or (Q)(2) in Section 237 of this Code,¹ shall file a sworn statement as required herein.

(C) The statements filed by a candidate, or office-holder, shall list all contributions received and all expenditures made by the candidate, the office-holder, his campaign treasurer, and his assistant campaign treasurers during the appropriate reporting period as described in Subsection (H) of this section. The statements filed by a political committee, or a campaign treasurer representing the same, shall list all contributions received and expenditures made by the committee during the appropriate reporting period as described in Subsection (H) of this section. Each statement shall include the dates and amounts

and the full name and complete address of each person from whom contributions in an aggregate amount of more than \$50 has been received or borrowed during the appropriate reporting period as described in Subsection (H) of this section. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than \$50 was made during the appropriate reporting period, and the purpose of such expenditures. Each report shall also include a total of all contributions received and all expenditures made during the appropriate reporting period and a total of all contributions of \$50 and less received and all expenditures of \$50 and less made during the appropriate reporting period.

(D) Each political committee receiving contributions or making expenditures on behalf of a candidate, or office-holder, shall notify the candidate, or office-holder, as to the name and address of the political committee and its campaign treasurer, if one is required. The candidate, or office-holder, shall include within each statement required by this code a list identifying the name and address of each such political committee and its campaign treasurer, if one is required. "On behalf of" means the knowing acceptance of a contribution for a candidate(s), or office-holder(s), or the making of an expenditure for a candidate(s), or office-holder(s). Any campaign treasurer, candidate, office-holder, or other person managing a political committee, who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(E) Such statements shall be accompanied by the following affidavit verified by the person filing the statement:

"I do solemnly swear that the foregoing statement, filed herewith, is in all things true and correct, and fully shows all information required to be reported by me pursuant to the Political Funds Reporting and Disclosure Act of 1975."

(F) The statement and oath shall be filed as follows: for a county office (any office of the state or county government which is filled by the choice of the voters residing in only one county or less than one county), or a measure submitted at an election called by a county, with the county clerk of the county; for a district office (any office of the state government, less than statewide, which is filled by the choice of the voters residing in more than one county) or a state office, or statewide measure, or other constitutionally designated members of the Executive Department, with the secretary of state; for a municipal office, or a measure submitted at an election called by a municipality, with the city secretary or city clerk of the municipality; and for an office of a political subdivision, or a measure submitted at an election called by a political subdivision

other than a county of municipality, with the secretary of the governing body of the political subdivision. General purpose political committees shall file the required sworn statements and oaths with the Secretary of State. The deadline for filing any statement required under this section is 5 p. m. of the last day designated in the pertinent subsection for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p. m. of the next day which is not a Saturday or Sunday or enumerated holiday. A statement shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person making the report may show by competent evidence that the actual date of posting was to the contrary.

(G) A candidate, office-holder, or political committee shall not accept a contribution aggregating more than \$500 in a reporting period from a political committee not in this state unless the contribution is accompanied by a written statement which sets forth the full name and complete address of each person who contributed more than \$100 to such committee during the preceding twelve months and which is certified by an officer of the contributing political committee. A correct copy of any such statement shall be included with the statement filed on which the contribution is reported. For the purpose of reporting, "political committee not in this state" shall mean any political committee expending 80 percent or more of its expenditures in any combination of elections for state or district offices and/or measures and elections for county, municipal and political subdivisions offices and/or measures outside of this state within the immediately preceding twelve-month period.

(H)(1)(a) Candidates and the campaign treasurers of specific purpose political committees as defined in subsection (P)(1) of Section 237, shall file sworn statements at the times required in paragraph (4) of this subsection.

(b)(i) Office-holders and specific purpose political committees assisting office-holder(s) as defined in subsection (P)(2) of Section 237 of this Code shall file sworn statements on January 15 of each year of all contributions received and all expenditures made during the previous calendar year in accordance with the provisions of subsection (C) of this section but reporting only such contributions accepted and expenditures made that have not been previously reported.

(ii) In addition to the annual statement required in subsection (H)(1)(b)(i) above, any such office-holder shall file additional statements to cover all contributions received and expenditures made by such office-holder for that period of time prior to the designation of a campaign treasurer by such office-holder, and after such designation all contributions and expenditures are to be reported pursuant to subsection (H)(1)(a). The statements required by this subsection shall be filed not later than the 15th day following the designation of a campaign treasurer.

(2) Campaign treasurers of general purpose political committees shall file sworn statements at times required in paragraph (7) of this subsection.

(3) If the operations of a political committee necessitate a change in the applicability of paragraph (1) or (2) of this subsection, the campaign treasurer of such political committee shall make such change and declare the identity of the authorities with whom future filings are expected to be made by filing (a) notification(s) with the authority(ies) with whom such committee has previously been required to file sworn statements. Failure to file such notice(s), when such change has been properly made, before the next applicable deadline for filing sworn statements under the formerly applicable sections, shall constitute a Class B misdemeanor.

(4) Every candidate or specific purpose political committee shall file three sworn statements relating to the election in which such person is involved in addition to any statement as provided in paragraph (6) below. The three sworn statements shall be filed not later than the 30th day prior to the election, not later than the 7th day prior to the election, and not later than the 30th day after the election, respectively. A candidate who has been nominated by his party's primary in lieu of filing his third statement which encompasses nine (9) days prior to twenty-five (25) days after the election shall include in his first statement prior to the general election all previously unreported contributions and expenditures. The period reported in the first such statement shall begin on the day of campaign treasurer designation, and end on and include the 40th day prior to the election. The period reported in the second such statement shall begin on the 39th day before the election and end on and include the 10th day before the election. The period reported in the third such statement shall begin on the 9th day before the election and end on and include the 25th day after the election. In the event a candidate or specific purpose political committee becomes involved in an election after the end of any period covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(5) In lieu of any third statement required, which falls on the 30th day after any general primary or special elections, whenever a candidate or specific purpose political committee is involved in a run-off election, not later than the 7th day before the run-off election, the candidate or specific purpose political committee shall file a statement of all previously unreported contributions and expenditures through the 10th day before the run-off election. The next statement required shall be filed not later than the 30th day after the run-off election and shall report all contributions received and all expenditures made during a period beginning on the 9th day before the run-off election and ending on the 25th day after the run-off election.

(6) Each year after the last deadline for filing a statement of contributions and expenditures, an additional statement shall be filed, provided, however, if there have been no expenditures made or contributions knowingly accepted since the last required reporting period, or if any contributions knowingly accepted and any expenditures made have all been reported under Subsection (H)(1)(b) of this section, there shall be no filing required. The annual statement shall be filed on or before January 15 (following the last filing) and the period shall cover all previously unreported contributions and expenditures through and including the 31st day of December.

(7) All general purpose political committees shall file sworn statements as designated herein:

(a) On January 15th of each year, a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported;

(b) Not earlier than the 40th day and not later than the 30th day before the date of an election in which the general purpose committee is involved, a statement of all contributions received and all expenditures made during the period from the date on which the general purpose political committee filed a designation of a campaign treasurer through the 40th day before the date of the election;

(c) Not earlier than the 10th day and not later than the 7th day before the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made through the 10th day before the date of the election which have not been previously reported;

(d) Not earlier than the 25th day and not later than the 30th day after the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made since the date covered by the last report filed under this subsection;

(e) Whenever a general purpose political committee is involved in a run-off election, in lieu of the statement to be filed by not later than the 30th day after the first election, the committee shall file a statement on the 7th day before the date of the run-off election showing all contributions received and all expenditures made since the date of the last report filed under this subsection;

(f) In the event a general purpose political committee becomes involved in an election after the end of any periods covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(8) Candidates for offices created under laws of the United States are specifically exempted from the requirements of this section. It is provided, however, that they shall file copies of any reports required by federal laws with the secretary of state on the same date they file such reports with the appropriate federal authorities.

(9) **Final Statement.** A candidate or political committee may cease filing sworn statements regarding a campaign after a final statement has been filed and designated as such. Any of the required sworn statements may constitute a final statement if its filing results in the completion of the reporting of all contributions and expenditures involved in an election, together with the appropriate related information, required to be reported.

(10) In the event a general purpose political committee makes a contribution to either another general purpose political committee or an out of state political committee, and cannot thereby make the determination of the appropriate times to make filings of sworn statements, such contributing general purpose political committee shall be deemed to have complied with the requirements of this Section by filing a sworn statement with the Secretary of State fully reporting such contribution (as an expenditure) no later than the next succeeding filing deadline for the general primary election.

(I)(1) If any candidate, office-holder, or campaign treasurer of a political committee fails to file a sworn statement containing all information required by this chapter within 15 days of the deadline provided herein, such person shall be guilty of a Class A misdemeanor.

(2) Any candidate, office-holder, campaign treasurer, or other person managing a political committee who swears falsely in a filed statement is subject to the provisions of Section 37.02 of the Texas Penal Code.

(J) Any candidate or campaign treasurer of a political committee who fails to report in whole or in

part any contribution or expenditure as provided in the foregoing provisions of this Section shall be liable for double the amount or value of such unreported contribution or expenditure or unreported portion thereof, to each opposing candidate in the election in which same should have been reported. Each of such opposing candidates shall also recover reasonable attorneys' fees for collecting the above liquidated damages.

(K) Any candidate, office-holder, or campaign treasurer, of a political committee who fails to report in whole or in part any contribution or expenditure as provided in this Section, shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unreported contribution or unreported expenditure.

(L) Statements filed under this Section shall be open to public inspection. They shall be preserved for a period of two years, after which they may be destroyed unless a court of competent jurisdiction has ordered their further preservation.

(M) No charge shall be levied for the filing of any report required by this section.

(N) No charge greater than that authorized by the State Board of Control for copies of similar documents filed with state agencies shall be charged for copies of any reports required to be filed by this section.

[Amended by Acts 1975, 64th Leg., p. 2263, ch. 711, § 9, eff. Sept. 1, 1975.]

¹Article 14.01.

This article was renumbered from article 14.08 and amended by the 1975 Act.

Art. 14.08. Leave Name Off Ticket

Any candidate who shall knowingly permit or assent to the violation of any provision of this Chapter by any campaign treasurer or assistant campaign treasurer, or other person, shall thereby forfeit his right to have his name placed upon the primary ballot, or if nominated in the primary election, to have his name placed on the official ballot at the general election. Provided, no candidate in the general election shall forfeit the right to have his name printed on the ballot for such election if the Constitution of this State prescribes the qualifications of the holder of the office sought by the candidate.

Proceedings by quo warranto to enforce the provisions of this Section, or to determine the right of any candidate alleged to have violated any provision of this Chapter, to have his name placed on the primary ballot, or the right of any nominee alleged to have violated any provision of this Chapter to have his name placed upon the official ballot for the general election, may be instituted on the complaint of any citizen in the district court of any county, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with any such violation. All such proceedings so

instituted shall be advanced, and summarily heard and disposed of by both the trial and appellate courts.

[Amended by Acts 1975, 64th Leg., p. 2268, ch. 711, § 10, eff. Sept. 1, 1975.]

This article was renumbered from article 14.09 and amended by the 1975 Act.

Art. 14.09. Political Advertising

(A) It is unlawful for any person knowingly to enter into a contract or transaction to print, publish or broadcast, any political advertising which does not disclose thereon that it is political advertising and which does not state thereon the name and address either of the person who personally entered into the contract or transaction with the printer, publisher, or broadcaster or in whose behalf such contract or transaction was entered into. A violation of this provision shall constitute a Class A misdemeanor. However, in the event the political advertisement conveys the impression that it emanates from a source other than its true source for the purpose of injuring any candidate or influencing the vote in any election, the candidate, campaign treasurer, assistant campaign treasurer or any other person purchasing or contracting for the furnishing of such political advertisement in support of or in opposition to any candidate or measure, who knowingly violates this subsection shall be guilty of a felony of the third degree.

(B) Any advertising medium or any officer or agent thereof who willfully demands or receives for any political advertising any money or other thing of value in excess of the sum due for such service, or any person who pays or offers to pay for such service any money or other thing of value in excess of the sum due, or any person who pays or offers to pay any money or other thing of value for the publication or broadcasting of political advertising except as advertising or production matter, shall be fined not more than \$100. No advertising medium may charge a rate for political advertising in excess of the following:

(1) For advertising broadcast over a radio or television station, including a community antenna or cable television system, the rate charged shall not exceed the lowest unit charge of the station for the same class, condition and amount of time for the same period;

(2) For advertising printed or published by any other medium, the rate charged shall not exceed the lowest charge made for comparable use of such space for other purposes. The rate shall take into account the amount of space used, the number of times used, the frequency of use, and the kind of space used, as well as the type of advertising copy submitted by or on behalf of a candidate, or political committee. All discount privileges otherwise offered by a

newspaper or magazine to advertisers shall be available upon equal terms to all candidates, or political committees.

(C) It is the legislative intent to impose both civil and criminal responsibility on corporations, partnerships, labor unions, or labor organizations, or any unincorporated associations, firms, committees, clubs, or other organizations, or groups of persons, including any groups of persons associated with a political party or element thereof, for violations of this section.

[Amended by Acts 1975, 64th Leg., p. 2268, ch. 711, § 11, eff. Sept. 1, 1975.]

This article was renumbered from article 14.10 and amended by the 1975 Act.

Art. 14.10. Campaign Communications

(A)(1) It is unlawful for an individual to misrepresent his identity or, if acting or purporting to act as an agent for any person, to misrepresent the identity of that person in any written or oral communication relating to the campaign of a candidate for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure with the intent to injure any candidate or to influence the vote on the measure.

(2) It is unlawful for any person to issue any communication relating to the candidacy of a person for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure, which purports to emanate from any source other than its true source.

(B)(1) It is unlawful for any candidate for nomination or election to a public office which is regularly filled at the general election for state and county officers to use the title of the office he seeks in his political advertising when the use of such title could reasonably be construed to lead the voters to believe that the candidate is the holder of the office sought, unless the candidate is the holder of the office at the time the representation is made.

(2) It is unlawful for any person to print, publish, or broadcast any political advertising, or to make any written or oral commercial communication, relating to the campaign of a candidate for nomination or election to a public office which is regularly filled at the general election for state and county officers which states, implies, or otherwise represents that the candidate is the holder of the office sought, unless the candidate is the holder of the office at the time the representation is made.

(C) A violation of this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 2269, ch. 711, § 12, eff. Sept. 1, 1975.]

Art. 14.10A. Misleading Use of Office Title

(a) It is unlawful for any candidate for nomination or election to a public office which is regularly filled at the general election for state and county officers to use the title of the office he seeks in his political advertising when the use of such title could reasonably be construed to lead the voters to believe that the candidate is the holder of the office sought, unless the candidate is the holder of the office at the time the representation is made.

(b) It is unlawful for any person to print, publish, or broadcast any political advertising, or to make any written or oral commercial communication, relating to the campaign of a candidate for nomination or election to a public office which is regularly filled at the general election for state and county officers which states, implies, or otherwise represents that the candidate is the holder of the office sought, unless the candidate is the holder of the office at the time the representation is made.

(c) A violation of this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 2098, ch. 682, § 26, eff. Sept. 1, 1975.]

Art. 14.13. Regulation of Illegal Acts; Providing Duties for Secretary of State

(A) Filing complaint with Secretary of State. Any citizen of this state may file with the Secretary of State a complaint alleging that a person has committed one or more of the following violations of this chapter:

(1) Failure to file a statement of contributions and expenditures that is required to be filed with the Secretary of State, or late filing of a statement with the Secretary of State.

(2) Filing of a statement of contributions and expenditures with the Secretary of State that does not conform to law.

(3) Accepting a contribution or making an expenditure before the filing of a designation of a campaign treasurer in an election in which the designation is required to be filed with the Secretary of State.

(4) Making or accepting an unlawful contribution or making an unlawful expenditure.

(B) Form and contents of complaint. A complaint must:

(1) be signed and sworn to by the complainant as containing allegations that are true and correct and made on personal knowledge; and

(2) state the name of the person accused, the election involved, if any, and the alleged violation; and

(3) allege facts indicating that the person accused has committed a violation.

(C) Notice to the accused. Upon receipt of a complaint meeting the requirements of Paragraphs (A) and (B) of this section, the Secretary of State shall give notice by registered or certified mail, restricted delivery, return receipt requested, to the person who is the subject of the complaint:

- (1) informing the person that the complaint has been filed;
- (2) attaching a copy of the complaint;
- (3) requesting the person to make a written response within 15 days after the date shown on the notice (the date of mailing); and
- (4) attaching a copy of this section.

(D) Referral to prosecuting attorney and Attorney General.

(1) If the accused is a candidate or the campaign treasurer of a candidate or of a political committee supporting a candidate, the Secretary of State shall not report any alleged violations to the prosecuting attorney or to the Attorney General while the candidate is still engaged in the campaign in the specific election in which the alleged violation is said to have occurred or in a subsequent runoff or general election for the same term of office.

(2) After a lapse of 25 days from the date of a notice pursuant to Paragraph (C) or after a lapse of 25 days from an election described in (D)(1) above of this section, if it appears that the person accused in the complaint may have failed to comply with the relevant provisions of law, the Secretary of State shall forward to the appropriate prosecuting attorney the original complaint and the accused's response (if any) to the notice, together with certified copies of all pertinent records filed with the Secretary of State, in order that appropriate action may be taken.

(3) If the alleged violation is one for which a civil penalty accrues in favor of the state, the Secretary of State shall also forward to the Attorney General certified copies of the original complaint, the accused's response, and all pertinent records filed with the Secretary of State, in order that appropriate action be taken.

(E) Malicious complaints. A civil action for damages exists against the complainant in favor of any person against whom a complaint is filed maliciously and without probable cause, after the termination of any resulting prosecution. In addition, a person who makes a false allegation in a complaint is subject to the provisions of the Texas Penal Code relating to the offense of perjury.¹

(F) The procedures outlined in this section are cumulative of other available procedures for investigation and enforcement of violations of this chapter. Nothing in this section shall be taken as precluding

the filing of a complaint directly with a prosecuting attorney or as precluding investigations and prosecutions by a prosecuting attorney and actions by the Attorney General for recovery of civil penalties without a referral from the Secretary of State.

(G) Duties of Secretary of State.

(1) It shall be the duty of the Secretary of State to prescribe forms for any instruments required to be filed by this code, regardless of whether the instruments are to be filed with the Secretary of State or with some other authority, and to make such forms available to persons required to file such statements and information with the Secretary of State, or any other authority.

(2) It shall be the duty of the Secretary of State to furnish such forms to the following: the State Executive Committee of any political party, the clerk of each county, the duly elected chairman of each county political subdivision or authority holding an election under this code.

(3) The State Executive Committee, county clerk, county chairman, and secretary or clerk shall make available to all candidates, officeholders, or political committees the forms provided by the Secretary of State.

(4) It shall be the duty of the Secretary of State to interpret and administer the provisions of this Act in the exercise of his authority stated in Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code) and to make such interpretations and administrative rulings available to any person upon request.

[Added by Acts 1975, 64th Leg., p. 2270, ch. 711, § 13, eff. Sept. 1, 1975.]

¹ See Penal Code, § 37.01 et seq.
Former article 14.13, added by Acts 1973, 63rd Leg., p. 1110, ch. 423, § 11, establishing County Election Commissions and a State Election Commission, was repealed by § 13 of the 1975 Act, enacting this article.

Art. 14.15. Venue for Offenses

Venue for any offense resulting from a violation of this chapter shall lie exclusively in the county of residence of the accused, except when the accused is a nonresident of Texas, in which case venue shall lie in Travis County.

[Amended by Acts 1975, 64th Leg., p. 2272, ch. 711, § 14, eff. Sept. 1, 1975.]

CHAPTER FIFTEEN. OFFENSES RELATING TO ELECTIONS

SUBCHAPTER F. MISCONDUCT AT ELECTIONS

Article

15.73. Intimidation or Reprisal Against a Voter [NEW].

15.74. Inducing Another Person to Make False Statement on Registration Application [NEW].

SUBCHAPTER C. OFFENSES BY OFFICERS
OF ELECTION

Art. 15.28. Election Officer Divulging Vote

Any presiding officer, judge, clerk, watcher, interpreter, person assisting a voter in preparing his ballot, inspector, or any other person performing official functions, of any general, primary or special election who shall from an inspection of the ballot or other information obtained at the polling place and not in a judicial investigation divulge how any person has voted at such election is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 5, eff. June 20, 1975.]

Art. 15.30. Aid to Voter

Any judge or clerk at an election or any other person who assists any voter to prepare his ballot except when a voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him unable to write or to see or to operate the voting equipment, or who in assisting a voter in the preparation of his ballot prepares the same otherwise than as the voter directs, or who suggests by word or sign or gesture how such voter shall vote, shall be fined not less than two hundred dollars nor more than five hundred dollars or be confined in jail for not less than two nor more than twelve months, or both.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 27, eff. Sept. 1, 1975.]

SUBCHAPTER D. ILLEGAL VOTING

Art. 15.41. Illegal Voting

If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any proposition to be determined by said election, he shall be guilty of a third degree felony.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 6, eff. June 20, 1975.]

Art. 15.42. Instigating Illegal Voting

Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 7, eff. June 20, 1975.]

Art. 15.43. False Swearing

Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is

challenged as unqualified, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 8, eff. June 20, 1975.]

Art. 15.44. Inducing Voter to Swear Falsely

Whoever knowingly and intentionally induces or attempts to induce another person to swear falsely as prohibited in the preceding article, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 9, eff. June 20, 1975.]

Art. 15.49. Participating in Primary Elections or Conventions of More Than One Party

Whoever votes or offers to vote at either a general primary election or a runoff primary election or participates or offers to participate in a convention of a political party, having voted at either a general primary election or a runoff primary election or participated in a convention of any other party during the same voting year, shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 10, eff. June 20, 1975.]

Art. 15.50. Voting More Than Once

Whoever at a general, special or primary election votes or attempts to vote more than once shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 11, eff. June 20, 1975.]

SUBCHAPTER E. OFFENSES AFTER ELECTION

Art. 15.61. Altering or Destroying Ballots, etc.

If any person shall willfully alter, obliterate, or suppress any ballots, election returns or certificates of election, or shall willfully destroy any ballots or election returns except as permitted by law, he shall be guilty of a third degree felony.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 12, eff. June 20, 1975.]

Art. 15.62. Messenger Tampering with Ballot

Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 13, eff. June 20, 1975.]

Art. 15.65. Failure to Keep Ballot Box

Whoever fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over

the same, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 14, eff. June 20, 1975.]

SUBCHAPTER F. MISCONDUCT AT ELECTIONS

Art. 15.73. Intimidation or Reprisal Against a Voter

Whoever knowingly and intentionally harms or threatens to harm another person by an unlawful act or economic reprisal in retaliation for or on account of having voted for or against any candidate

or measure or refusing to reveal how he voted is guilty of a felony of the third degree.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 15, eff. June 20, 1975.]

Art. 15.74. Inducing Another Person to Make False Statement on Registration Application

Whoever requests, commands, or attempts to induce another person to make any false statement on any voter registration application shall be guilty of a felony of the third degree.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 16, eff. June 20, 1975.]

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- 1.30. Hazardous Financial Condition [NEW].
- 1.30. Notification [NEW].

Art. 1.09. Commissioner of Insurance

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

(b) Repealed by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.

[See Compact Edition, Volume 2 for text of (c) to (g)]

[Amended by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.]

Art. 1.09A. Office of the State Fire Marshal

The chairman of the board shall appoint a state fire marshal, who shall be a state commissioned officer, and who shall function as such subject to the rules and regulations of the board. He shall administer, enforce, and carry out the applicable provisions of this code relating to the duties and responsibilities of the state fire marshal under the supervision of the board. He shall hold his position at the pleasure of the board and may be discharged at any time. The state fire marshal shall be the chief investigator in charge of the investigation of arson and suspected arson within the state, and may commission arson investigators to act under his supervision, and may revoke an investigator's commission for just cause. After consultation with the state fire marshal, the State Board of Insurance shall adopt necessary rules and regulations to guide the state fire marshal and his investigators in the investigation of arson and suspected arson.

[Amended by Acts 1975, 64th Leg., p. 853, ch. 326, § 2, eff. May 30, 1975.]

Art. 1.30. Notification

[Text as added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1]

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual-assessment companies of all kinds and types, statewide assessment associations, local mutual aids, burial associa-

tions, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically by naming this article exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Notice of Order or Judgment

Sec. 2. An insurer shall notify the commissioner and deliver a copy of any order or judgment to the commissioner within 30 days of the happening in another state of any one or more of the following:

- (1) suspension or revocation of his right to transact business;
- (2) receipt of an order to show cause why its license should not be suspended or revoked;
- (3) imposition of any penalty, forfeiture, or sanction on it for any violation of the insurance laws of such other state.

Penalty for Failure to Notify

Sec. 3. Any insurer who has failed to notify the commissioner and to deliver a copy of any order or judgment to him pursuant to Section 2 of this article shall forfeit to the people of the state a sum not to exceed \$500 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.

[Added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1975.]

¹ Article 7.01 et seq.

For text as added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, see art. 1.30, post

Art. 1.30. Hazardous Financial Condition

[Text as added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1]

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assess-

ment 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 the Texas Insurance Code of 1951, as amended,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically, by naming this article, exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Order to Rectify Financial Condition

Sec. 2. Whenever the financial condition of an insurer when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the insurer, the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases, its method of operation, its affiliations, its investments, any contracts which lead or may lead to contingent liability, or agreements in respect to guaranty and surety, indicate a condition such that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public, then the commissioner may, after notice and hearing, order the insurer to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce the volume of new business being accepted;

(c) reduce general insurance and commission expenses by specified methods;

(d) suspend or limit the writing of new business for a period of time; or

(e) increase the insurer's capital and surplus by contribution.

Standards and Criteria for Early Warning

Sec. 3. The board is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to its policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of an insurer, which standards shall be consistent with the purposes expressed in Section 2 of this article.

Arrangements with Other Jurisdictions

Sec. 4. The commissioner is authorized to enter into arrangements or agreements with the insurance regulatory authorities of other jurisdictions concerning the management, volume of business, type of risks to be insured, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of an insurer that is licensed in such other jurisdictions and that is deemed to be in a hazardous financial condition or needful of specific remedies which may be imposed by the commissioner and insurance regulatory authorities of such other jurisdictions.

Additional Authority of Article

Sec. 5. Authority granted by the provisions of this article is in addition to other provisions of law and not in substitution, restriction, or diminution thereof.

[Added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, eff. June 19, 1975.]

For text as added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1, see art. 1.30, ante

¹ Article 7.01 et seq.

CHAPTER THREE. LIFE, HEALTH AND ACCIDENT INSURANCE

SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

Article

3.14. Repealed.

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

3.50-2. Employees Uniform Group Insurance Benefits Act [NEW].

3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System [NEW].

3.51-6. Group and Blanket Accident and Health Insurance [NEW].

SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

Art. 3.14. Repealed by Acts 1975, 64th Leg., p. 464, ch. 198, § 2, eff. May 15, 1975

See, now, art. 21.39-B.

SUBCHAPTER C. RESERVES AND INVESTMENTS

Art. 3.39. Authorized Investments and Loans for "Domestic" Life Insurance Companies

[See Compact Edition, Volume 2 for text of Part I]

PART II. AUTHORIZED LOANS

A life insurance company organized under the laws of this state may loan its several funds identi-

fied as follows, taking as collateral security for the payment of such loans the securities named below, and none other.

A. ANY OF ITS FUNDS ACCUMULATIONS

Such company may loan any of its funds and accumulations on the following securities:

1. First Liens Upon Real Estate.

First liens upon real estate, the title to which is valid and the value of which is at least one-third more than the amount loaned thereon; provided, however, that the aggregate amount of loans secured by first liens on real estate to any one corporation, company, partnership, individual or any affiliated person or group may not exceed ten (10%) per cent of the admitted assets of such insurer, and provided further that the amount of any such single loan secured by a first lien on real estate may not exceed five (5%) per cent of the admitted assets of the insurer. The limitation provided by this subsection shall not apply to any first lien on real estate where the Commissioner of Insurance finds that: (1) the making or acquiring of such lien is beneficial to and protects the interest of the insurer and (2) no substantial damage to the policyholders and creditors of such insurer appears probable from the taking or acquiring of such lien.

2. First Liens Upon Leasehold Estates.

First liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate, provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal and interest during a period not exceeding four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate.

3. Collateral Securities.

Upon any obligation secured collaterally by any such first liens on real estate or leasehold estates.

4. Policy Loans.

Security of its own policies. No loan on any policy shall exceed the reserve values thereof.

5. Other Securities.

It may loan any of its funds and accumulations, taking as collateral to secure the payment of such loan, any of the securities named or referred to in Part 1 of this Article 3.39 above in which it may invest any of its funds and accumulations.

6. Restrictions as to Value of Real Estate Removed Where Loans Insured by the United States.

The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C.A. Sec. 1701 et seq.), or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended, or by the State of Texas, would not exceed the amount of loan permissible under said restrictions.

7. Loans to be Authorized by Board of Directors.

No loan, except policy loans, shall be made by any such insurance company unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such loans.

8. Insurance Requirements.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the state in which such real estate is located, or in a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, which insurance shall be in an amount of at least fifty per cent (50%) of the value of such buildings; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

B. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

1. Capital Stock, Bonds, and Other Obligations of Solvent Corporations, and Educational or Religious Corporations.

It may loan its capital, surplus, and contingency funds, or any part thereof over and above the amount of its policy reserves, taking as security therefor the capital stock, bonds, bills of exchange, or other commercial notes or bills and the securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years

next preceding such investment; or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or in the bonds or notes of any Educational or Religious Corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent; provided, the market value of such stock, bills of exchange, or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty per cent (50%) more than the sum loaned thereon; provided that it shall not take as collateral security for any loan its own capital stock, nor shall it take as collateral security for any loan the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingency funds, nor shall it take as collateral security for any loan the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars (\$25,000), nor the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); and provided further, that it shall not take as collateral security for any such loan any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

[See Compact Edition, Volume 2 for text of Part III]

[Amended by Acts 1975, 64th Leg., p. 1109, ch. 418, § 1, eff. June 19, 1975.]

SUBCHAPTER D. POLICIES AND BENEFICIARIES

Art. 3.42. Policy Form Approval

(a) No policy, contract or certificate of life, term or endowment insurance, group life or term insurance, industrial life insurance, accident or health insurance, group accident or health insurance, hospitalization insurance, group hospitalization insurance, medical or surgical insurance, group medical or surgical insurance, or fraternal benefit insurance, and no annuity or pure endowment contract or group annuity contract, shall be delivered, issued or used in this state by a life, accident, health or casualty insurance company, a mutual life insurance company, mutual insurance company other than life, mutual or natural premium life insurance company, general casualty company, Lloyds, reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service or any other insurer, unless

the form of said policy, contract or certificate has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Provided, however, that this Article shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the State Board of Insurance and which is entitled by statute to an exemption certificate from said Board in evidence of its exempt status; provided, further, that this Act shall not be construed to enlarge the powers of any of the insurers subject to this Article.

(b) No application form which is required to be or is attached to the policy, contract or certificate, and no rider or endorsement to be attached to, printed upon or used in connection with any policy, contract or certificate described in Paragraph (a) of this Article shall be delivered, issued or used in this state by any insurer described in Paragraph (a) of this Article unless the form of said application, rider or endorsement has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Each individual accident and sickness insurance policy application form, which is required to be or is attached to the policy, shall comply with the rules and regulations of the Board promulgated pursuant to Subchapter G of this chapter. Provided, however, that this Article shall not apply to riders or endorsements which relate to the reservation of rights and benefits under such policies, contracts and certificates, and which are used at the request of the holder of the policy, contract or certificate.

(c) Every such filing hereby required shall be made not less than thirty days in advance of any such issuance, delivery or use. At the expiration of thirty days the form so filed shall be deemed approved by the State Board of Insurance unless prior thereto it has been affirmatively approved or disapproved by the written order of said Board. The State Board of Insurance may extend by not more than an additional thirty days the period within which it may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial fifteen day period and at the expiration of any such extended period, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The State Board of Insurance may withdraw any such approval at any time. Approval of any such form by such Board shall constitute a waiver of any expired portion of the waiting period, or periods, herein provided.

(d) The order of the State Board of Insurance disapproving any such form or withdrawing a previous approval shall state the grounds for such disapproval or withdrawal.

(e) The State Board of Insurance may, by written order, exempt from the requirements of this Article for so long as it deems proper, any insurance document or form specified in such order, to which in its opinion this Article may not practicably be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public.

(f) The State Board of Insurance shall forthwith disapprove any such form, or withdraw any previous approval thereto if, and only if,

(1) It is in any respect in violation of or does not comply with this Code.

(2) It contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive or contrary to law or to the public policy of this state.

(3) It has any title, heading or other indication of its provisions which is misleading.

(g)(1) The Board may, after notice and hearing, withdraw any previous approval of an individual accident and sickness insurance policy form if, after consideration of all relevant facts, the Board finds that the benefits provided under such policy form are unreasonable in relation to the premium charged. The Board shall from time to time as conditions warrant, and after notice and hearing, promulgate such reasonable rules and regulations and amendments thereto as are necessary to establish the standard or standards by which any previous approval of a policy form may be withdrawn. Any such rule or regulation shall be promulgated in accordance with Article 3.70-10 of the Texas Insurance Code. Nothing in this section shall be construed as granting the State Board of Insurance any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual accident and sickness insurance policy or policies.

(2) The Board shall require the filing of all rates to be charged for individual accident and sickness policies and may adopt necessary forms to be filed by insurers in conjunction with the annual statement required under Articles 3.07 and 3.20 of this code for reporting the experience on all individual accident and sickness insurance policy forms issued by the insurer so as to determine compliance with Subsection (1).

(h) Appeals from any order of the State Board of Insurance issued under this Article may be taken to the District Court of Travis County, Texas, in accordance with Article 21.44 of Sub-Chapter F of this Insurance Code, or any amendments thereof.

[Amended by Acts 1975, 64th Leg., p. 2208, ch. 703, § 4, eff. June 21, 1975.]

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

Art. 3.50. Group Life Insurance

Definitions

Sec. 1. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten (10) employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension or profit sharing plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(2) A policy issued to a labor union, which shall be deemed the employer and policyholder, to insure the members of such union who are actively engaged in the same occupation and who shall be deemed to be the employees of such union within the meaning of this Article.

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, provided the majority of the members of such association are residents of this state, an association of public employees, an incorporated city, town or village, an independent school district, common school district, state colleges or universities, any association of state employees, any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees and any department of the state government which employer or association shall be deemed the policyholder to insure the employees of any such incorporated city, town or village, of any such independent school district, of any common

school district, of any such state college or university, of any such department of the state government, members of any association of state, county or city, town or village or of the United States Government or any subdivision thereof, provided the majority of such employees reside in this state, employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The persons eligible for insurance under the policy shall be all of the employees of the employer or if the policyholder is an association, all of the members of the association.

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however, that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the eligible employees or members on the effective date of this Act.

(c) The policy must cover at least ten (10) employees at date of issue, or if an association of employees is the policyholder, ten (10) members of said association at date of issue.

(d) The term employees as used herein in addition to its usual meaning shall include elective and appointive officials of the state.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who become borrowers, or purchasers of securities, merchandise or other property, under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchase, to the extent of their respective indebtedness, but not to exceed Twenty Thousand Dollars (\$20,000.00) on any one life; provided, however, the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, may be so insured in an initial amount of such insurance not to exceed the total amount repayable under the contract of indebtedness and, when such indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, and such insurance on such credit commitments not exceeding one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan, but such insurance shall not exceed Fifty Thousand Dollars (\$50,000.00) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor for educational purposes or of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph

(a), the insurance in excess of the indebtedness to the creditor, if any, shall be payable to the estate of the debtor or under the provision of a facility of payment clause.

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers and the employees of the trade association of such employers or all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least

seventy-five percent (75%) of the then eligible persons of each participating employer unit, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred (100) persons; unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder or employer. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to trustees or employers exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00) or two hundred percent (200%) of such annual compensation, whichever is the lesser.

(e) The limitation as to amount of group insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amount provided by the policy which it replaces, or

the amounts provided above whichever is greater.

(f) No policy may be issued (i) to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund); or (ii) to insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(6) No policy of wholesale, franchise or employee life insurance, as hereinafter defined, shall be issued or delivered in this state unless it conforms to the following requirements:

(a) Wholesale, franchise or employee life insurance is hereby defined as: a term life insurance plan under which a number of individual term life insurance policies are issued at special rates to a selected group. A special rate is any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

(b) Wholesale, franchise or employee life insurance may be issued to (1) the employees of a common employer or employers, covering at date of issue not less than five employees; or (2) the members of a labor union or unions covering at date of issue not less than five members; or (3) the members of a credit union or credit unions covering at date of issue not less than five (5) members.

(c) The premium for the policy shall be paid either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions or by both, or partly from such funds and partly from funds contributed by the insured person, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month.

(d) No policy may be issued on a wholesale, franchise or employee life insurance basis which, together with any other term life insurance policy or policies issued on a wholesale, franchise, employee life insurance or group basis, provides term life insurance coverage for an amount in excess

of Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser. An individual application shall be taken for each such policy and the insurer shall be entitled to rely upon the applicant's statements as to applicant's other similar coverage upon his life.

(e) Each such policy of insurance shall contain a provision substantially as follows:

A provision that if the insurance on an insured person ceases because of termination of employment or of membership in the union, such person shall be entitled to have issued to him by the insurer, without evidence of insurability an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination.

(f) Each such policy may contain any provision substantially as follows:

(1) A provision that the policy is renewable at the option of the insurer only;

(2) A provision for termination of coverage by the insurer upon termination of employment by the insured employee;

(3) A provision requiring a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as condition to coverage.

(g) The limitation as to amount of group and wholesale, franchise or employee life insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(h) Nothing contained in this Subsection (6) shall in any manner alter, impair or

invalidate (1) any policy heretofore issued prior to the effective date of this Act; nor (2) any such plan heretofore placed in force and effect provided such prior plan was at date of issue legal and valid; nor (3) any policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan or similar plan of premium collection.

(6A) A policy may be issued to a principal, or if such principal is a life or life and accident or life, accident and health insurer, by or to such principal, covering when issued not less than ten (10) agents of the principal, subject to the following requirements:

(a) As used in this section, the term "agents" shall be deemed to include general agents, subagents and salesmen.

(b) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation.

(c) The premium for the policy shall be paid either wholly by the principal or partly from funds contributed by the principal and partly from funds contributed by the insured agents. A policy on which no part of the premium is to be derived from funds contributed by the insured agents must insure all of the eligible agents or all of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents to the principal. A policy on which part of the premium is to be derived from funds contributed by the insured agents must cover at issue at least seventy-five percent (75%) of the eligible agents or at least seventy-five percent (75%) of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents; provided, however, that the benefits may be extended to other classes of agents as seventy-five percent (75%) thereof express the desire to be covered.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the principal or by the agents. No policy may be issued which provides term insurance on any agent which together with any other term insurance under any group life insurance policy or policies issued to the principal exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual commissions or other fixed or ascertainable compensation of such agent

from the principal exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual commissions or other fixed or ascertainable compensation, whichever is the lesser.

(e) The insurance shall be for the benefit of persons other than the principal.

(7) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Section 16(B) of Article 5421m, Vernon's Texas Civil Statutes (Chapter 318, Acts of the 51st Legislature, Regular Session, 1949, as amended).

(8) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured employee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government or any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

(a) The premiums for the group term life insurance shall be paid by the policyholder from funds solely contributed by the insured employee.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured employee or by the policyholder, provided that group term life insurance upon the life of a spouse shall not exceed the lesser of (1) Ten Thousand Dollars (\$10,000.00) or (2) one-half of the amount of insurance on the life of the insured employee under the group policy; and provided that group term life insurance on the life of any minor child shall not exceed Two Thousand Dollars (\$2,000.00).

(c) Upon termination of the group term life insurance with respect to the spouse of any insured employee by reason of such person's termination of employment or death, or termination of the group contract, the spouse insured pursuant to this section shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured employee.

(d) Only one certificate need be issued for delivery to an insured employee if a statement concerning any dependent's coverage is included in such certificate.

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

Dependents: Continuation of Benefits After Death of Insured

Sec. 6. Any group life insurance policy which contains provisions for the payment by the insurer of benefits for members of the family or dependents of a person in the insured group may provide for a continuation of such benefits or any part or parts thereof after the death of the person in the insured group, and provided further that any amounts of insurance so provided by such benefits shall not be construed as life insurance for the purpose of determining the maximum amount of term insurance that may be issued on any one life.

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 2171, ch. 698, § 1, eff. June 21, 1975.]

Art. 3.50-2. Employees Uniform Group Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas Employees Uniform Group Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the purposes of this Act are:

(a) to provide uniformity in life, accident, and health insurance and benefits coverages on all employees of the State of Texas;

(b) to enable the State of Texas to attract and retain competent and able employees by providing them with life, accident, and health insurance and benefits coverages at least equal to those commonly provided in private industry;

(c) to foster, promote, and encourage employment by and service to the State of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among state employees;

(e) to foster and develop high standards of employer-employee relationships between the State of Texas and its employees;

(f) to recognize the service to the state by elected state officials by extending to them the same life, accident, and health insurance and benefits coverages as are provided herein for state employees; and

(g) to recognize the long and faithful service and dedication of employees of the State of Texas and to encourage them to remain in state service until eligible for retirement by providing health insurance benefits for such employees.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier designated by the trustee to administer any insurance coverages, services, benefits, or requirements in accordance with this Act and the trustee's regulations promulgated pursuant thereto.

(2) "Annuitant" shall mean an employee who retires under the jurisdiction of the Employees Retirement System of Texas, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), and Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6228i, Vernon's Texas Civil Statutes), and an employee who retires under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Chapter 3, Title I, Texas Education Code,¹ who at the time of his retirement is an employee of the Teacher Retirement System of Texas school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) "Department" shall mean commission, board, agency, division, or department of the State of Texas created as such by the constitution or statutes of this state.

(5)(A) "Employee" shall mean any appointive or elective state officer or employee in the service of the State of Texas, except employees of any university, senior or junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:²

(i) who is retired or retires under the jurisdiction of the Employees Retirement System of Texas, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as

amended (Article 6228b, Vernon's Texas Civil Statutes), and Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6228i, Vernon's Texas Civil Statutes), and an employee who is retired or retires under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Chapter 3, Title I, Texas Education Code, who at the time of his retirement was or is an employee of the Teacher Retirement System of Texas school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System; or

(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state; or

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the state comptroller upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department rather than from funds of the General Appropriations Act.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

(C) As of September 1, 1977, "employee" shall also mean and include any appointive state officer or employee of any university, senior or junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code.

(6) "Employer" shall mean the State of Texas and all its departments.

(7) "Health benefits plan" shall mean any group insurance policy or contract, medical, dental, or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health care services, including comparable health care services for employees who rely solely on spiritual means through prayer for healing in accordance with the teachings of a well recognized church or denomination.

(8) "Dependent" shall mean the spouse of an employee or retired employee and an unmarried

child under 25 years of age, including: (A) an adopted child and (B) a stepchild, foster child, or other child who is in a regular parent-child relationship and (C) any such child, regardless of age, who lives with or whose care is provided by an employee or annuitant on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine.

(9) "Qualified carrier" shall mean: (A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has a surplus of \$1 million, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; (B) any corporation operating under Chapter 20 of the Insurance Code³ which provides any of the types of coverage, benefits, or services provided for in this Act, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or (C) any combination or carriers as herein defined, upon such terms and conditions as may be prescribed by the trustee, providing, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(10) "Service" shall mean any personal service of an employee creditable in accordance with rules and regulations promulgated by the trustee.

(11) "Trustee" shall mean the State Board of Trustees, provided for in Section 6, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), to administer the Employees Retirement System of Texas.

(12) "Active employee plan" shall mean a plan or program of group insurance as determined by the trustee as defined in Paragraph (11) above for the benefit of employees of the State of Texas as defined in this Act who are not retired.

(13) "Retired employees plan" shall mean a plan or program of group insurance as determined by the trustee for all retired employees as defined in this Act. This plan may be separate

or a part of the active employee plan at the discretion of the trustee, and, if separate, shall include both full benefits and supplemental coverage options.

(b) In addition to the foregoing definitions, the trustee shall have authority to define by rule any words in terms necessary in the administration of this Act.

¹ Education Code, § 3.01 et seq.

² Education Code, § 61.001 et seq.

³ Article 20.01 et seq.

Administration

Sec. 4. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the proper administration of this Act and the insurance coverages, services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the insurance coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee. Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

- (a) preparation of specifications for all insurance provided by authority of this Act;
- (b) prescribing the time at which and the conditions under which an employee is eligible for all coverages provided under this Act;
- (c) determination of the methods and procedures of claims administration;
- (d) determination of the amount of employee payroll deductions and the responsibility of es-

establishing procedures by which such deductions shall be made;

(e) establishment of grievance procedures by which the trustee shall act as an appeals body for complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters;

(f) continuing study of the operation of all insurance coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;

(g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending dates of coverages of employees and annuitants and their dependents under health benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group insurance coverages and benefits applicable to all state employees. The trustee also may provide for optional group insurance coverages and benefits in addition to the basic plan; and

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate.

Authority to Purchase Group Insurance

Sec. 5. (a) The trustee shall establish a plan or plans for active employees and retired employees, and is hereby authorized, empowered, and directed to contract with one or more qualified carriers or a combination of qualified carriers for the establishment of such plans. The trustee is further authorized, empowered, and directed to establish the above referenced plans of group insurance which in the trustee's discretion may include but are not necessarily limited to the following: group life insurance, accidental death and dismemberment, health benefits plans, including but not limited to hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, obstetrical benefits, prescribed drugs, medicines, and prosthetic devices and supplement benefits, supplies, and services in conformity with the provisions of this Act, insurance protection against either long or short term loss of salary and any other coverages of group insurance which in the discretion of the trustee with consultation from the advisory committee shall be deemed advisable. All rules and regulations shall be promulgated pursuant thereto upon such terms and conditions as shall be agreed upon between the trustee

and the carrier or carriers selected to provide such insurance coverages and benefits. The trustee shall determine the insurance coverages desired for state employees and will submit this information to the State Board of Insurance for any recommendations as to the types and sufficiency of such coverages. The State Board of Insurance will notify the board of trustees within 15 days as to any such recommendations and will furnish the board of trustees with a list of all carriers authorized to do business in the State of Texas who would be eligible to bid on the insurance coverage proposed. The trustee will notify those carriers that competitive bidding will be conducted and that they are to submit their bids to the State Board of Insurance by a specified date if they wish to bid on the contract. The State Board of Insurance will, after the designated closing date for receiving bids, examine and evaluate the bidding contracts and certify their actuarial soundness to the trustee within 15 days from the closing date. The trustee shall select the desired carrier or carriers and will notify the bidding eligible carriers as to the results of the bidding. The trustee shall select the desired carrier or carriers to provide services which shall be in the best interest of the employees covered by this Act. The trustee is not required to select the lowest bid but shall take into consideration other factors such as ability to service contracts, past experience, financial ability, and other relevant criteria. Should the trustee select a carrier whose bid differs from that advertised, such deviation shall be recorded and the reasons for such deviation shall be fully justified and explained in the minutes of the next meeting of the trustee.

(b) In the event the trustee shall select as the carrier one whose bid was not the lowest of all bids submitted, such selection shall be submitted together with justifications and reasons therefor to the State Board of Insurance. Such deviating selection shall not be deemed final and binding unless and until a majority of the State Board of Insurance has certified its approval in writing to the trustee, or upon the expiration of 30 days after receipt thereof by the State Board of Insurance such deviating selection shall be deemed approved.

(c) The trustee will be required to submit for competitive bidding the coverages provided by the group plan as follows:

- (1) at least every three years;
- (2) whenever a change in the types and amounts of coverage occurs, provided that submission for competitive bidding shall not be required more than once within a year from the last submission.

Benefit Certificates

Sec. 6. The trustees shall provide for the insurance to each employee insured under this Act a

certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 7. As soon as practicable after the end of each calendar year but not later than 90 days thereafter, the trustee shall make a written report to the State Board of Insurance concerning the insurance coverages provided and the benefits and services being received by all state employees insured under the provisions of this Act. It shall be the duty of the State Board of Insurance to review such report and advise the trustee in regard to the insurance features of the coverages provided for all state employees and cooperate fully with the trustee in carrying out the purposes of this Act.

Reinsurance

Sec. 8. (a) The trustee shall arrange with any carrier or carriers issuing any policy or policies under this Act for the reinsurance, under conditions approved by the trustee, of portions of the total amount of insurance under such policy or policies, with other qualified carriers which elect to participate in the reinsurance.

(b) The trustee shall determine for and in advance of a policy year which qualified carriers are eligible to participate as reinsurers and the amount of insurance under a policy or policies which is to be allocated to the issuing company and reinsurers. The trustee shall make this determination at least every three years and when a participating company withdraws.

Annual Accounting; Special Contingency Reserve

Sec. 9. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the trustee not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the trustee:

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claims, charges, losses, costs, and expenses incurred for that period; and

(3) the amount of the insurers' allowance for a reasonable profit and contingencies for that period.

(b) An excess of the total of Subdivision (a)(1) of this section over the sum of Subdivisions (a)(2) and (a)(3) of this section shall be held by the carrier issuing the policy as a special contingency reserve to be used by the carrier only for charges, claims, costs,

and expenses under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the carrier and approved by the trustee as being consistent with the rates generally used by the carrier for similar funds held under other group insurance policies. When the trustee determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges, claims, costs, or expenses under the policy, any further excess shall be deposited in the State Treasury to the credit of the Employees Life, Accident, and Health Insurance and Benefits Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the State Treasury to the credit of the fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

Exemption from Execution

Sec. 10. All insurance benefit payments, employee contributions, optional benefits payments, and any and all rights, benefits, or payments accruing to any person under the provisions of this Act, as well as all money in any fund created by this Act, shall be and the same are hereby exempt from execution, attachment, garnishment, or any other process whatsoever and shall be unassigned except as specifically provided in this Act.

Group Life Insurance

Sec. 11. (a) The trustee is authorized and directed to establish a group life insurance program for all employees, including retired employees, of this state as herein provided, which, subject to the conditions and limitations contained in this Act and the trustee's rules and regulations promulgated pursuant thereto, will provide for each employee group life insurance in such an amount as shall be determined by the trustee. In addition to the benefits hereinabove provided and subject to the conditions and limitations of the policy or policies purchased by the trustee, such policy or policies shall provide such payments and benefits for employees and retired employees as shall be determined by the trustee. The trustee is also authorized to include the dependents of employees in the group life insurance program.

(b) The trustee shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay, and specify the types of pay included in annual pay and all other matters necessary to implement this section.

Death Claims; Order of Precedence; Escheat

Sec. 12. (a) The amount of group life insurance and group accidental death and dismemberment in-

insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within one year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by Subsection (a) of this section, or if payment to the person within that period is prohibited by any statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within two years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named in Subsection (a) of this section, and neither the trustee nor the office established by the administering carrier has received notice that such a claim will be made, payment may be to the claimant who in the judgment of the trustee is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within four years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the fund.

Automatic Coverage

Sec. 13. No employee of the State of Texas shall be denied any of the group insurance coverage provided under this Act and funded by the State of Texas. Every employee shall be automatically covered under the group insurance provided for in this Act on the date he becomes eligible for insurance,

and each policy of insurance purchased by the trustee providing such insurance shall provide for such automatic coverage.

Payment of Premiums

Sec. 14. The State of Texas shall contribute monthly to the cost of each insured employee's group insurance such amount as shall be appropriated therefor by the legislature in the General Appropriations Act or by the governing board of state departments in their respective official operating budgets if their employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. If such employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas make any contribution to the cost of any other insurance coverages, services, or benefits on such employee or annuitant. If any insured employee or annuitant applies for coverage for which the premium exceeds the state's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of benefits under said group policies and the amount contributed therefor by the State of Texas.

Employer Contributions

Sec. 15. (a) On or before the first day of November next preceding each regular session of the legislature, the trustee shall certify to the Legislative Budget Board and budget division of the governor's office for information and review the amount necessary to pay the contributions of the State of Texas to the trustee for insurance premiums on the coverages provided under this Act during the ensuing biennium. This amount shall be included in the budget of the state which the governor submits to the legislature. The trustee shall certify on or before August 31 of each year to the state comptroller of public accounts and the State Treasurer the estimated amount of state contributions to be received for employees covered by this Act during the ensuing year.

(b) From and after the effective date of this Act, there is hereby allocated and appropriated to the trustee, in accordance with the provisions of this Act, from the several funds from which state employees receive their respective salaries, a sum equal to the total of all employer contributions computed in accordance with the provisions of this Act and the rules and regulations of the trustee promulgated pursuant thereto.

(c) All money hereby allocated and appropriated by the state to the trustee under this Act shall be paid to the trustee in monthly installments based on

the annual estimate by the trustee of the contributions to be received for all state employees during said year; provided, however, that in the event said estimate of the contributions of the state employees shall vary from the actual amount of the employer contributions during the year, such adjustments shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the appropriate fund created by this Act in the amount certified by the trustee.

(d) The trustee shall certify to the governing boards of those state departments who provide contributions for their employees from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts needed to pay their respective contributions. Such certifications shall be made at least 30 days prior to the meeting at which the governing board adopts its operating budget.

Employees Life, Accident, and Health Insurance and Benefits Fund

Sec. 16. (a) There is hereby created with the treasury of the State of Texas an Employees Life, Accident, and Health Insurance and Benefits Fund which shall be administered by the trustee. The contributions of employees, annuitants, and the state provided for under this Act shall be paid into the fund. The fund is available:

(1) without fiscal year limitation for all payments for any insurance coverages provided for under this Act; and

(2) to pay expenses for administering this Act within the limitations that may be specified annually by the legislature.

(b) Portions of the contributions made by employees, annuitants, and the state shall be regularly set aside in the fund as follows: a percentage, not to exceed one percent of all contributions, determined by the trustee to be reasonably adequate to pay the administrative expenses made available by Subsection (a) of this section. The trustee, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the trustee. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the state to, or to increase the benefits provided by, the plan from which the reserves are derived, as the trustee from time to time shall determine.

(c) The trustee shall have full power to invest and reinvest any of the money in the fund subject only to the restrictions contained in Section 7, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes). The interest on and the proceeds from the sale of these obligations become a part of the fund.

(d) When insurance coverages or benefits provided for under this Act are discontinued, the contingency reserve of that plan shall be credited to the contingency reserves of such insurance continuing under this Act for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

Studies, Reports, Records, and Audits

Sec. 17. (a) The trustee shall make a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits available to employees and on the experience thereof.

(b) Each contract entered into under this Act shall contain provisions requiring carriers to

(1) furnish such reasonable reports as the trustee determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the trustee and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purposes of this Act.

(c) Each state department shall keep such records, make such certifications, and furnish the trustee with such information and reports as may be necessary to enable the trustee to carry out its functions under this Act.

Group Insurance Advisory Committee

Sec. 18. There is hereby created and established the Group Insurance Advisory Committee, which shall consist of 21 members who shall be employees of the State of Texas. One classified employee shall be appointed from each of the 10 largest state agencies or departments by the chief administrative officer of those agencies or departments, one member shall be the executive director of the Employees Retirement System of Texas, and one member shall be a classified employee of the governor's office, appointed by the governor. The remaining members shall be elected by and from the classified employees of the other state departments and agencies in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or department. All members

of the committee shall be appointed or elected for three-year terms; provided, however, that in the initial appointments and election, the trustee shall designate seven members to serve for one year, seven to serve for two years, and seven to serve for three years. Subsequent appointments or elections shall be for three-year terms. During a term of appointment or election, vacancies shall be filled by an employee of the same agency from which the vacancy occurred, being appointed by the board of trustees for the balance of the vacated term. The Group Insurance Advisory Committee shall advise and consult with the trustee on matters concerning all insurance coverages provided under this Act. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the group insurance program among the various state departments and agencies. The duties of each member of the Group Insurance Advisory Committee shall be to secure input from fellow employees and shall be considered additional duties required of his or her other state office or employment and all expenses incurred by any such member in performing his or her duties as a member of the committee shall be paid out of funds made available for those purposes to the agency or department of which he or she is an employee or officer.

Coverage for Dependents

Sec. 19. Any employee or annuitant shall be entitled to secure for his dependents any uniform group insurance coverages provided for employees under this Act, as shall be determined by the trustee. Such payments for such coverages for dependents shall be deducted from the monthly pay of the employee or from his retirement benefits in such manner and form as the trustee shall determine. A surviving spouse of an employee or a retiree who is entitled to monthly benefits paid by a retirement system named in this Act may, following the death of the employee or retiree, elect to retain the spouse's authorized insurance coverage and also retain authorized insurance coverage for any dependent of the spouse, at the group rate for employees, provided such coverage was previously secured by the employee or retiree for the spouse or dependent, and the spouse directs the applicable retirement system to deduct required premiums from the monthly benefits paid the surviving spouse by the retirement system. Upon termination of the monthly annuity, insurance coverage in the group shall terminate.

Effective Date

Sec. 20. This Act shall become effective September 1, 1975, but no insurance coverages shall be provided hereunder until such time as the trustee shall have made a study of the coverages and benefits authorized by this Act and gathered the neces-

sary statistical data and information to secure such group insurance and the Texas Legislature has appropriated the funds necessary to provide the insurance coverages and benefits provided for in this Act; provided, however, that subject only to the legislature's appropriating the necessary funds, group insurance coverages for state employees contemplated by this Act shall be provided beginning not later than September 1, 1976. Departments are specifically authorized to continue or initiate state employee insurance plans and policies with state financial participation until the date and time this Act is implemented; provided, however, that any experience rating refunds becoming payable to such department under any such plans or policies on or after the date and time this Act is implemented shall be paid to the Employees Life, Accident, and Health Insurance and Benefits Fund, and such payment shall be deemed payment to such department.

Affect of Section Headings

Sec. 21. Section headings contained in this Act shall not be deemed to govern, limit, expand, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section hereof.

Severability

Sec. 22. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision; and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 23. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1975, 64th Leg., p. 208, ch. 79, §§ 1 to 23, eff. Sept. 1, 1975.]

[Article 3.50-2 was not enacted as part of the Insurance Code of 1951.]

Art. 3.51-2. County and Political Subdivision of the State of Texas—Officials, Employees, and Retirees

(a) Each county or political subdivision of the State of Texas is authorized to procure contracts insuring its officials, employees, and retirees or any class or classes thereof under a policy or policies of group life, group health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance. The dependents of any

such officials, employees, and retirees may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The employees' contributions to the premiums for such insurance issued to the employer as the policyholder may be deducted by the employer from the employees' salaries when authorized in writing by the respective employees so to do; provided, however, no state funds shall be used to procure such contracts, nor shall any state funds be used to pay premiums under said contracts of insurance.

(b) Any county or political subdivision of the State of Texas which is authorized by law to procure a contract insuring its respective officials, employees, and retirees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such county or political subdivision of the State of Texas; provided that the amount of group life insurance on any one official, employee, or retiree shall not exceed \$25,000.

[Amended by Acts 1975, 64th Leg., p. 278, ch. 120, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"Sec. 2. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provision to other persons or circumstances shall not thereby be rendered invalid or unconstitutional, nor be affected thereby."

Art. 3.51-4. Payment of Premiums of Group Life and Health Insurance Policies for Retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, Retired Employees of the Texas Department of Mental Health and Mental Retardation Who Accepted Retirement Under the Teacher Retirement System of Texas, Retired Employees of the Texas Youth Council Who Accepted Retirement Under the Teacher Retirement System of Texas, and Retired Employees of the Teacher Retirement System of Texas Who Accepted Retirement Under the Teacher Retirement System of Texas

The premium cost of group life, health, accident, hospital, surgical and/or medical expense insurance for retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, for retired employees of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code,¹ shall be paid by the State of Texas, subject to the following limitations and conditions:

(a) Payment shall be from the funds of the agency, commission, board or department from which the officer or employee retired, shall be limited to the same amount allowed active employees under current group life and health insurance programs of the agency, commission, board or department, and shall be made in accordance with rules and regulations to be established no later than September 1, 1973, by the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System for its respective retirees and no later than September 1, 1975, by the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas for their retired employees who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code.

(b) The agency, commission, board and department shall certify to the state comptroller of public accounts and to the state treasurer each month the amount required each month to pay the insurance premiums of the said retirees, and the State of Texas shall pay the amount so ascertained each month, beginning September 1, 1973, to the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System, and beginning September 1, 1975, to the Texas Department of Mental Health and Mental Retardation and the Texas Youth Council.

[Amended by Acts 1975, 64th Leg., p. 1027, ch. 394, § 1, eff. June 19, 1975.]

¹ Education Code, § 3.01 et seq.

Art. 3.51-4A. Extension of Term Life Insurance to Spouses and Children

Sec. 1. Insurance under any group term life insurance policy issued and delivered pursuant to the laws of the State of Texas, except a policy issued and delivered to a creditor pursuant to Section 1(4) of Article 3.50 of the Texas Insurance Code or pursuant to any other law of the State of Texas providing for credit life insurance, may be extended to cover the spouse, the children under 21 years of age, natural or adopted, and the children over 21 years of age, natural or adopted, who are enrolled as full-time students at an educational institution or are physically or mentally disabled and who are under the supervision of the parents, of each insured thereunder, provided that the amounts of insurance under the policy are based on some plan precluding individual selection either by the insured or the policyholder, and provided further that the amount of such insurance on the life of the spouse shall not

exceed \$10,000 or one-half of the amount of insurance on the life of the aforesaid insured under said policy, whichever is less, nor shall the amount of such insurance on the life of a child exceed \$2,000.

[See Compact Edition, Volume 2 for text of 2 to 4]

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 2, eff. May 27, 1975.]

Art. 3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System.

(a) The costs of group life and health insurance premiums to persons retired under the Teacher Retirement Act, who at the time of their retirement were employed by the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas senior college or university, and the Coordinating Board, Texas College and University System, shall be fully paid from the funds of such agency, commission, institution, or board under the following provisions and conditions:

(1) The coverage of this Act shall extend to all such retired persons within the limits of eligibility under state contracts in force on the effective date of this Act or as may be otherwise provided by law;

(2) such payment shall be in accordance with rules and regulations established by such agency, commission, institution, or board;

(3) such agency, commission, institution, and board shall certify to the Comptroller of Public Accounts and the State Treasurer each month the amount so ascertained each month to such agency, commission, institution, and board;

(4) payments shall begin on the first day of the month following the month in which this Act takes effect and shall continue to be paid until otherwise provided by law.

(b) There are hereby authorized to be paid out of the funds of each agency, commission, institution, or board named in the Act the sums necessary to fund the payments of premiums provided in this Act. [Added by Acts 1975, 64th Leg., p. 1062, ch. 408, § 1, eff. Sept. 1, 1975.]

Art. 3.51-6. Group and Blanket Accident and Health Insurance

Group Insurance Defined; Coverage, Certificate, Fees or Allowances

Sec. 1. (a) Group accident and health insurance is hereby defined to be that form of accident, sickness, or accident and sickness insurance covering groups of persons as provided in Subdivisions (1) through (5) below:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor, or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise, and retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(2) under a policy issued to an association, including but not limited to a labor union or organizations of such unions, membership corporations organized or holding a certificate of authority under the Texas Non-Profit Corporation Act,¹ and cooperatives and corporations subject to the supervision and control of the Farm Credit Administration of the United States of America, and which association shall have a constitution and bylaws, and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, to insure members, employees, or employees of members (active and retired for the benefit of persons other than the association or its officers or trustees);

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or such association, or employees of members of such

association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer, retired employees, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group accident and sickness policy or contract.

(b) The spouse and dependents of employees or members referred to in Subdivisions (a)(1) through (a)(5) of this section may be included within the coverage provided in a group policy.

(c) An insurer issuing a group policy under this article shall furnish to the policyholder for delivery to each employee or member of the insured group a certificate of insurance which shall contain a statement, in summary form, of the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(d) No group policy of accident, health, or accident and health insurance shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(5) of this section.

(e) No insurer shall pay to any individual, firm, corporation, or group entity any fees or allowances for services related to group policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer, provided that this provision shall not limit the right of the insurer to pay dividends or make returns of premium to any group or to any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit payment of commissions or compensation to a duly licensed agent.

¹ Civil Statutes, Art. 1396-1.01 et seq.

Blanket Insurance Defined; Application or Certificate; Liability for Death or Injury of Member; Fees or Allowances

Sec. 2. (a) Blanket accident and health insurance is hereby defined to be that form of accident, health,

or accident and health insurance covering groups of persons as provided in (1) through (9) below:

(1) under a policy issued to any common carrier or to any operator, owner, or lessor of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on such common carrier or such means of transportation; or, under a policy issued to any automobile and/or truck leasing company, which shall be deemed the policyholder, covering a group of persons who may become either renters, lessees, or passengers defined by their travel status on such rented or leased vehicles;

(2) under a policy issued to an employer, who shall be deemed the policyholder, covering any group of employees, dependents, or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder;

(3) under a policy issued to a college, school, or other institution of learning, a school district or districts, or school jurisdictional unit, or to the head, principal, or governing board of any such education unit, who or which shall be deemed the policyholder, covering students, teachers, or employees;

(4) under a policy issued to any religious, charitable, recreational, educational, or civic organization, or branch thereof, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to any activity or activities or operations sponsored or supervised by such policyholder;

(5) under a policy issued to a sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors;

(6) under a policy issued to any governmental or volunteer fire department or fire company, first aid, civil defense, or other such governmental or volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(7) under a policy issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers;

(8) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance,

which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(9) under a policy issued to cover any other risk or class of risks which, in the discretion of the commissioner of insurance, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner of insurance may be exercised on an individual risk basis or class of risks, or both.

(b) An individual application need not be required from a person covered under a blanket accident and sickness policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

(c) Nothing in this section shall be deemed to affect the legal liability of any policyholder for the death of or injury to any member of a group.

(d) No blanket policy shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(9) of this section.

(e) No insurer shall pay to any individual, firm, or corporation any fees or allowances for services related to blanket policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer provided that this provision shall not limit the right of the insurer to pay dividends or make return of premium to any group or any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit the payment of commissions or compensation to a duly licensed agent.

Payment of Benefits

Sec. 3. All benefits under any group or blanket accident and sickness policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured be a minor or otherwise not competent to give a valid release, such benefits may be made payable to his parent, guardian, or other person actually supporting him. The policy may provide that all or a portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the option of the insurer 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 the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the obligation of the insurer with respect to the amount of insurance so paid.

Exemptions

Sec. 4. The provisions of this article shall not be applicable to:

(1) credit accident and health insurance policies subject to Article 3.53 of the Insurance Code, as amended;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance prior to April 1, 1975;

(3) accident and health coverages that are incidental to any form of group automobile, casualty, property, or workmen's compensation—employers' liability policies promulgated or approved by the State Board of Insurance;

(4) any policy or contract of insurance with a state agency, department, or board providing health services to all eligible persons under Section 6, The Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes), 343-353¹ (42 U.S.C.A. 1396-1396g), providing health care and services under a state plan.

¹ So in enrolled bill; probably should read "79 Stat. 343-353".

Rules and Regulations

Sec. 5. The State Board of Insurance is authorized to issue such rules and regulations as may be necessary to carry out the various provisions of this article. Rules and regulations promulgated pursuant to this article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Added by Acts 1975, 64th Leg., p. 1112, ch. 419, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"Sec. 2. This Act shall apply to all group accident, health, or accident and health insurance policies and all blanket accident, health, or accident and health insurance policies, delivered or issued for delivery in the State of Texas on and after January 1, 1976."

SUBCHAPTER G. ACCIDENT AND SICKNESS INSURANCE

Art. 3.70-1. Purpose; Definitions; Scope of Act; Rules and Regulations; Standards for Policy Provisions; Minimum Standards; Outline of Coverage; Pre-Existing Conditions; Administrative Procedures

(A) Purpose. The purpose of this Act shall be to provide for reasonable standardization, readability, and simplification of terms and coverages contained in individual accident and sickness insurance policies; to facilitate public understanding of coverages; to eliminate provisions contained in individual accident and sickness insurance policies which may be unjust, unfair, misleading, or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and to provide for full and fair disclosure in the sale of accident and sickness coverages.

(B) Definitions. As used in this Act,

(1) "Board" shall mean the State Board of Insurance of the State of Texas.

(2) "Commissioner" shall mean the Commissioner of Insurance of the State of Texas.

(3) "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.

(4) "Policy" means the entire contract between the insurer and the insured, including the policy, riders, endorsements, and the application, if attached.

(C) Scope of Act. This Act shall apply to and govern individual accident and sickness insurance policies issued, or issued for delivery, 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, nonprofit hospital, medical, or dental service corporations including but not limited to companies subject to Chapter 20 of this code, as amended, stipulated premium insurance companies, or any other insurer which by law is required to be licensed by the Board; 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; nor to credit accident and sickness insurance policies written under Article 3.53 of this code, as amended; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies. Conversion policies issued pursuant to a contractual conversion privilege under a group accident and sickness insurance policy shall not be subject to Subsections (D) through (H) of this article.

(D) Rules and Regulations. The Board is authorized to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article.

(E) Standards for Policy Provisions.

(1) The Board shall issue reasonable rules and regulations to establish specific standards including standards for readability of policies and for full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of accident and sickness insurance which shall be in addition to and in accordance with applicable laws of this state which may cover but shall not be limited to:

- (a) terms of renewability;
- (b) initial and subsequent conditions of eligibility;
- (c) nonduplication of coverage provisions;
- (d) coverage of dependents;
- (e) pre-existing conditions;
- (f) termination of insurance;
- (g) probationary periods;
- (h) limitations;
- (i) exceptions;
- (j) reductions;
- (k) elimination periods;
- (l) requirements for replacement;
- (m) recurrent conditions; and

(n) the definition of terms including but not limited to the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable and noncancellable; provided that any definition of hospital so developed shall not be applicable to companies organized under Chapter 20 of this code, as amended.

(2) The Board may issue rules and regulations that specify prohibited policy provisions, not otherwise specifically authorized by statute, which in the opinion of the Board are unjust, unfair, or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary.

(F) Minimum Standards for Benefits.

(1) The Board shall issue rules and regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and sickness insurance:

- (a) basic hospital expense coverage;
- (b) basic medical-surgical expense coverage;
- (c) hospital confinement indemnity coverage;
- (d) major medical expense coverage;
- (e) disability income protection coverage;
- (f) accident only coverage;
- (g) specified disease or specified accident coverage; and
- (h) limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in Paragraphs (a) through (h) of Subsection (1) of this section.

(3) No policy shall be issued, or issued for delivery, in the State of Texas which does not

meet the prescribed minimum standards for the categories of coverage listed in Paragraphs (a) through (h) of Subsection (1) of this section which are contained within the policy unless the Board finds such policy to be a supplemental policy, a policy experimental in nature or finds such policy will fulfill a reasonable public need and such policy meets the requirements set forth in Article 3.42 of the Insurance Code.

(4) The Board shall prescribe the method of identification of policies based on coverages provided.

(G) Outline of Coverage.

(1) In order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies, no such policy shall be issued, or issued for delivery, in the State of Texas unless: (i) in the case of a direct response insurance product, the outline of coverage described in Subsection (2) of this section accompanies the policy; (ii) in all other cases, the outline of coverage described in Subsection (2) of this section is delivered to the applicant at the time application is made and an acknowledgement of receipt or certificate of delivery of such outline is provided the insurer with the application. In the event the policy is issued on a basis other than that applied for, the outline of coverage properly describing the policy must accompany the policy when it is delivered and clearly state that it is not the policy for which application was made.

(2) The Board shall prescribe the format and content of the outline of coverage required by Subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) a statement identifying the applicable category or categories of coverage provided by the policy as prescribed in Section (F) of this article;

(b) a description of the principal benefits and coverage provided in the policy;

(c) a statement of the exceptions, reductions, and limitations contained in the policy;

(d) a statement of the renewal provision including any reservation by the insurer of a right to change premiums;

(e) a statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions;

(f) a summary of such provisions required to be in the policy by Section 3, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), as the Board may determine to be necessary to carry out the purposes of this Act.

(g) Any other statements, descriptions, or outlines that the Board may determine to be reasonably necessary to carry out the purposes of this Act.

(H) Pre-existing Conditions. (1) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after 12 months from any pre-existing condition not specifically excluded from coverage by terms of the policy. (2) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), or of Paragraph (1) of this subsection, no individual policy of accident and sickness insurance issued or issued for delivery in this state to a person age 65 or over may contain a provision excluding from coverage any loss due to a pre-existing condition, not specifically excluded from coverage by name or specific description in an exclusion endorsement or rider effective on the date of the loss, for a period in excess of six months from the effective date of coverage under the policy; provided, however, that if the Board finds that the public interest would be served thereby, it may authorize a policy provision excluding coverage for pre-existing conditions for a period in excess of six months but in no event shall such period exceed one year. (3) Except as so provided, a policy issued under the provisions of this section may not include wording that would permit a defense based on pre-existing conditions.

(I) Administrative Procedures. Rules and regulations promulgated pursuant to this Article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Amended by Acts 1975, 64th Leg., p. 2199, ch. 703, § 1, eff. June 21, 1975.]

Sections 2 and 3 of the 1975 amendatory act amended subsecs. (A) and (B) of art. 3.70-3; § 4 amended art. 3.42; § 5 amended art. 3.70-9; and § 6 thereof provided:

"Sec. 6. This Act shall apply to all policies of accident and sickness insurance issued, or issued for delivery, in the State of Texas after June 1, 1976. This Act shall not apply to policies issued, or issued for delivery, in the State of Texas prior to such date."

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, provisions of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which are in each instance not less favorable in any respect to the insured or the beneficiary; and provided further that Provisions 6, 8, and 9 shall not be required provisions under this Subsection A for companies organized under Chapter 20 of this code, as amended. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows:

Time Limit on Certain Defenses: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of Section 3(B), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestible":

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestible as to the statements contained in the application.)

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

Grace Period: A grace period of (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement.

ment and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every (insert a number not less than one nor more than six) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of (insert a number not less than one nor more than six) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of (insert a number not less than one nor

more than six) months preceding the date on which such notice is actually given.)

(6) A provision as follows:

Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible; and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or

to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$..... (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(B) Other Provisions. Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a provision of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior

to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$. (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate; or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

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 coverag-

es, 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.)

(5) 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.

(6) 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. Can-

cellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(7) 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.

(8) 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.

(9) 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.

[See Compact Edition, Volume 2 for text of (C) to (G)]

[Amended by Acts 1975, 64th Leg., p. 2202, ch. 703, §§ 2 and 3, eff. June 21, 1975.]

Art. 3.70-9. Violation

Any person, partnership, or corporation wilfully violating any provision of this Act 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 Thousand Dollars (\$5,000.00) 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.

[Amended by Acts 1975, 64th Leg., p. 2210, ch. 703, § 5, eff. June 21, 1975.]

Art. 3.72. Variable Annuity Contracts

[See Compact Edition, Volume 2 for text of 1 to 7]

Investment of Separate Account Funds

Sec. 8. Any domestic insurance company which has established one or more separate variable annuity accounts pursuant to this article may invest and reinvest all or any part of the assets allocated to any such account in and only in the securities and investments authorized by Article 3.39 of this Insurance Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of

America, or which are publicly held and traded in the "over-the-counter market" as defined by the State Board of Insurance and as to which market quotations have been available. None of the assets allocated to any such variable annuity account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (a) Twenty-Five Thousand Dollars (\$25,000) or (b) five percent (5%) of the assets of any such separate variable annuity account in any one corporation issuing such common capital stock, except that subject to the approval of the State Board of Insurance all of the assets of a separate account may be invested in the shares of one or more open-end management companies registered under the Federal Investment Company Act of 1940¹ and qualifying as a diversified company thereunder. The assets and investments of such separate variable annuity accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seiler if the purchase is not made through broker, the specific variable annuity account for which the investment is made.

[See Compact Edition, Volume 2 for text of 9 to 16]

[Amended by Acts 1975, 64th Leg., p. 1379, ch. 528, § 1, eff. Sept. 1, 1975.]

¹ 15 U.S.C.A. § 80a-1 et seq.

CHAPTER FIVE. RATING AND POLICY FORMS

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Article

5.13-1. Legal Service Contracts [NEW].

SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

5.43-2. Fire Detection and Alarm Devices and Systems; Regulation of Sales, Service, Installation and Maintenance [NEW].
5.53-A. Home Warranty Insurance [NEW].

SUBCHAPTER J. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS, PODIATRISTS, AND HOSPITALS [NEW].

5.82. Rating Procedures.

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Art. 5.13-1. Legal Service Contracts

(a) Every insurer governed by Subchapter B of Chapter 5 of the Insurance Code, as amended,¹ and every life, health, and accident insurer governed by Chapter 3 of the Insurance Code, as amended,² is

authorized to issue prepaid legal services contracts. Every such insurer or rating organization authorized under Article 5.16 of the Insurance Code shall file with the State Board of Insurance all rules and forms applicable to prepaid legal service contracts in a manner to be established by the State Board of Insurance. All rates, rating plans, and charges shall be established in accordance with actuarial principles for various categories of insureds. Rates, rating plans, and charges shall not be excessive, inadequate, unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. Certification, by a qualified actuary, to the appropriateness of the charges, rates, or rating plans, based upon reasonable assumptions, shall accompany the filing along with adequate supporting information.

(b) The State Board of Insurance shall, within a reasonable period, approve any form if the requirements of this section are met. It shall be unlawful to issue such forms until approved or to use such schedules of charges, rates, or rating plans until filed and approved. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply with the standards of this article, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 30 days thereafter, in which such noncompliance may be corrected. If the board has not acted on any form, rate, rating plan, or charges within 30 days after the filing of same, they shall be deemed approved. The board may require the submission of whatever relevant information is deemed necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(c) The right of such insurers to issue prepaid legal services contracts on individual, group, or franchise bases is hereby recognized, and qualified agents of such insurers who are licensed under Articles 21.07 and 21.14 of the Insurance Code, as amended, and Chapter 213, Acts of the 54th Legislature, 1955, as amended (Article 21.07-1, Vernon's Texas Insurance Code), shall be authorized to write such coverages under such rules and regulations as the State Board of Insurance may prescribe.

(d) The State Board of Insurance is hereby vested with power and authority under this article to promulgate, after notice of hearing, and to enforce, rules and regulations concerning the application to the designated insurers of this article and for such clarification, amplification, and augmentation as in the discretion of the State Board of Insurance are deemed necessary to accomplish the purposes of this article.

(e) This article shall be construed as a specific exception to Article 3.54 of the Texas Insurance Code.

(f) Nothing in this Act shall be construed as compelling the State Board of Insurance to establish standard or absolute rates and the board is specifically authorized, in its discretion, to approve different rates for different insurers for the same risk or risks on the types of insurance covered by this article; nor shall this article be construed as to require the State Board of Insurance to establish a single or uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the board is empowered to approve such different rates for different insurers, and is required to approve such rates as filed by any insurer unless it finds that such filing does not meet the requirements of this article.

[Added by Acts 1975, 64th Leg., p. 126, ch. 60, § 2, eff. Sept. 1, 1975.]

¹ Article 5.13 et seq.

² Article 3.01 et seq.

Limitations. Section 3 of the 1975 Act provided:

"An insurer operating under the requirements of Section 2 shall not contract itself to practice law in any manner, nor shall it control or attempt to control the relations existing between an insured and his or her attorney. These attorneys shall never be employees of the insurer but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the insured. Such insurer must agree to pay any attorney licensed by the Supreme Court to practice law in Texas for such services rendered."

SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

Art. 5.43-1. Fire Extinguishers; Installation and Servicing; Penalties

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

Registration and Licensing

Sec. 4. (a) Each firm engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems must have a certificate of registration issued by the State Board of Insurance. The initial fee for the certificate of registration is \$75 and the renewal fee for each year thereafter is \$75.

(b) Each employee, other than an apprentice, of firms engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems who services extinguishers or fixed systems, must have a license issued by the State Board of Insurance. The initial fee for the license is \$5 and the renewal fee for each year thereafter is \$5.

[See Compact Edition, Volume 2 for text of 4(c) and (d), 5 to 12]

[Amended by Acts 1975, 64th Leg., p. 899, ch. 335, § 1, eff. June 19, 1975.]

Art. 5.43-2. Fire Detection and Alarm Devices and Systems; Regulation of Sales, Service, Installation and Maintenance

Purpose

Sec. 1. The purpose of this Act is to regulate the sales, servicing, installation, and maintenance of fire

detection and fire alarm devices and systems in the interest of safeguarding lives and property.

Definitions

Sec. 2. As used in this Act:

(1) "Person" means a natural person, including an owner, manager, officer, employee, occupant, or individual.

(2) "Organization" means a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, firm or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(3) "Advisory council" means a group of five individuals experienced and knowledgeable in one or more of the following areas: sale, installation, maintenance, or manufacturing of fire alarm or detection systems, electrical engineering, fire services or be a member of a fire protection association which is to be appointed by the State Board of Insurance.

(4) "Board" means the State Board of Insurance.

(5) "Sale" means sale or offering for sale, lease, or rent any merchandise, equipment, or service at wholesale or retail, to the public or any person, for an agreed sum of money or other consideration.

(6) "Installation" means the initial placement of equipment and/or the extension, modification, or alteration of equipment already in place.

(7) "Approval, approved" means that equipment which has been tested or listed by a nationally recognized fire testing laboratory such as but not limited to Underwriters' Laboratories, Incorporated, or Factory Mutual Research Corporation, or has gained specific written approval for the use intended by the state marshal.

(8) "Maintenance" means to maintain in a condition of repair that will allow performance as originally designed or intended.

(9) "Service, servicing" means any charging, recharging, maintaining, repairing, testing, or installing.

(10) "Fire detection device" means any arrangement of materials, the sole function of which is to provide indication of fire, smoke, or combustion in its incipient stages.

(11) "Fire alarm device" means any device capable, through audible and/or visible means, of sounding a warning that fire or combustion has taken or is taking place.

(12) "Fire alarm installation superintendent" means an individual or individuals who shall be

designated by each company that sells, services, installs, or maintains a fire alarm or detection system to inspect and certify that each fire alarm or detection system as installed meets the standards as provided for by law.

Exceptions

Sec. 3. The provisions of this Act and the rules and regulations promulgated under this Act shall have uniform force and effect throughout the state and no municipality or county shall hereinafter enact any ordinances, rules, or regulations inconsistent with the provisions of this Act or rules and regulations promulgated pursuant to this Act. Provided, however, that any municipality or county ordinances, rules, or regulations in force or effect on the effective date of this Act shall not be invalidated because of any provision of this Act. Provided further that the provisions of this Act shall not apply to the sale, offer for sale, or installation of approved fire detection devices or approved fire alarm devices designed for and installed in other than commercial, business, or public buildings.

Administration

Sec. 4. The board shall administer the Act and it may issue rules and regulations which it considers necessary to its administration through the state fire marshal. The board, in promulgating necessary rules and regulations, may utilize recognized standards such as, but not limited to, those of the National Fire Protection Association, the National Electrical Code, those recognized by federal law or regulation, those recognized by any nationally recognized standards-making organization, or any information furnished by individual manufacturers. Also, the board may issue necessary rules and regulations for protection of life and property, after due notice and hearing.

Registration and Licensing

Sec. 5. (a) Each organization engaged in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices shall have a certificate of registration issued by the board. The initial fee for the certificate of registration is \$250 and the renewal fee for each year thereafter is \$150.

(b) Each separate office location of an organization engaged in the act of selling, leasing, servicing, maintaining, or installing fire detection or fire alarm devices or systems, other than the location identified on the certificate of registration, shall have a branch office registration certificate, issued by the board. The initial fee for this branch office registration certificate is \$50 and the renewal fee for each year thereafter is \$50. The board shall identify each branch office location as a part of a registered organization before a branch office registration certificate may be issued.

(c) Each fire alarm installation superintendent must obtain a license issued by the board. The initial fee for the license is \$25 and the renewal fee for each year thereafter is \$15.

(d) No person may inspect with the intention of certifying any fire alarm or fire detection system or device unless he is the holder of a valid and current license issued pursuant to this Act.

(e) A person licensed pursuant to this Act to inspect and certify a fire alarm or fire detection system or device shall be an employee or agent of an organization that holds a valid and current certificate of registration issued pursuant to this Act.

(f) A person who sells, services, installs, or maintains fire alarm systems or fire detection devices shall be an employee or agent of an organization that holds a valid certificate of registration issued pursuant to this Act.

Powers and Duties of the State Board of Insurance

Sec. 6. The board shall delegate authority to exercise all or part of its functions, powers, and duties under this Act, including the issuance of certificates, to the state fire marshal, and the state fire marshal along with assistance of a nonbinding advisory council to be appointed by the board shall implement such rules and regulations as may be determined by the board to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of organizations engaging in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(2) the requirements for the sale, service, installation, or maintenance of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(B) evaluating and determining which organizations shall be approved as testing laboratories for fire alarm and fire detection devices and systems; and

(C) evaluating and approving a required training program for all persons who engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems.

Certain Acts Prohibited

Sec. 7. No organization pursuant to this Act may do any of the following:

(1) sell, service, install, or maintain fire alarm or fire detection devices and systems without a valid and current certificate of registration;

(2) obtain or attempt to obtain a certificate of registration by fraudulent representation; or

(3) sell, service, install, or maintain fire alarm or fire detection devices or systems contrary to the provisions of this Act or the rules and regulations formulated by the board under the authority of this Act.

Fees Collected

Sec. 8. The fees herein provided for, when collected, shall be placed with the State Treasurer in a separate fund, which shall be known as the fire alarm and detection systems fund, and expenditures shall be made from said fund as set forth in the General Appropriations Act.

Selling or Leasing Fire Alarm or Fire Detection Devices

Sec. 9. (a) No device or alarm, the sole intended purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory or a laboratory approved by the fire marshal.

(b) No fire detection or alarm device may be sold or installed in this state unless accompanied by printed information supplied to the owner by the supplier or installing contractor concerning:

(1) instructions describing the installation, operation, testing, and proper maintenance of the device;

(2) information which will aid in establishing an emergency evacuation plan for the protected premises; and

(3) the telephone number and location, including notification procedures, of the nearest fire department.

Applications and Hearings on Licenses and Certificates

Sec. 10. (a) Applications and qualifications for certificates issued hereunder shall be made pursuant to rules and regulations adopted by the board.

(b) The board shall conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of certificates of registration or approvals of testing laboratories issued under this Act or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

(c) A certificate of registration or testing laboratory approval may be denied, or same duly issued may be suspended or revoked, or the renewal thereof refused, if after notice and public hearing, the board finds from the evidence presented at said hearing

that one or more provisions of this Act or of any rule or regulation promulgated under this Act has been violated.

Penalties

Sec. 11. (a) Any person who individually, or as an employee or agent of an organization, violates any of the provisions of this Act or order of the board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed \$500 for each such violation, which may be recovered by a civil action.

(b) In addition to any other penalties, any person of an organization who performs a function that requires a certificate of registration as described herein without first obtaining such certificate of registration commits a Class B misdemeanor.

[Added by Acts 1975, 64th Leg., p. 853, ch. 326, § 1, eff. May 30, 1975.]

Art. 5.53-A. Home Warranty Insurance

Sec. 1. Any company licensed to engage in the business of fire insurance and its allied lines, or marine insurance, or both, is authorized to write home warranty insurance in Texas. Home warranty insurance is not inland marine insurance, but shall be governed in the same manner and to the same extent as inland marine insurance.

Sec. 2. As used in this Code, the term "home warranty insurance" means insurance assuring either

(1) performance by builders of residential property of their warranty obligations to purchasers of such property; or

(2) against named defects arising from failure of the builder to construct residential property in accordance with specified construction standards.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 1, eff. April 3, 1975.]

SUBCHAPTER G. WORKMEN'S COMPENSATION AND LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION INSURANCE

Art. 5.76. Prevention of Injuries and Assignment of Rejected Risks

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) It shall be the duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance, in the manner herein provided, for any risk under the Workmen's Compensation Law of Texas,¹ the Longshoremen's and Harbor Workers'

Compensation Act,² and/or the Federal Coal Mine Health and Safety Act of 1969, as amended,³ or for any city, county or any other political subdivision, agency or department of the State authorized to provide workmen's compensation insurance for its employees under any laws of the State of Texas, heretofore or hereafter enacted, which risk shall have been tendered to and rejected by any member of said agency. It shall be the further duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance in the manner herein provided on all policies and claims in existence for any insurance company which has been declared insolvent by the courts of this State or any other state in the same manner as if said policies had been written by servicing companies of this agency. With respect to said claims in existence at the time of said declaration of insolvency and paid by the agency, the agency shall have the same rights against the receiver of said insolvent company as are provided by the laws of this State for workmen's compensation loss claimants of the insolvent insurance company. From and after the date the rules made and adopted under Paragraph (e) have been approved by the Board the procedures and remedies established under this article shall be the sole and exclusive procedure and remedies, either at law or in equity, of any applicant for such insurance whose insurance has been rejected or cancelled by any company or association.

[See Compact Edition, Volume 2 for text of (d) to (h)]

[Amended by Acts 1975, 64th Leg., p. 1164, ch. 436, § 1, eff. June 19, 1975.]

¹ Civil Statutes, Art. 8306 et seq.

² 33 U.S.C.A. § 901 et seq.

³ 30 U.S.C.A. § 801 et seq.

Section 2 of the 1975 amendatory act provided:

"Sec. 2. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing, or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made."

SUBCHAPTER J. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS, PODIATRISTS, AND HOSPITALS [NEW]

Art. 5.82. Rating Procedures

[Text of article effective until Dec. 31, 1977]

Scope of Article

Sec. 1. This article shall apply to the making and use of insurance rates by every insurer licensed to write or engage in writing professional liability insurance for any person licensed to practice medicine or podiatry or certified to administer anesthesia in this state or any hospital licensed under the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes), including ratings organizations acting on behalf of insurers.

Rate Standards

Sec. 2. Rates shall be made in accordance with the following provisions:

(a) To the extent deemed credible, consideration shall be given to past and prospective loss experience within this state and if the loss experience within this state is not credible, then due consideration may be given to past and prospective loss experience outside this state, to a reasonable margin for underwriting profit and contingencies, to dividends or savings allowed or returned by insurers to their policyholders or members, to past and prospective expenses both countrywide and those specifically applicable to this state and to all other relevant factors, including trend factors, within and outside this state.

(b) Risks may be grouped by classifications, by rating schedules, or by any other reasonable methods, for the establishment of rates. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive, inadequate, as herein defined, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless such rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless such rate is unreasonably low for the insurance coverage provided and the use of such rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

Filing of Rates

Sec. 3. (a) The provisions of Article 5.15, Texas Insurance Code, shall apply to the filing of rates and rating information required under this article.

(b) Nothing contained in this article or Chapter 5, Subchapter B of the Insurance Code¹ concerning the regulation of rates, rating plans, and rating classifications shall, as applies to the writing of professional liability insurance for licensed hospitals, podiatrists, and physicians and certified anesthetists give the board the power to prescribe uniform or absolute rates; nor shall anything therein be construed as preventing the filing of different rates for risks in a

given classification or modified rates for individual risks made in accordance with rating plans, as filed by different insurers or organizations authorized to file such rates. As used in this subsection, "absolute rates" mean rates, rating classifications, or rating plans filed by an insurer or authorized rating organization in accordance with Chapter 5, Subchapter B, Insurance Code, which rates, rating classifications, or rating plans so filed are required to be used, to the exclusion of all others, by each insurer lawfully engaged in writing policies of insurance.

(c) The provisions of Article 5.18 of this chapter shall apply to this subchapter.

Time for Filing Claims

Sec. 4. Notwithstanding any other law, no claim against a person or hospital covered by a policy of professional liability insurance covering a person licensed to practice medicine or podiatry or certified to administer anesthesia in this state or a hospital licensed under the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes), whether for breach of express or implied contract or tort, for compensation for a medical treatment or hospitalization may be commenced unless the action is filed within two years of the breach or the tort complained of or from the date the medical treatment that is the subject of the claim or the hospitalization for which the claim is made is completed, except that minors under the age of six years shall have until their eighth birthday in which to file, or have filed on their behalf, such claim. Except as herein provided, this section applies to all persons regardless of minority or other legal disability.

Reporting of Claims and Claims Information

Sec. 5. Each insurer who issues policies of professional liability insurance covering persons licensed to practice medicine or podiatry or certified to administer anesthesia in this state or hospitals licensed under the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes), shall file annually with the State Board of Insurance a report of all claims and amount of claims, amounts of claims reserves, information relating to amounts of judgments and settlements paid on claims, and other information required by the board. The board is hereby empowered to formulate and promulgate a form upon which such information shall be reported. The form shall be so devised as to require the information to be reported in an accurate manner, reasonably calculated to facilitate interpretation.

Annual Premiums

Sec. 6. Policies of professional liability insurance under this article shall be written on not less than an annual premium basis.

Notice of Cancellation or Nonrenewal

Sec. 7. An insurer who issues a policy of professional liability insurance covered by this article shall give at least 90 days' written notice to an insured if premiums on the insurance are to be increased or the policy is to be cancelled or nonrenewed other than for nonpayment of premiums or because the insured is no longer licensed. If the premiums are to be increased, the notice shall state the amount of the increase, and if the policy is to be cancelled or nonrenewed, the insurer shall state in the notice the reason for cancellation.

Maintenance Tax and Other Provisions

Sec. 8. (a) Insurance written pursuant to this subchapter shall also be subject to the provisions of Article 5.24, Texas Insurance Code.

(b) The State Board of Insurance shall make necessary rules and regulations to effectuate the purposes of this article.

[Added by Acts 1975, 64th Leg., p. 864, ch. 330, § 1, eff. June 5, 1975.]

¹Article 5.13 et seq.
Section 2 of the 1975 Act provided:
"This Act shall take effect upon its passage and expire on December 31, 1977, except that causes of action accruing during the effective life of this Act shall be filed pursuant to the provisions of Section 4 hereof."

CHAPTER SIX. FIRE AND MARINE COMPANIES

Article

6.01-A. Reserving Home Warranty Insurance [NEW].

Art. 6.01-A. Reserving Home Warranty Insurance

Sec. 1. Every company writing home warranty insurance in Texas shall maintain reinsurance or unearned premium reserves on all policies in force.

Sec. 2. The reserves on home warranty insurance shall be computed in the same manner and to the same extent as fire insurance is reserved in accordance with Article 6.01 of this Code.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 2, eff. April 3, 1975.]

CHAPTER NINE. TEXAS TITLE INSURANCE ACT

Article

- 9.48. Title Insurance Guaranty [NEW].
- 9.49. Insured Closing [NEW].
- 9.50. Home Solicitation Transactions Act as Consumer Protection Law [NEW].
- 9.51. Title Insurance Agents Right to Surrender License [NEW].
- 9.52. Escrow Officer's Right to Surrender License [NEW].
- 9.53. Uniform Closing and Settlement Statements [NEW].
- 9.54. Advance Disclosure of Settlement Costs Involving Residential Property [NEW].
- 9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property [NEW].

9.56. Creation and Operation of Attorney's Title Insurance Company [NEW].

Art. 9.01. Short Title and Legislative Purpose and Intent

A. This Act shall be known and may be cited as the "Texas Title Insurance Act."

B. The Legislature of the State of Texas finds that the business of title insurance, both the direct issuance of policies and the reinsurance of any assumed risks, of every type, shall in all respects be totally regulated by the State of Texas so as to provide for the protection of every consumer and purchaser of a title insurance policy. It is the express legislative intent that this Chapter 9 accomplish such a result.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 1, eff. Sept. 1, 1975.]

Art. 9.02. Definitions

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(c) "Title Insurance Company" means any domestic company organized under the provisions of this Act for the purpose of insuring titles to real property, any title insurance company organized under the laws of another state or foreign government meeting the requirements of this Act and holding a certificate of authority to transact business in Texas and any domestic or foreign company having a certificate of authority to insure titles to real estate within this state and which meet the requirements of this Act.

(d) "Commissioner" means the Commissioner of Insurance of the State of Texas.

(e) "Board" means the State Board of Insurance of the State of Texas.

(f) "Title Insurance Agent" means a person, firm, association, or corporation owning or leasing and

controlling an abstract plant as defined by the Board, or as a participant in a bona fide joint abstract plant operation as defined by the Board, and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf.

(g) "Escrow Officer" means an officer or employee of a title insurance agent whose duties include any or all of the following:

(1) countersigning title insurance policies, commitments and binders; or

(2) supervising the preparation and delivery of title insurance policies, commitments and binders; or

(3) receiving, handling, or disbursing escrow funds;

provided that no clerical employees who perform any of the above duties under the direction and control of an escrow officer shall be included in this definition.

(h) "Foreign Title Insurance Company" means a title insurance company organized under the laws of any jurisdiction other than the State of Texas.

(i) "Abstract plant" as used herein shall mean a geographical abstract plant such as is defined by the Board from time to time and the Board, in defining an abstract plant, shall require a geographically arranged plant, currently kept to date, that is found by the Board to be adequate for use in insuring titles, so as to provide for the safety and protection of the policyholders.

(j) "Residential real property" means any real property which has improvements thereon and is designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives).

(k) "Thing of value" includes any payment, advance, funds, loan, service, or other consideration.

(l) "Person" includes individuals, corporations, associations, partnerships and trusts.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 2, eff. Sept. 1, 1975.]

Art. 9.06. Capital Stock and Surplus Required

Except as provided by Article 9.56, Section 4A of this Chapter 9, all title insurance companies created and operating under the provisions of this Chapter must have a paid up capital of not less than One Million Dollars (\$1,000,000) and a surplus of not less than Four Hundred Thousand Dollars (\$400,000), provided, however, that the minimum unimpaired capital and surplus for a corporation which was authorized to transact title insurance business on the effective date of this Chapter and which on that date had an unimpaired capital of less than One Million Dollars (\$1,000,000) and a surplus of less than Four Hundred Thousand Dollars (\$400,000) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000) capital and One Hundred Thousand Dollars (\$100,000) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-Five Thousand Dollars (\$525,000) capital and One Hundred Sixty Thousand Dollars (\$160,000) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000) capital and Two Hundred Twenty Thousand Dollars (\$220,000) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-Five Thousand Dollars (\$775,000) capital and Two Hundred Eighty Thousand Dollars (\$280,000) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000) capital and Three Hundred Forty Thousand Dollars (\$340,000) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000) and surplus of not less than Four Hundred Thousand Dollars (\$400,000) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 3, eff. Sept. 1, 1975.]

Art. 9.07. 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 insofar as the business of either may be the business of title insurance, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Chapter or any other law of the State of Texas, shall be permitted to issue any title policy of any character, or underwriting contract, or reinsure any portion of the risk assumed by any title policy, on Texas real property other than under this Chapter under such rules and regulations. No policy of title insurance, reinsurance of any risk assumed under any policy of title insurance, or any 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, except as is provided in Article 9.19D. Before any premium rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the title insurance companies and title insurance agents authorized or qualified under this Chapter and the public. Under no

circumstances may any title insurance company or title insurance agent use any form which is required under the provisions of this Chapter 9 to be promulgated or approved until the same shall have been so promulgated or approved by the Board.

The Board shall have the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents created or operating under this Chapter for policies of title insurance or other promulgated or approved forms, and the premiums therefor shall be paid in the due and ordinary course of business. Premium rates for reinsurance as between title insurance companies qualified under this Chapter shall not be fixed or promulgated by the Board, and title insurance companies may set such premium rates for reinsurance as such title insurance companies shall agree upon. Under no circumstance shall any premium be charged for any policy of title insurance or other promulgated or approved forms different from those fixed and promulgated by the Board, except for premiums charged for reinsurance. The premium rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall require all title insurance companies and all title insurance agents 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 the Board's consideration.

The Board shall hold an annual hearing during November of each calendar year, commencing in 1975, to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Board may determine necessary to consider. Proper notice of such public hearing and the items to be considered shall be made to the public and shall be sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter for at least four (4) weeks in advance of such hearing.

Premium 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 title insurance companies and title insurance agents qualified or authorized to do business under this Chapter, and after public notice in such manner as to give fair publicity thereto for at least four (4) weeks in advance. The Board must call such additional hearing to consider premium rate changes at the request of a title insurance company.

The Board may, on its own motion, following notice as required for the annual hearing hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the Board shall determine necessary or proper.

Any title insurance company, any title insurance agent, or other person interested, feeling injured by any action of the Board with regard to premium rates or other action taken by the Board, 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.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 4, eff. Sept. 1, 1975.]

Art. 9.09. Prohibiting Transacting of Other Kinds of Insurance by Title Insurance Companies or the Transacting of Title Insurance by Other Types of Insurance Companies

Corporations, domestic or foreign, operating under this Chapter shall not transact, underwrite or issue any kind of insurance other than title insurance on real property; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance; provided, however, that the above prohibitions shall not apply as to any corporation, domestic or foreign, which on October 1, 1967 was transacting, underwriting and issuing within the State of Texas title insurance and any other kind of insurance. Any corporation now organized and doing business under the provisions of Chapter 8 and actively writing title insurance shall be subject to all the provisions of this Chapter except Article 9.18 relating to investments.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 5, eff. Sept. 1, 1975.]

Art. 9.11. Revocation of Right to do Business

Any foreign or domestic corporations issuing any form of title insurance policy or other promulgated or approved forms, or charging any premium rates on an owner, mortgagee, or other title insurance policy, or on other promulgated or approved forms, except for the premium rates charged for reinsurance, on Texas real property other than forms and premium rates prescribed by the Board, under the provisions of this Chapter shall forfeit its right to do business in this state. The provisions of this Article 9.11 shall not, however, be applicable to premium

rates charged in connection with reinsurance transactions between or among title insurance companies doing business under the provisions of this Chapter, provided any such reinsurance contract complies with the provisions of Article 9.19 of this Chapter. [Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 6, eff. Sept. 1, 1975.]

Art. 9.13. Fees

The general laws applicable to payment of filing fees of corporations having capital stock are hereby made applicable to corporations coming under the provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 7, eff. Sept. 1, 1975.]

Art. 9.14. Charter and Amendments

The original charter of corporations doing the business of title insurance and incorporated under the provisions of this Chapter, or under Subdivision 57, Article 1302, Revised Civil Statutes of 1925, or under Article 1302a, Texas Civil Statutes (Acts 1929, 41st Legislature, page 383, Chapter 245, Section 1) or under any other law regardless of the nature of such amendment, shall be certified only to and filed only with the Board, and only the Board shall collect from the said companies filing fees required under the law. All other laws or parts of laws, to the extent that the same are in conflict with the provisions of this Article, shall not hereafter apply to such corporations.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 8, eff. Sept. 1, 1975.]

Art. 9.15. Certificate of Authority

The Board after having satisfied itself by such investigation as it may deem proper with reference to the payment of capital stock and surplus as required by this Chapter 9, and the value of the assets offered in payment thereof (the expense of which examination shall be borne by the title insurance company), shall issue to such title insurance company a certificate of authority to transact the characters of business provided for in this Chapter on either an annual or a continuing basis. No title insurance company, domestic or foreign, shall transact business under this Chapter unless it shall hold a valid certificate of authority.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 9, eff. Sept. 1, 1975.]

Art. 9.19. Maximum Liability

A. No title insurance company operating under the provisions of this Chapter shall issue any policy of title insurance on any real property located within the State of Texas involving a potential liability by virtue of such policy of more than fifty (50%) percent of the capital stock and surplus as stated in the most recent annual statement of the company unless

the excess shall in due course be reinsured in some other title insurance company authorized to do business in Texas under this Chapter. Each title insurance company authorized to do business under the provisions of this Chapter may reinsure any or all of its policies and contracts issued on real property situated within the State of Texas, provided:

(i) the reinsuring title insurance company shall be licensed to do business in the State of Texas under the provisions of this Chapter; and

(ii) the form of the reinsurance contract shall be approved in advance by the Board.

B. If the Board has first approved one or more forms of reinsurance contracts for a title insurance company, such title insurance company may thereafter continue using such form or forms without submitting individual reinsurance contracts to the Board. Authority is reserved to the Board, however, to alter the required form so previously approved by it after first giving written notice to the title insurance company or title insurance companies affected by such required change.

C. No title insurance company authorized to do business in Texas under the provisions of this Chapter may accept reinsurance risks on real property situated within the State of Texas except from other title insurance companies holding a certificate of authority to do business in the State of Texas under the provisions of this Chapter.

D. The Board may, however, upon application and hearing permit any title insurance company licensed to do business in this State under this Chapter to acquire reinsurance upon an individual policy or facultative basis from title insurance companies not licensed to do business in this State, provided:

(i) any such non-admitted foreign title insurance company has a combined capital and surplus of at least \$1,400,000 evidenced by its annual statement last preceding the acceptance of such reinsurance; and

(ii) any such title insurance company so authorized to do business under this Chapter has exhausted the opportunity to acquire such reinsurance from all other title insurance companies so authorized to do business under the provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 10, eff. Sept. 1, 1975.]

Art. 9.25. Capital and Surplus Required; Foreign Corporations

No foreign corporation shall conduct the business of title insurance in this state unless it shall show from its financial statement and such other examination as the Board may desire to make, an unimpaired capital of not less than One Million Dollars

(\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00), provided, however, that the minimum unimpaired capital and surplus requirements for a foreign corporation operating under a certificate of authority on the effective date of this Chapter, which corporation on such date had an unimpaired capital of less than One Million Dollars (\$1,000,000.00) and surplus of less than Four Hundred Thousand Dollars (\$400,000.00) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000.00) capital and One Hundred Thousand Dollars (\$100,000.00) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-five Thousand Dollars (\$525,000.00) capital and One Hundred Sixty Thousand Dollars (\$160,000.00) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000.00) capital and Two Hundred Twenty Thousand Dollars (\$220,000.00) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-five Thousand Dollars (\$775,000.00) capital and Two Hundred Eighty Thousand Dollars (\$280,000.00) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000.00) capital and Three Hundred Forty Thousand Dollars (\$340,000.00) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 11, eff. Sept. 1, 1975.]

Art. 9.30. Rebates and Discounts

A. No commission, rebate, discount, or other thing of value shall be paid, allowed or permitted by any title insurance company, domestic or foreign, or by any title insurance agent doing the business of title insurance provided for in this Chapter, relating to title policies or underwriting contracts and no portion of any premium shall be paid to any person for soliciting or referring title insurance business; provided this Article 9.30 shall not prevent any title insurance company, domestic or foreign, doing business under this Chapter, from appointing as its title insurance agent in any county any person, firm, or corporation owning and operating an abstract plant of such county as its title insurance agent and making such arrangements for division of premiums as may be approved by the Board.

B. No person shall give and no person shall accept any portion, split, or percentage of any charge

made or received for the rendering of a real estate settlement or closing in connection with a transaction involving the conveyance or mortgaging of real estate located in the State of Texas other than for services actually performed.

C. Nothing in this Article 9.30 shall, however, be construed as prohibiting (a) the payment of a fee to attorneys at law for services actually rendered or (b) the payment to any person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 12, eff. Sept. 1, 1975.]

Art. 9.40. Right of Title Insurance Company to Examine Agent's Trust Fund Accounts and to Require Reports

Any title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title insurance agents, such examination to be made at the expense of the title insurance company; or the title insurance company may require special reports from any such agent regarding any of its transactions. Each title insurance company shall periodically, but at least every two years, audit the unused forms in the possession of each of its title insurance agents so as to determine that all used forms have been reported to the title insurance company. A report of each such audit shall be made to the State Board of Insurance.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 22, eff. Sept. 1, 1975.]

Art. 9.48. Title Insurance Guaranty

Title

Sec. 1. This article shall be known and may be cited as the "Texas Title Insurance Guaranty Act."

Purpose

Sec. 2. This article is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This article shall apply only to all title insurance (direct and reinsurance) written by title insurance companies authorized to do business in this state and doing business under and regulated by the provisions of this Chapter 9.

Construction

Sec. 4. This article shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this article

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is an unpaid claim of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state. Individual "covered claims" shall be limited to \$100,000 and shall not include any amount in excess of \$100,000. "Covered claim" shall also include any sum up to \$100,000 for which any insurer is liable in connection with the fidelity or solvency of any title insurance agent of such insurer as authorized by Article 9.49 of this chapter of this code. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this article.

(3) "Insurer" is any title insurance company authorized to do business in this state, and doing business under and regulated by the provisions of this Chapter 9.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this article, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the commissioner; or (b) after the effective date of this article, an insurer placed in conservatorship after it has been deemed by the commissioner to be insolvent and which has been designated an "impaired insurer" by the commissioner.

(5) "Payment of covered claims" is actual payment of claims and also is the utilization of funds of the impaired insurer and funds derived

from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(6) "Net direct written premiums" is the gross amount of premiums paid by policyholders for issuance of policies of title insurance insuring risks located in this state and to which this article applies. The term does not include premiums for reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for reinsurance ceded to other insurers.

Assessments

Sec. 6. Whenever the commissioner determines that an insurer has become an impaired insurer, the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.

Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.

The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within 30 days after the commissioner gives notice of the assessment, and assessments may be collected by the con-

servator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas, and actions to collect such assessments shall have precedence over all other causes on the docket of a different nature. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this article shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the commissioner under the provisions of this Article 9.48.

Penalty for Failure to Pay Assessments

Sec. 7. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due.

Any insurer whose certificate or authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 8. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and

shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

Payment of Covered Claims

Sec. 9. When an insurer has been designated by the commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constituted reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice

shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.

This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 10. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further that in ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state. Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give

notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency pro-

ceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the impaired insurer may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

Release From Conservatorship or Receivership

Sec. 11. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this article shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns; provided, however, the commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The commissioner shall give 10 days notice of such hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer, and the holders of the receipts shall be entitled to appear at and participate in such hearing.

Creation of Advisory Association

Sec. 12. There is created by this article an advisory association to be known as the "Texas Title Insurance Advisory Association", herein called the "advisory association", to be composed of four insurers. Within 30 days after the effective date of this article, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, one shall be appointed to serve for a one-year term of office, one shall be appointed to serve for a two-year term of office, one shall be appointed to serve for a three-year term of office, and one shall

be appointed to serve a four-year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval by the commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this article, giving due consideration to geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the commissioner or upon written request of a majority of the members. Meetings shall not be open to the public, and only members of the advisory association, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings.

The advisory association shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the advisory association when he determines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors, and employees of an insolvent or impaired insurer, or an insurer the commissioner considers to be in danger of insolvency or impairment, to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner,

the liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the commissioner, liquidator, or conservator.

Members shall serve without pay, but their expenses in attending meetings shall be paid subject to the authorization by the legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director, or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within 90 days after the effective date of this article promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

Recognition of Assessments in Rates and Premium Tax Offset

Sec. 13. Insurers shall be entitled to recoup assessments up to one percent of their net direct written premiums from rates promulgated, established, or approved by the State Board of Insurance in the next calendar year. The State Board of Insurance in promulgating, establishing, or approving rates shall take into account assessments and refunds of assessments made in accordance with this article and shall include in the formula forming the basis for promulgating, establishing, or approving

rates sums sufficient to provide for such recoupment.

Unless the State Board of Insurance has determined that all amounts paid by each insurer on assessments on total net direct written premiums have been included in the rates and premiums as provided above, any amounts not so included shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of 20 percent per year for five successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years.

Advertisement

Sec. 14. It shall be unlawful for an insurer to advertise or refer to this Act in any manner as an inducement to the purchase of title insurance.

Immunity

Sec. 15. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this article or its agents or employees, the advisory association, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this article.

Rules and Regulations

Sec. 16. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article and in augmentation thereof.

Appeals

Sec. 17. Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Control Over Conflicts

Sec. 18. The provisions of this article and the powers and functions authorized by this article are to be exercised to the end that its purposes are accomplished. This article is cumulative of existing laws, but in the event of conflict between this article and any other law relating to the subject matter of this article or its application, the provisions of this article shall control.

Unconstitutional Application Prohibited

Sec. 19. This article and law does not apply to any insurer or other person to whom, under the

Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 13, eff. Sept. 1, 1975.]

Art. 9.49. Insured Closing

Title insurance companies operating under the provisions of this chapter are hereby expressly authorized and empowered to issue upon request on real property transactions in this state at no charge whatever insured closing and settlement letters, in the form prescribed by the board, in connection with the closing and settlement of loans made by title insurance agents for any title insurance company operating under the provisions of this chapter. After January 1, 1976, only the form prescribed by the board shall be used thereafter in issuing such insured closing and settlement letters. The liability of the title insurance company shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters as authorized by this Article 9.49.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 14, eff. Sept. 1, 1975.]

Art. 9.50. Home Solicitation Transactions Act as Consumer Protection Law

Chapter 246, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5069–13.01 through Article 5069–13.06, Vernon's Texas Civil Statutes), shall be deemed and considered a consumer protection law when construed in connection with any policy of title insurance issued in this state.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 15, eff. Sept. 1, 1975.]

Art. 9.51. Title Insurance Agents Right to Surrender License

No title insurance agent shall be permitted to surrender his license under the provisions of Article 9.37 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.37 by the commissioner of insurance for revocation of such person's title insurance agent's license.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 16, eff. Sept. 1, 1975.]

Art. 9.52. Escrow Officer's Right to Surrender License

No escrow officer shall be permitted to surrender his license under the provisions of Article 9.44 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.44 by the commissioner of insurance for revocation of such person's escrow agent's license.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 17, eff. Sept. 1, 1975.]

Art. 9.53. Uniform Closing and Settlement Statements

On or prior to January 1, 1976, the board, after notice and hearing, shall prescribe uniform settlement and closing statement forms to be used in connection with the settlement and closing of any conveyance or mortgaging of real estate in which transaction a title insurance policy is issued by any title insurance company or title insurance agent. The board is specifically authorized to establish separate forms for transactions involving improved residential real property and for all other real property transactions. The forms prescribed by the board shall be designed so that dual forms or separate forms provided for each party to the transaction identifying only the charges made to such party may be used at any settlement or closing.

Every such settlement and closing statement furnished to a party to the transaction shall state thereon the name of any person, firm, or corporation receiving any sum from such party to the settlement or closing. The title insurance company and the title insurance agent, however, shall be required to include within the closing and settlement statement only those items of disbursement as are actually disbursed by the title insurance company or the title insurance agent. If a title is examined or any closing or settlement services rendered by an attorney, other than a full-time employee of either the title insurance company or the title insurance agent, the amount of such fee (shown as included in the premium) and the name of the attorney (which may be expressed by the name of the firm, if applicable) to whom such fee was paid shall be shown thereon. Such form shall also conspicuously and clearly itemize the charges imposed upon such party in connection with the settlement and closing. If a charge for title insurance is made to such party, the form shall state whether the title insurance premium included in such charges covers or insures the mortgagee's interest in the property, the borrower's interest, or both.

Any title insurance company or any title insurance agent may at its election use the uniform closing statement prepared under the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533)¹ in lieu of the uniform closing statement prescribed by the board.

The provisions of this Article 9.53 of this Chapter 9 shall not apply to the settlement or closing of any residential real estate transaction regulated by the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).

The provisions of this Article 9.53 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insur-

ance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 18, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

Art. 9.54. Advance Disclosure of Settlement Costs Involving Residential Property

Every title insurance company and every title insurance agent licensed to do business in Texas under the provisions of this Chapter 9 shall, in connection with the issuance of any type of title policy guaranteeing either a lien upon or the title to improved residential property, upon written request of the buyer, seller, or borrower prior to settlement and closing, furnish to any such requesting party to such transaction an itemized disclosure in writing, to the extent that the information is available, each charge to be made to such party, arising in connection with such closing and settlement, upon any standard real estate settlement and closing form developed, prescribed or authorized under Article 9.53 of this chapter. If information is not available concerning any item or items of charges to be made to such party, proper notation shall be made that a charge is to be made, but the information is not available or that the amount shown is an estimate of such charge. Such person shall be advised in writing as to the identity of the person or organization responsible for such charges to be made for which an estimate has been made or for which notation has been made that the information is not available.

Provided, however, that the title insurance company or title insurance agent providing the disclosures of items of charge shall not be required to disclose costs or charges which the lender is required by any law to disclose to such party. Nothing contained in this Article 9.54 shall be deemed or construed as placing upon any title insurance company or title insurance agent any of the obligations imposed upon lenders by reason of the Federal Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).¹

The provisions of this Article 9.54 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 19, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

¹ West's Tex. Stats. & Codes '75 Supp.—43

Art. 9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property

After January 1, 1976, whenever any improved residential real property situated in the State of Texas shall be sold and a mortgagee title policy issued to guarantee the validity of a lien thereon, the title insurance company or title insurance agent so issuing such mortgagee title policy of insurance shall also issue an owner title policy to the owner of such property and the required premium as promulgated by the board shall be charged.

The provisions of this article may, however, be rejected, provided that the person acquiring title shall, at or prior to closing and settlement, execute a written and acknowledged rejection wherein the purchaser rejects issuance of such owner title policy. The form of such rejection shall be prescribed, after notice and hearing, by the board.

The provisions of this Article 9.55 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 20, eff. Sept. 1, 1975.]

Art. 9.56. Creation and Operation of Attorney's Title Insurance Company

Authorization; Applicability of Chapter; Legislative Intent

Sec. 1. (a) This Article 9.56 authorizes, under the limitations and express requirements as herein contained, the incorporation and operation of an "attorney's title insurance company."

(b) All provisions of Chapter 9 of this Insurance Code shall be applicable to such attorney's title insurance company as may be so incorporated, except as shall be otherwise expressly provided in this Article 9.56. The provisions of this Chapter 9 which apply to title insurance companies shall also apply to attorney's title insurance companies except as otherwise expressly provided in this Article 9.56; the provisions of this Chapter 9 which apply to title insurance agents shall also apply to title attorneys, except as otherwise expressly provided in this Article 9.56.

(c) Any rule, regulation, or promulgated premium rate heretofore adopted by the State Board of Insurance or hereafter adopted by the State Board of Insurance under the provisions of Chapter 9 of this Insurance Code shall likewise be applicable to any such attorney's title insurance company and to any title attorneys.

(d) It is the express intent of the Legislature of the State of Texas that any such attorney's title insurance company as and when created shall be expressly regulated as are other title insurance companies conducting the business of title insurance under the provisions of this Chapter 9 of this Insurance Code unless expressly provided in this Article 9.56 to the contrary.

Definitions

Sec. 2. The following definitions shall be applicable to this Article 9.56 of this Chapter 9, to wit:

(a) "Attorney's title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, issued only in connection with and as a part of a real property transaction and title opinion of a title attorney as the term "title attorney" is defined herein, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9.

(b) The "business of attorney's title insurance" shall be conducted by and through a title attorney, as herein defined, duly appointed by such attorney's title insurance company and such business of attorney's title insurance shall be deemed to be

(1) the making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, of any contract or policy of title insurance;

(2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or

(3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9, all as a part of a real estate transaction and title opinion of a title attorney.

(c) "Attorney's title insurance company" means any domestic company organized under the provisions of this chapter for the business of attorney's title insurance.

(d) "Title attorney" means any attorney who

(1) is a member in good standing of the State Bar of Texas; and

(2) owns one or more shares of stock in the attorney's title insurance company by which he is appointed a title attorney under this section; and

(3) is actively engaged in the practice of law; and

(4) owns or leases and controls an abstract plant as defined by the board, or is a participant in a bona fide joint plant operation as defined by the board, or has a contract to obtain title information from an abstract plant licensed by the board (which said contract is upon the form promulgated by the board and the portion of the premium to be paid to the owner or the operator of said abstract plant has been approved by the board), or who is the appointed title attorney for an attorney's title insurance company and bases his title opinion upon title evidence furnished from an abstract plant approved by the board and owned or leased and controlled by such attorney's title insurance company, except that in the event any attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is further unable to contract to obtain title information from an abstract plant licensed by the board and located in the county in which such attorney is a resident, such attorney may satisfy the requirements of this Subsection (4) by filing with the board disclosure of the inability to obtain said contract as a part of his license application upon a form prescribed by the board so as to make such disclosure a part of the application; and

(5) is appointed as a title attorney by an attorney's title insurance company by contract making such arrangements for division of premium as may be approved by the board under this chapter and authorized by such attorney's title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf; and

(6) is certified as such to the State Board of Insurance; and

(7) is licensed by the board as a title attorney for such attorney's title insurance company.

May Incorporate

Sec. 3. Private corporations may be created by 15 or more State of Texas resident members of the State Bar of Texas to insure titles to lands or interest therein in this state 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 encumbrances upon or defects in the title to such lands or interests therein, provided that such title insurance shall be issued only in connection with and as a part of a title opinion of a title attorney, without any premium or fee therefor except the prescribed title insurance rates provided for in Article 9.07 of this Chapter 9.

Subject to the provisions of Article 9.06 of this Chapter 9, and Section 4 of this article, the capital shares of such corporations may be issued for a par value of \$100 or more per share, and in one or more classes, provided, however, that (a) except as provided in (b) hereafter, all such shares shall be subscribed and paid for, and issued to members of the State Bar of Texas, residing in the State of Texas, subject to the right of reacquisition of such shares by such corporation in the event of death of such attorney shareholder or failure of such attorney shareholder to be and remain a licensed member of the State Bar of Texas, or failure of such attorney shareholder to be and remain qualified to be appointed a title attorney under the provisions of this Article 9.56; and (b) nothing herein contained prohibits an association of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas, from owning shares of any class thereof, providing at least 15 resident members of the State Bar of Texas at all times own shares therein whether of the same class or not.

Capital Stock and Surplus Required—Association of the Organized State Bar of Texas, the State Bar of Texas, or any Foundation Created By or Through the State Bar of Texas

Sec. 4. (a) The attorney's title insurance company created as an affiliate or subsidiary of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, and operating under the provisions of this section, must have a paid-up capital of not less than \$250,000 and a surplus of not less than \$150,000.

(b) Any other attorney's title insurance company shall meet the capital and surplus requirements upon organization as required by Article 9.06 of this Chapter 9.

Requirements for Title Attorneys

Sec. 5. No attorney shall act within this state as a title attorney for an attorney's title insurance company without first having been (1) licensed as a title attorney for such company by the board and (2) filing a bond or cash deposit in lieu thereof as required in Section 9; and no attorney's title insurance company shall allow or permit any attorney to

act as its title attorney within the state unless said attorney shall first have obtained a license and filed a bond as required by this chapter.

Title Attorney's Licenses

Sec. 6. (a) Before an initial license is issued to any Texas licensed attorney to act as a title attorney within the State of Texas for an attorney's title insurance company, there shall first be filed by the attorney's title insurance company with the board an application for a title attorney's license, on forms to be provided by the board, accompanied by a fee of \$2. The application shall be signed and duly sworn to by the attorney's title insurance company and the applicant title attorney. Such application shall contain the following:

(1) that the applicant title attorney is a bona fide licensed Texas attorney, resident of Texas; and

(2) that the applicant title attorney is actively engaged in the practice of law; and

(3) that the applicant title attorney is known to the attorney's title insurance company to have a good business reputation, to be a current member of the State Bar of Texas, in good standing, and is worthy of the public trust and said attorney's title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) that the applicant title attorney is qualified as defined in this Article 9.56 of this Chapter 9.

The board shall grant such title attorney's license if it determines from the application and its own investigation that the foregoing requirements have been met.

(b) On or before the first day of June of each year, every attorney's title insurance company operating under the provisions of this Chapter 9 shall certify to the board, on forms provided by the board, the names and addresses of every title attorney of said attorney's title insurance company, and shall apply for and pay a fee of \$2 for an annual license in the name of each title attorney included in said list; if any such attorney's title insurance company shall terminate any licensed title attorney, it shall immediately notify the board in writing of such act and request cancellation of such license, notifying the title attorney of such action. No such attorney's title insurance company shall permit any title attorney appointed by it to write, sign, or deliver title insurance policies within the state until the foregoing conditions have been complied with, and the board has granted said license. The board shall deliver such license to the attorney's title insurance company for transmittal to the title attorney.

Licenses shall continue until the first day of the next June unless previously cancelled; provided, however, that if any attorney's title insurance company surrenders or has its certificate of authority revoked by the board, all existing licenses of its title attorneys shall automatically terminate without notice.

The board shall keep a record of the names and addresses of all licensed title attorneys in such manner that the title attorneys appointed by any attorney's title insurance company authorized to transact the business of an attorney's title insurance company within the State of Texas may be conveniently ascertained and inspected by any person upon request.

(c) If an attorney's title insurance company terminates its contract with a title attorney or gives notice of termination to the title attorney, then any such title attorney may, within 30 days after either occurrence apply to the board for continuation of his license with an amendment thereto showing the name of another attorney's title insurance company for whom he is or will be authorized to act.

Authority of Title Attorney

Sec. 7. (a) A duly licensed title attorney may issue policies of title insurance for an attorney's title insurance company only if: (1) such title attorney is an appointed title attorney for an attorney's title insurance company; and (2) such title attorney bases each title opinion upon separate and current title evidence furnished by a licensed abstract plant of the records of the county in which the real property, the title to which is to be insured, is located; and (3) if such title attorney does not own or lease and control a licensed abstract plant and does not participate in a bona fide joint plant operation, such title attorney pays to the licensed abstract plant furnishing the title information the portion of the premium which may be agreed upon between the title attorney and the licensed abstract plant and approved by the board under the contract to furnish title information provided for under Paragraph (b) of this Section 7.

(b) The board shall, not later than January 1, 1976, promulgate the form of the contract to be made and entered into between a title attorney and a licensed abstract plant whereby title information shall be furnished by a licensed abstract plant to a title attorney. Such contract shall state therein the standards for the information which is to be furnished. Contracts shall be entered into between each title attorney and each licensed abstract plant. The board may from time to time alter, change, or amend the form of such contract.

The parties to any such contract shall determine the portion of the premium to be paid by the title

attorney to the licensed abstract plant, except that the board is authorized to and may disapprove any division of the premium which the board finds to be excessive or inadequate. Such portion of the premium to be paid to the licensed abstract plant shall be deemed and considered as the "regular charge" for title information as that term is used in Article 9.34 of this Chapter 9. Within 10 days following execution, the parties to each such contract shall file a copy of the executed contract with the board. Each such contract shall be deemed to be approved as to the division of the premium until the parties are notified of disapproval by the board.

(c) In the event a title attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is unable to contract with a licensed abstract plant to obtain the required title information in the county in which the real property, the title to which is to be insured, is located, such title attorney may deliver (but not issue) title insurance policies in conformity with the provisions of Article 9.34 of this Chapter 9. Likewise, a title attorney may deliver (but not issue) a title insurance policy upon real property in conformity with the provisions of Article 9.34 of this Chapter 9 when based upon a duly certified abstract of title prepared by a licensed abstract plant covering the particular real property from the sovereignty of the soil to the date of the transaction.

(d) Each annual audit of each title attorney shall include therein disclosure of the payments for title information and to whom such payments were made."

Title Attorneys' Licenses: Surrender, Forfeiture, Grounds for Revocation; Notice, Hearing, and Appeal

Sec. 8. (a) Any title attorney may surrender his license at any time by giving notice to the board and to the attorney's title insurance company concerned, except that no title attorney shall be permitted to surrender his license under the provisions of this Section 8 if prior to the offer to surrender such license an action shall have been commenced under the provisions of this Section 8 by the Commissioner of Insurance for revocation of such title attorney's license. Any title attorney shall automatically forfeit the license under the attorney's title insurance company represented if he shall terminate his relationship with the attorney's title insurance company.

(b) The license of any title attorney may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

(1) has wilfully violated any provision of this Chapter 9; 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 attorney's title insurance company, an insured, or any other person; or

(5) has otherwise demonstrated lack of trustworthiness or competence to act as a title attorney; or

(6) has been guilty of fraudulent or dishonest practices; or

(7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or

(8) is not of good character or reputation; or

(9) has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts; or

(10) has failed to remain a member of the State Bar of Texas, or has been disbarred; or

(11) is no longer actively engaged in the practice of law.

(c) Before the license of any title attorney shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the board shall give notice of its intention so to do, by registered mail, to the applicant for or holder of such license and to the attorney's title insurance company who desires that such license be granted or continued in effect, and shall set a date not less than 20 days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the attorney's title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the commissioner of insurance 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 attorney's title insurance company concerned.

(d) No applicant or licensee whose license has been denied, refused, or revoked hereunder shall be entitled to file another application for a license as a title attorney 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 refus-

ed by the board unless the applicant shows good cause why the denial, refusal, or revocation of his license shall not be deemed a bar to the issuance of a new license.

(e) If the board shall refuse an application for any license provided for in this Act, or shall suspend, revoke, or refuse to renew any such license at said hearing, then any such applicant or licensee, and any attorney's title insurance company concerned, may appeal from said order by filing suit against the board as defendant in any of the district courts of Travis County, Texas, and not elsewhere, within 20 days from the date of the order of said board. Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The board shall not be required to give any appeal bond in any cause arising hereunder.

Bonds for Title Attorneys

Sec. 9. (a) Every attorney who has been licensed as a title attorney shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of \$7,500, which bond shall obligate the principal and surety to (1) pay such pecuniary losses as may result to any participant in a real estate settlement or closing where an attorney's title insurance policy is issued by such title attorney which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of any title attorney, (2) to pay such pecuniary loss as any party to an escrow agreement in which the title attorney is escrowee shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such title attorney, either directly and alone, or in connivance with others. In lieu of such bond any title attorney may deposit with the board cash (or securities approved by the board) which cash and securities shall be in the amount of \$7,500 and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the board that the terms of any title attorney's bond may have been violated, the board may require the title attorney to appear in Travis County with such records as the board deems proper on a named date not earlier

than 10 days nor later than 15 days from service of notice, and there conduct an examination into the matter. If upon such examination the board is satisfied that the terms of said bond have been violated, the board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

Annual Audit and Report of Title Attorneys

Sec. 10. Every title attorney shall have an annual audit, at his expense, made of trust fund accounts, and within 90 days after January 1 of each calendar year shall send by certified mail, postage prepaid, to the board one copy of such audit report with a letter of transmittal, and each such title attorney shall also send a copy of such letter of transmittal and audit report to the attorney's title insurance company which he represents.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either, recommended by said title attorney and approved by the title insurance company represented by said title attorney.

Each attorney's title insurance company shall examine and analyze the audit report furnished by each of its title attorneys and shall within three months of receipt of same report to the board on forms to be promulgated by the board the findings and results of its examination and analysis of such audit report. If an attorney's title insurance company fails to receive an audit report from any of its title attorneys within the time specified above, it shall forthwith report such omission to the board.

All such reports and analyses furnished by the attorney's title insurance company to the board shall, at the election of the commissioner, be classed as confidential and privileged after having been filed with the board.

If any title attorney shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the board may, after notice to the title attorney and the attorney's title insurance company involved and after a hearing at which the attorney and attorney's title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such title attorney.

Any title attorney or attorney's title insurance company feeling aggrieved by any action of the board hereunder shall have the right to file a suit in a District Court of Travis County in the time and manner provided in Section 8.

Right of Attorney's Title Insurance Company to Examine Title Attorney's Fund Accounts and Require Reports

Sec. 11. Any attorney's title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title attorneys, such examination to be made at the expense of the attorney's title insurance company; or the attorney's title insurance company may require special reports from any such title attorney regarding any of its transactions.

Application to Other Title Insurance Companies

Sec. 12. The business of attorney's title insurance shall only be conducted by attorney's title insurance companies, as defined herein, and no title insurance company, foreign or domestic, or title insurance agent or escrow officer of a title insurance agent presently or hereafter licensed to transact a title insurance business in the State of Texas, pursuant to the provisions of this Chapter 9 of this Insurance Code, may operate as an attorney's title insurance company or a title attorney under the provisions of this chapter.

Exemption From Other Acts

Sec. 13. (a) The sale, issuance, or offering of any capital stock to persons permitted by the provisions of this Article 9.56 to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Chapter 9, which provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities; and the sale, issuance, or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

(b) The shares of stock of each attorney's title insurance company (regardless of class) may be owned only (except as provided in Section 3 of this Article 9.56) by attorneys duly licensed by the State Bar of Texas, residing in the State of Texas, and qualified to be appointed a title attorney under the provisions of this Article 9.56. Each certificate evidencing any share shall have endorsed thereon provisions relating to limitation upon the alienation of such shares whereby such shares may be owned only by such qualifying attorneys or the attorney's title insurance company so issuing such shares. The pro-

visions of this Section 13B shall not, however, be applicable to shares owned by the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas.

(c) At time of organization of any attorney's title insurance company, the applicants for such attorney's title insurance company shall, as a part of the application for granting and approving the charter of such attorney's title insurance company, file with and obtain the approval of the State Board of Insurance an acceptable plan providing for the reacquisition of any and all shares of stock of such attorney's title insurance company issued to any qualified attorney when such attorney no longer remains qualified to own the same or upon the death of such attorney, whichever shall first occur. Such plan shall, in addition to its other provisions, contain an express provision that under no circumstance may such attorney's title insurance company acquire outstanding shares of its stock as treasury stock if such reacquisition of such shares will result in reducing the capital and surplus of such attorney's title insurance company below the minimum capital and surplus required for the initial organization of such attorney's title insurance company.

(d) In the event of the death of any title attorney, the attorney's title insurance company shall have a period of nine months following the death of such title attorney within which to acquire such deceased title attorney's share or shares.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 21, eff. Sept. 1, 1975.]

CHAPTER FOURTEEN. GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES

Art. 14.17. Certificate of Authority Required; Exemptions

It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit;

provided no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone and whose operating expenses do not exceed One Thousand Dollars (\$1,000) per month; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.

[Amended by Acts 1975, 64th Leg., p. 483, ch. 206, § 1, eff. Sept. 1, 1975.]

Art. 14.20. Reduced Benefits or Excluded Coverage on Life Policies; Health and Accident Policies Excluded

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the State Board of Insurance issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. The provisions of this Section 1 of this Article 14.20 shall apply to all outstanding policies already containing such limitations.

Sec. 2. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated

and authorized by Section 1 of this Article 14.20) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Section 1 of this Article 14.20) shall not exceed five years from issue date. This Section 2 of this Article 14.20 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

Sec. 3. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Section 3 of this Article 14.20 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

Sec. 4. The provisions of Section 2 and Section 3 of this Article 14.20 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 2(a)(2) of Article 14.15 of this Insurance Code.

Sec. 5. The provisions of this Article 14.20 shall not apply to health and accident policies.
[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 1, eff. Nov. 1, 1975.]

Section 2 of the 1975 Act amended § 5 of art. 22.13; § 3 thereof provided:
"Sec. 3. The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

CHAPTER FIFTEEN. MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

Article
15.05-A. Application of Texas Non-Profit Corporation Act [NEW].

Art. 15.05-A. Application of Texas Non-Profit Corporation Act

Insofar as the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), are not inconsistent with or contrary to any applicable provisions of the Insurance Code, as amended, the provisions of

the Texas Non-Profit Corporation Act as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), shall apply to and govern mutual insurance companies as defined in Article 15.01 of this chapter. Provided however, any such mutual insurance company may upon advance approval of the Commissioner of Insurance pay dividends to its members, and wherever in the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the secretary of state, such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such mutual insurance companies are concerned.
[Added by Acts 1975, 64th Leg., p. 347, ch. 148, § 1, eff. May 8, 1975.]

CHAPTER TWENTY A. HEALTH MAINTENANCE ORGANIZATION ACT [NEW]

- Article
- 20A.01. Short Title.
- 20A.02. Definitions.
- 20A.03. Establishment of Health Maintenance Organization.
- 20A.04. Application for Certificate of Authority.
- 20A.05. Issuance of Certificate of Authority.
- 20A.06. Powers of Health Maintenance Organization.
- 20A.07. Governing Body.
- 20A.08. Fiduciary Responsibility.
- 20A.09. Evidence of Coverage and Charges.
- 20A.10. Annual Report.
- 20A.11. Information to Enrollees.
- 20A.12. Complaint System.
- 20A.13. Protection Against Insolvency.
- 20A.14. Prohibited Practices.
- 20A.15. Regulation of Agents.
- 20A.16. Powers of Insurers and Others.
- 20A.17. Examinations.
- 20A.18. Management and Exclusive Contracts.
- 20A.19. Hazardous Financial Condition.
- 20A.20. Suspension or Revocation of Certificate of Authority.
- 20A.21. Rehabilitation, Liquidation, or Conservation of Health Maintenance Organizations.
- 20A.22. Rules and Regulations.
- 20A.23. Appeals.
- 20A.24. Violation of Act.
- 20A.25. Confidentiality of Medical and Health Information.
- 20A.26. Statutory Construction in Relationship to Other Laws.
- 20A.27. Public Record.
- 20A.28. Authority to Contract.
- 20A.29. Physician-Patient Relationship.
- 20A.30. Officers and Employees Bond.
- 20A.31. Injunctions.
- 20A.32. Fees.
- 20A.33. Taxation.
- 20A.34. Effective Date.

[This chapter was not enacted as part of the Insurance Code.]

Art. 20A.01. Short Title

This Act may be cited as the Texas Health Maintenance Organization Act.
[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.02. Definitions

(a) "Basic health care services" means health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient medical services.

(b) "Board" means the State Board of Health.

(c) "Commissioner" means the commissioner of insurance.

(d) "Enrollee" means an individual who has been enrolled in a health care plan, including covered dependents.

(e) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

(f) "Group hospital service corporation" means a nonprofit corporation organized and operating under Chapter 20 of the Insurance Code.¹

(g) "Health care" means prevention, maintenance, and rehabilitation services provided by qualified persons other than medical care.

(h) "Health care plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services and at least part of such arrangement consists of arranging for or the provision of health care services, as distinguished from mere indemnification against the cost of such service, on a prepaid basis through insurance or otherwise.

(i) "Health care services" means any services, including the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

(j) "Health maintenance organization" means any person who undertakes to provide or arrange for one or more health care plans.

(k) "Medical care" means furnishing those services defined as the practice of medicine in Section 11, Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4510a, Vernon's Texas Civil Statutes).

(l) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

(m) "Physician" means anyone licensed to practice medicine in the State of Texas.

(n) "Provider" means any practitioner other than a physician, such as a registered nurse, pharmacist, pharmacy, hospital, or other institution or organization or person that furnishes health care services,

who is licensed or otherwise authorized to practice in this state.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

¹ Article 20.01 et seq.

Art. 20A.03. Establishment of Health Maintenance Organization

(a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Act. No person shall establish or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(b) Within 90 days of the effective date of this Act, every existing health maintenance organization shall submit an application for a certificate of authority. Each such applicant may continue to operate until the commissioner acts on the application. In the event that an application is denied, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.04. Application for Certificate of Authority

(a) Each application for a certificate of authority shall be on a form prescribed by rule of the commissioner and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive commit-

tee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association;

(4) a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant;

(5) a statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;

(6) a copy of the form of evidence of coverage to be issued to the enrollee;

(7) a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(8) a financial statement showing the applicant's assets, liabilities, and sources of financial support; if the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this Act;

(9) a description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital, as well as any other sources of funding;

(10) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the health maintenance organization on a cause of action arising in this state may be served;

(11) a statement reasonably describing the geographic area or areas to be served;

(12) a description of the complaint procedures to be utilized;

(13) a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein;

(14) a description of the mechanisms by which enrollees will be afforded the opportunity to participate in matters of policy and operation; and

(15) such other information as the commissioner may require to make the determinations required by this Act.

(b) A health maintenance organization shall file notice with the commissioner prior to any modification of the operations or documents described in Subsection (a) of this section. As soon as reasonably possible after the filing has been made, the commissioner shall in writing approve or disapprove the same. Any filing shall be considered approved unless disapproved within 30 days; provided that the commissioner may by official order postpone the action for such further time not exceeding 30 days, as may be considered necessary for proper consideration.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.05. Issuance of Certificate of Authority

(a)(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall begin consideration of the application and forthwith transmit copies of such application and accompanying documents to the board.

(2) The board shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

(A) has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, and continuity of services;

(B) has arrangements, established in accordance with rules and regulations promulgated by the board with the concurrence of the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and

(C) has a procedure, established by rules and regulations of the board with the concurrence of the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of its services, availability and accessibility of its services.

(3) Within 45 days of receipt of the application by the board for issuance of a certificate of authority, the board shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the board certifies that the health maintenance organization does not meet such requirements, it shall specify in what respects it is deficient.

(b) The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act within 75 days of the receipt of the certification of the board. Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if:

(1) the board certifies that the health maintenance organization's proposed plan of operation meets the requirements of Subsection (a)(2) of this section; and

(2) the commissioner is satisfied that:

(A) the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(B) the health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(C) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

(i) the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(iv) any agreement which provides for the provision of health care services; and

(v) any surety bond or deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed;

(D) the enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to Section 7(b) of this Act;

(E) nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

(c) If the board or the commissioner, or both, shall certify that the health maintenance organization's proposed plan of operation does not meet the requirements of this section, the commissioner shall not issue the certificate of authority. The commissioner shall notify the applicant that it is deficient, and shall specify in what respects it is deficient.

(d) A certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Any change in control, as defined by Article 21.49-1 of the Insurance Code of Texas, of the health maintenance organization, shall be subject to the approval of the commissioner.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.06. Powers of Health Maintenance Organization

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and ancillary equipment and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization;

(2) the making of loans to a medical group, under an independent contract with it in furtherance of its program, or corporations under its control, for the purpose of acquiring or constructing medical facilities and hospitals, or in the furtherance of a program providing health care services to enrollees;

(3) the furnishing of medical care services through physicians who have independent contracts with the health maintenance organizations; the furnishing or arranging for the delivery of health care services through providers or groups of providers who are under contract with or employed by the health maintenance organization; provided, however, that a health maintenance organization is not authorized to employ or contract with physicians or providers in any manner which is prohibited by any licensing law of this state under which such physicians or providers are licensed;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

(5) the contracting with an insurance company licensed in this state, or with a group hospital service corporation authorized to do business in the state, for the provision of insurance, indemnity, or reimbursement against the cost of health care and medical care services provided by the health maintenance organization;

(6) the offering, in addition to the basic health care services, of:

(A) additional health care or medical services;

(B) indemnity benefits covering out-of-area emergency services; and

(C) indemnity benefits in addition to those relating to out-of-area and emergency services, provided through insurers or group hospital service corporations;

(7) receiving and accepting from government or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization;

(8) all powers given to corporations (including professional corporations and associations), partnerships, and associations pursuant to their organizational documents which are not in conflict with provisions of this Act, or other applicable law.

(b)(1) The health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in Subdivision (1) or (2) of Subsection (a) of this section. The commissioner shall disapprove such exercise of powers which, in his or her opinion, would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within 30 days of filing, it shall be deemed approved; provided that the commissioner may, by official order, postpone action for such further time, not exceeding 30 days, as may be considered necessary for proper consideration.

(2) The commissioner may promulgate rules and regulations exempting from the filing requirements of this subdivision those activities having a de minimis effect.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.07. Governing Body

(a) The governing body of any health maintenance organization may include physicians, providers, or other individuals, or any combination of the above.

(b) The governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.08. Fiduciary Responsibility

Any director, officer, member, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.09. Evidence of Coverage and Charges

(a)(1) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or the group hospital service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in Section 14 of this Act; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical and health care services and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or indication whether the plan is contributory or noncontributory with respect to group certificates; and

(v) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints. Any subsequent changes may be

evidenced in a separate document issued to the enrollee.

(4) Copy of the form of the evidence of coverage to be used in this state, and any amendments thereto, shall be subject to the filing and approval requirements of Subsection (b) of this section, unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or group hospital service corporations, in which event the filing and approval provisions of such law shall apply. To the extent, however, that such provisions do not apply to the requirements of Subdivision (3), Subsection (a) of this section, the requirements of Subdivision (3) shall be applicable.

(b)(1) No schedule of charges for enrollee coverage for medical services or health care services or amendments thereto may be used in conjunction with any health care plan until a copy of such schedule or amendments thereto has been filed with the commissioner.

(2) Such charges may be established in accordance with actuarial principles for various categories of enrollees, provided that charges applicable to an enrollee shall not be individually determined based on the status of his or her health. However, the charges shall not be excessive, inadequate, or unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

(c) The commissioner shall, within a reasonable period, approve any form if the requirements of this section are met and any evidence of coverage if the requirements of this section are met. It shall be unlawful to issue such form until approved or to use such schedule or charges until filed. If the commissioner disapproves such filing, he or she shall notify the filer. In the notice, the commissioner shall specify the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commissioner does not approve any form within 30 days after the filing of such forms or charges, they shall be deemed approved.

(d) The commissioner may require the submission of whatever relevant information he or she deems necessary in determining whether to approve or disapprove a filing made pursuant to this section. [Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.10. Annual Report

(a) Each health maintenance organization shall annually, on or before the 1st day of March, file a report, verified by at least two principal officers, with the commissioner, with a copy to the board, covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commissioner and shall include:

(1) a financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) any material changes in the information submitted pursuant to Section 4 of this Act;

(3) the number of persons enrolled during the year, the number of enrollees as of the end of the year, and the number of enrollments terminated during the year;

(4) a summary of the information compiled pursuant to Section 12 of this Act in such form as required by the board; and

(5) such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the duties under this Act.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.11. Information to Enrollees

Every health maintenance organization shall annually provide to its enrollees:

(a) the most recent annual statement of financial condition, including a balance sheet and summary of receipts and disbursements;

(b) a description of the organizational structure and operation of the health care plan and a summary of any material changes since the issuance of the last report;

(c) a description of services and information describing where and how to secure the services; and

(d) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.12. Complaint System

(a)(1) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner after consultation with the board to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

(2) Every health maintenance organization shall submit to the commissioner and to the board an annual report in a form prescribed by rule of the commissioner after consultation with the board.

(b) The commissioner or board may examine such complaint system.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.13. Protection Against Insolvency

Each health maintenance organization shall furnish a surety bond in a reasonable amount satisfactory to the commissioner or deposit with the commissioner cash or securities acceptable to the commissioner in at least the same amount as a guarantee that the obligations to the enrollees will be performed. The commissioner may waive this requirement when satisfied that the assets of the organization or its contracts with insurers, group hospital service corporations, governments, or other organizations are sufficient to assure reasonably the performance of its obligations.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.14. Prohibited Practices

(a) No health maintenance organization, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For the purposes of this Act:

(1) a statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;

(2) a statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which said statement is made or such item of information is communicated, such statement or items of information may be reasonably understood by a reasonable person, not possessing special knowledge, regarding health care coverage, as indicating any benefit or advantage or absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist;

(3) an evidence of coverage shall be deemed to be deceptive if the evidence of coverage, taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans, and evidence of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(b) Article 21.21, as amended, of the Insurance Code, shall be construed to apply to health maintenance

organizations and health care plans and evidence of coverage, except to the extent that the commissioner determines that the nature of health maintenance organizations and health care plans and evidence of coverage renders such sections clearly inappropriate.

(c) An enrollee may not be cancelled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner.

(d) No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(e) No physician or health care provider or group of physicians or providers or health care facility or institution may exclude any other physician or provider from staff privileges, facilities, or institutions solely on the ground that such physician or provider is associated with a health maintenance organization issued a certificate of authority under this Act.

(f) Only those persons who comply with the provisions of this Act and are issued a certificate of authority by the commissioner may use the phrase "health maintenance organization" or "HMO" in the course of operation.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.15. Regulation of Agents

The commissioner may, after notice and hearings, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents. An agent means a person directly or indirectly associated with a health care plan who engages in solicitation or enrollment.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.16. Powers of Insurers and Others

(a) An insurance company licensed in this state, pursuant to Chapter 2, 3, or 15 of the Insurance Code,¹ or a group hospital service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this Act. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies or group hospital service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization under the provisions of this Act.

(b) Notwithstanding any provision of insurance or group hospital service corporation laws, an insurer or group hospital service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided by a health maintenance organization and to provide coverage in the event of failure of a health maintenance organization to meet its obligations. Among other things, under such contracts, the insurer or group hospital service corporation may make benefit payments to a health maintenance organization for health care services rendered by physicians or providers pursuant to health care plans.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

¹ Articles 2.01 et seq., 3.01 et seq., 15.01 et seq.

Art. 20A.17. Examinations

(a) The commissioner may make an examination of the affairs of any health maintenance organization as it is deemed necessary, but not less frequently than once every three years.

(b) The board may make an examination concerning the quality of health care services of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements as often as it deems it necessary, but not less frequently than once every three years.

(c)(1) Every health maintenance organization shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations. Every physician and provider so examined need only make available for examination that portion of its books and records relevant to its relationship with the health maintenance organization.

(2) Medical, hospital and health records of enrollees and records of physicians and providers providing service under independent contract with a health maintenance organization shall only be subject to such examination as is necessary for an ongoing quality of health assurance program concerning health care procedures and outcome in accordance with an approved plan as provided for in this Act. Said plan shall provide for adequate protection of confidentiality of medical information and shall only be disclosed in accordance with applicable law and this Act and shall only be subject to subpoena upon a showing of good cause.

(3) For the purpose of examinations, the commissioner and board may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such physicians and providers concerning their business.

(d) Article 1.19, as amended, of the Insurance Code shall be construed to apply to health maintenance organizations, except to the extent that the

commissioner determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.18. Management and Exclusive Contracts

(a) No health maintenance organization may enter into an exclusive agency contract or management contract, unless the contract is first filed with the commissioner and approved under this section within 30 days after filing or such reasonable extended period as the commissioner may specify by notice given within the 30 days.

(b) The commissioner shall disapprove a contract submitted under Subsection (a) of this section if he finds that:

(1) it subjects the health maintenance organization to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the health maintenance organization are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the health maintenance organization with due regard for the interests of its enrollees, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the organization's enrollees, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.19. Hazardous Financial Condition

(a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner of insurance may, after notice and hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by reinsurance;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods;

(4) to suspend or limit the writing of new business for a period of time; or

(5) to increase the health maintenance organization's capital and surplus by contribution.

(b) The commissioner is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public, and to fix standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.20. Suspension or Revocation of Certificate of Authority

(a) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Act if the commissioner finds that any of the following conditions exist:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational documents, its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under Section 4 of this Act, unless amendments to such submissions have been filed with and approved by the commissioner.

(2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of Section 9 of this Act.

(3) The health care plan does not provide or arrange for basic health care services.

(4) The board certifies to the commissioner that:

(A) the health maintenance organization does not meet the requirements of Section 5(a)(2) of this Act; or

(B) the health maintenance organization is unable to fulfill its obligation to furnish health care services as required under its health care plan.

(5) The health maintenance organization is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to enrollees or prospective enrollees.

(6) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under Section 7(b) of this Act.

(7) The health maintenance organization has failed to implement the complaint system required by Section 12 of this Act in a manner to resolve reasonably valid complaints.

(8) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(10) The health maintenance organization has otherwise failed to comply substantially with this Act, and any rule and regulation thereunder.

(b) A certificate of authority shall be suspended or revoked only after compliance with this section.

(c) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children, or newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(d) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization, as he may find to be in the best interest of the enrollees, to the end that the enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.21. Rehabilitation, Liquidation, or Conservation of Health Maintenance Organizations

All rehabilitation, liquidation, or conservation of a health maintenance organization shall be considered to be rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to Articles 21.28, as amended, 21.28-A, and 21.28-B of the Insurance Code. The commissioner may also order the conservation, liquidation, or rehabilitation of a health maintenance organization if the commissioner is of the opinion that the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of the state.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.22. Rules and Regulations

The commissioner may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of this Act.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.23. Appeals

(a) Any person who is affected by any rule, ruling, or decision of the commissioner or board shall have the right to have such rule, ruling, or decision reviewed by the State Board of Insurance by making an application to the State Board of Insurance. Such application shall state the identities of the person, the rule, ruling, or decision complained of, the interest of the person in such rule, ruling, or decision, the grounds of such objection, the action sought of the State Board of Insurance, and the reasons and grounds for such action by the State Board of Insurance. The original shall be filed with the chief clerk of the State Board of Insurance together with a certification that a true and correct copy of such application has been filed with the commissioner. Within 30 days after the application is filed, and after 10 days' written notice to all parties of record, the State Board of Insurance shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The State Board of Insurance shall make such other rules and regulations with respect to such applications and their consideration as it considers to be advisable, not inconsistent with this Act. Said application shall have precedence over all other business of a different nature pending before said State Board of Insurance.

(b) In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the State Board of Insurance whether included in the application or not.

(c) If any person who is affected by any rule, ruling, or decision of the State Board of Insurance be dissatisfied with any rule, ruling, or decision adopted by the commissioner, board, or State Board of Insurance, that person, after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in a district court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as a defendant. Said action shall have precedence over all other causes on the docket of a different nature. Said appeal shall be filed within 20 days after the State Board of Insurance has entered an order. The decision of the State Board of Insurance shall not be enjoined or stayed except on application to such district court after notice to the State Board of Insurance. The proceedings on appeal shall be un-

der the substantial evidence rule, and such appeal shall be taken to a district court in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.24. Violation of Act

A person or an agent or an officer of a health maintenance organization who wilfully violates this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.25. Confidentiality of Medical and Health Information

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or upon the express consent of the enrollee or applicant; or pursuant to a statute or court order for the production of evidence or to discovery therefor; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. The health maintenance organization shall be entitled to claim such statutory privilege against such disclosure which the physician or provider who furnishes such information to the health maintenance organization is entitled to claim.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.26. Statutory Construction in Relationship to Other Laws

(a) Except as otherwise provided in this Act, provisions of the insurance law and provisions of the group hospital service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurance company or a group hospital service corporation licensed and regulated pursuant to the insurance laws or the group hospital service corporation laws of this state except with respect to its health maintenance organ-

ization's activities authorized and regulated pursuant to this Act.

(b) Solicitation of enrollees by health maintenance organizations granted a certificate of authority, or their representatives or agents, shall not be construed to violate any provision of law relating to solicitation or advertising by providers or physicians.

(c) Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state. Nothing in this Act shall be construed to repeal, modify, or amend Section 3, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4505, Vernon's Texas Civil Statutes), and no health maintenance organization shall be exempt from same.

(d) The provision of factually accurate information regarding coverage, rates, location and hours of service, and names of affiliated institutions, physicians, and providers by health maintenance organizations or its personnel to potential enrolled participants shall not be construed to be violative of any provision of law relating to solicitation or advertising by physicians or providers. Such information with respect to providers or physicians shall in no manner be contrary to or in conflict with any law or ethics regulating the practice of practitioners of any professional service rendered through or in connection with such providers or physicians.

(e) Any health maintenance organization authorized under this Act which contracts with a health facility or enters into an independent contractual arrangement with physicians or providers organized on a group practice or individual practice basis shall not by virtue of any contracts or arrangements be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(f)(1) This Act shall not be applicable to any person licensed to practice medicine in this state, nor to any professional association organized under the Texas Professional Association Act, as amended (Article 1528f, Vernon's Texas Civil Statutes), nor to any nonprofit corporation organized and complying with Section 4, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4509a, Vernon's Texas Civil Statutes), so long as that person, professional association, or nonprofit corporation is engaged in the delivery of health or medical care that is within the definition of the practice of medicine as defined in Section 2(k) of this Act.

(2) Any person, professional association, or nonprofit corporation referred to above, which shall employ or enter into a contractual arrangement with a provider or group of providers to furnish basic health care services as defined in Section 2(a) of this Act, would be subject to the provisions of this Act, and shall be required to obtain a certificate of authority from the commissioner.

(3) Notwithstanding any other law, any person, professional association, or nonprofit corporation referred to above, which conducts activities permitted by law but which do not require a certificate of authority under this Act, and in the process contracts with one or more physicians, professional associations, or nonprofit corporations referred to above, shall not, by virtue of such contract or arrangement, be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(4) Notwithstanding any other law, provisions of the insurance law and the provisions of the group hospital service corporation law shall not be applicable to the above persons, professional associations, or nonprofit corporations.

(g)(1) No health maintenance organization shall be exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(2) If the proposed plan of operation of the health maintenance organization includes the provision of any facility and/or service that makes the health maintenance organization subject to the statute mentioned in Subdivision (1) of this subsection, the commissioner may not issue a certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the agency responsible for the issuance of the certificate of need.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.27. Public Record

All applications, filings, and reports required under this Act shall be treated as public documents, except that examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.28. Authority to Contract

The commissioner or board, in carrying out their obligations under this Act, may contract with other state agencies or, after notice and hearing, with other qualified persons to make recommendations concerning the determinations to be made by the commissioner or board.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.29. Physician-Patient Relationship

This Act shall not be construed to:

(a) authorize any person, other than a duly licensed physician or practitioner of the healing arts, acting within the scope of his or her license, to engage, directly or indirectly, in the practice of medicine or any healing art, or

(b) authorize any person to regulate, interfere, or intervene in any manner in the practice of medicine or any healing art.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.30. Officers and Employees Bond

Each health maintenance organization shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the commissioner, designate therein some officer who shall be responsible in the handling of the funds of the health maintenance organization. Said health maintenance organization shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than \$25,000 for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of such officer, either directly or alone or in connivance with others, while employed as such officer or exercising powers of such office. In lieu of any such bond, any such officer may deposit with the commissioner cash, or securities approved by the commissioner, which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

In addition to the bond required in the preceding paragraph, each health maintenance organization shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the commissioner with a minimum of \$1,000 and a maximum of \$10,000, satisfactory and payable to the commissioner for the use and benefit of the health maintenance organization obligating the principal and surety to pay each pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on

any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.31. Injunctions

When it appears to the commissioner that a health maintenance organization is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commissioner may bring suit in a district court of Travis County to enjoin the violation and for such other relief as the court may deem appropriate.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.32. Fees

Every organization subject to this chapter shall pay to the commissioner the following fees:

(a) for filing a copy of its original application for certificate of authority or amendment thereto, \$250;

(b) for filing each annual report pursuant to Section 10 of this Act, \$100;

(c) the expenses of any examinations conducted pursuant to this Act; and

(d) for every other filing required by this Act, \$25.

[Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.33. Taxation

(a) To defray the expense of carrying out the provisions of this Act, there shall be annually assessed and collected by the State of Texas, through the State Board of Insurance, from each corporation operating under this Act, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of one percent of all revenues received by such corporation in return for issuance of health maintenance certificates or contracts in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes, when collected, shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and money in his hands, and shall be known as the Health Maintenance Organization Fund, said fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures shall not exceed in the aggregate the sum assessed and collected from such corporations; and should there be an unexpended balance at the end of any year, the State Board of Insurance shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the treasury will be suffi-

cient to pay all expenses of carrying out the provisions of this Act, which funds shall be paid out and filed by a majority of the State Board of Insurance when the comptroller shall issue warrants therefor. Any amount remaining in said fund at the end of any year shall be carried over and expended in accordance with the provisions of this article during the subsequent year or years. Provided, that no expenditures shall be made from said fund except under the authority of the legislature as set forth in the general appropriations bill.

(b) Each corporation complying with requirements of this Act shall on or before the first day of March of each year file its annual statement showing the gross amount of revenues collected during the year ending December 31 preceding, and each such corporation if organized under the laws of this state shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 7064a, Revised Civil Statutes of Texas, 1925, as amended; if such corporation is not organized under Texas laws, said corporations shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 4769, Revised Civil Statutes of Texas, 1925, as amended.

Upon receipt of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such corporation which shall be paid to the State Treasurer on or before March 15 following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this state during the calendar year ending December 31 in which such payments were collected, or for that portion of the year during which the corporation transacted business in this state.

(c) Each such corporation shall be subject to the provisions of Articles 7074 through 7078 of the Revised Civil Statutes of Texas, 1925, as amended. [Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

Art. 20A.34. Effective Date

This Act shall take effect on the first day of December, 1975. [Acts 1975, 64th Leg., p. 514, ch. 214, §§ 1 to 34, eff. Dec. 1, 1975.]

CHAPTER TWENTY-ONE. GENERAL PROVISIONS

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Article
21.39-B. Restriction on Transactions with Funds and Assets [NEW].

21.49-3. Texas Medical Liability Insurance Underwriting Association Act [NEW].

SUBCHAPTER A. AGENTS AND AGENTS' LICENSES

Art. 21.07. Licensing of Agents

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

Examination of Applicant for License to Write Health and Accident Insurance

Sec. 4. (a) Each applicant for a license under the provisions of this Article 21.07, Texas Insurance Code, 1951, as amended, who desires to write health and accident insurance, other than as excepted in Section 3 of this Article 21.07, within this State shall submit to a personal written examination prescribed and administered in the English or Spanish language by the State Board of Insurance to determine his competency with respect to health and accident insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to health and accident insurance, and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of:

(i) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, as amended, which is currently in force at the effective date of this Act; or

(ii) An applicant whose license expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided such prior license granted such applicant the right to sell health and accident insurance.

[See Compact Edition, Volume 2 for text of 4(b) to (e), 5 to 17]

[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 1, eff. Sept. 1, 1975.]

Art. 21.07-1. Legal Reserve Life Insurance Agents; Examination; Licenses

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

Examination of Applicant for License

Sec. 5. (a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered in the English or Spanish language, and as shall be prescribed by the State Board of Insurance, 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 State Board of Insurance; except that no such written examination shall be required of:

(1) An applicant for the renewal of a license issued by the State Board of Insurance 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 State Board of Insurance, be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU).

[See Compact Edition, Volume 2 for text of 5(b) to (d), 6 to 15]

[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 2, eff. Sept. 1, 1975.]

Art. 21.07-3. Managing General Agent's Licensing Act

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

Acting Without License Prohibited

Sec. 3. It shall be unlawful for any person, firm or corporation to act as a managing general agent in behalf of any insurance company or carrier without having in force the license provided for herein, except that no license shall be required if the applicant is a business corporation authorized to do business in Texas, all of whose outstanding stock is solely owned by an insurance company or carrier licensed to do business in Texas, whose business affairs are completely controlled by such insurance company or carrier and the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurance company or carrier and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive such commission direct from the insurance company or carrier and its subsidiaries and affiliates and the corporation does no other act of a managing general agent as provided for in this article; provided, however, that any contracts entered into with agents shall be executed by the managing general agent in behalf of the insurance company or carrier.

[See Compact Edition, Volume 2 for text of 4 to 21]

[Amended by Acts 1975, 64th Leg., p. 1094, ch. 414, § 2, eff. Sept. 1, 1975.]

Art. 21.07-4. Licensing of Insurance Adjusters

[See Compact Edition, Volume 2 for text of 1 to 13]

Fees for License and Examination; Insurance Adjusters' Fund

Sec. 14. (a) The commissioner shall collect in advance the following fees for an adjuster's license and examination:

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

(c) When collected, the fees provided for by this section shall be placed with the state treasurer in a separate fund, which shall be known as the insurance adjusters' fund, provided that no expenditure shall be made from said fund except under authority of the Legislature as set forth in the general appropriations bill.

[See Compact Edition, Volume 2 for text of 15 to 22]

[Amended by Acts 1975, 64th Leg., p. 656, ch. 273, § 1, eff. Sept. 1, 1975.]

Art. 21.14. Licensing of Local Recording Agents and Solicitors; Life, Health and Accident Insurance Excepted; Other Exceptions

[See Compact Edition, Volume 2 for text of 1 to 6a]

Conduct of Examinations; Notice; Manual of Questions and Answers

Sec. 7. All examinations provided by this article shall be conducted by the State Board of Insurance, and shall be held not less frequently than one each sixty (60) days every year at times and places prescribed by the State Board of Insurance, of which applicants shall be notified by the State Board of Insurance in writing, ten (10) days prior to the date of such examinations, and shall be conducted in writing in either the English or Spanish language, except that the applicant upon notice to the State Board of Insurance shall be entitled to be examined in the county seat of the county of his residence. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the State Board of Insurance shall be made available to all companies, general agents, and managers for the use of their prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

[See Compact Edition, Volume 2 for text of 8 to 26]

[Amended by Acts 1975, 64th Leg., p. 2373, ch. 731, § 3, eff. Sept. 1, 1975.]

SUBCHAPTER D. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS

Art. 21.28-C. Property and Casualty Insurance Guaranty Act

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

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by stock and mutual fire insurance

companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to home warranty insurance; and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies.

[See Compact Edition, Volume 2 for text of 4 to 14]

Recognition of Assessments in Premium Tax Offset

Sec. 15. Any assessment paid by an insurer under this Act shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, and the balance of any assessment paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Code.

[See Compact Edition, Volume 2 for text of 16 to 21]

[Amended by Acts 1975, 64th Leg., p. 56, ch. 32, § 3, eff. April 3, 1975; Acts 1975, 64th Leg., p. 1094, ch. 414, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Art. 21.39-B. Restriction on Transactions with Funds and Assets

Sec. 1. Any director, member of a committee, or officer, or any clerk of a domestic company, who is charged with the duty of handling or investing its funds, shall not:

- (1) deposit or invest such funds, except in the corporate name of such company, provided, however, that securities kept under a custodial agreement or trust agreement with a bank or trust company may be issued in the name of a nominee of such bank or trust company if such bank or trust company has corporate trust powers and is duly authorized to act as a custodian or trustee and is organized under the laws of

the United States of America or any state thereof and either is a member of the Federal Reserve System or is a member of the Federal Deposit Insurance Corporation;

- (2) borrow the funds of such company;

(3) be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; or

(4) take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company.

Sec. 2. The State Board of Insurance may promulgate such regulations as may be deemed necessary to carry out the provisions of this article.

Sec. 3. The provisions of this article are applicable to all domestic insurance companies subject to regulation by the Insurance Code, as amended, and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in any chapter of the code are not in limitation of the provisions of this article, and in the event of conflict between this article and any other article of the code or in the event of any ambiguity, the provisions of this article shall govern.

As used herein, the term "insurance companies" includes stock companies, reciprocals or inter-insurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies and all other organizations, corporations, or persons transacting an insurance business, unless such insurance companies are by statute specifically, by naming this article, exempted from the operation of this article.

[Added by Acts 1975, 64th Leg., p. 464, ch. 198, § 1, eff. May 15, 1975.]

Art. 21.49-3. Medical Liability Insurance Underwriting Association Act

Short Title

Sec. 1. This Act shall be known as the "Texas Medical Liability Insurance Underwriting Association Act."

Definitions

Sec. 2. (1) "Medical liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering professional service by one licensed to practice medi-

cine or podiatry or certified to administer anesthesia in this state or any hospital licensed under the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes).

(2) "Association" means the joint underwriting association established pursuant to the provisions of this article.

(3) "Net direct premiums" means gross direct premiums written on automobile liability and liability other than auto insurance written pursuant to the provisions of the Insurance Code, less policyholder dividends, return premiums for the unused or unabsorbed portion of premium deposits and less return premiums upon cancelled contracts written on such liability risks.

(4) "Board" means the State Board of Insurance of the State of Texas.

Joint Underwriting Association

Sec. 3. (a) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing, within this state, on a direct basis, automobile liability and liability other than auto insurance on or after January 1, 1975, as provided in the Insurance Code, specifically including and applicable to Lloyds and reciprocal or interinsurance exchanges, but excluding farm mutual insurance companies as authorized by Chapter 16 of this code, and county mutual insurance companies as authorized by Chapter 17 of this code. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact such kind of insurance in this state. The purpose of the association shall be to provide medical liability insurance on a self-supporting basis.

(b) The association shall, pursuant to the provisions of this article and the plan of operation with respect to medical liability insurance, have the power on behalf of its members:

(1) to issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limits as specified in the plan of operation; provided that no individual or organization may be insured by policies issued by the association for an amount exceeding \$300,000;

(2) to underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;

(3) to assume reinsurance from its members; and

(4) to cede reinsurance.

(c)(1) The board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of operation consistent with the provisions of this article, to become effective and operative no later than 90 days after the effective date of this Act.

(2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance, and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(3) The plan of operation shall provide that any profit achieved after reimbursement of members' contributions in accordance with Section 4(b)(5) of this article by the association shall be added to the reserves of the association.

(4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the board, or shall be made at the direction of the board.

Procedures

Sec. 4. (a)(1) Any licensed physician, licensed podiatrist, or hospital or certified anesthetist shall, on or after the effective date of the plan of operation, be entitled to apply to the association for such coverage. Such application may be made on behalf of an applicant by an agent authorized pursuant to Article 21.14 of this code.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance (as shown by the insured having failed to pay or make written objection to premium charges within 30 days after billing) then the association, upon receipt of the premium, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical liability insurance for a term of one year.

(b)(1) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as

amended,¹ giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the board may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail.

(2) Within such time as the board shall direct, the association shall submit, for the approval of the board pursuant to Article 5.15 of the Insurance Code, an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association.

(3) Any deficit sustained by the association in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or more of the following procedures:

(A) an assessment upon the policyholders;

(B) a rate increase applicable prospectively;

(C) a credit against premium taxes under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit shall be allowed at a rate of 20 percent per year for five successive years following the year in which said deficit was sustained and at the option of the insurer may be taken over an additional number of years.

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the board may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section (3)(c)(2) of the article, all members shall, on a basis authorized by the board, as long as the board deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members with interest at a rate to be approved by the board. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code.

¹ Article 5.13 et seq.

Participation

Sec. 5. All insurers which are members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums, as defined herein, of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer that may be required by the board. No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

Directors

Sec. 6. The association shall be governed by a board of nine directors, to be elected annually by the members of the association. On or before 15 days after the effective date of this Act, the State Board of Insurance shall appoint a temporary board of directors of the association which shall consist of nine members who are representatives of the association, selected so as to fairly represent various classes of member insurers and organizations of insurers. Such temporary board of directors shall serve until the first annual meeting of the members of the association or until their successors have been elected in accordance with this section. The first elected board shall be elected at the annual meeting of the members, or their authorized representatives, which shall be held at a time and place designated by the board.

Appeals

Sec. 7. (a) Any person insured or applying for insurance pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling, or decision of the association, may, within 30 days after such act,

ruling, or decision, appeal to the board of directors of the association. The board of directors of the association shall hear said appeal within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the person making such request or the duly authorized representative. Within 10 days after such hearing, the board of directors of the association shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board of directors of the association.

(b) In the event any person insured or applying for insurance is aggrieved by the final action of the board of directors of the association or in the event the association is aggrieved by the action of the board with respect to any ruling, order, or determination of the board of directors of the association or the board, the aggrieved party may, within 30 days after such action, make a written request to the board for a hearing thereon. The board shall hear the association, or the appeal from an act, ruling, or decision of the association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the association making such request or the person, or his duly authorized representative, appealing from the act, ruling, or decision of the board of directors of the association. Within 30 days after such hearing, the board shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board. Pending such hearing and decision thereon, the board may suspend or postpone the effective date of its previous rule or of the act, ruling, or decision appealed to the board. The association, or the person aggrieved by any order or decision of the board, may thereafter appeal in accordance with Article 1.04(f) of the Insurance Code of Texas.

Privileged Communications

Sec. 8. There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, its agents or employees, an insurer, any licensed agent, or the board or its authorized representatives, for any statements made in good faith by them in any reports or communications, concerning risks insured or to be insured by the association, or at any administrative hearings conducted in connection therewith.

Annual Statements

Sec. 9. The association shall file in the office of the board, annually on or before the first day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding calendar year. Such statement shall contain such matters and information as are prescribed and shall be in

such form as is approved by the board. The board may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Examinations

Sec. 10. The board shall make an examination into the affairs of the association at least annually. Such examination shall be conducted, the report thereon filed, and expenses borne and paid for, in the manner prescribed in Articles 1.15 and 1.16 of the Insurance Code.

Dissolution of the Association

Sec. 11. Upon the effective date of this article, the board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of dissolution consistent with the provisions of this article, to become effective and operative on the expiration of this Act. The plan of dissolution shall contain provisions for maintaining reserves for losses which may be reported subsequent to the expiration of all policies in force. If, at the expiration of five years and annually thereafter, if necessary, from the expiration date of this Act the board finds, after notice and hearing, that all known claims have been paid or otherwise disposed of by the association, then the board may wind up the affairs of the association by distributing to the members of the association any profits remaining after payment to a special fund created by the statutory liquidator of the board a reasonable reserve to be administered by said liquidator for unknown claims. If such reserve fund proves inadequate, the association shall be treated as an insolvent insurer in respect to the application of the provisions of Article 21.28-C, Property and Casualty Insurance Guaranty Act, Insurance Code. Notice of claim shall be made upon the board.

[Added by Acts 1975, 64th Leg., p. 867, ch. 331, § 1, eff. June 3, 1975.]

Sections 2 and 3 of the 1975 Act provided:

Sec. 2. (a) There is created a medical professional liability study commission to consist of the following members:

- (1) the lieutenant governor, or his designee;
- (2) the speaker of the Texas House of Representatives, or his designee;
- (3) one senator who shall be a member of the Senate Economic Development Committee, to be appointed by the lieutenant governor;
- (4) one representative who shall be a member of the House Insurance Committee, to be appointed by the speaker;
- (5) two representatives of the joint underwriting association established in this bill, to be appointed by the chairman of the board of directors;
- (6) two persons licensed to practice medicine in Texas, to be appointed or designated by the president of the Texas Medical Association;
- (7) two persons licensed to practice law in Texas, to be appointed or designated by the president of the State Bar of Texas;
- (8) two licensed insurance agents, one to be appointed or designated by the president of the Texas Association of Insurance Agents and one

member to be appointed by the president of the Insurance Counselors of Texas;

- (9) two hospital administrators, to be appointed or designated by the Texas Hospital Association;
- (10) two individuals not associated with any of the above associations, to be appointed by the governor; and
- (11) two members representing the two insurers which would have the largest assessment under Section 5 of this Act.

"(b) The commission shall meet and organize before August 1, 1975. Appointments or designations shall be made by an authorized official or public official by notifying in writing the chairman of the board of directors of the association, with a copy to the Secretary of State of Texas. The lieutenant governor or his designee or a member of the commission appointed by the lieutenant governor shall serve as chairman. The commission shall meet at least twice in calendar year of 1975 and at least four times annually thereafter, or more often as the commission considers necessary to carry out its purposes.

"(c) The legislative council shall provide staff assistance to the commission if necessary.

"(d) The commissioner of insurance shall provide all information and reports at his disposal which the commission requests.

"(e) No member of the commission shall be entitled to any compensation, except all reasonable travel and other expenses shall be paid to the commission members. Any commission member who is a member of the legislature shall be entitled to reimbursement of his expenses from the appropriate contingent expense fund.

"(f) The commission is authorized to employ such staff as it sees fit to carry out its functions.

"(g) The commission shall have authority to adopt reasonable rules and regulations in relation to such items as meetings, quorums, voting, and other matters relating to the orderly conduct of its business.

"(h) The commission shall make specific recommendations, including proposed legislation to the governor, lieutenant governor, speaker, legislative council, and members of the legislature on or before December 1, 1976. The report shall offer specific recommendations regarding the professional liability problem. In addition, the report shall include, but not be limited to, discussions of the following topics:

- (1) the scope and extent of the medical professional liability problem;
- (2) reasons for the increase in such claims;
- (3) effects of the rise in such claims on physicians and health care providers, including the increased use of defensive medicine and increased premium costs;
- (4) effect of claims increase on patients, including increased costs;
- (5) alternative approaches and proposed solutions to this problem;
- (6) review of comparable law on compensation commissions, arbitration panels, screening panels, and recommendations regarding use;
- (7) review of existing and proposed laws governing compensation and the amount of compensation to patients, including the time within which claims may be brought and the elements of loss for which compensation may be recovered;
- (8) the existing tort law in the area of concern and recommendations for change, if any;
- (9) any other matters or procedures which the commission considers relevant to its report.

"(c) This commission shall expire on the last day of the regular session of the 65th Legislature."

"Sec. 3. This Act shall take effect upon its passage; provided, however, that after December 31, 1977, no new policies will be issued by the association. All then issued policies shall continue in force until their expiration."

CHAPTER TWENTY-TWO. STIPULATED PREMIUM INSURANCE COMPANIES

Art. 22.13. Policy Form Approval

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

Reductions or Increases

Sec. 5. A. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

B. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) shall not exceed five years from issue date. This Subparagraph A of Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

C. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Subparagraph C of this Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

D. The provisions of Section 5 of this Article 22.13 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 1(b) of Article 22.11 of this Insurance Code.

E. The provisions of this Section 5 of this Article 22.13 shall not apply to health and accident policies.

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

[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 2, eff. Nov. 1, 1975.]

Section 1 of the 1975 Act amended art. 14.20; § 3 thereof provided: "Sec. 3. The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Art. 22.23. Issuance of Life Insurance Policies and Annuity Contracts by Stipulated Premium Companies

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00 may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that:

(1) no individual life shall be insured for more than \$5,000.00,

(2) each such policy shall be reserved and reinsured as required under the provisions of Chapter Three of this Insurance Code, and

(3) each such life policy shall be issued only upon an endowment or limited pay basis.

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, may issue annuity contracts as authorized and permitted under the provisions of Chapter Three of this Insurance Code. Reserves on such contracts shall be maintained in accordance with the statutes governing reserves on equivalent contracts issued by legal reserve companies, as such laws now exist or as they may hereafter be amended. Any insurer which elects to write annuity contracts under authority of this Article shall thereafter be required to maintain capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, and any such company shall be regarded as insolvent which fails to maintain capital and unencumbered surplus of at least a combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities.

[Amended by Acts 1975, 64th Leg., p. 1126, ch. 425, § 1, eff. June 19, 1975.]

CHAPTER TWENTY-THREE. NON-PROFIT LEGAL SERVICES CORPORATIONS [NEW]

Article

- 23.01. Incorporations; Definitions.
- 23.02. Supervision; Requirements.
- 23.03. Attorneys Under Contract.
- 23.04. Officers: Employees Bond.
- 23.05. Claims: Cancellation of Certificate of Authority.
- 23.06. Dissolution.
- 23.07. Method of Dissolution.
- 23.08. Fees; Taxes.
- 23.09. Applications.
- 23.10. Corporations Non-Profit; Funds; Investments.
- 23.11. Authority to Contract.
- 23.12. Limitations.
- 23.13. Contingent Liabilities.
- 23.14. Supervision.
- 23.15. Approval of Rates.
- 23.16. Benefit Certificates and Legal Services Contracts.
- 23.17. Blank Deposits.
- 23.18. Finance Procedures.
- 23.19. Participation Contracts: Agreements with Insurers.
- 23.20. Expenses of Directors: Meetings.
- 23.21. Examination of Books and Records.
- 23.22. Complaints.
- 23.23. Regulation of Agents.
- 23.24. Hazardous Financial Condition.
- 23.25. Management and Exclusive Agency Contracts.
- 23.26. Application of Other Laws.

Art. 23.01. Incorporation; Definitions

Any seven or more persons on application to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act as a nonmembership corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

As used in this chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

(1) "Attorney" means a person currently licensed by the Supreme Court of Texas to practice law.

(2) "Applicant" means a person applying for a legal services contract for performance of legal services through a corporation qualified under this chapter.

(3) "Benefit certificate" means a writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

(4) "Contracting attorney" means an attorney who has entered into the contract provided by Article 23.11 of this code.

(5) "Participant" means the person entitled to performance of legal services under contract with a corporation qualified under this chapter.

(6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to be performed for insurers or the business of insurance by the Insurance Code. The multimember insurance regulatory body designated by the Insurance Code as the uniform insurance rule-making authority is authorized to enact rules designating the proper insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of

the State Board of Insurance, and shall be subject to the following requirements:

(1) After incorporation, but as a condition of doing business other than seeking applicants and obtaining contracting attorneys, they shall have collected in advance from at least 200 applicants (unless a lesser number of applicants is found by the State Board of Insurance to be a large enough number of applicants to constitute a workable prepaid legal service plan) the application fee and at least one month's payment for services. Such funds shall, at all times prior to issuance by the State Board of Insurance of its certificate of authority as below provided, be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued. It shall thereafter be a condition of continued operation that a minimum number of 200 participants or lesser number previously approved by the State Board of Insurance be maintained.

(2) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the State Board of Insurance not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the State Board of Insurance.

(3) They shall maintain solvency in each of its funds, i. e., the admitted assets of each such fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by Article 23.15 of this code), and it shall be a continuing condition of licensing by the State Board of Insurance that such solvency be maintained.

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the State Board of Insurance shall issue it a certificate of authority authorizing it to transact business until such certificate shall be revoked for noncompliance with law, by operation of law or as provided by this chapter.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.03. Attorneys Under Contract

Each corporation complying with the requirements of this chapter before issuing any contract for prepaid legal services shall have and so long as it issues such contracts maintain such number of contracting attorneys as is sufficient in the determination of the State Board of Insurance to service the participant contracts contemplated by the corporation's plan of operation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.04. Officers: Employees Bond

Each corporation complying with the requirements of this chapter shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the State Board of Insurance, designate some officer or officers who shall be responsible in the handling of the funds of the corporation. Said corporation shall make and file for each such officer a surety bond or blanket bond covering all such officers with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than \$25,000 for each officer for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of each such officer, either directly and alone or in connivance with others, while employed as such an officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the State Board of Insurance cash (or securities approved by the State Board of Insurance) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

In addition to the bond required in the preceding paragraph, each corporation shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the State Board of Insurance with a minimum of \$1,000 and a maximum of \$10,000 for each employee, satisfactory and payable to the State Board of Insurance for the use and benefit of the corporation obligating the principal and surety to pay each pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.05. Claims; Cancellation of Certificate of Authority

All lawful claims for payment based upon certificates issued to participants shall be paid within 120 days after receipt of due proof of claim. Written notice of claim given to a corporation complying with the requirements of this chapter shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the participant

making claim within 15 days such forms as are usually furnished by it for filing such claims. The State Board of Insurance after public hearing on written specifications after 20 days notice shall cancel the certificate of authority of any such corporation found to be not in compliance with this chapter, operating fraudulently, or which fails to pay its valid claims in accordance with the provisions of this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.06. Dissolution

Any dissolution or liquidation of any corporation subject to the provisions of this chapter shall be under the supervision of the State Board of Insurance. In case of dissolution of any group formed under the provisions of this chapter, participants' claims shall be given priority over all other claims except cost of liquidation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.07. Method of Dissolution

Any corporation operating under this chapter may be dissolved at any time by a vote of its board of directors, and after such action has been approved by the State Board of Insurance. In the case of voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers (including the settlement of all outstanding obligations to participants), and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved by the State Board of Insurance, the provisions for voluntary dissolution under the Texas Non-Profit Corporation Act shall be followed to dissolve the corporation. In all other cases where a corporation operating under this chapter is found to be insolvent, or to have violated the provisions of this chapter, on a determination of this condition, and after due notice and hearing, the affairs of the corporation shall be disposed of by a liquidator appointed by and under the supervision of the State Board of Insurance, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.08. Fees; Taxes

(a) The State Board of Insurance shall charge a fee of \$50 for filing the annual statement of each corporation operating under this chapter; an application fee of \$100 for each corporation applying under this chapter; and a fee of \$25 for the issuance of each certificate of authority to the corporation.

(b) To defray the expense of carrying out the provisions of this chapter, there shall be annually assessed and collected by the State of Texas, through the State Board of Insurance, from each corporation operating under this chapter, in addition to all other taxes now imposed, or which may here-

after be imposed by law, a tax of one percent of all revenues received by such corporation in return for issuance of prepaid legal services contracts in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes, when collected, shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and money in his hands, and shall be known as the Prepaid Legal Services Fund, said fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures shall not exceed in the aggregate the sum assessed and collected from such corporations; and should there be an unexpended balance at the end of any year, the State Board of Insurance shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the treasury will be sufficient to pay all expenses of carrying out the provisions of this chapter, which funds shall be paid out and filed by a majority of the State Board of Insurance when the comptroller shall issue warrants therefor. Any amount remaining in said fund at the end of any year shall be carried over and expended in accordance with the provisions of this article during the subsequent year or years. Provided, that no expenditures shall be made from said fund except under authority of the legislature as set forth in the general appropriations bill.

(c) The payment of the maximum tax of one percent provided by the preceding section of this article by any corporation complying with this chapter in any year either as a maintenance tax or as a voluntary elected payment into the General Revenue Fund of the State of Texas or a combination of such payments equaling such one percent shall be deemed to be a payment in lieu of any franchise or other gross receipts tax by or under the laws of this state and such corporation shall be exempt from such franchise and other gross revenue taxes as would apply to such corporation during the period for which the one percent tax or voluntary payment or combination thereof is made.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.09. Applications

Any corporation complying with the requirements of this chapter shall be authorized to accept applicants, who upon issuance of a benefit certificate shall be entitled to legal services for such period of time as is provided therein. Such corporation shall be governed by this chapter and shall not be construed as being engaged in the business of insurance nor subject to laws respecting insurers so long as it complies with the provisions of this chapter. The provisions of this article shall not be deemed to declare the issuance of contracts for prepaid legal services when done by those entities other than

corporations complying with this chapter not to be the business of insurance. The right of corporations complying with the requirements of this chapter to issue prepaid legal services contracts on individual, group, and franchise bases is recognized.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.10. Corporations Non-Profit; Funds; Investments

The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit nonmembership organizations for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. Provided further, that each such corporation shall have two funds, namely: the claim fund and the expense fund. The claim fund shall be composed of at least 80 percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. The application fees shall be paid by applicants prior to issuance of a benefit certificate, and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. Claim fund investments may include, besides lawful money and demand deposits, only certificates of deposits, share accounts, and time deposits in public banks and savings and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the expense fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The claim fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, and refunds of fees paid into such fund; and to the extent approved by the State Board of Insurance, cost of settling contested claims, expenses directly incurred on or for preservation of investments of the claim fund and contracts authorized under Article 23.19 of this code.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.11. Authority to Contract

Corporations complying with the requirements of this chapter shall have authority to contract in accordance with this chapter with attorneys in such manner as to assure to each participant holding a

benefit certificate of the corporation the furnishing of such legal services by attorney under contract, or who shall agree to contract, to the extent agreed upon in prepaid legal service contract between the corporation and the participant, with the right to the corporation to limit in the prepaid legal service contract and benefit certificate the types and extent of benefits and the circumstances for which such legal services shall be furnished.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.12. Limitations

The corporation complying with the requirements of this chapter shall not contract itself to practice law in any manner, nor shall the corporation control or attempt to control the relations existing between a participant and his or her attorney, but the corporation shall confine its activities to contracting as an agent on behalf of its participants for legal services to be rendered only by and through contracting attorneys, who shall never be employees of the corporation but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the participants. Such corporation must agree to contract under Article 23.11 of this code with any attorney licensed by the Supreme Court to practice law in Texas. Contracting attorneys shall maintain such professional liability, and errors and omissions insurance as the corporation shall deem proper and the State Board of Insurance may by uniform rule declare a minimum amount of each such coverage to be maintained.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.13. Contingent Liabilities

Any person may advance to the corporation on contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this chapter and such money and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval of the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.14. Supervision

Every corporation complying with the requirements of this chapter shall, before accepting applications for participation in said non-profit legal service plan, have sufficient money in its expense fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan, rate schedule, and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable and not excessive before such corporation shall en-

gage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation and its rate schedule of charges to participants. No change in such plan or rate schedule shall be effectuated without its first being filed and approved by the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.15. Approval of Rates

The State Board of Insurance shall likewise approve the ratio of benefits to be paid to anticipated revenues from the rate schedule proposed to be used if such be found to be actuarially sound. No prepaid legal services contract or benefit certificate thereunder shall be issued by corporations complying with this chapter without such finding. The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation. Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.16. Benefit Certificates and Legal Services Contracts

Every corporation shall issue to its applicants that are covered by a contract for prepaid legal services benefit certificates setting forth the benefits to which they are or may become entitled. Such certificates, application forms, and contracts made between the corporation and the participants' employer or group representative shall be in form approved by the State Board of Insurance prior to issuance. The State Board of Insurance shall be authorized to issue rules and regulations concerning such forms to provide that they shall properly describe their benefits and not be unjust, misleading, or deceptive.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.17. Blank Deposits

All funds collected from applicants and participants of a corporation complying with this chapter shall be deposited to the account of the corporation in a public bank, which is a state depository having

Federal Deposit Insurance Corporation protection of its deposits.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.18. Finance Procedures

A corporation complying with the requirements of this chapter shall not pay any of the claim funds collected from participants to any attorney except for legal services rendered by such attorney to the participants.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.19. Participation Contracts; Agreements with Insurers

Corporations complying with the requirements of this chapter shall be authorized to contract with other organizations complying with this chapter and insurers licensed to do business in Texas for joint participation through mutualization contract agreements or guaranty treaties or otherwise cede or accept legal services obligations from such companies on the whole or any part of such legal service obligations, provided that such contract forms, documents, treaties, or agreement forms are filed with and approved by the State Board of Insurance to be in accordance with the plan of operation of the corporation prior to their effectiveness.

The State Board of Insurance shall be authorized to issue rules and regulations concerning such participation contracts and agreements with insurers as provided by this article in accordance with and in carrying out its purposes.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.20. Expenses of Directors: Meetings

No director of any corporation created under this chapter shall receive any salary, wages, or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of the corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.21. Examination of Books and Records

Every corporation complying with this chapter shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the State Board of Insurance, the expense of such examination to be borne by said corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.22. Complaints

The State Board of Insurance shall refer any complaints received by it concerning the performance of any attorney connected with any corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by

the Supreme Court to receive attorney grievances from the public.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.23. Regulation of Agents

The State Board of Insurance may after notice and hearing promulgate such reasonable rules and regulations as are necessary to license and control agents of corporations complying with this chapter. An agent means a natural person who solicits legal services contracts or enrolls applicants.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.24. Hazardous Financial Condition

(a) Whenever the financial condition of any corporation complying with the requirements of this chapter indicates a condition such that the continued operation of such corporation might be hazardous to its participants, creditors, or the general public, then the State Board of Insurance may, after notice and hearing, order such corporation to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by use of Article 23.19 of this code;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods; or

(4) to suspend or limit the writing of new business for a period of time.

Where none of the foregoing remedies is effective and the hazardous condition is determined to be a shortage of money in the expense fund the State Board of Insurance may after further notice and hearing order funds sufficient to cure the hazardous condition to be placed in the expense fund. The State Board of Insurance shall not have authority hereby to require the maintenance of money in the expense fund except as provided by Article 23.02(3) of this code.

(b) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its participants, creditors, or the general public, and to fix standards for evaluating the financial condition of any corporation complying with the requirement of this chapter, which standards shall be consistent with the purposes expressed in this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.25. Management and Exclusive Agency Contracts

(a) No corporation complying with the requirements of this chapter may enter into an exclusive agency contract or management contract, unless the contract is first filed with the State Board of Insurance and approved under this article within 30 days after filing or such reasonable extended period as the State Board of Insurance may specify by notice given within the 30 days.

(b) The State Board of Insurance shall disapprove a contract submitted under Section (a) of this article if it finds that:

(1) it subjects the corporation to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation with due regard for the interest of its participants, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the corporation's participants, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.26. Application of Other Laws

(a) Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Laws Act and the Texas Non-Profit Corporation Act as those laws now exist or may be amended in the future to the extent the provisions of this chapter are not in conflict therewith.

(b) The following provisions of the Insurance Code as they now exist or shall hereafter be amended shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 3.14, 21.21, 21.25, 21.28, 21.28A, and 21.47 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the Insurance Code, as amended.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

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TEXAS PROBATE CODE

CHAPTER 1. GENERAL PROVISIONS

§ 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

[See Compact Edition, Volume 2 for text of (a) to (d)]

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(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, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

[See Compact Edition, Volume 2 for text of (h) to (s)]

(t) "Minors" are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

[See Compact Edition, Volume 2 for text of (u) to (hh)]

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2195, ch. 701, § 1, eff. June 21, 1975.]

§ 5. Jurisdiction of District Court and Other Courts of Record With Respect to Probate Proceedings and Appeals from Probate Orders

(a) The district court shall have original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

(b) In those counties where there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding pro-

bate, administrations, guardianships, and mental illness matters shall be filed and heard in the county court, except that in contested probate matters, the judge of the county court may on his own motion, or shall on the motion of any party to the proceeding transfer such proceeding to the district court, which may then hear such proceeding as if originally filed in such court. In contested matters transferred to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court, and it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons and to apprentice minors, as provided by law. Upon resolution of all pending contested matters, the probate proceeding shall be transferred by the district court to the county court for further proceedings not inconsistent with the orders of the district court.

(c) In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in such courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts.

(d) All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate, including but not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate, all actions for trial of the right of property incident to an estate, and actions to construe wills.

(e) All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals.

[Amended by Acts 1975, 64th Leg., p. 2195, ch. 701, § 2, eff. June 21, 1975.]

§ 28. Personal Representative to Serve Pending Appeal of Appointment

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.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 3, eff. June 21, 1975.]

§ 30. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

§ 36. Duty and Responsibility of Judge

It shall be the duty of each county and probate 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 duty enjoined upon them by law pertaining to such estates and wards. The judge shall annually, if in his opinion the same be necessary, examine 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 estate and guardians of persons. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate or ward, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

[Amended by Acts 1975, 64th Leg., p. 979, ch. 375, § 1, eff. June 19, 1975.]

CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION AND GUARDIANSHIP.

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 Five Thousand Dollars; and

(d) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by such distributees as have legal

capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee, which affidavit shall be approved by the judge of the court having jurisdiction and venue, to be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, the names and addresses of the distributees, and their right to receive the money or property of the estate, or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estates; and

(e) A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property or other right belonging to said estate.

Henceforth the county clerk of every county in this state shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

[Amended by Acts 1975, 64th Leg., p. 1402, ch. 543, § 1, eff. Sept. 1, 1975.]

PART 4. INDEPENDENT ADMINISTRATION

§ 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 six months from the date of the probate of the will appointing him.

[Amended by Acts 1975, 64th Leg., p. 980, ch. 376, § 1, eff. June 19, 1975.]

CHAPTER VII. EXECUTORS, ADMINISTRATORS, AND GUARDIANS

PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

§ 200. Bond of Married Person Under Eighteen Years of Age

When a person under eighteen 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. [Amended by Acts 1975, 64th Leg., p. 105, ch. 45, § 3, eff. Sept. 1, 1975.]

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

§ 230. Care of Property of Estates

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

(b) Estates of Wards (1) General Powers and Duties. 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.

(2) Power to Make Tax-Motivated Gifts. (A) On application of the guardian or any interested party, and after notice to all interested persons and to such other persons as the court may direct, and on a showing that the ward will probably remain incompetent during his lifetime, the court may, after hearing and by order, authorize the guardian to apply such principal or income of the ward's estate as is not required for the support of the ward during his lifetime or of his family towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. The court may authorize the guardian to make gifts of the ward's personal property or real estate, outright or in trust, on behalf of the ward, to or for the benefit of

(i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest,

(ii) the ward's heirs at law who are identifiable at the time of the order,

(iii) devisees under the ward's last validly executed will, if there be such a will,

(iv) and a person serving as guardian of the ward provided he is eligible under either category (ii) or (iii) above.

(B) The person making application to the court shall outline the proposed estate plan, setting forth all the benefits to be derived therefrom. The application shall also indicate that the planned disposition is consistent with the intentions of the ward insofar as they can be ascertained. If the ward's intentions

cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of his estate as herein provided.

(C) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings, if deemed advisable for the protection of the ward or the interested party.

(D) Subsequent modifications of an approved plan may be made by similar application to the court. [Amended by Acts 1975, 64th Leg., p. 268, ch. 114, § 1, eff. April 30, 1975.]

§ 236. Sums Allowable for Education and Maintenance of Ward

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

(b) Court Approval of Previous Expenditures. When a guardian has in good faith expended funds from the corpus of his ward's estate for support and maintenance for emergency purposes, and when it is not convenient or possible to first secure approval of the Court, if the proof is clear and convincing that such expenditures were reasonable and proper and such that the Court would have granted authority to make the expenditures out of the corpus, and that the ward received the benefits of such expenditures, the judge, in the exercise of his sound discretion, may approve such expenditures in the same manner as if such expenditures were made by the guardian out of the income from the ward's estate. Provided, however, such expenditures may not exceed the sum of Two Thousand Dollars (\$2,000).

[Amended by Acts 1975, 64th Leg., p. 978, ch. 374, § 1, eff. June 19, 1975.]

CHAPTER VIII. PROCEEDINGS DURING ADMINISTRATION AND GUARDIANSHIP

PART 4. PRESENTATION AND PAYMENT OF CLAIMS

§ 312. Contest of Claims, Action by Court, and Appeals

[See Compact Edition Volume 2 for text of (a) to (d)]

(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 courts of (civil) appeals, as from other judgments of the county court in probate matters.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 14, eff. June 21, 1975.]

§ 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute

suit thereon in the court of original probate jurisdiction in which the estate is pending or in any other court of proper jurisdiction 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, if of any court other than the court of original probate jurisdiction, 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.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 5, eff. June 21, 1975.]

§ 320. Order of Payment of Claims

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

(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, in the following order:

- (1) expenses for the care, maintenance and education of the ward or his dependents;
- (2) expenses of administration;
- (3) other claims against the estate.

(c) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

[Amended by Acts 1975, 64th Leg., p. 1818, ch. 554, § 1, eff. Sept. 1, 1975.]

PART 5. SALES

§ 341. Application for Sale of Real Estate

(a) Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents and wards.

(2) Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.

(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(4) Dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.

(5) Conserve the estate of a ward by selling mineral interest and/or royalties on minerals in place owned by a ward.

(6) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

(b) Any natural or adoptive parent of a minor who is not a ward may apply to the court for an order to sell property of a minor without being appointed guardian, when the value of the property does not exceed \$1,500. A sale of property pursuant to an order of the court under the subsection is not subject to disaffirmance by the minor.

(c) Such parent shall make application under oath to the court for the sale of such property. Venue for such application shall be the same as in applications for the appointment for guardians of a minor. The application shall contain the following information:

- (1) A Legal description of the property.
- (2) The name of the minor, or minors and his interest in the property.
- (3) The name of the purchaser.
- (4) That such sale of the minor's interest is for cash.
- (5) That all funds received by the parent shall be used for the use and benefit of such minor.

(d) The court shall upon receipt of such application set the same for hearing at a date not less than five days from date of filing of such application, and if it deems necessary may cause citation to be issued.

(e) At the time of the hearing of said application, the court shall order the sale of such property, if it is satisfied from the evidence that the sale is in the best interest of said minor.

(f) When the order of sale has been entered by the court, the purchaser of such property shall pay the proceeds of such sale belonging to said minor or minors into the registry of the court.

(g) Nothing in this section shall prevent the proceeds so deposited from being withdrawn from the registry of the court under Section 144 of the Texas Probate Code.

[Amended by Acts 1975, 64th Leg., p. 975, ch. 372, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 976, ch. 373, § 1, eff. June 19, 1975.]

§ 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 as in other final judgments in probate proceedings.

[Amended by Acts 1975, 64th Leg., p. 2197, ch. 701, § 6, eff. June 21, 1975.]

PART 9. PARTITION OF WARD'S ESTATE IN REALTY

§ 388. Partition of Ward's Interest in Realty

[See *Compact Edition, Volume 2 for text of (a) to (e)*]

(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 others, part owner or owners, should be partitioned, he may bring suit in the court in which such guardianship proceedings are pending against the other part owner for the partition of such real estate; and the court after hearing such suit may, if it is satisfied that such necessity exists, enter an order partitioning such real estate to the owner thereof.

[Amended by Acts 1975, 64th Leg., p. 1128, ch. 427, § 1, eff. June 19, 1975.]

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 eighteen 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.

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 2, eff. Sept. 1, 1975.]

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Art. 7057c. Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. V, § 1, eff. Sept. 1, 1975.

Prior to repeal, § 2 of this article was amended by Acts 1965, 59th Leg., p. 73, ch. 26, § 1.

Art. 7100. Repealed by Acts 1975, 64th Leg., p. 898, ch. 334, § 11, eff. Sept. 1, 1975

Art. 7150. Exemption from Taxation

The following property shall be exempt from taxation, to-wit:

[See Compact Edition, Volume 2 for text of 1 to [19]]

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, the American G.I. Forum, 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.

[See Compact Edition, Volume 2 for text of 21 and 22, added by Acts 1967, 60th Leg., p. 319, ch. 152, § 1]

22. All real and personal property owned by non-profit corporations (as defined in the Texas Non-Profit Corporation Act), which property is reasonably necessary for, and used for, the promotion of any of the following purposes:

- (1) Libraries and archival institutions
- (2) Zoos

(3) Restoration and preservation of historic houses, structures and landmarks

(4) Symphony orchestras, choirs, and chorals

(5) Theaters of the dramatic arts, historical pageants

(6) Youth athletic programs, including little league football and baseball.

[See Compact Edition, Volume 2 for text of 22a to 28]

[Amended by Acts 1975, 64th Leg., p. 2314, ch. 719, art. 14, § 1, art. 19, § 1, eff., Sept. 1, 1975.]

Art. 7150h. Exemption of Property of Disabled and Deceased Veterans

[Text of article effective Jan. 1, 1976]

Exemption

Sec. 1. There are exempted from all property taxes levied by the state, a county, city, town, school district, special district, or other political subdivision of the state the value of assessed property owned by a disabled veteran or by the surviving spouse or children of a deceased veteran in the amounts provided in this Act.

Disabled Veteran Defined; Percentage of Disability

Sec. 2. (a) A "disabled veteran" is a person classified as a disabled veteran by the Veterans Administration of the United States (or the successor of that agency) or by the branch of the armed services of the United States in which he served, and whose disability is service connected.

(b) The percentage of disability under this Act is the percentage of disability that is certified for the veteran by the Veterans Administration of the United States or by the branch of the armed services of the United States in which he served.

Amount of Exemption

Sec. 3. (a) A disabled veteran whose disability is less than 10 percent is not entitled to an exemption under this Act.

(b) A disabled veteran whose disability is 10 percent or more, but not more than 30 percent, is entitled to an exemption of the first \$1,500 of the assessed value of his property.

(c) A disabled veteran whose disability is more than 30 percent, but not more than 50 percent is entitled to an exemption of the first \$2,000 of the assessed value of his property.

(d) A disabled veteran whose disability is more than 50 percent, but not more than 70 percent is

entitled to an exemption of the first \$2,500 of the assessed value of his property.

(e) A disabled veteran whose disability is more than 70 percent is entitled to an exemption of the first \$3,000 of the assessed value of his property.

(f) A disabled veteran whose disability is 10 percent or more and who is 65 years old or older is entitled to an exemption of the first \$3,000 of the assessed value of his property.

(g) A disabled veteran whose disability consists of the loss of the use of one or more limbs, total blindness in one or both eyes, or paraplegia is entitled to an exemption of the first \$3,000 of the assessed value of his property.

Qualification Under More Than One Exemption

Sec. 4. A disabled veteran who qualifies under more than one of the exemptions under Section 3 of this Act is not entitled to aggregate or combine the value of the exemptions, but may take the exemption allowing the largest exclusion.

Surviving Spouse's Exemption

Sec. 5. The surviving spouse of a person who dies while on active duty in the armed services of the United States is entitled to an exemption of the first \$2,500 of the assessed value of the spouse's property.

Surviving Child's Exemption

Sec. 6. A surviving child of a person who dies while on active duty in the armed services of the United States is entitled to an exemption of the first \$2,500 of the assessed value of the child's property during the period that the child is under 21 years old and is unmarried.

Effective Date of Exemption

Sec. 7. An exemption authorized under Sections 5 and 6 of this Act becomes effective on January 1 of the year following the year in which the member of the armed services of the United States died, and the eligibility of the surviving spouse or child is determined on the effective date of the exemption.

Deceased Disabled Veteran; Exemption of Surviving Spouse

Sec. 8. The surviving spouse of a deceased disabled veteran, who at the time of his death was entitled to an exemption under Section 3 of this Act, is entitled to an exemption equal to the amount the deceased disabled veteran was entitled to receive at the time of his death, if the surviving spouse is unmarried.

Deceased Disabled Veteran; Exemption of Qualified Child

Sec. 9. (a) This section applies only if there is no person receiving an exemption under Section 8 of this Act.

(b) Each qualified child of a deceased disabled veteran who was entitled to an exemption under

Section 3 of this Act at the time of his death is entitled to an exemption from property taxes in an amount determined under Subsection (c) of this section.

(c) The amount of the exemption allowable under Subsection (b) of this section is determined by dividing the amount of the exemption to which the deceased disabled veteran was entitled at the time of his death by the number of qualified children.

(d) A qualified child of a disabled veteran is any child who is less than 21 years old, is unmarried, and has property which would be subject to taxation by any taxing unit in the state without regard to the exemption authorized in this section.

Multiple Exemptions

Sec. 10. (a) A person who is entitled to an exemption under this Act as a disabled veteran and also is entitled to an exemption as the surviving spouse or child of a deceased disabled veteran or as the surviving spouse or child of a person who died while on active duty in the armed services of the United States is entitled to add the value of each exemption and is exempt from property taxes in an amount equal to the sum of the exemptions.

(b) A person who is entitled to an exemption as the spouse of a deceased disabled veteran is not entitled to an exemption as the child of a disabled veteran or as the child of a person who died while on active duty in the armed services of the United States.

Tax Assessor-Collectors Form for Claiming Exemption

Sec. 11. The tax assessor-collector of each taxing unit responsible for assessing and collecting property taxes in this state shall provide to each person appearing at the office of the tax assessor-collector to render his property or to have his property assessed and to each person personally visited by the tax assessor-collector to assess property a form on which the person may claim any exemption allowed under this Act.

Regulations of Comptroller of Public Accounts

Sec. 12. The comptroller of public accounts shall make regulations providing for the manner in which proof of eligibility of an exemption may be made. The comptroller may also make regulations concerning the duties of tax assessor-collectors under this Act and the manner in which an exemption may be claimed.

Purpose of Act

Sec. 13. The purpose of this Act is to provide for exemptions under the authority of Article VIII, Section 2(b), of the Texas Constitution.
[Amended by Acts 1975, 64th Leg., p. 2316, ch. 719, art. 20, § 1, eff. Jan. 1, 1976.]

[For text of article effective until Jan. 1, 1976, see Compact Edition, Volume 2]

Section 2 of art. XX of the 1975 amendatory act provides: "This Article takes effect January 1, 1976."

Art. 7150i. Exemption of Historic Sites

[Text of article added conditioned on constitutional amendment, rejected by the People on November 4, 1975]

The governing body of any political subdivision of this state that levies property taxes may exempt from property taxation part or all of the value of a structure, and the land necessary for access and use thereof, if the structure is:

(1) designated as a Recorded Historic Landmark by the Texas Historical Commission and by the governing body of the taxing unit; or

(2) designated as a historically significant site that is in need of tax relief to encourage its preservation under an ordinance adopted by the governing body of the taxing unit.

[Added by Acts 1975, 64th Leg., p. 1029, ch. 395, § 1; Acts 1975, 64th Leg., p. 2321, ch. 719, art. XXV, § 1.]

Section 2 of ch. 395 provided:

"This Act takes effect on the adoption of the Constitutional Amendment proposed in Section V of Senate Joint Resolution 11 as adopted by the 64th Legislature, Regular Session, 1975."

Section 2 of art. XXV of ch. 719 provided:

"Sec. 2. This Article takes effect on the adoption of the Constitutional Amendment proposed in Section V of Senate Joint Resolution 11 as adopted by the 64th Legislature, Regular Session, 1975."

Senate Joint Resolution II was rejected by the voters at election held November 4, 1975.

Art. 7150j. Notice of Homestead Exemption Availability to Person 65 or Older

If a county or other political subdivision adopts the residence homestead exemption for persons 65 years of age or older as permitted by Article VIII, Section 1-b(b), of the Texas Constitution, and requires persons to make a timely claim for the exemption, the subdivision shall include in at least one written communication mailed to its taxpayers each year a notice that the exemption is available and a form that a claimant may complete and return to the subdivision's tax office by mail to claim the exemption.

[Amended by Acts 1975, 64th Leg., p. 2322, ch. 719, art. 27, § 1, eff. Sept. 1, 1975.]

Articles I to XXVII of the 1975 Act revised and amended certain tax laws; art. XXVIII, § 1, thereof provided: "This Act takes effect September 1, 1975, unless otherwise specified within an Article."

Art. 7174a. Valuation of Open-space Land Used to Support Raising of Livestock or Produce Farm Crops or Forest Products

[Text of article effective Jan. 1, 1977, upon adoption of constitutional amendment, rejected by the People on November 4, 1975]

Definitions

Sec. 1. In this Act:

(1) "Open-space land" means all land with a five-year history of being devoted principally to the production of farm crops, forest products, or the raising of livestock, and that land without such a history which the owner has sworn by affidavit to the local taxing authority will be used for the production of farm crops, forest products, or the raising of livestock, exclusive of structures with a residential use and those structures used for processing farm crops, forest products, or livestock.

(2) "Farm crops" means plants and fruits grown for human or animal consumption and plants grown for the production of fibers, floriculture, viticulture, or horticulture.

(3) "Forest products" means forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items for industrial, commercial, or personal consumption.

(4) "Livestock" means farm or ranch animals kept for use and profit.

(5) "Capability of the land" refers to the value classification of land for agricultural and forestry use based on average yields with due consideration given to soil type, general topography, weather factors, location factors, and other pertinent information available from Texas A&M University and its subdivisions, the Texas Department of Agriculture, the Texas Forest Service, and other competent sources.

(6) "Average net income" means the average net income that would have been earned over the five-year period immediately preceding the valuation by a person using ordinary prudence in the management of the land and the farm crops, forest products, or livestock produced or supported thereon.

Valuation of Open-space Land

Sec. 2. The value for ad valorem tax purposes of open-space land used to support the raising of livestock or production of farm crops or forest products shall be determined on the basis of the capability of the land to support livestock or produce farm crops or forest products using accepted income capitalization methods applied to average net income, such capability to be determined by rule promulgated by the comptroller of public accounts utilizing information available from Texas A&M University and its subdivisions, the Texas Department of Agriculture, the Texas Forest Service, and other competent sources. The value so determined shall never exceed the fair market value of the land as determined by other appraisal methods. The valuations shall in-

clude all real property employed and all improvements and structures used in connection with the real property, provided that confined feeding operations, structures used for processing farm crops, forest products, and those structures designated for residential use shall be valued at market value. Pursuant to rule-making authority, the comptroller shall develop and distribute to all taxing authorities appraisal manuals setting forth this method of valuing open-space land, including average net income figures for livestock, farm crops, and forestry enterprises, and such appraisal manuals shall be used by each taxing authority in determining the value of open-space land. For the valuation function enumerated in Section 4 of this Act the tax records of the valuations of open-space land used to support the raising of livestock or production of farm crops or forest products shall also contain the full market value of the open-space land. The local taxing authority shall develop and enforce procedures to verify that the land in question meets the conditions contained in Section 1(1) of this Act.

Capitalization Rate

Sec. 3. The income capitalization rate to be used in determining the value of open-space land shall be 10 percent or an amount equal to 2 percent greater than the average variable interest rate specified by the Federal Land Bank of Houston, in Houston, Texas, for the immediately preceding tax year, whichever percentage is the greater.

Change of Use of Land

Sec. 4. If the local taxing authority finds that the open-space land devoted to the production of farm crops, forest products, or livestock ceases to be used for the production of farm crops, forest products, or livestock, the land shall be appraised at market value, and the owner shall pay to each taxing authority imposing ad valorem taxes on the land a tax equal to the difference between the taxes paid or payable on the land during the previous four years under its open-space land for farm crops, forest products, or livestock designation and that tax that would have been levied had the land been appraised at market value for the same period of time plus interest at the rate of 5 percent per annum calculated from the dates on which the difference would have become due.

Minimum Appraisal of Forest Land

Sec. 5. The value for ad valorem tax purposes of open-space land used for the production of forest products as provided in Section 2 of this Act shall not be less than the appraised value of such land for the 1976 tax year; provided, however, that the value used for any tax year shall never exceed the fair market value of the land as determined by other appraisal methods.

Effective Date

Sec. 6. This Act takes effect January 1, 1977, but only if the constitutional amendment proposed by Section 5, S.J.R. No. 11, 64th Legislature, Regular Session, 1975, is adopted.¹

[Acts 1975, 64th Leg., p. 2374, ch. 733, §§ 1 to 6, eff. Jan. 1, 1977.]

¹ Senate Joint Resolution II was rejected by the voters at election held November 4, 1975.

CHAPTER EIGHT. COLLECTION AND COLLECTOR

Art. 7260. Monthly Reports

[See Compact Edition, Volume 2 for text of 1 to 7]

8. (a) The Tax Collector shall, on proof of error, be entitled to deduct amounts of ad valorem tax payments, if paid in error, from the amounts of taxes due the State of Texas; and same shall be by him refunded to claimants; and the State Comptroller shall, on proof of error, honor such deductions the same as if made in the month in which the payment was actually made.

(b) This section applies only in a case of mistake acknowledged by the tax collector and does not apply to a case involving a dispute between a taxpayer and the tax collector.

(c) The comptroller may honor a deduction made under the authority of this section only after an independent examination of the evidence offered in proof of the claim and on a finding that the claim is valid and arises from a mistake.

[Amended by Acts 1975, 64th Leg., p. 629, ch. 260, § 1, eff. Sept. 1, 1975.]

Art. 7261. Duties of Clerk and Collector

[See Compact Edition, Volume 2 for text of 1 to 6]

7. When the Tax Collector determines that county ad valorem taxes or other ad valorem taxes collected by the Tax Collector on behalf of other Tax Units have been erroneously paid or overpaid, through mistake of law or fact, the Tax Collector, upon verification by the County Auditor of the erroneous payment or overpayment, may refund such erroneous payment or overpayment from available tax-collection revenues received or other available funds appropriated for this purpose. Application for a refund must be made by the taxpayer affected and filed with the Tax Collector within three (3) years of the date of the erroneous payment or overpayment. For all refunds in excess of \$500 the Tax Collector must present the application for the refund to the Tax Unit's governing body for verification and approval.

[Amended by Acts 1975, 64th Leg., p. 1347, ch. 506, § 1, eff. Sept. 1, 1975.]

CHAPTER ELEVEN. IN CERTAIN CASES**Art. 7359. City May Use County Officers**

Any incorporated city, town or village in this State is hereby authorized by ordinance to authorize the county tax assessor and county tax collector of the county in which said city, town or village is situated, to act as tax assessor and tax collector respectively for said city, town or village. The property in said city, town or village utilizing such county assessor and collector shall be assessed at the same value as it is assessed for county and State purposes, except that real property in an incorporated city in a county of 830,460 population, or greater, according to the last preceding federal census, by ordinance of the city government may be assessed at a greater rate of value than the same property is assessed for state and county purposes. When an ordinance is so passed making available their services, said assessor shall assess the taxes for said city, town or village and perform the duties of tax asses-

sor for said city, town or village according to the ordinances of said city, town or village and according to law; and said collector shall collect the taxes and assessments for said city, town or village and turn over as soon as collected to the city depository of said city or other authority authorized to receive such taxes or assessments, all taxes or money so collected, and shall perform the duties of tax collector of said city, town or village according to the ordinances thereof and according to law, deducting from the taxes so collected his fees provided for herein; and they shall respectively receive for such services one percent of the taxes so collected, except the fee for the collection of taxes of a city in a county having a population of 830,460 or more, according to the last preceding federal census, may be determined by agreement between the county tax assessor-collector and the city of an amount not to exceed the actual costs to the county.

[Amended by Acts 1975, 64th Leg., p. 663, ch. 278, § 2, eff. Sept. 1, 1975.]

*

TITLE 122A. TAXATION—GENERAL

CHAPTER 1. GENERAL PROVISIONS

Article.

- 1.034. Dates for Filing Reports and Making Payments [NEW].
1.13A. Penalty and Interest [NEW].

Art. 1.034. Dates for Filing Reports and Making Payments

The Comptroller of Public Accounts is authorized to prescribe the date for filing reports and payments required to be made pursuant to the provisions of this Title notwithstanding other specific requirements for reporting or payments contained in the Title except those specific provisions of Chapter 20 of this Title.

[Added by Acts 1975, 64th Leg., p. 2315, ch. 719, art. 15, § 1, eff. Sept. 1, 1975.]

Art. 1.13. Timely Filing of Reports

[See Compact Edition, Volume 2 for text of (a) to (g)]

(h) Notwithstanding any other specific provision in this title to the contrary, the comptroller is authorized to grant upon written request by any person required to file or make any report by this title on or before a specified date a reasonable extension of time not to exceed 45 days to make or file the return or returns. In order to be eligible for an extension of time in which to file a return, the person must state in the request the reasons or grounds for the extension of time and remit 90 percent of the taxes estimated to be due on or before the filing date specified in other provisions of the title.

[Amended by Acts 1975, 64th Leg., p. 1092, ch. 412, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:
"This Act takes effect September 1, 1975."

Art. 1.13A. Penalty and Interest

Notwithstanding any other specific provisions of this title to the contrary, any penalty and/or interest provided by this title will not become due or payable upon a determination by the comptroller that the person making any report required by this title exercised reasonable diligence to comply with the provisions of this title.

[Added by Acts 1975, 64th Leg., p. 1093, ch. 413, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:
"This Act takes effect September 1, 1975."

CHAPTER 6. MOTOR VEHICLE RETAIL SALES AND USE TAX

Article

- 6.041. Revocation; Suspension of Motor Vehicle Retail Seller's Permit; Procedure [NEW].

Art. 6.01. Imposition of Tax

[See Compact Edition, Volume 2 for text of (1) to (8)]

[Text of sec. (9) added by Acts 1975, 64th Leg., p. 167, ch. 71, § 1]

(9) There is hereby levied a use tax in the sum of Twenty Dollars (\$20) upon any person to whom any metal dealer plate is issued by the Texas Highway Department pursuant to the provisions of Article 6686, Revised Civil Statutes of Texas, 1925, as amended. The tax shall be paid on each metal plate issued and shall be in lieu of any other tax levied under this Chapter. The taxes levied by this section shall be paid to the Texas Highway Department, which Department shall deposit said funds in the State Treasury to be credited in the same manner as other taxes collected under this Chapter. The tax shall be paid at the same time application is made for the issuance of any metal dealer plate and the Texas Highway Department shall refuse to issue any such plate until said tax is paid.

[Text of sec. (9) added by Acts 1975, 64th Leg., p. 2308, ch. 719, art. X, § 1]

(9) When a lessor-purchaser acquires a motor vehicle that is to be leased to a public agency, he is not required to pay the tax imposed by this Chapter if he presents to the Tax Assessor-Collector a form prescribed and provided by the Comptroller showing the identification of the motor vehicle and the name and address of the lessor and the lessee and verified by the lessor and an officer of the public agency to which the motor vehicle is to be leased and operated with exempt license number plates issued under Article 6675a-3aa, Title 116, Revised Civil Statutes of Texas, 1925, as amended. When a motor vehicle for which the tax has not been paid under this section is no longer leased to a public agency, the owner shall notify the Comptroller of Public Accounts of the fact on a form prescribed and provided by the Comptroller and shall pay the tax on the motor vehicle based on the owner's book value at the rate prescribed by this Article.

[Amended by Acts 1975, 64th Leg., p. 167, ch. 71, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2308, ch. 719, art. 10, § 1, eff. Sept. 1, 1975.]

Art. 6.03. Title Definitions

The following words shall have the following meaning unless a different meaning clearly appears from the context.

[See Compact Edition, Volume 2 for text of (A) to (F)]

(G) "Public agency" means a department, commission, board, office, institution, or other agency of the State of Texas or of a county, city, town, school district, hospital district, water district, or other special district or authority or political subdivision created by or pursuant to the constitution or the statutes of this state.

[Amended by Acts 1975, 64th Leg., p. 2308, ch. 719, art. 10, § 2, eff. Sept. 1, 1975.]

Art. 6.041. Revocation; Suspension of Motor Vehicle Retail Seller's Permit; Procedure

(1) Whenever any motor vehicle owner required by Article 6.04 to obtain a Motor Vehicle Retail Seller's Permit fails to comply with any provision of this Chapter or with any rule or regulation of the Comptroller relating to such tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person twenty (20) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

(2) The Comptroller shall give to the person written notice of the suspension or revocation of any of his permits.

(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(4) The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this Chapter and the rules and regulations of the Comptroller. The Comptroller may prescribe the terms under which a suspended permit may be reissued.

(5) The action of the Comptroller may be appealed by the taxpayer in the same manner as a final deficiency determination.

[Added by Acts 1975, 64th Leg., p. 2315, ch. 719, art. 17, § 1, eff. Sept. 1, 1975.]

CHAPTER 7. CIGARETTE TAX LAW**Art. 7.08. Authority of Comptroller**

[See Compact Edition, Volume 2 for text of (1) to (8)]

(9) The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or

the set meter are received by the distributor. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall snip such stamps or set such meter in compliance with the order and transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement. However, in order to secure the payments of the tax as provided in this Section, a distributor must file with the State Treasurer a surety bond, approved by the State Treasurer and the Attorney General, with a corporate surety authorized to do business in this State, conditioned upon payment in full for the stamps or meter settings within the time specified in this Section. Payment by a company check or by personal check of a bonded distributor shall be treated as cash payment when received by the State Treasurer for payment of stamps or meter settings received by the bonded distributor. The State Treasurer shall fix the amount of the bond, in an amount equal to one and one-half times the credit in stamps and/or meter settings requested by the distributor and approved by the State Treasurer for the purchase of stamps and/or meter settings during the succeeding month. Any distributor who fails to forward the proper remittance by the due date shall be notified by the State Treasurer within five (5) days after the due date to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section and to enforce payment of the bond.

[Amended by Acts 1975, 64th Leg., p. 2321, ch. 719, art. 26, § 1, eff. Sept. 1, 1975.]

CHAPTER 8. CIGARS AND TOBACCO PRODUCTS TAX**Art. 8.02. Tax Levy and Rate**

There is hereby levied a tax upon the "first sale" of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

(a) Upon cigars of all description weighing not more than three (3) pounds per one thousand (1,000), one cent (1¢) for each ten (10) cigars or fraction thereof.

(b) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for not more than three

and three-tenths cents (3.3¢) each, seven dollars and fifty cents (\$7.50) per one thousand (1,000).

(c)(1) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing no substantial amount of non-tobacco ingredients, having a factory list price exclusive of this tax of less than two hundred fifteen dollars (\$215) per thousand (1,000), eleven dollars (\$11) per thousand (1,000).

(2) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing no substantial amount of non-tobacco ingredients, having a factory list price exclusive of this tax of two hundred fifteen dollars (\$215) or more per thousand (1,000), fifteen dollars (\$15) per thousand (1,000).

(3) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing a substantial amount of non-tobacco ingredients, fifteen dollars (\$15) per thousand (1,000).

(4) All cigars described in this Paragraph (c) are presumed to contain a substantial amount of non-tobacco ingredients unless the report to the Comptroller made for the purpose of establishing the tax upon such cigars is accompanied by an affidavit, by the manufacturer when the manufacturer prepares such report or by both the manufacturer and the distributor, when the distributor prepares such report, stating that specific cigars described in such report contain no sheet wrapper, sheet binder, or sheet filler.

(d) Upon all chewing tobacco and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five percent (25%) of the factory list price, exclusive of any trade discount, special discount, or deals. [Amended by Acts 1975, 64th Leg., p. 2319, ch. 719, art. 23, § 1, eff. July 1, 1975.]

Section 2 of art. XXIII of the 1975 amendatory act provides: "This Article takes effect July 1, 1975."

CHAPTER 11. MISCELLANEOUS TAXES BASED ON GROSS RECEIPTS

Art. 11.01. Express Companies

Repeal

This article is repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. IV, § 1, effective Jan. 1, 1976.

Art. 11.05. Sleeping, Palace or Dining Car Companies

Repeal

This article is repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. III, § 1, effective Jan. 1, 1976.

CHAPTER 12. FRANCHISE TAX

Art. 12.01. Base and Rate of Tax

(1) Except as otherwise provided in this chapter, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas shall file such reports as are required by Articles 12.08 and 12.19 and pay to the Comptroller a franchise tax for the period from May 1 of each year to and including April 30 of the following year, based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

(a) Basic Tax. Four Dollars and Twenty-five Cents (\$4.25) per \$1,000 or fractional part thereof applied to that portion of the sum of the stated capital, surplus, and undivided profits the sum of which for the purposes of this chapter is hereafter referred to as "taxable capital," allocable to Texas in accordance with Article 12.02. As used in this chapter, the phrase "stated capital" shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act;

(b) Four Dollars and Twenty-five Cents (\$4.25) per \$1,000 or fractional part thereof applied to the assessed value for county ad valorem tax purposes of the real and personal property owned by the corporation in this state; or

(c) Fifty-five Dollars (\$55).

(2) Other than those corporations enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, the corporations enumerated below shall be required to pay a franchise tax equal to one-fifth of the franchise tax imposed under Subsection (1)(a) or (1)(b) of this article, whichever is the greater, but not less than the entire tax imposed by Subsection (1)(c) of this article:

(a) corporations paying annually a tax on intangible assets as required by the laws of this state;

(b) corporations incorporated only for the purpose of owning or operating street railways or passenger bus systems in any city or town and suburbs thereof;

(c) corporations incorporated and doing business only for the purpose of maintaining or

owning or operating electric interurban railroads; and

(d) corporations, four-fifths or more of whose assets are invested in, and four-fifths or more of whose gross income is received from, voting common capital stock which comprises four-fifths or more of the total fully voting common capital stock of one or more corporations which are public utility corporations 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.

[Text of sec. (6) added by Acts 1975, 64th Leg., p. 2318, ch. 719, art. XXI, § 2]

(6) A corporation may deduct from its taxable capital taxable in this state the amortized cost of a solar energy device acquired by the corporation for the production of energy or for heating or cooling and used in this State by the corporation. The cost may be amortized for any period not less than 60 months in equal monthly amounts beginning on the month the device is placed into service in this State and extending only during the period that the device is in use in this State. A corporation making a deduction under this Section shall file with the Comptroller an amortization schedule showing the period during which a deduction is to be made and on the request of the Comptroller shall provide proof of the cost of the device and of its operation in this State. A separate deduction may be taken for each device placed in service in this State by the corporation.

[Amended by Acts 1975, 64th Leg., p. 2310, ch. 719, art. 12, § 1, art. 21, § 2, eff. Sept. 1, 1975.]

Section 2 of art. XII of the 1975 Act amended article 12.03; § 3 amended article 12.06(3); § 4 repealed article 12.211; and § 5 thereof provided:

"Sec. 5. This Article is not intended to be nor shall it or any provision of it ever be construed or deemed to be 'an Act of the Legislature passed subsequent to the effective date of Public Law 91-156 [12 U.S.C.A. § 548]' as that term is used in Acts 1971, 62nd Legislature, p. 1206, Chapter 292, Article 7, Section 1, effective July 1, 1971 [see note under article 20.02, Compact Edition, volume 21]."

Art. 12.03. Corporations Exempt

(1) The franchise tax imposed by this chapter shall not apply to:

(a) an insurance company; surety, guaranty, or fidelity company; transportation company; sleeping, palace car, and dining company now required to pay an annual tax measured by their gross receipts;

(b) a corporation organized as a railway terminal corporation and having no annual net income from the business done by it;

(c) a nonprofit corporation organized for the exclusive purpose of promoting the public interest of any county, city, or town, or other area within the state;

(d) a nonprofit corporation organized for the purpose of religious worship;

(e) a nonprofit corporation organized for the purpose of providing places of burial;

(f) a nonprofit corporation organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits;

(g) a nonprofit corporation organized for strictly educational purposes, including a corporation organized for the sole purpose of providing a student loan fund or student scholarships;

(h) a nonprofit corporation organized for purely public charity;

(i) a savings and loan association chartered or authorized to operate as a building or savings and loan association under the provisions of the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes);

(j) an open-end investment company, as defined in and subject to the Federal Investment Company Act of 1940 (15 U.S.Code, secs. 80a-1 et seq.), and which also is registered as such investment company under The Securities Act, as amended (Articles 581-1 et seq., Vernon's Texas Civil Statutes);

(k) a nonprofit corporation organized for the sole purpose of educating the public in the protection and conservation of fish, game, and other wildlife, as well as grasslands and forests;

(l) a nonprofit water supply or sewer service corporation organized in behalf of cities or towns pursuant to Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes);

(m) a nonprofit corporation organized for the purpose of constructing, acquiring, owning, leasing, or operating a natural gas facility in behalf of and for the benefit of a city or residents of a city;

(n) a nonprofit corporation organized for the purpose of providing convalescent homes or other housing for persons 62 years of age or older or for handicapped or disabled persons without regard to whether the corporation is for purely public charity;

(o) a nonprofit corporation engaged exclusively in the business of owning residential property for the purpose of providing cooperative housing for any person or persons;

(p) a corporation exempted from the payment of a franchise tax by the provisions of any of the laws of this state other than this chapter;

(q) a nonprofit corporation which has been exempted from the federal income tax under the provisions of Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as amended, as it existed on January 1, 1975; and

(r) corporations engaged exclusively in the business of manufacturing, selling, and installing solar energy devices, which term, for the purposes of this chapter, means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power.

(2) Each corporation eligible for exemption from the franchise tax under Subdivision (q) of Section 1 of this article shall furnish to the comptroller evidence sufficient to establish that it is exempt from the federal income tax. The federal exemption may be established by furnishing to the comptroller no later than the end of the month nearest the expiration of 15 months from the date of charter or certificate or from September 1, 1975, whichever is later, a copy of the letter of exemption issued to the corporation by the Internal Revenue Service. If a letter of exemption has not been timely issued by the Internal Revenue Service, the corporation may furnish to the comptroller within such 15-month period evidence that the corporation has in good faith filed an application for the federal exemption and, except as indicated in Section (6) of this article, the franchise tax exemption, when finally established under either of the above procedures, will be recognized as of the date of the corporation's charter or certificate.

(3) If a corporation timely furnishes evidence to the comptroller that it has made application in good faith for a federal income tax exemption, and if the application is finally denied by the Internal Revenue Service, no penalty provided in this chapter shall be added to the franchise tax owed by such corporation from the date of its charter or certificate to the date of such final denial.

(4) If a corporation's exemption from the federal income tax is withdrawn by the Internal Revenue Service for failure of the corporation to qualify or to maintain its qualification therefor, the corporation's franchise tax exemption shall terminate on April 30 next following the effective date of withdrawal of the federal exemption, and thereafter such corporation shall be subject to and shall be liable for the franchise tax levied by this chapter.

(5) Any corporation, whether or not eligible for exemption under Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as amended, as it existed on January 1, 1975, may elect to apply to the comptroller for exemption under an applicable provision of Section (1) of this article, by furnishing in accordance with rules and regulations promulgated by the comptroller evidence sufficient to establish

its exemption. If the application is submitted to the comptroller no later than the end of the month after the expiration of 15 months from the date of charter or certificate, or from September 1, 1975, whichever is later, except as indicated in Section (6) of this article, the exemption when finally established will be recognized as of such date of charter or certificate.

(6) The provisions of this article do not require any additional application, report, letter of exemption, or other evidence from a corporation eligible for exemption under Section (1) of this article, which corporation was granted exemption by the comptroller or by the secretary of state prior to September 1, 1975. Provided that nothing in this article or in any other laws of this state shall be construed to authorize a refund or credit for franchise tax paid prior to September 1, 1975, by a corporation eligible for or determined by the comptroller to be exempt under this article from the payment of franchise tax, unless the comptroller determines that the corporation through mistake of law or fact overpaid the franchise tax due by it prior to September 1, 1975. Provided, further, that if a corporation which was granted an exemption prior to September 1, 1975, no longer qualifies for exemption under Section (1) of this article, such previously granted exemption shall terminate on April 30, 1976, and thereafter such corporation shall be subject to and shall be liable for the franchise tax levied by this chapter.

[Amended by Acts 1975, 64th Leg., p. 2311, ch. 719, art. 12, § 2, eff. Sept. 1, 1975.]

Art. 12.06. Initial Tax to be Paid

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

(3) Effective September 1, 1975, each foreign corporation doing business in this State shall have on deposit with the Comptroller of Public Accounts the Five Hundred Dollars (\$500) trust amount described in Section (2) above. Upon determination by the comptroller that a foreign corporation has maintained a continuous status in good standing for three (3) consecutive reporting years, or upon determination by the comptroller that a corporation is exempt from payment of the franchise tax under Article 12.03 of this chapter or other laws of this state, such corporation shall be exempt thereafter from the security requirements of this article, and the comptroller shall return the trust deposit to the corporation; provided, however, that such exemption from the security requirement shall continue only until such time that it is determined by the comptroller that the corporation has failed to file all reports or to pay the franchise tax or other payments required by this chapter, or that the corporation no longer qualifies for exemption from the franchise tax, at which time the comptroller shall notify the corpora-

tion that a cash trust deposit in the amount of Five Hundred Dollars (\$500) must be furnished the comptroller's office as required by this article.

[Amended by Acts 1975, 64th Leg., p. 2313, ch. 719, art. 12, § 3, eff. Sept. 1, 1975.]

Art. 12.211. Repealed by Acts 1975, 64th Leg., p. 2314, ch. 719, art. XII, § 4, eff. Sept. 1, 1975

CHAPTER 13. TAX ON COIN-OPERATED MACHINES

Art. 13.01. Definitions

The following words, terms and phrases as used in this Chapter are defined as follows:

(1) The term "owner" means any person, individual, firm, company, association or corporation owning any "coin-operated machine" in this State.

(2) The term "operator" means any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in a place of business other than his own, any "coin-operated machine" in this State.

(3) The term "coin-operated machine" means every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(4) The term "music coin-operated machine" means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, and all other coin-operated machines which dispense or vend music.

(5) The term "skill or pleasure coin-operated machines" means every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in this Chapter. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dis-

pense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(6) The term "service coin-operated machines" means every pay toilet, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

(7) The term "commission" means the Texas Amusement Machine Commission.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.02. Amount of Tax

(1) Every "owner", save an owner holding an import license and holding coin-operated machines solely for re-sale, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machine" shall pay, and there is hereby levied on each "coin-operated machine", as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of \$15.00.

(2) Provided that the first money taken from each coin-operated machine each calendar year shall be paid to the owner to reimburse the payment of that year's annual occupation tax levied above and those levied by any city or county. No owner shall agree or contract or offer to agree to contract to waive this reimbursement either directly or indirectly. No owner shall agree or contract with a bailee or lessee of a coin-operated machine to compensate said bailee or lessee in excess of fifty percent (50%) of the gross receipts of such machine after the above reimbursement has been made. In addition to all other penalties provided by law the commission shall revoke any license held under Article 13.17 by any person who violates this Subsection.

(3) The commission may provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for a duplicate permit is \$2.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.03. Exemptions From Tax

Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax, stamp vending machines, and "service coin-operated machines," as that term is defined, are expressly

exempt from the tax levied herein, and the other provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.04. Public Nuisance

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the commission, its agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.05. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports

(1) Any person who shall invoke the power and remedies of injunction against the commission to restrain or enjoin it from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the commission to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the commission or their authorized representatives, a complete, itemized record maintained in accordance with generally accepted auditing and accounting practices, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the commission daily, excluding Sundays and legal holidays, a report on a form to be prescribed by the commission, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said

report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The commission, or its authorized representatives, may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed, all taxes, fees and assessments, paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the commission, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the commission all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall in no way interfere with or impair the power of the commission to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.06. Attachment of Permit to Machine

Provided further, the permit issued by the commission to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.07. Rules and Regulations; Revocation of Licenses or Permits

(1) The commission may make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the commission shall investigate the violation, make findings of fact, and may recommend to the Attorney General that a license, permit, or registration certificate be revoked. If the licenses, permits, or registration certificate of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is revoked, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses, permits, or registration certificates are reinstated or until new licenses, permits, or registration certificates are granted.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.08. Permits; Collection of Tax; Payment of Expenses

The commission shall collect, and issue permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars (\$25,000) of the funds derived under the provisions of this Chapter shall be deposited annually to the credit of the General Revenue Fund as payment for the services of the commission and other State agencies in the enforcement of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.09. Existing Laws; Violations not Authorized

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or mainte-

nance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.10. Records

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and the commission, or their authorized representatives, a complete, itemized record maintained in accordance with accepted auditing and accounting practices of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.11. Violations of Act; Penalty; Suit to Recover Penalty

If any "owner" of a coin-operated machine within this State shall (a) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said permit being attached thereto, or (b) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a permit issued by the commission showing the payment of the tax due thereon for the current year, or (c) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (d) shall fail to keep such records, or (e) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or (f) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (g) mislead the commission or its authorized representatives in the enforcement of this Chapter, or (h) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (i) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall forfeit to the State as a penalty, the sum of

not less than Five Dollars (\$5) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.12. Offenses; Penalty

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid permit issued by the commission showing the payment of the tax due thereon for the current year, or

(b) if any person required to keep records of coin-operated machines in this State shall falsify such records or

(c) shall fail to keep such records, or

(d) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or

(e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(f) mislead the commission or its authorized representatives in the enforcement of this Chapter, or

(g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or

(h) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall be guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.13. Sealing Machine to Prevent Operations; Penalty for Breaking Seal

Provided that the commission or its authorized representatives, may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by said commission or its authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the commission shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 13.12 of this Chapter. The commission shall charge a fee of \$25.00 for the release of any coin-operated machine sealed for nonpayment of tax.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.14. Apportionment of Tax; Tax Levy by Counties and Cities

Except as herein provided in this Chapter, one-fourth ($\frac{1}{4}$) of the net revenue derived from this Chapter shall be credited to the Available School Fund of the State of Texas and three-fourths ($\frac{3}{4}$) of the net revenue derived from this Chapter shall be credited to the Clearance Fund, established by Article XX of House Bill No. 8, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one half ($\frac{1}{2}$) of the State tax levied herein.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.15. Sealing of Machines by City or County

Any city or county levying an occupation tax on coin-operated machines is hereby authorized to seal any such machine on which the tax has not been paid. Any city or county levying an occupation tax on coin-operated machines is hereby authorized to charge a fee not exceeding Five Dollars (\$5) for the release of any machine sealed as provided herein for nonpayment of tax. Whoever shall break the seal affixed in the name of any city or county or exhibit, display or remove from location any machine on which the seal has been broken shall be guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.16. Taxes, Penalties and Interest Under Re-enacted or Repealed Statutes; Offenses and Penalties Under Prior Laws

All occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Chapter before the effective date of this Chapter shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Chapter are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Chapter shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.17. Regulation of Music and Skill or Pleasure Coin-Operated Machines

Purpose

Sec. 1. The purpose of this Article is to provide comprehensive regulation of music and skill or pleasure coin-operated machines.

Construction

Sec. 1(a). Notwithstanding any language in this Chapter or any other Chapter to the contrary, the term "music or skill or pleasure coin-operated machine" shall include coin-operated billiard and pool games and shall exclude coin-operated amusement machines designed exclusively for children.

Definitions

Sec. 2. In this Article, unless the context requires a different definition,

(1) "person" includes any natural person, association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them;

(2) "financial interest" includes any legal or equitable interest, and specifically includes the ownership of shares or bonds of a corporation.

Administration

Sec. 3. The commission shall administer this Article. The commission may initiate investigations, hearings, and take other necessary measures to ensure compliance with the provisions of this Article or to determine whether violations may exist. If the commission finds evidence of a violation, it shall notify the Attorney General who may institute a civil action in the name of the commission against a person who violates a provision of this Article. If the commission finds evidence of violation of penal provisions, it shall present it to the District or County Attorney of the county wherein such violation occurred.

Powers of Commission

Sec. 4. In addition to its other authority, the commission may, for the purpose of administering this Article,

(1) prescribe all necessary regulations and rules to ensure that all persons affected by this Article are afforded due process of law;

(2) hold hearings and prescribe rules of procedure and evidence for the conduct of hearings;

(3) issue licenses;

(4) prescribe the procedure for registration of music and skill or pleasure coin-operated machines and the method of securely attaching registration stamps;

(5) disclose confidential information to appropriate officials; and

(6) prescribe the form and content of

(a) license applications;

(b) registration certificates;

(c) tax permits;

(d) reports concerning the location of coin-operated machines; and

(e) reports of the consideration of each party to contracts concerning the placement of coin-operated machines in establishments owned by a person other than the licensee.

Delegation of Authority

Sec. 5. The commission may delegate to an authorized representative any authority given it by this Article, including the conduct of investigations and the holding of hearings.

Agency Cooperation

Sec. 6. All state agencies are directed to cooperate with the commission in its investigatory functions under this Article, and shall provide it access to their relevant records and reports including those declared or designated as confidential by other law.

Confidentiality; Penalty for Disclosure

Sec. 7. (1) All information derived from books, records, reports, and applications required to be made available under this Article to the commission or the Attorney General is confidential unless specifically designated a public record, and may be used only for the purpose of enforcing the provisions of this Article.

(2) Any employee of the commission or Attorney General who discloses confidential information obtained from the administration of this Article to an unauthorized person is guilty of a Class C misdemeanor.

License or Registration Certificate Required; Penalty; Exceptions

Sec. 8. (1) No person shall engage in business to manufacture, own, buy, sell, or rent, lease, trade, lend, or furnish to another, or repair, maintain, service, transport within the state, store, or import, a music coin-operated machine or a skill or pleasure coin-operated machine without a license or registration certificate issued under this Article.

(2) A person who knowingly violates this Section is guilty of a Class B misdemeanor.

(3) No license is required for a corporation or association organized and operated exclusively for religious, charitable, educational, or benevolent purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, to own, or lease or rent from another, a music or

skill or pleasure coin-operated machine for the corporation's or association's exclusive use and in furtherance of the purposes for which it is established. No tax may be assessed against any of these entities if otherwise prohibited by law.

(4) No license or tax is required for an individual to own a music or skill or pleasure coin-operated machine for personal use and amusement in his private residence.

(5) No license is required for any person subject to regulation by the Railroad Commission of Texas to transport or store in the due course of business a music or skill or pleasure coin-operated machine not owned by him.

(6) A person who knowingly secures or attempts to secure a license under this Article by fraud, misrepresentation or subterfuge is guilty of a third-degree felony.

Nature of License

Sec. 9. A license issued under this Article

(1) is an annual license which expires on December 31st of each year, unless it expires as provided in subdivision (5) of this Section or is suspended or cancelled earlier;

(2) is effective for a single business entity;

(3) vests no property or right in the licensee except to conduct the licensed business during the period the license is in effect;

(4) is nontransferable, nonassignable, and not subject to execution; and

(5) expires upon the death of an individual licensee, or upon the dissolution of any other licensee.

Temporary Extension of License

Sec. 10. When a license issued under this Article expires because of the death of an individual licensee, or the dissolution of any other licensee, or upon conditions involving receivership or bankruptcy, the commission, except for good cause shown, shall permit the successor in interest to operate the business under the same license through December 31st of the year. The commission shall give this permission in writing upon certification by the County Judge of the county in which the business is located that the person requesting the extension is the successor in interest. The extended license is subject to suspension or cancellation as is any other license issued under this Article. An original license application is necessary upon expiration of the extension.

Display; Penalty

Sec. 11. (1) A person licensed to do business under this Article shall prominently display his current license certificate at his place of business at all times.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

Application for License

Sec. 12. (1) An application for a license to do business under this Article shall contain a complete statement regarding the ownership of the business to be licensed. This statement of ownership must specify

(a) the nature of the business entity to be licensed;

(b) the name and residence address of every person who has a financial interest in the business, and the nature, type, and extent of that financial interest, except corporate applicants may omit any shareholder holding less than 10% of the corporate shares.

(2) The application shall designate a single individual who is responsible for keeping a record and reporting to the commission the following information regarding each music or skill or pleasure coin-operated machine owned, possessed or controlled by the licensee:

(a) the make, type, and serial number of machine;

(b) the date put in operation;

(c) the dates of the first, and the most recent registration of the machine;

(d) the specific location of each machine;

(e) any change in ownership of a machine.

(3) The application shall be accompanied by a sworn written statement executed by the individual designated to maintain the records and make reports that he is aware of and accepts this responsibility.

(4) The individual designated to maintain the records and to make reports must have the following relationship to the business to be licensed:

(a) the owner of a sole proprietorship;

(b) a partner of the partnership;

(c) an officer of the corporation;

(d) a trustee of the trust;

(e) a receiver of the receivership; or

(f) an officer or principal member of the association, joint venture, organization, or other entity not specified.

(5) The commission may require any other pertinent information to be included in the application.

(6) The application must contain a statement that the information contained in it is true and complete, and this statement shall be made under oath.

(7) The statement of ownership contained in the application becomes a public record upon issuance of a license. Other information in the application is confidential.

(8) The application shall designate an office in this state where the applicant proposes to maintain the records which he is required to maintain by this Article, otherwise by law, or by rule or regulation of the commission.

Fee with Application

Sec. 13. The application must be accompanied by the annual license fee in the form of a cashier's check or money order payable to the commission.

Records and Reports; Offenses; Penalty

Sec. 14. (1) The licensee shall keep records and make reports to the commission of the information specified in Subsection (2) of Section 12 of this Article at intervals specified by the commission, and upon demand by the commission. He shall immediately notify the commission in writing of any change in ownership of the licensed business.

(2) It is an offense for a person to willfully fail or refuse to make reports required by this Section.

(3) It is an offense for a person to willfully withhold or conceal any information required to be reported by this Section from a person who has the duty to make the report.

(4) A person who violates this Section is guilty of a Class B misdemeanor.

Types of Licenses

Sec. 15. (1) A person who wishes to engage in certain business dealing with music coin-operated machines or skill or pleasure coin-operated machines shall apply for a general business license, or an import license, or a repair license, or any combination of these.

(2) A general business licensee may engage in business to manufacture, own, buy, sell, rent, lease, trade, repair, maintain, service, transport or exhibit within the state, and store music and skill or pleasure coin-operated machines.

(3) An import licensee may engage in business to import, transport, own, buy, repair, sell, and deliver, music and skill or pleasure coin-operated machines, for sale and delivery within this State.

(4) A repair licensee may engage in the business of repairing, maintaining, servicing, transporting, or storing music, skill, or pleasure coin-operated machines.

Fees

Sec. 16. (1) The annual license fee for a general business license shall be as follows:

For an applicant with 50 or fewer machines, \$200;

For an applicant with 51-200 machines, \$400;
For an applicant with over 200 machines, \$500.

(2) The annual license fee for an import license is \$500.

(3) The annual license fee for a repair license is \$50.

(4) The commission may not refund any part of a license fee after the license is issued. In the event a license is not issued, the commission may retain \$25 to cover administrative costs, and may refund the balance.

(5) Cities and counties within this state may charge a license fee in an amount not to exceed one-half of the license fee required herein.

Exemptions

Sec. 16A. (1) A person who owns or exhibits coin-operated machines is exempt from the licensing and record keeping requirements imposed by this Article if:

(a) he operates or exhibits his machines exclusively on premises occupied by him, and in connection with his business; and

(b) he owns no machine subject to the occupation tax imposed by this chapter located on the business premises of another person; and

(c) he has no financial interest, direct or indirect, in the coin-operated music, skill, or pleasure machine industry, except for the interest he owns in his machines used exclusively on premises occupied by him.

(2) Machines which are exhibited by a nonlicensed owner exempt under this section must be registered with the commission. The owner shall obtain a registration certificate each year. The registration certificate shall show the name and address of the location of each machine and shall certify that the machine has a valid tax stamp affixed to it. The owner shall obtain his registration certificate by filing sworn application.

(3) Each time the location of a machine is changed, the owner of the registration certificate shall notify the commission of the change by filing an amendment to the registration certificate within 10 days of the change.

(4) The fee for registration of machines affected by this section is \$10 for the business entity in which the owner's machines are exhibited.

Removal of Stamp Prohibited; Penalty

Sec. 17. (1) No person other than the commission may intentionally remove a current registration stamp from a music or skill or pleasure coin-operated machine.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

License as Consent to Entry

Sec. 18. Acceptance of a license issued under this Article constitutes consent by the licensee that the commission or any peace officer may freely enter upon the licensed business premises during normal business hours for the purpose of ensuring compliance with this Article.

Mandatory Grounds for Refusal, Suspension, or Revocation of License

Sec. 19. (1) The commission shall not issue a general business or import license for a business under this Article if it finds that the applicant

(a) has been finally convicted of a felony in a court of competent jurisdiction during the five years preceding the filing of the application; or

(b) has been on probation or parole as a result of a felony conviction during the two years preceding the filing of the application.

(2) The commission may not issue or renew a license for a business under this Article, and shall suspend for any period of time, or cancel a license, if it finds that the applicant or licensee is indebted to the State by judgment for any fees, costs, penalties, or delinquent taxes.

(3) The commission may not issue or renew a license for a business pursuant to the terms of this Article if the applicant does not designate and maintain an office in this state or if the applicant does not permit inspection by the commission of all records which the applicant or licensee is required to maintain.

(4) The commission shall issue an original license to an applicant who complies with the requirements of Subsections (1) and (2) of this Section.

Discretionary Grounds for Refusal, Suspension, or Revocation of License

Sec. 20. (1) A license issued pursuant to the authority of this Article may be revoked, or renewal refused, if:

(a) the licensee has intentionally violated a provision of this Article or a regulation promulgated pursuant to the authority of this Article;

(b) the licensee has intentionally failed to answer a question, or intentionally made a false statement in, or in connection with, his application or renewal;

(c) the licensee extends credit without registering his intent to do so with the consumer credit commission;

(d) the licensee uses coercion to accomplish a purpose or to engage in conduct regulated by the commission;

(e) a contract or agreement between the licensee and a location owner contains a restriction, of any kind and to any degree, on the right of the location owner to purchase, agree to purchase, or use a product, commodity, or service not regulated under the terms of this Article;

(f) issuance of, or failure to suspend or cancel, the license would be contrary to the intent and purpose of this Article.

(2) The commission shall conduct a hearing to ascertain whether a licensee has engaged in conduct which would be grounds for revocation. The commission shall make findings of fact, and, if the commission determines that grounds for revocation exist, the commission shall file those findings with the Attorney General. The Attorney General upon receipt of the record may institute an action to impose the penalties provided by this Act in Article 13.11 or to revoke the license. The action shall be instituted in a district court in the county of the licensee's place of business.

Applicant and Licensee Defined

Sec. 21. In Sections 19 and 20 of this Article, unless the context requires a different definition, the words "applicant" and "licensee" include each partner of a partnership; each trustee of a trust; each receiver of a receivership; each officer and director of a corporation; and each shareholder owning not less than 25 percent of the outstanding shares; any individual applicant or licensee; each officer, director, and member of any association or other entity not specified and, when applicable in context, the business entity itself.

Notice and Hearing

Sec. 22. (1) An applicant or licensee is entitled to at least ten days' notice and a hearing in the following instances:

(a) after his original application for a license has been refused;

(b) before his application for a renewal of a license may be refused;

(c) before the commission may file a recommendation of revocation, denial, or other sanction, with the Attorney General.

(2) Notice of hearing for refusal, cancellation, or suspension may be served personally by the commission or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address. In the event that notice cannot be effected by either of these methods after due diligence, the commission may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The commission shall

publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

Notice of Commission's Order

Sec. 23. (1) Any order refusing an application or renewal application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant or licensee.

(2) An order recommending cancellation or suspension of a license shall state the reasons for the cancellation or suspension, and a copy of the order shall be delivered immediately to the licensee.

(3) Delivery of the commission's recommendation of refusal, cancellation, or suspension may be given by

(a) personal service upon an individual applicant or licensee;

(b) personal service upon any officer or director or partner or trustee or receiver, as the case may be;

(c) personal service upon the person in charge of the business premises, temporarily or otherwise, of the applicant or licensee;

(d) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee;

(e) posting notice upon the outside door of the business premises of the applicant or licensee.

(4) Notice is complete upon performance of any of the above.

Review of Commission Action

Sec. 24. (1) Appeal by an affected person from all actions of the commission other than a recommendation to the Attorney General for the revocation of a license as provided in Article 13.07(2) and Article 13.17 Section 20(2) of this Act or from denial of requested action shall be to a District Court of the county of the licensee's place of business. The review shall be conducted by the court and shall be confined to the record. If the record is found to be incomplete, the court may order that additional evidence be taken before the commission. The commission may modify its findings and decision or order by reason of the additional evidence and shall file such evidence and any modifications, new findings, decisions, or orders with the court. In cases of alleged irregularities in procedure before the commission, not shown in the record, proof thereon may be taken in the court.

(2) The court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact committed to commission discretion. The court may affirm the decision

of the commission in whole or in part; the court shall reverse or remand the case for further proceeding if substantial rights of the appellant have been prejudiced because the commission's findings, inferences, conclusion, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the commission;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appeals

Sec. 25. Appeal from any final judgment of the District Court may be taken by any party, including the commission, in the manner provided for in civil actions generally; provided that the commission may not appeal a decision on motion of the Attorney General to revoke a license.

Prohibited Financial Relationships; Credit Transactions; Penalty

Sec. 26. (1) It shall be unlawful for a person who has a financial interest in a business required to be licensed by this Article or for any agent on behalf of such person to contract either orally or in writing to convey an interest in real property whether by lease, sub-lease or otherwise if such contract contains a provision or provisions in any way limiting the other party's right to secure music or skill or pleasure coin-operated machines from any source.

(2) It shall be unlawful for a person to secure or attempt to secure a contract of lease or bailment of a music or skill or pleasure coin-operated machine by coercion, threats or intimidation, through the commission of, or threat to commit, any act prohibited by the penal laws of this State or the Consumer Credit Code of this State.

(3) A person who violates Subsection (1) of this Section shall be guilty of a third-degree felony.

(4) Any person required to be licensed by this Article may make an extension of credit or lend the licensee's credit to a lessee or a bailee of a music or skill or pleasure coin-operated machine, or on behalf of either for business or commercial purposes when the following terms and conditions have been met and the following duties and obligations satisfactorily assumed and discharged.

(a) Before making the first such extension of credit, the licensee under this Article shall first notify the Consumer Credit Commissioner of the

State of Texas of the intent of such licensee to make extensions of credit in the conduct of the licensee's business.

(b) The consideration for such extensions of credit shall not be less than one-half percent or exceed interest or its equivalent at the rate of one and one-half percent (1½%) per month, computed according to the United States Rule. Consideration excludes court costs and attorney's fees as determined by the court, but includes the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing an extension of credit or forbearance of money, credit, goods, or things in action, or any other service rendered. If in any transaction any consideration in excess of that provided above is charged or received by the licensee directly, or indirectly, except as the result of an accidental and bona fide error corrected upon discovery, the unpaid balance of the indebtedness created by such transaction shall be void, and that portion of any indebtedness so created which has been paid to the licensee, either the principal or its equivalent or interest or its equivalent, or both, shall be repaid by the licensee to the person.

(c) No extension of credit may be made by any person required to be licensed by this Article unless it is evidenced by a written agreement signed by the parties thereto specifying both the amount of credit extended, the consideration for such extension of credit, and the terms according to which such extension of credit is to be repaid.

(d) Each licensee making extensions of credit authorized by this Section shall keep in this State books and records, which shall be consistent with accepted accounting and auditing practices, relating to all such extensions of credit authorized by this Section sufficient to enable any competent person to determine whether or not such licensee is complying with this Section. Such records shall be preserved for four (4) years from the date of the transaction to which they relate, or two (2) years from the date of the final entry made with regard to such transaction, whichever is later.

(e) At such times as the Consumer Credit Commissioner may deem necessary, or at the request of the commission or the Attorney General, the Consumer Credit Commissioner, or his duly authorized representative, may make an examination of the place of business¹ of each licensee hereunder, and may inquire into and examine the transactions, books, accounts, pa-

pers, correspondence, or records of such licensee insofar as they pertain to the extensions of credit regulated by this Section. In the course of such examinations, the Consumer Credit Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Consumer Credit Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Section to consider, investigate or secure information. Any licensee who shall fail or refuse to let the Consumer Credit Commissioner or his duly authorized representative examine or make copies of such books or other relative documents shall thereby be deemed in violation of this Section. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Consumer Credit Commissioner an amount assessed by the Commissioner to cover the direct and indirect costs of such examination, including a proportionate share of general administrative expenses, which amount shall be retained and held by the Consumer Credit Commissioner, and no part of such fee shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Consumer Credit Commissioner in conducting such examinations shall be paid only from such fees, and no such expense shall ever be charged against the funds of this State.

(f) The Consumer Credit Commissioner may make regulations necessary for the enforcement of this Section and consistent with all its provisions. Before making a regulation the Consumer Credit Commissioner shall give each licensee at least thirty (30) days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Consumer Credit Commissioner, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each regulation shall be entered in a permanent record book which shall be a public record and be kept in the Consumer Credit Commissioner's office. A copy of every regulation shall be mailed to each licensee, and no regulation shall become effective until the expiration of at least twenty

(20) days after such mailing. On the application of any person and payment of the cost thereof, the Consumer Credit Commissioner shall furnish such person a certified copy of any such regulation.

(4) Any person who violates Subsection (3) of this Section is guilty of a Class C misdemeanor. [Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

CHAPTER 19. MISCELLANEOUS OCCUPATION TAX

Art. 19.01. Miscellaneous Occupation Taxes

There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this Article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows:

(1) Repealed by Acts 1975, 64th Leg., p. 827, ch. 320, § 12, eff. Sept. 1, 1975.

[See Compact Edition, Volume 2 for text of (2) to (10)]

[Amended by Acts 1975, 64th Leg., p. 830, ch. 320, § 12, eff. Sept. 1, 1975.]

CHAPTER 20. LIMITED SALES, EXCISE AND USE TAX

Art. 20.01. Title—Definitions

This Chapter is known and may be cited as the "Limited Sales, Excise and Use Tax Act," and the following words shall have the following meanings unless a different meaning clearly appears from the context:

[See Compact Edition, Volume 2 for text of (A) to (K)]

(L) Sales Price.

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

(3) "Sales Price" does not include any of the following:

(a) Cash discounts allowed on sales.

(b) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit, or refunds on the sales price of taxable services.

(c) The amount of any tax imposed by the United States upon or with respect to retail sales or wholesale sales of tires and fishing equipment whether imposed upon the retailer, wholesaler, or the consumer, under Subtitles D and E, Title 26 (Internal Revenue Code), United States Code.¹

(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of taxable items under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of a taxable item of any kind or nature.

(f) Charges for transportation of tangible personal property after sale.

(g) The amount charged for labor or services rendered in installing, applying, remodeling, or repairing the tangible personal property sold.

[Text of subsec. (3)(h) added by Acts 1975, 64th Leg., p. 262, ch. 108, § 1]

(h) Voluntary gratuities.

[Text of subsec. (3)(h) added by Acts 1975, 64th Leg., p. 2307, ch. 719, art. VIII, § 1]

(h) The face value of United States of America coin or currency in a sale of United States of America coin or currency in which the total consideration given by the purchaser exceeds the face value of the coin or currency.

[See Compact Edition, Volume 2 for text of (M) to (X)]

(Y) Newspaper. "Newspaper" means those publications which are printed and distributed periodically at daily, weekly, or other short intervals not exceeding four weeks, for the dissemination of news of a general character and of a general interest. For purposes of this section, advertising is considered to be news of a general character and of a general interest. The term "newspaper" does not include handbills, circulars, flyers, or the like, unless such items, when printed, are printed for the purpose of distribution as a part of a publication which itself constitutes a newspaper within the meaning of this section, and are in fact actually distributed as part of a newspaper as herein defined.

[Amended by Acts 1975, 64th Leg., p. 262, ch. 108, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 2307, ch. 719, art. VIII, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2307, ch. 719, art. XI, § 1, eff. Sept. 1, 1975.]

¹ 26 U.S.C.A. (I.R.C.1954), §§ 4041 et seq., 5001 et seq.

Art. 20.031. Administrative and Enforcement of Use Tax

[See Compact Edition, Volume 2 for text of (A) to (M)]

(N) Federal Tax Information. The Comptroller shall supply to each retailer engaged in selling taxa-

ble items subject to a tax under Subtitles D and E, Title 26 (Internal Revenue Code), United States Code,¹ information concerning the amount of the federal tax collected from the manufacturer, wholesaler, retailer, or consumer and shall provide to the retailer tables for the calculation of the sales price of taxable items as defined by this Chapter. It is a violation of this Chapter for a retailer to collect from any consumer any tax imposed by this Chapter if the retailer includes in the amount of the sales price of the taxable item the amount of any tax imposed under Subtitles D and E, Title 26, United States Code.

[Amended by Acts 1975, 64th Leg., p. 2307, ch. 719, art. 8, § 2, eff. Sept. 1, 1975.]

¹ 26 U.S.C.A. (I.R.C.1954) § 4001 et seq.

Art. 20.04. Exemptions

[See Compact Edition, Volume 2 for text of (A) to (E)]

(F) Certain Meals and Food Products. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of:

(1) Meals and food products (including soft drinks and candy) for human consumption served by public or private schools, school districts, student organizations, or Parent-Teacher Associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school during the regular school day or by a Parent-Teacher Association during a fund-raising sale the proceeds of which do not go to the benefit of an individual.

(2) Meals and food products (including soft drinks and candy) for human consumption when sold by a church or at a function of said church.

(3) Meals and food products (including soft drinks and candy) for human consumption when served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings.

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

(H) United States; State; Political Subdivision; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any taxable items to, or the storage, use or other consumption of taxable items by:

(1) The United States, its unincorporated agencies and instrumentalities.

(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(3) The State of Texas, its unincorporated agencies and instrumentalities.

(4) Any county, city, special district or other political subdivision of this State.

(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

[Text of subsec. (H)(6) effective until June 1, 1978]

(6) Any nonprofit organization engaged in commemorating the Bicentennial of the American Revolution, provided such taxable items are used by the organization in commemorating the Bicentennial of the American Revolution, provided that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, and provided further that this exemption will expire on June 1, 1978.

[See Compact Edition, Volume 2 for text of (I) to (M)]

(N) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Horses, mules and work animals.

(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

(5) Fertilizer.

(6) Machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, production of grass, the building or maintaining of roads and water facilities, feed for any form of animal life, or other agricultural products to be sold in the regular course of business, and machinery, equipment, and gooseneck trailers exclusively used in the processing, packing, or marketing of agricultural products by the original producer at a location operated by the original producer exclusively for processing, packing, or marketing his own products.

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

(P) Vessels.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships or vessels exclusively and directly used in a commercial enterprise, including commercial fishing vessels, and vessels used commercially as vessels for pleasure fishing by individuals as paying passengers thereon, of eight (8) tons displacement and over, and the receipts from the sale of such ships or vessels exclusively and directly used in a commercial enterprise when sold by the builder thereof, and repair services, renovation, and/or conversion, including labor and materials to such ships or vessels exclusively and directly used in a commercial enterprise.

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

(Q) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to persons and used for the exclusive purpose of training or instructing pilots in a licensed course of instruction, or sold to any foreign government or sold to persons who are not residents of this State and repair services to aircraft operated by a certificated or licensed carrier of persons or property.

[See Compact Edition, Volume 2 for text of (R) to (AA)]

(BB) Newspapers.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of, and the storage, use, or other consumption in this State of:

(a) tangible personal property which will enter into and become an ingredient or component part of a newspaper, as that term is defined in Article 20.01(Y) of this Chapter, whether or not such newspaper is printed for ultimate sale at retail within or without this State; and

(b) tangible personal property used or consumed in or during any phase of actual printing or processing of such newspaper, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such printing or processing operations. Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change during such printing or processing operations or for

removing impurities or otherwise placing a newspaper in its final distributable form are included within the exemption, as are other articles of tangible personal property used in such a manner as to be necessary or essential in the actual printing or processing operations. The exemption provided herein does not include the following:

(i) machinery, equipment, and replacement parts and accessories therefor, having a useful life when new in excess of six (6) months;

(ii) machinery, equipment, materials, and supplies used in a manner that is merely incidental to the printing or processing, such as, for example, intraplant transportation equipment, and maintenance and janitorial equipment and supplies;

(iii) hand tools used in the printing and processing; and

(iv) tangible personal property used by the newspaper printer in any activities other than the actual printing or processing operation, such as, for example, office equipment and supplies, equipment and supplies used in selling or in distributing activities, in gathering information for publication, or in transportation activities.

(2) Wrapping, Packing and Packaging Supplies.

(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing, or packaging any newspaper for the purpose of expediting or furthering in any way either the sale of that newspaper or the distribution of that newspaper if distributed without charge.

(b) For the purpose of this Section, wrapping, packing, and packaging supplies shall include, but shall not be limited to:

(i) wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, rubber bands, labels, staples, glue, and mailing tubes; and

(ii) property used inside a package in order to shape, form, preserve, stabilize, or protect newspapers contained therein.

(3) Notwithstanding any provision in this Chapter to the contrary, there are exempted from the taxes imposed by this Chapter the receipts from the following transactions:

(a) Transactions involving a transfer for a consideration of the title or possession of a newspaper, as defined in Article 20.01(Y) of this Chapter, which has been produced, fabricated,

or printed to the special order of the customer, provided such customer was responsible for gathering substantially all the information contained in such newspaper, formulating the layout, design, and format of such newspaper, and further provided that such customer would otherwise have been entitled to the exemption contained in Section (1) of this Article 20.04(BB) except for the fact that such customer did not own and operate or otherwise possess or control a printing facility capable of printing and processing such newspaper; and

(b) Transactions involving a transfer for a consideration of the title or possession of items such as handbills, circulars, flyers, advertising supplements, or the like, which have been printed to the special order of the customer, provided that such items, when printed, are printed for the exclusive purpose of being distributed as a part of a newspaper, as defined in Article 20.01(Y) of this Chapter, are actually distributed as part of such a newspaper, and further provided that such items, after being printed, are not delivered to such customer but are instead delivered to the person responsible for the distribution of the newspaper of which the items were originally intended to be a part.

(CC) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use, or other consumption in this State of solar energy devices. A "solar energy device" is a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power.

(DD) There are exempted from the computation of the amount of taxes imposed by this Chapter the receipts from the sale, lease, or rental of any taxable items to, or the storage, use, or other consumption of taxable items by, any nonprofit corporation or association engaged exclusively in providing athletic competition among persons under nineteen (19) years of age, provided that no financial benefit inures to any individual or shareholder. The contracting for the sale of or the sale of concessions at any game or event conducted by a nonprofit corporation or association does not prevent the application of this exemption to the nonprofit corporation or association.

(EE)(1) There are exempted from the taxes imposed by this chapter the receipts from the sale of food products, and candy, carbonated beverages, and

diluted juices, whether or not the product is sold for immediate consumption, if the sale:

(i) is made by a person under 18 years of age who is a member of a nonprofit organization devoted to the exclusive purposes of education or physical or religious training, and groups associated with public or private elementary or secondary schools;

(ii) is made as a part of a fund-raising drive sponsored by the organization;

(iii) all net proceeds from the sale go to the organization for its exclusive use.

(2) There are exempted from the taxes imposed by this chapter the storage, consumption, or other use in this state of food products acquired in a sale exempted by the provisions of Subsection (1) of this section. The exemption allowed by this subsection applies only to the purchaser at the exempt sale. [Amended by Acts 1975, 64th Leg., p. 669, ch. 282, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2306, ch. 719, art. 6, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2309, ch. 719, arts. 11, § 2, 13, § 1, 16, § 1, 18, § 1, 21, § 1 and 22, § 1, eff. Sept. 1, 1975.]

CHAPTER 21. ADMISSIONS TAX

Art. 21.02. Tax Imposed

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

(2) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays and like amusements held at a fixed or regularly established motion picture theater, and on each admission to a skating rink, where the admission charged is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen Cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

(3) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or fractional part thereof paid as admission to horse racing, dog racing, and like mechanical or animal contests and exhibitions, except automobile racing and motorcycle racing.

(4) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or a fractional part thereof paid as admission to dance halls, night clubs, and any and all other like places of amusements, contests, and exhibitions where the admission charged is in excess of fifty-one cents (51¢).

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

[Amended by Acts 1975, 64th Leg., p. 2307, ch. 719, art. 9, § 1, art. 24, § 1, eff. Sept. 1, 1975.]

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¹ West's Tex.Stats. & Codes '75 Supp.

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REVISED CIVIL STATUTES

TITLE 1

GENERAL PROVISIONS

Article

1c. [Expired].

Art. 1c. Expired

By the terms of § 2 of this article, the Governor's Committee on Human Relations ceased to exist on August 31, 1975.

Art. 26. Oaths, Affidavits and Affirmations; Persons Authorized to Administer and Issue Certificate; Armed Forces Members and Spouses; Presumption; Absence of Seal

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

4. In addition to the methods above provided, any such oath, affidavit, or affirmation made by a member of the Armed Forces of the United States of America or any Auxiliaries thereto, or by the husband or wife of a member of the Armed Forces of the United States of America or any Auxiliaries thereto, may be administered by any commissioned

officer in the Armed Forces of the United States of America or in the Auxiliaries thereto, and a certificate of such fact may be made by such officer.

In the absence of pleading or proof to the contrary it shall be presumed, when any certificate of an oath, affidavit, or affirmation is offered in evidence, that the person signing such as a commissioned officer was such on the date signed, and that the person making such oath, affidavit, or affirmation, to which such officer certifies, was one of those with respect to whom such action is hereby authorized.

No oath, affidavit, or affirmation administered in accordance with the provisions of this sub-section 4 of this Act shall be held invalid by reason of the failure of the officer certifying to such oath, affidavit, or affirmation to attach an official seal to the certificate thereto.

[Amended by Acts 1975, 64th Leg., p. 166, ch. 70, § 1, eff. Sept. 1, 1975.]

TITLE 2

ACCOUNTANTS—PUBLIC AND CERTIFIED

Article

41b. Audits of River Authorities [NEW].

Art. 41b. Audits of River Authorities

Annual Audit of Fiscal Accounts by Public Accountant or State Auditor

Sec. 1. The fiscal accounts of each river authority in this state shall be audited annually. The board of directors of a river authority may have the authority's fiscal accounts audited at authority expense by an independent public accountant or certified public accountant holding a permit from the Texas State Board of Public Accountancy. If a river authority does not elect to have the fiscal accounts audited by an independent public accountant or a certified public accountant, the state auditor shall audit the authority in the manner provided by law for state government audits. The annual audit, if performed by an accountant other than the state auditor, shall be completed within 120 days after the close of the district's fiscal year.

Generally Accepted Auditing and Accounting Standards

Sec. 2. The audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles.

Approval and Filing of Report

Sec. 3. After the board of directors of the authority approves the annual audit report, the report

shall be filed with the Texas Water Rights Commission. If the board of directors refuses to approve the audit report, the board shall nevertheless file the report with the commission along with a statement detailing the reasons why the report was not accepted.

Copy of Report Available for Public Inspection

Sec. 4. A copy of the audit report shall be available for public inspection in the administrative office of the river authority during regular office hours.

Advertisement for Competitive Bids Unnecessary

Sec. 5. It is not necessary that the board of directors advertise for competitive bids before selecting the independent public accountant or certified public accountant to perform the annual audit required by the provisions of this Act.

Audit by State Auditor

Sec. 6. If the state auditor considers it necessary, he may have an audit made of any river authority in this state. The audit shall be conducted in the manner provided by law for audit of the state government.

Repealer

Sec. 7. Section 7b, Chapter 293, Acts of the 48th Legislature, 1943, as amended (Article 4413a-7b, Vernon's Texas Civil Statutes), is repealed. [Acts 1975, 64th Leg., p. 591, ch. 242, §§ 1 to 7, eff. May 20, 1975.]

TITLE 3

ADOPTION

**Art. 46b-2. Adoption of Hard-to-Place Children;
Financial Assistance**

*[See Compact Edition, Volume 3 for text of 1
to 4]*

Financial Assistance

Sec. 5.

[See Compact Edition, Volume 3 for text of 5(a)]

(b) There may be paid to subsidize the adoption an amount not to exceed the amount that would be paid for foster care for the child if the placement for adoption had not taken place, if the department, pursuant to rules and regulations which it shall adopt, determines that the need for such assistance exists.

(c) The county responsible for the care of the child in a foster home is responsible for the payments provided for by this section. State funds may be used to make payments for children whom the State Department of Public Welfare places for adoption and for whom the Department was managing conservator at the time of such placement and state funds shall be used to make payments for children whom the State Department of Public Welfare places for adoption who are recipients of aid to families with dependent children at the time of the placement.

[See Compact Edition, Volume 3 for text of 6]

[Amended by Acts 1975, 64th Leg., p. 1034, ch. 399, § 1, eff. June 19, 1975.]

TITLE 3A

AERONAUTICS

MISCELLANEOUS

Art. 46g. Airport Security Personnel; Employment; Commission as Peace Officers

[See Compact Edition, Volume 3 for text of (a) to (c)]

(d) Any peace officer commissioned under this Act shall be vested with all the rights, privileges, obligations, and duties of any other peace officer in this state while he is on the property under the control of the airport, or in the actual course and scope of his employment.

[Amended by Acts 1975, 64th Leg., p. 991, ch. 380, § 1, eff. June 19, 1975.]

TITLE 4

AGRICULTURE AND HORTICULTURE

CHAPTER ONE. COMMISSIONER OF AGRICULTURE

Article

55f. Grading of Livestock [NEW].

Art. 55c. Financing Programs to Encourage Production and Use of Agricultural Commodities; Referendum; Exemptions; Political Activity; Budget Approval

[See Compact Edition, Volume 3 for text of 1 and 2]

Exemptions

Sec. 2A. Rice, flax, and cattle are exempt from all provisions of this Act. The original referendum and subsequent biennial board elections may provide exemptions for producers within the boundaries of the assessment district, provided such exemptions are included in full written form on the election ballot and are approved by two-thirds or more of those voting in the election.

[See Compact Edition, Volume 3 for text of 3 to 14A]

Producers' Assessment Exemptions

Sec. 14B. (a) Producers of any agricultural commodity may exempt their product sales from assessments by filing a signed request for exemption with the processor at the time of each sale. The processor shall include copies of the exemption requests with remittance of assessed funds each month to the secretary-treasurer of the commodity producers board for the commodity.

(b) The commissioner shall prescribe exemption forms to be used. The board shall furnish the prescribed exemption forms to all processors within the district of operation.

[Text of section conditioned on constitutional amendment]

Collection of Assessment; Refund

Sec. 15. (a) The levying of an assessment which has been authorized by referendum vote shall be made and collected as provided in this section.

(b) The board shall determine the commodity process point at which collection of the assessment

shall be made, except that when the producer and processor are the same legal entity the processor shall collect the assessment at the time of processing, also, except that when a producer retains ownership after processing, the processor shall collect the assessment at time of processing and the secretary-treasurer of the board shall notify all such processors at that point of process, by registered or certified mail, that on and after the date specified in the letter, the processor, when making any purchase of the commodity or advancing any funds therefor, shall collect the assessment from the producer by deducting the amount thereof from the purchase price or funds advanced at that process point.

(c) The amount of the assessment collected shall be clearly shown on the sales invoice or other document evidencing the transaction, and a copy of such receipt shall be furnished the producer by the processor.

(d) The processor collecting the assessment shall remit such funds monthly, not later than the 10th day of the month following that in which they were collected, to the secretary-treasurer of the commodity producers board for such commodity, unless otherwise provided in the original referendum which authorized creation of the assessment district.

(e) The secretary-treasurer shall deposit all money received by the board under this Act, including assessments, donations from individuals, concerns, or corporations, and grants from state or other governmental agencies, in a bank selected by the board. The money shall be expended for the purposes specified in this Act.

(f) Any producer who has paid such assessment may, if he desires to do so, obtain a refund of the amount paid, if application for a refund is made within 60 days after the date of payment. Such application shall be in writing on a form designed and furnished for such purpose by the commodity producers board. The application shall be filed with the secretary-treasurer of the board, accompanied by proof of the payment of the assessment, and it is the duty of the secretary-treasurer to promptly pay the refund to the producer not later than the 10th day of the month following the month in which the application and proof of payment is received.

For text of section pending constitutional amendment, see Compact Edition, Volume 3

[See Compact Edition, Volume 3 for text of 15A to 17B]

[Amended by Acts 1975, 64th Leg., p. 596, ch. 245, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 851, ch. 325, §§ 1 and 2, eff. May 30, 1975.]

Section 2 of Acts 1975, 64th Leg., p. 596, ch. 245, provided:

"This Act takes effect only if and when the constitutional amendment revising the finance provision of the Texas Constitution, proposed by Senate Joint Resolution 11, 64th Legislature, Regular Session, 1975, is adopted, or if and when the constitutional amendment proposed by Senate Joint Resolution 34, 64th Legislature, Regular Session, 1975, is adopted."

Section 3 of Acts 1975, 64th Leg., p. 851, ch. 325, provided:

"Section 14B, Chapter 462, Acts of the 60th Legislature, Regular Session, 1967, as added by this Act, expires on the adoption by the voters of this state of either Senate Joint Resolution No. 34, as proposed by the 64th Legislature, Regular Session, 1975, or Section 5 of Senate Joint Resolution No. 11, as proposed by the 64th Legislature, Regular Session, 1975, revising the constitutional provisions relating to finance and proposing a new Article VIII of the Texas Constitution. Otherwise, Section 14B continues in effect."

Senate Joint Resolution 11 was rejected by the voters at election held on November 4, 1975.

Art. 55f. Grading of Livestock

Definitions

Sec. 1. In this Act:

- (1) "Livestock" means cattle, sheep, goats, and hogs.
- (2) "Commissioner" means the state commissioner of agriculture.
- (3) "Person" means an individual, firm, partnership, corporation, or association of individuals.

Grading on Request

Sec. 2. The commissioner or his authorized agents may grade livestock alive in this state on request of the owner or a cooperative marketing association.

Agents; Competency Requirements

Sec. 3. The commissioner may employ agents for the purpose of grading livestock and may require applicants for employment or persons employed as inspectors to pass examinations and meet other requirements established by the commissioner to demonstrate competence in grading livestock.

Grade Standards

Sec. 4. Grade standards for classifying livestock under this Act shall be the standards and classifications of the United States Department of Agriculture.

Regulations; Fees

Sec. 5. The commissioner may promulgate regulations relating to the method and procedures for the grading service. The commissioner may collect from persons who requested grading, fees for livestock grading in amounts to cover costs incurred in providing the grading services. Fees collected as provided in this Act shall be deposited in the state treasury.

[Acts 1975, 64th Leg., p. 1838, ch. 567, §§ 1 to 5, eff. June 19, 1975.]

CHAPTER TWO. STATE SEED AND PLANT BOARD

Article

56 to 67a. [Repealed].

67b. Seed and Plant Certification Act [NEW].

Arts. 56 to 67a. Repealed by Acts 1975, 64th Leg., p. 348, ch. 149, § 15, eff. Sept. 1, 1975

See, now, art. 67b.

Art. 67b. Seed and Plant Certification Act

Short Title

Sec. 1. This Act may be cited as the Texas Seed and Plant Certification Act.

Definitions

Sec. 2. In this Act:

- (1) "Person" means an individual, firm, partnership, corporation, association of individuals, or agency, department, or subdivision of the state.
- (2) "Plant" includes plant parts.
- (3) "Board" means the State Seed and Plant Board.
- (4) "Commissioner" means the state commissioner of agriculture.
- (5) The terms "certified seed" and "certified plant" mean seed or a plant which has been determined by a seed or plant certifying agency to meet agency regulations and standards as to genetic purity and identity. The four classes of certified seed and plants are Breeder, Foundation, Registered, and Certified.
- (6) The terms "Breeder seed" and "Breeder plant" mean a class of certified seed or plants which is directly controlled by the originating or sponsoring person or his designee and which is the primary source for the production of seed and plants of the other classes of seed and plants.
- (7) The terms "Foundation seed" and "Foundation plant" mean a class of certified seed or plants which is the progeny of Breeder or Foundation seed or plants, and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Foundation class of seed or plants for the purpose of maintaining genetic purity and identity.
- (8) The terms "Registered seed" and "Registered plant" mean a class of certified seed or plants which is the progeny of Breeder or Foundation seed or plants and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant

certifying agency for the Registered class of seed or plants for the purpose of maintaining genetic purity and identity.

(9) The terms "Certified seed" and "Certified plant" mean a class of certified seed or plants which is the progeny of Breeder, Foundation, or Registered seed or plants, except as otherwise provided by federal law, and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Certified class of seed or plants for the purpose of maintaining genetic purity and identity.

State Seed and Plant Board

Sec. 3. (a) The State Seed and Plant Board is an agency of the state. The board consists of six members appointed by the governor with the advice and consent of the senate. Membership must include:

(1) one individual from the Soils and Crop Sciences Department, Texas Agricultural Experiment Station, Texas A & M University;

(2) one individual from the Department of Plant and Soil Sciences, Texas Tech University;

(3) one individual licensed as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution;

(4) one individual who sells Texas Foundation, Registered, or Certified seed or plants;

(5) one individual actively engaged in farming but not a producer or seller of Texas Foundation, Registered, or Certified seed or plants; and

(6) the head of the seed division of the state department of agriculture.

(b) An individual appointed from a state university or the state department of agriculture serves on the board as an ex officio member. A member serves for a term of two years and until his successor has qualified. Members serve without compensation but are entitled to reimbursement by the state for actual expenses incurred in the performance of their duties.

(c) A member whose employment is terminated with the agency or department from which he was appointed or who ceases to be engaged in the business or professional activity which he was appointed to represent vacates his membership on the board.

(d) The board annually shall elect a chairman, vice-chairman, and secretary. The board shall meet at such times and places as determined by the chairman.

Licensing of Foundation, Registered, and Certified Seed and Plant Producers

Sec. 4. (a) The board may establish, not inconsistent with federal law, procedures for and eligibility of various kinds and varieties of seed and plants for genetic purity and identity certification. The board may establish standards of genetic purity and identity, not inconsistent with federal law, for classes of certified seed and plants of various kinds or varieties for which the board determines that standards are desirable. The board shall report to the commissioner the standards promulgated for the certification eligibility of various kinds and varieties of seed and plants and shall report to the commissioner the various kinds and varieties eligible for certification. In establishing the standards, the board may consider all factors affecting the quality of seed and plants. This Paragraph (a) shall not go into effect until one year from the time of passage of this Act.

(b) A person who wants to produce a certified class of seed or plant for which the board has established standards of genetic purity and identity may apply to the board for licensing as a Foundation, Registered, or Certified producer of seed or plants. To be licensed as a producer, a person must satisfy the board that:

(1) he is of good character and has a reputation for honesty;

(2) his facilities meet board requirements for producing and maintaining seed or plants for the certification generations desired; and

(3) he has met any other board requirements as to knowledge of the production or maintenance of seed or plants for the certification generations for which he applies to be licensed.

(c) The board may prescribe regulations governing the production and handling by licensed producers of certified classes of seed and plants to insure the maintenance of genetic purity and identity.

(d) A license to produce Foundation, Registered, or Certified seed or plants is not transferable and is permanent unless revoked as provided in this Act. A person licensed as a producer of Foundation, Registered, or Certified seed or plants is eligible to produce certified seed or plants, as provided in his license, of the class for which he is licensed or of any lower class of certified seed or plants, as determined by the board.

Registration of Plant Breeders

Sec. 5. (a) A person engaging in the development, maintenance, or production of seed or plants for which standards of genetic purity and identity have been established by the board may apply to the board for registration as a plant breeder. Application for a certificate of registration shall be made on

forms prescribed by the board, accompanied by a non-refundable registration fee of not more than \$100, as determined by the board. To be registered as a plant breeder, a person must satisfy the board that he is skilled in the science of plant breeding. The board may require skill to be shown by evidence of accomplishments in the field and may require an oral or written examination in the subject.

(b) A certificate of registration is not transferable and is permanent unless revoked as provided in this Act.

Protection of Foundation, Registered, and Certified Cotton Varieties

Sec. 6. (a) The board shall promulgate regulations governing the registration for certification eligibility of newly developed varieties of cotton. A person desiring to register a new variety of cotton shall apply for registration to the board on forms prescribed by the board. To obtain registration for a new variety of cotton, a person must satisfy the board that the cotton to be registered is a distinct new variety and must meet board requirements regulating control of production, maintenance, and handling of the cotton for genetic purity and identity.

(b) On issuance of a certificate of registration for a new cotton variety, the board shall notify the commissioner of the eligibility for certification of seed of the variety.

(1) After issuance of a certificate of registration for a new cotton variety, no person may use the name given the new variety by the registrant in the sale of noncertified cottonseed for a period of 17 years from the date of issuance of the certificate of registration.

(2) Subdivision (1), Subsection (b) of this section does not apply to a variety for which an application is pending for United States plant variety protection, not specifying sale by variety name only as a class of certified seed, nor to a variety for which a certificate has been issued for United States plant variety protection, not specifying sale by variety name only as a class of certified seed.

(c) This section does not require registration of new varieties of cotton. On 10 days' notice to the board, a person may withdraw from the operation of this section a cotton variety previously registered to him.

(d) This section does not prohibit contracts between a registrant and seedmen or farmers for the production or sale of certified seed of the new cotton variety.

(e) This section does not prohibit one farmer from selling to another farmer cottonseed of a new variety grown on his own farm, as provided in Subsection

(c), Section 5 of the Texas Seed Law, as amended (Article 93b, Vernon's Texas Civil Statutes).

(f) At any time when the board determines that a critical situation exists because rain, hail, drouth, insects, or other natural elements beyond producers' control have reduced the supply of planting seed of a registered cotton variety, the board may hold a public hearing to determine the extent of the emergency. Notice of the time, place, and nature of the hearing shall be published in at least three newspapers of general circulation in the state at least seven days before the hearing. At the hearing, if the board deems advisable after presentation of evidence from interested parties, the board may allow noncertified seed grown from certified seed of the variety in which a shortage exists to be sold by variety name for that crop year only. This subsection does not apply to a variety for which an application is pending for United States plant variety protection, specifying sale by variety name only as a class of certified seed, nor to a variety for which a certificate has been issued for United States plant variety protection, specifying sale by variety name only as a class of certified seed.

(g) This section does not apply to seeds marketed or approved for certification eligibility before September 1, 1969.

Other Board Duties

Sec. 7. The board shall approve tests for certified classes of seed and plants and formats of labels for certified classes of seed and plants. The board shall prescribe qualifications for inspectors and shall nominate candidates for employment by the commissioner as certified seed and plant inspectors.

Certification of Seed and Plants

Sec. 8. (a) The state department of agriculture is the certifying agency in Texas for the certification of seed and plants. The commissioner shall appoint a sufficient number of inspectors nominated by the board to carry out the inspection provisions of this Act.

(b) A person licensed as a Foundation, Registered, or Certified seed or plant producer, registered as a plant breeder, or having a certificate of registration for a cotton variety is eligible to have seed or plants of an eligible class and variety certified by the commissioner. On request by a licensed producer, registered plant breeder, or registrant of a cotton variety to have his seed or plants certified, the commissioner shall cause inspections to be made of the producer's or registrant's fields, facilities, and seed or plants. Inspection may include tests approved by the board and carried out by inspectors under the authority of the commissioner. After inspection, if the commissioner determines that the

production of seed or plants has met the standards and regulations prescribed by the board, he shall cause to be attached to each container of the product a label identifying the seed or plant and the certified class and including such other information as prescribed by statute or regulations of the board.

(c) However, as a condition to the granting of certification labels, the commissioner shall collect inspection fees in amounts determined by the commissioner to be necessary to cover the costs of inspection and labels.

Seed and Plants from Outside the State

Sec. 9. (a) The commissioner may promulgate regulations, tests, and standards which must be met before seed or plants represented to be of a certified class may be shipped into the state for distribution in the state. Regulations, tests, and standards promulgated shall be designed to insure buyers in the state of having available certified seed and plants of known origin, genetic purity, and identity. Regulations, tests, and standards promulgated shall correspond to appropriate regulations, tests, and standards used in certifying seed and plants produced in Texas.

(b) The commissioner may require inspections of seed and plants represented to be of a certified class and shipped into the state for distribution in the state and may collect fees to cover costs of inspection, as determined by the commissioner. The commissioner may require inspection fee payment before distribution in the state.

(c) No person may distribute in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the person has first complied with any regulations, including testing requirements, promulgated by the commissioner for seed or plants shipped into the state.

(d) No person may sell or offer for sale in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the seed or plants have been certified by an official certifying agency in the state, province, or country of origin or have been certified by the commissioner.

(e) Seed or plants shipped into the state for distribution in the state which are represented to be of a certified class and which are found by the commissioner after investigation to violate the requirements of this section are restricted from distribution. In addition, the commissioner may order the seed or plants in violation confiscated and retained under his general supervision. An owner or consignee of restricted or confiscated seed or plants may appeal the commissioner's order by filing an appeal within 10 days of the order. Appeal is in the county court of

the county where the seed or plants are restricted or were confiscated. The appeal in county court is by trial de novo. If no appeal is filed as provided in this Act, or if after an appeal in county court, the commissioner's action is not reversed, the commissioner may cause confiscated seed or plants to be destroyed.

Prohibited Acts

Sec. 10. (a) No person may sell or offer for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "from officially inspected fields," "state inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified as being Foundation, Registered, or Certified seed or plants.

(b) No person may represent himself to be a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants unless he has been registered or licensed as provided in this Act.

(c) No person may sell or offer for sale in this state Foundation, Registered, or Certified seed or plants not in compliance with this Act or with regulations authorized by this Act to be promulgated.

(d) No person may sell or offer for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented.

Revocation of Registration, License, and Certification

Sec. 11. (a) If an inspector reports to the commissioner that a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants has made exaggerated claims for his products or has failed to observe any regulation governing the maintenance and production of a certified class of seed or plants which he is registered or licensed to produce or maintain, the commissioner may give written notice to the breeder or producer of the time and place of a revocation hearing to be held by the commissioner not less than 10 days after issuance of notice.

(b) If at the hearing, the commissioner finds that the registered plant breeder or licensed producer has made exaggerated claims or has violated any regulation for the production and maintenance of the certified class of seed or plants involved, the commissioner may revoke the registration or license and order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.

(c) A registered plant breeder or licensed producer whose registration or license has been revoked and whose certification labels have been cancelled and withdrawn may appeal the commissioner's action to the board by filing a notice of appeal with the commissioner within 30 days of the revocation. The commissioner shall report the notice of appeal to the board, which shall give written notice of the time and place for an appeal hearing to the appellant. The hearing on appeal may not be less than 10 nor more than 30 days after notice of appeal is filed with the commissioner. If the commissioner's action is reversed at the appeal hearing, the board shall direct the commissioner to reinstate the registration or license and reissue certification labels for seed or plants for which labels were previously cancelled and withdrawn.

Deposit of Fees

Sec. 12. All fees collected under the provisions of this Act shall be deposited in the State Treasury in a special account known as the special agricultural fund, to be used in the administration of this Act.

Penalties

Sec. 13. (a) A person who violates Subsection (b), Section 6 of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$1,000.

(b) A person who violates Subsections (c) or (d) of Section 10 of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, by confinement in county jail for not more than 60 days, or by both.

(c) A person who violates Subsections (c), (d), or (e) of Section 9, or Subsections (a) or (b) of Section 10 of this Act, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100, by confinement in county jail for not more than 30 days, or by both.

Repealer

Sec. 14. Articles 56, 57, 58, 59, 60, 61, 62, 63, 64, 64a, 65, 66, and 67, Revised Civil Statutes of Texas, 1925, as amended, and Chapter 93, Acts of the 41st Legislature, 1929, as amended (Article 67a, Vernon's Texas Civil Statutes), are repealed.

Effective Date

Sec. 15. This Act takes effect September 1, 1975. [Acts 1975, 64th Leg., p. 348, ch. 149, §§ 1 to 15, eff. Sept. 1, 1975.]

CHAPTER THREE. PINK BOLLWORM

Art. 75. Repealed by Acts 1975, 64th Leg., p. 567, ch. 225, § 1, eff. May 20, 1975

CHAPTER FOUR. AGRICULTURAL SEEDS

Art. 93b. Texas Seed Law

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2. (a) When used in this Act:

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

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom.

(7) The term "public notice" means a description of proposed action or the text of adopted rules or regulations published in three newspapers of general circulation throughout the State for a period of three consecutive weeks.

(b) The Commissioner of Agriculture may classify and define types, kinds, classes, genera, species, subspecies, hybrids, and varieties of agricultural, vegetable, and weed seeds for purposes of this Act. After public notice and public hearing, the Commissioner of Agriculture may classify noxious weed seeds and may establish the rate of each allowed, or prohibit the inclusion of any of them, in containers of agricultural or vegetable seed described in Section 3 of this Act. Immediately after any ruling by the Commissioner of Agriculture made under the provisions of this subsection, the Commissioner shall cause public notice of the new rules or the amendments to the existing rules to be published. Copies of any new rules or changes in the existing rules shall be made available to anyone who requests a copy.

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 in the English language, giving the following information:

(a) For Agricultural Seeds.

(1) The name of the kind or the kind and variety for each agricultural seed component present in excess of 5 percent of the whole and the percentage by weight of each: Provided, that if the variety of those kinds generally labeled as to variety as designated in the rules and regulations is not stated, the label shall show the name of the kind and the words, "Variety Not Stated." Hybrids shall be labeled as hybrids.

(2) Lot number or other lot identification.

(3) Origin, if known, of all agricultural seeds. If the origin is unknown, that fact shall be so stated.

(4) Percentage by weight of all weed seeds.

(5)(A) The name and number of each noxious weed seed will be shown at rate per pound.

(B) 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 named on the label.

(7) Percentage by weight of inert matter.

(8) For each named agricultural seed (a) percentage of germination as prescribed in the rules and regulations 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) Net Weight.

(b) For Vegetable Seed in containers weighing one pound or more:

(1) The name of each kind and variety of vegetable seed component present in excess of five percent of the whole and the percentage by weight of each, in order of predominance.

(2) Name and address of the person who labeled said seed.

(3) Kind and variety of seed.

(4) Percentage purity.

(5) Germination in accordance with the rules and regulations.

(6) Date of Test.

(7) If present, name and number of noxious weed seeds per pound.

(8) Lot number or other lot identification.

(c) For Vegetable Seed in containers weighing less than one pound:

(1) Kind and variety of seed;

(2) The calendar month and year of the germination test, or the year for which the seed was packaged;

(3) Name and address of the person who labeled the seeds; and

(4) For seed with a percentage of germination less than the standard prescribed in the rules and regulations:

(A) Percentage of germination, in accordance with the rules and regulations, exclusive of hard seed;

(B) Percentage of hard seed, if present; and

(C) The words "Below Standard" in a size not smaller than eight-point type.

(d) The labeling requirements for vegetable seeds are met if the seed is weighed from a properly labeled container in the presence of the purchaser.

Promulgation of Rules and Regulations Concerning Labels; Procedure

Sec. 3a. (1) All seeds named and treated as prescribed in this Act (for which a separate label may be used) shall be labeled in accordance with rules and regulations prescribed by the Commissioner of Agriculture.

(2) The Commissioner of Agriculture, after public notice, shall hold a public hearing in Austin, Travis County, Texas, concerning any proposed rules and regulations or any amendments to the rules and regulations pertaining to the seeds described in this section.

(3) Immediately following any ruling by the Commissioner of Agriculture made pursuant to the provisions of this section, the Commissioner shall publish the new rules or the amendments to the existing rules in at least three newspapers of general circulation throughout the State for a period of three consecutive weeks. Copies of any new rules or changes in the existing rules shall be made available to anyone who desires a copy.

Prohibition

Sec. 4. (a) It is unlawful for any person to sell, offer for sale, expose for sale or transport for sale any agricultural and vegetable seeds 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; except that the Commissioner of Agriculture may prescribe, amend, adopt and publish after public hearing following public notice rules and regulations to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials and under such other conditions prescribed by the Commissioner of Agriculture as he finds will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

(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) Containing noxious weed seeds in excess of the limitations per pound subject to tolerances and methods of determination prescribed in the rules and regulations under this Act.

(5) If any labeling, advertising, or other representation subject to this Act represents the seed to be certified seed of any class unless:

(A) A seed certifying agency has determined that the seed conforms to standards of purity and identity as to kind, species, subspecies (if appropriate), or variety in accordance with rules and regulations of the certifying agency; and

(B) The seed bears an official label issued for the seed by a seed certifying agency, certifying that the seed is of a specific class, kind, species, subspecies (if appropriate), or variety.

(6) Labeled with a variety name but not certified by an official seed certifying agency, when it is a variety required by federal law to be sold only as a class of certified seed (except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with approval of, the owner of the variety).

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

Exemptions

Sec. 5. (a) The provisions of Sections 2 and 3 do not apply:

(1) To seed or grain not intended for sowing purposes.

(2) To seed in storage for cleaning and processing, if the invoice, labeling, or other records pertaining to the seed bear the phrase "seed for processing."

(3) To seed being transported to, or consigned to, a seed cleaning or processing establishment for cleaning or processing, if the invoice or labeling accompanying the seed bears the phrase "seed for processing." Provided, that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this Act.

(b) No person shall be subject to the penalties of this Act, for having sold, offered, or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to kind, variety, type, treatment, or origin, which seeds cannot be identified by examination, unless he has failed to obtain an invoice or grower's declaration giving kind, or kind and variety, or kind and type, treatment, and origin, if required.

(c) Providing that nothing in this Act shall be construed as preventing one farmer from selling to another farmer such seed grown on his own farm, as covered by the provisions of this Act, without having said seed tested and labeled as provided for herein, when such seed is not advertised in the public communications media outside the vendor's home county, is not sold, offered for sale, or exposed for sale by an individual or organization for a farmer, and is not shipped by common carrier.

Duties and Authority of the Commissioner of Agriculture

Sec. 6. (a) The duty of enforcing this Act and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. It shall be the duty of such officer, who may act through his authorized agents:

(1) To sample, inspect, make analysis of, and test agricultural and vegetable seed transported, sold, offered, or exposed for sale within this State for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural or vegetable seed is in compliance with the provisions of this Act, and to notify promptly the person who transported, sold, offered, or exposed the seed for sale of any violation.

(2) To prescribe and, after public hearing following public notice, to adopt rules and regulations governing the methods of sampling, inspecting, analysis, tests and examination of agricultural and vegetable seed, and the tolerances to be followed in the administration of this Act, which shall be in general accord with officially

prescribed practice in interstate commerce, to provide definition of terms, and such other rules and regulations as may be necessary to secure the efficient enforcement of this Act.

(b) Further, for the purpose of carrying out the provisions of this Act, the Commissioner of Agriculture individually or through his authorized agents is authorized:

(1) To enter upon any public or private premises during regular business hours in order to have access to seeds and the records from personnel authorized by management connected therewith subject to the Act and the rules and regulations thereunder, and any truck or other conveyer by land, water, or air at any time when the conveyer is accessible, for the same purpose.

(2) To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the Commissioner of Agriculture has reason to believe is in violation of any of the provisions of this Act which shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. Provided, that in respect to seed which has been denied sale as provided in this paragraph, the owner or custodian of such seed shall have the right to appeal from such order to a court of competent jurisdiction where the seed is found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this Act.

(3) To establish and maintain or make provision for seed testing facilities, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions.

(4) To make or provide for making purity and germination tests of seed for farmers and dealers on request; to prescribe rules and regulations governing such testing; and to fix and collect charges for the tests made.

(5) To cooperate with the United States Department of Agriculture in seed law enforcement.

Inspection Fee; Payment Procedure; Records; Reports; Rules and Regulations; Failure to Comply; Cancellation of Permit

Sec. 7. (a) For the purpose of administering the Texas Seed Act, any person who sells, offers for sale or otherwise distributes for sale any agricultural seed within this state for planting purposes shall pay

to the Commissioner of Agriculture an inspection fee to be set by the Commissioner of Agriculture. Said inspection fee shall be deposited in the State Treasury by the Commissioner, and placed by the State Treasurer in the special Department of Agriculture Fund.

(b) The procedure for paying the inspection fee on agricultural seed shall be either by the use of the Texas Tested Seed Label or by means of the reporting system but shall not be by means of both such procedures, and shall in addition to such rules and regulations which the Commissioner of Agriculture is herewith authorized to issue, be in compliance with all the provisions of this Act.

(c) When the inspection fee is to be paid by use of the Texas Tested Seed Label the person who distributes, sells, offers for sale or exposes for sale agricultural seed for planting purposes shall purchase said Texas Tested Seed Label from the Commissioner of Agriculture and shall attach the label to each container of seed sold, offered for sale or otherwise distributed for sale for planting purposes within this state. The Commissioner of Agriculture is hereby empowered to promulgate rules and regulations prescribing the form of the labels and the manner of showing the analysis information required in Section 3 of this Act.

(d) When the inspection fee is paid by means of the reporting system, the Commissioner of Agriculture shall, after application for a permit, issue a permit bearing an assigned number to any person who sells, offers or exposes for sale, or otherwise distributes for sale agricultural seed for planting purposes within this state. The Commissioner of Agriculture is authorized at his discretion and under such rules and regulations as he may promulgate, to prescribe and furnish such forms and to require the filing of reports. The inspection fee shall be due on the total pounds sold or distributed. In addition to all other provisions of this Act, each person who is issued a permit to sell, offer for sale or otherwise distribute agricultural seed and pay the inspection fee in accordance with the reporting system shall:

(1) Maintain and furnish such records as the Commissioner of Agriculture may require to reflect accurately the total pounds of agricultural seed handled, sold, offered for sale or distributed for sale as planting seed. The Commissioner of Agriculture or his duly authorized agents shall have permission to examine the records of the permittee during normal working hours.

(2) File with the Commissioner of Agriculture within thirty days after the close of each quarter year ending the last day of November, February, May and August, sworn reports covering the total pounds of all sales of agricultural seed

subject to an inspection fee sold during the preceding quarter. An inspection fee penalty of 10 percent of the amount due or \$10, whichever is greater, is incurred if a report is not submitted when due and prior written approval for a delayed report has not been obtained.

(3) When located outside the State of Texas and when distributing agricultural seed in the State of Texas, shall maintain in the State of Texas the records and information required by Subsection (d), Section 7, of this Act or pay all costs incurred in the auditing of records at a location outside the state. The Commissioner of Agriculture is authorized and directed to revoke the permit of any person who fails to comply with this requirement. Itemized statements of costs incurred in any such audits shall be furnished the permittee by the Commissioner promptly on completion of any such audit, and the permittee must pay the costs within thirty (30) days from the date of the statement.

(4) Affix to each container of agricultural seed sold, offered for sale, or otherwise distributed and to the invoice of each lot of agricultural seed sold, offered for sale, or otherwise distributed in bulk, a plainly printed or written statement giving the information required in Section 3 of this Act.

Any failure of a permittee to observe these regulations, file required reports, or pay fees required shall be grounds for cancellation of the permit.

(e) The inspection fee must be paid during each germination period that said seed remains offered or exposed for sale. For any seed on which the germination test has expired, payment of the inspection fee is the responsibility of the custodian of said seed.

(f) Any person who sells, offers or exposes for sale, or otherwise distributes seed in bulk when inspection fee payment is by means other than the reporting system must furnish to the purchaser one Texas Tested Seed Label printed with the analysis information required in Section 3 of this Act for each 100 pounds or fraction of 100 pounds sold.

(g) The Commissioner of Agriculture is authorized to prescribe, amend, adopt, and publish after public hearing following public notice, such rules and regulations as are necessary to carry out and make effective the provisions of this section.

Vegetable Seed License

Sec. 7A. (a) After September 1, 1975, no person may sell, offer or expose for sale, or otherwise distribute for sale in this state any vegetable seed for planting purposes unless the person has a valid current vegetable seed license issued by the Commissioner of Agriculture.

(b) After public notice and a public hearing, the Commissioner of Agriculture may determine from time to time the license fee required of an applicant for an original or renewal vegetable seed license. Application for a license must be made on forms prescribed by the Commissioner. A vegetable seed license expires on August 31 of each year.

(c) No license is required of a person who sells, offers or exposes for sale, or otherwise distributes for sale vegetable seed in containers bearing the name and address of a person licensed under this section.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 984, ch. 379, §§ 1 to 4, eff. June 19, 1975.]

CHAPTER SIX. FRUITS AND VEGETABLES

Art. 118b. Citrus Fruit Growers Act

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

Sec. 4.

License Fee; Surety Bond

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

(b) The following fees are hereby prescribed and shall be paid by applicants for license under this Act, and the Commissioner, his agents and employees are hereby authorized to collect the same.

(1) For license as a "dealer" or "handler" of citrus fruit, the sum of Twenty-five Dollars (\$25).

(2) For license as a "commission merchant" and/or "contract dealer," as the term is in this Act defined, Twenty-five Dollars (\$25).

(3) For a license as a "buying agent," the sum of One Dollar (\$1).

(4) For a license as a "transporting agent," the sum of One Dollar (\$1).

(5) For a license as a "dealer" who sells any citrus fruit from door to door or from temporary locations, the sum of One Dollar (\$1).

(c) All "commission merchants" and/or "dealers" and "contract dealers," as the terms are in this Act defined, except persons applying only for licenses to sell citrus fruit from door to door or from temporary locations, shall, in addition to the license fee herein prescribed, deliver to the Commissioner, together with their application for license, a good and sufficient surety bond, payable to the Governor of the State of Texas and his successors in office in the following amounts for the number of standard packed boxes of citrus fruit, or the equivalent thereof, exclusive of citrus fruit grown by said "commission merchant" and/or "dealer" or "contract dealer," which the "commission merchant" and/or "dealer"

or "contract dealer" handled during the previous year:

- | | |
|--------------|---------------------------------|
| (1) \$ 5,000 | up to 5,000 boxes; |
| (2) \$10,000 | between 5,000 and 50,000 boxes; |
| (3) \$25,000 | over 50,000 boxes. |

[See *Compact Edition, Volume 3 for text of 4(d) to 12*]

Regulations as to Purchase

Sec. 13. It shall be unlawful for any dealer, packer, processor or warehouseman to purchase or receive or handle any citrus fruit without requiring the person from whom such citrus fruit is purchased or received, to furnish a statement in writing of (a) the owner of said citrus fruit, (b) the grower of said citrus fruit, together with the approximate location of the orchard where said fruit was grown, (c) the date said fruit was gathered and by whose authority same was gathered, and such records shall be kept in a permanent book or folder and shall be available to inspection by any interested party. The Commissioner or his authorized representatives may periodically investigate licensees or persons alleged to be selling citrus fruit in violation of this Act and, without notice, require evidence of purchase of any citrus fruit in their possession.

[See *Compact Edition, Volume 3 for text of 14 to 28*]

[Amended by Acts 1975, 64th Leg., p. 993, ch. 382, §§ 1 and 2, eff. June 19, 1975.]

Art. 118b-1. Coloring Citrus Fruit

[See *Compact Edition, Volume 3 for text of 1 to 5*]

Standards for Fruit to be Colored

Sec. 6. It shall be unlawful for any person to use on citrus fruit, or apply thereto, any coloring matter unless such fruit passes the requirements of the State maturity tests, and in addition thereto, oranges shall pass the following minimum requirements for total soluble solids of the juice thereof and for ratio of total soluble solids of the juice thereof to anhydrous citric acid:

(a) When the total soluble solids of the juice is not less than nine (9) per cent, the minimum ratio of total soluble solids to the anhydrous citric acid shall not be less than nine to one.

(b) When the total soluble solids of the juice is not less than eight and one-half (8½) per cent, the minimum ratio of total soluble solids to the anhydrous citric acid shall be not less than ten to one.

(c) Coloring matter shall not in any case be applied to any oranges which do not meet the standards set out in subsections (a) and (b) above. Likewise, coloring matter shall not in any case be applied to any oranges unless the

juice content thereof shall be at least four and one-half (4½) gallons to each standard packed box of one and two-fifths (1⅔) bushels capacity, the juice to be extracted by hand, without mechanical pressure.

(d) In determining the total soluble solids of citrus fruit within the purpose and meaning of this Act, the Brix hydrometer shall be used, and the reading of the hydrometer corrected for temperatures shall be considered as the per centum of the total soluble solids. Anhydrous citric acid shall be determined by titration of the juice, using standard alkali and phenolphthalein as the indicator, the total acidity being calculated as anhydrous citric acid.

[See *Compact Edition, Volume 3 for text of 7*]

Enforcement of Act, Chief of Maturity Division

Sec. 8. The enforcement of this Act and of the rules and regulations promulgated by the Commissioner shall be under the direction and control of the Commissioner, and shall be intrusted by him to the Chief of the Maturity Division. All employees, inspectors, and officers of the Commissioner authorized by Chapter 244, Acts of the Regular Session of the Forty-second Legislature, as amended,¹ shall also be charged with such duties hereunder as may be imposed by the Commissioner, or the Chief of the Maturity Division.

¹ Article 118c.

[See *Compact Edition, Volume 3 for text of 9 and 10*]

Marking or Branding Colored Fruit

Sec. 11. Each piece of fruit treated with coloring matter as provided herein shall be branded or marked with the words "Color Added" in letters at least three-sixteenths of an inch in height, but this provision shall be deemed to have been complied with if not more than forty-five (45) per cent of any such fruit is imperfectly or partially marked or branded. In the event such fruit is branded or marked with a trade-mark or name, or brand, by a two-line die in one operation, such words "Color Added" shall be placed above the trade-mark or name or brand.

Each package or container in which is sold, delivered, transported, or delivered for transportation any citrus fruit treated with coloring matter as provided herein, shall be marked, or branded, or have attached thereto securely a tag upon which is marked or branded the words "Color Added" in letters at least three-fourths of an inch in height, provided that the Commissioner may by regulation change the requirements of this Section to conform to any law or regulation promulgated under Federal authority.

[See Compact Edition, Volume 3 for text of 12 to 15]

[Amended by Acts 1975, 64th Leg., p. 991, ch. 381, §§ 1 to 3, eff. June 19, 1975.]

CHAPTER SEVEN A. PLANT DISEASES AND PESTS

Article

135b-5. [Repealed].

135b-5a. Pesticide Control Act [NEW].

Art. 135b-5. Repealed by Acts 1975, 64th Leg., p. 995, ch. 383, § 34, eff. Nov. 1, 1976

See, now, art. 135b-5a.

Art. 135b-5a. Pesticide Control Act

Short Title

Sec. 1. This Act may be cited as the Texas Pesticide Control Act.

Definitions

Sec. 2. In this Act:

(1) "Active ingredient" means:

(A) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates any pest;

(B) in the case of a plant regulator, an ingredient which, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of ornamental or crop plants or the products of them;

(C) in the case of a defoliant, an ingredient which causes leaves or foliage to drop from a plant; and

(D) in the case of a desiccant, an ingredient which artificially accelerates the drying of plant tissue.

(2) "Adulterated" applies to any pesticide:

(A) if its strength or purity falls below the professed standard or quality expressed on its labeling or under which it is sold;

(B) if any substance has been substituted wholly or in part for the pesticide;

(C) if any valuable constituent of the pesticide has been wholly or in part abstracted; or

(D) if any contaminant is present in an amount which is determined by the commissioner to be a hazard.

(3) "Animal" means any vertebrate or invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(4) "Antidote" means a practical treatment used in preventing or lessening ill effects from poisoning and includes first-aid treatment.

(5) "Certified applicator" means an individual who is determined by an official regulating authority, as provided in this Act, to be competent to use and supervise the use of any restricted-use or state-limited-use pesticide covered by his valid current certified applicator's license.

(6) "Commercial applicator" means a person who owns or manages a pesticide application business engaged in the application of restricted-use or state-limited-use pesticides to the land of another.

(7) "Commissioner" means the Commissioner of Agriculture of the State of Texas or his authorized agent.

(8) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of competency required being directly related to the nature of the activity and the associated responsibility.

(9) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

(11) "Device" means any instrument or contrivance, other than a firearm, which is used to trap, destroy, repel, or mitigate any pest or any other form of plant or animal life (other than man and bacteria, viruses, or other microorganisms on or in living man or other living animals), but not including equipment used for the application of pesticides when sold separately from the pesticides.

(12) "Direct supervision" means that, in the application of a restricted-use or state-limited-use pesticide, the application is made by an individual acting under the instructions and control of a certified applicator responsible for the actions of that individual and available if and when needed, although the certified applicator may not be physically present at the time and place of the pesticide application.

(13) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply.

(14) "Due notice" means notice of the time and place at which a hearing is to occur, notice of the subject matter and a general statement of the proposed action, and notice of the class or group of persons to be directly affected, caused to be published by the commissioner in three newspapers of general circulation throughout the state not less than 10 days before the hearing.

(15) "Environment" includes water, air, land, all plants, and man and other animals living in or on water, air, or land, and the interrelationships that exist among them.

(16) "Equipment" means any type of ground, water, or aerial equipment or contrivance employing motorized, mechanical, or pressurized power and used to apply any pesticide to land or to anything that may be inhabiting or growing or stored on or in the land, but does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance for which the person applying the pesticide is the source of power or energy used in making the pesticide application.

(17) "Fungus" means any non-chlorophyll-bearing thallophyte (any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), such as rust, smut, mildew, mold, yeast, or bacteria, except a non-chlorophyll-bearing thallophyte on or in living man or other living animals and except one on or in processed foods, beverages, or pharmaceuticals.

(18) "Inert ingredient" means an ingredient that is not an active ingredient.

(19) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in a pesticide.

(20) "Insect" means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies, and includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(21) "Label" means the written, printed, or graphic matter on, or attached to, a pesticide or device or any of its containers or wrappers.

(22) "Labeling" means a label and any other written, printed, or graphic matter prepared by a registrant:

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to current official publications of federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(23) "Land" means any land or water areas, including airspace, and any plant, animal, structure, building, contrivance, or machinery, whether fixed or mobile, appurtenant to or situ-

ated on a land or water area or airspace, including any used for transportation.

(24) "License use category" means a classification of pesticide use based on the subject, method, or place of pesticide application.

(25) "Nematode" means an invertebrate animal of the phylum Nematelminthes and class Nematoda (an unsegmented round worm with an elongated, fusiform, or sac-like body covered with cuticle), inhabiting soil, water, plants, or plant parts.

(26) "Noncommercial application" means a person or government agency or department which wants to use restricted-use or state-limited-use pesticides or the authority to demonstrate restricted-use or state-limited-use pesticides and does not qualify as a private applicator and is not required to have a commercial applicator's license.

(27) "Person" means an individual, firm, partnership, corporation, governmental entity, or association of individuals.

(28) "Pest" means any insect, snail, slug, rodent, bird, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms in living man or other living animals), which the commissioner declares to be a pest.

(29) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(30) "Pesticide dealer" means a person who distributes restricted-use pesticides or state-limited-use pesticides which by regulation are restricted to distribution only by licensed pesticide dealers, except manufacturers and formulators of pesticides who do not sell directly to the user.

(31) "Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation, or otherwise to alter the behavior of ornamental or crop plants or the products of them, but does not include any substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.

(32) "Private applicator" means a person who uses or supervises the use of any restricted-use or state-limited-use pesticide for the purpose of producing any agricultural commodity:

(A) on property owned or rented by him or his employer or under his general control; or

(B) if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(33) "Registered applicator" means a competent person working under the direct supervision of a certified applicator.

(34) "Regulatory agency" means a state agency with responsibility for certifying applicators of restricted-use or state-limited-use pesticides, as provided in Section 16 of this Act.

(35) "Restricted-use pesticide" means any pesticide classified as a restricted-use pesticide by the administrator of the federal Environmental Protection Agency.

(36) "State-limited-use pesticide" means any pesticide which, when used as directed or in accordance with widespread and commonly recognized practice, the commissioner determines, after a hearing, requires additional restrictions to prevent unreasonable adverse effects on the environment, including effects on man, land, crops, and animals other than pests.

(37) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of a pesticide.

(38) "Weed" means any plant that grows where not wanted.

Misbranded

Sec. 3. The term "misbranded" applies:

(1) to any pesticide or device subject to this Act:

(A) if its labeling bears any statement, design, or graphic representation relating to the pesticide, device, or the ingredients of either which is false or misleading in any particular;

(B) if it is an imitation of or is distributed under the name of another pesticide or device; or

(C) if any word, statement, or other information required by this Act or regulations promulgated as provided in this Act to appear on a label or labeling, is not prominently placed on a label or labeling with such conspicuousness, as compared with other material on the label or labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(2) to any pesticide:

(A) if its labeling bears any reference to registration under the provisions of this Act

unless the reference is required by regulations promulgated as provided in this Act;

(B) if the labeling does not contain a statement of the use classifications for which the product is registered;

(C) if the label does not bear:

(i) the name, brand, or trademark under which the pesticide is distributed;

(ii) an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase, and on any outer container or wrapper of a retail package, if the ingredient statement on the immediate container cannot be clearly read without removing the outer wrapping;

(iii) directions for use which are necessary for effecting the purpose for which the product is intended, and if complied with, are adequate for the protection of health and the environment;

(iv) if the pesticide contains arsenic in any form, a statement of the percentages of total water-soluble arsenic, calculated as elementary arsenic;

(v) the name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured; or

(vi) numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package;

(D) if the label does not clearly display appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide; or

(E) if the pesticide container does not bear a label or if the label does not contain all information required by this Act or regulations promulgated as provided in this Act.

Pesticide Advisory Committee

Sec. 4. (a) The Pesticide Advisory Committee is a committee consisting of the deans of the departments of agriculture of Texas A & M University and Texas Tech University, the executive director of the Parks and Wildlife Department, the commissioner of the State Department of Health, and the commissioner of agriculture, or their designated representatives. Members of the committee serve as ex officio members and receive no compensation as committee members but are entitled to reimbursement from the funds of their respective departments or agencies for actual expenses incurred in the performance of their duties.

(b) The committee meets at least once a year and at such other times as determined by the commissioner, for the purpose of advising the commissioner on the best use of pesticides for the protection of the public health and welfare, animal life, and property. The committee shall receive requested assistance from state universities and state agencies, including assistance from consultants retained by state universities or state agencies, to aid the committee in its recommendations to the commissioner regarding any pesticide program or any other related matter submitted by the commissioner for committee recommendations.

Registration of Pesticides

Sec. 5. (a) Every pesticide which is distributed within this state or is delivered for transportation or transported in intrastate commerce or between points within this state through any point outside the state, must be registered with the commissioner by the manufacturer, or by any person whose name appears on the label of the pesticide, if not the manufacturer, before the pesticide may be distributed, delivered for transportation, or transported as provided in this subsection. However, registration is not required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the second plant or warehouse as a constituent part of a pesticide registered under the provisions of this Act.

(b) A person who applies for registration of a pesticide shall file with the commissioner a statement including:

- (1) the name and address of the applicant and the name and address of the person whose name will appear on the pesticide label, if not the applicant's;
- (2) the name of the pesticide;
- (3) a complete copy of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;
- (4) the use classification, whether for restricted or general use, as provided in the federal Insecticide, Fungicide, and Rodenticide Act, as amended,¹ or in regulations promulgated as provided in the Act;
- (5) the use classification proposed by the applicant, if the pesticide is not required by federal law to be registered under a use classification; and
- (6) other information required by the commissioner for the determination of eligibility for registration.

(c) The commissioner may require the submission of the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration. The commissioner may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide not registered under federal law or a pesticide for which federal or state restrictions on use are being considered.

(d) A person located outside this state shall, as a condition to registration of a pesticide, file with the commissioner an instrument in writing designating a resident agent for service of process in actions taken in the administration or enforcement of this Act. In lieu of designating a resident agent, the person may designate in writing the secretary of state as the recipient of service of process for the person in this state.

(e) Registration expires annually on December 31. A person who applies for renewal of registration must include in his application only such information as is different from the information furnished at the time of the most recent registration or renewal of registration.

(f) As a condition to registration, an applicant shall pay to the commissioner an annual registration fee of \$30 for each pesticide to be registered as provided in this Act.

(g) Any pesticide registration in effect on December 31 for which a renewal application has been filed and a renewal registration fee paid continues in effect until the commissioner notifies the applicant that the registration has been renewed or denied renewal.

(h) A person who fails to apply for renewal of pesticide registration before March 1 of any year shall, as a condition to the renewal of registration, pay a late registration fee of \$5 for each brand to be renewed, to be added to the amount of the renewal registration fee.

(i) The commissioner may not approve an application for registration of a pesticide unless he finds that the composition of the pesticide warrants the proposed claims made for it and that the pesticide, its labeling, and other materials required to be submitted as provided in this Act comply with the requirements of this Act.

(j) The commissioner may register pesticides for additional uses and methods of application not covered by federal regulation but not inconsistent with federal law, for the purpose of meeting special local needs. Before approval of any registration for special local needs, the commissioner shall determine that the applicant meets other requirements of this section.

¹ 7 U.S.C.A. § 135 et seq.

Denial or Cancellation of Registration

Sec. 6. (a) If the commissioner has reason to believe that any use of a registered pesticide is in violation of the provisions of this Act or is dangerous or harmful, he may issue to the registrant of the pesticide written notice of a hearing on denial or cancellation of registration. The notice must contain a statement of the time and place of the hearing, which may not be less than 10 days after issuance of notice. After opportunity at the hearing for presentation of evidence by interested parties, the commissioner may deny or cancel the registration of the pesticide if he finds that:

- (1) use of the pesticide has demonstrated uncontrollable adverse environmental effects;
- (2) use of the pesticide is a detriment to the environment which outweighs benefits received by its use;
- (3) even when properly used, the pesticide is detrimental to vegetation, except weeds, or to domestic animals or the public health and safety;
- (4) any false or misleading statement about the pesticide has been made or implied by the registrant or his agent, in writing, verbally, or through any form of advertising literature; or
- (5) the registrant or the pesticide has not complied with a requirement of this Act or rule promulgated as provided in this Act.

Experimental Use Permit

Sec. 7. (a) Any person may apply to the commissioner for an experimental use permit for a pesticide. The commissioner may issue an experimental use permit if the commissioner determines that the applicant needs the permit in order to accumulate data necessary to register a pesticide under this Act. An application for an experimental use permit may be filed before or after an application for registration is filed.

(b) Use of a pesticide under an experimental use permit is under the supervision of the commissioner and is subject to such terms and conditions and be for such period of time as the commissioner may prescribe in the permit.

(c) The commissioner may revoke any experimental use permit at any time if he finds that its terms or conditions are being violated or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

Rules and Regulations

Sec. 8. (a) The commissioner may, after due notice and a public hearing, make appropriate regulations for carrying out the provisions of this Act,

including but not limited to regulations providing for:

- (1) the collection, examination, and reporting of records, devices, and samples of pesticides;
- (2) the safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers; and
- (3) labeling requirements for all pesticides and devices required to be registered under the provisions of this Act.

(b) After due notice and a public hearing, the commissioner may adopt from time to time lists of state-limited-use pesticides for the entire state or for designated areas within the state. If the commissioner determines that a pesticide requires restrictions or additional restrictions on distribution or use to prevent unreasonable adverse effects on the environment, he may include the pesticide on a list of state-limited-use pesticides. The commissioner may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only with permission of the commissioner, only under his direct supervision in certain areas under certain conditions, and only in specified quantities and concentrations. The commissioner may require persons authorized to distribute or use state-limited-use pesticides to maintain records of their distribution and use of all state-limited-use pesticides and may require that the records be kept separately from other business records.

Pesticide Dealer License

Sec. 9. (a) No person may distribute in this state restricted-use or state-limited-use pesticides without having a valid current pesticide dealer license issued by the commissioner for each location in the state which is used for distribution. Any person licensed as a dealer under Chapter 349, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 135b-4, Vernon's Texas Civil Statutes) shall not be required to pay an additional fee for the license prescribed in this section.

(b) Application for a pesticide dealer license is on forms prescribed by the commissioner, accompanied by a nonrefundable annual registration fee of not more than \$100, as determined by the commissioner. A pesticide dealer license expires on December 31 of each year.

(c) A person without a place of business in the state may obtain one pesticide dealer license for all of his out-of-state locations. As a condition to the issuance of a license, he shall file a statement as provided in Subsection (d), Section 5, of this Act.

(d) Each pesticide dealer license must be prominently displayed in the dealer's place of business. Failure to so display a license is a ground for revocation of the license.

(e) If an application for a renewal of a pesticide dealer license is not filed with the commissioner by March 1 of any year, a late license fee of \$5 is due in addition to the annual license fee and must be paid before issuance of the renewal license.

(f) Licensed pesticide dealers shall maintain for a period of two years records of each restricted-use and state-limited-use pesticide sold. Information included in the records shall be as prescribed by the commissioner. The commissioner may require submission of records to him. Failure to submit requested records is a ground for revocation of a license.

(g) This section does not apply to a licensed pesticide applicator who distributes restricted-use or state-limited-use pesticides only as an integral part of his pesticide application business and who dispenses the pesticides only through equipment used in his pesticide application business. This section does not apply to any federal, state, county, or municipal agency which provides pesticides only for its own programs.

Denial or Revocation of Pesticide Dealer License

Sec. 10. (a) If the commissioner has reason to believe that an applicant has failed to comply with requirements of Section 9 of this Act or regulations promulgated as provided in Section 9, or if the commissioner has reason to believe that a licensee has failed to comply with requirements of Section 9 or regulations promulgated as provided in Section 9, he may issue written notice to the applicant or licensee of the time and place of a hearing to be held by the commissioner on denial or revocation of license. The hearing may not be less than 10 days after issuance of notice.

(b) After opportunity at the hearing for presentation of evidence by the applicant or licensee, the commissioner may refuse to issue a pesticide dealer license or revoke a pesticide dealer license, if he finds that the applicant or licensee has failed to comply with applicable requirements of Section 9 of this Act or regulations promulgated as provided in Section 9.

Enforcement

Sec. 11. (a) The commissioner or his authorized agents may enter at reasonable hours any building or place owned, controlled, or operated by a registrant or dealer, where from probable cause it appears that the building or place contains pesticides, for the purpose of inspection, examination of records, and sampling. The commissioner or his authorized agents may take a sample for official analysis from any package or lot of pesticides found within the state.

(b) The commissioner may issue and enforce a written or printed stop-sale order to the owner or custodian of any pesticide which he has reason to believe is in violation of any of the provisions of this Act, prohibiting further sale of the pesticide until the commissioner determines that the pesticide is no longer in violation of the Act.

(c) The owner or custodian of a pesticide to which a stop-sale order applies may appeal from the order to a court of competent jurisdiction in the county where the pesticide is found. Appeal is by trial de novo. This section does not limit the right of the commissioner to proceed as authorized by other sections of this Act.

(d) The commissioner may institute an action in his own name to enjoin any violation of a provision of this Act. Venue is in the county where the alleged violation occurred or is occurring.

Other Powers and Duties of the Commissioner

Sec. 12. (a) The commissioner may contract with state colleges and universities, state agencies, or commercial laboratories for examination of pesticides. Contracts with commercial laboratories may be let only on the basis of competitive bidding.

(b) The commissioner shall make or provide for sample tests of pesticides on request, and he may charge and collect fees for the tests necessary to cover expenses incurred in making or providing for the tests.

Prohibited Acts

Sec. 13. (a) No person may distribute within the state, or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state, any of the following:

- (1) any pesticide which has not been registered as provided in this Act;
- (2) any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration;
- (3) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this Act and the regulations adopted under this Act; provided that an applicator may after acquiring such an unbroken container, open and transport the open container to and from application and storage sites as necessary;

(4) any pesticide which has not been colored or discolored as required by the provisions of this Act;

(5) any pesticide which is adulterated or misbranded or any device which is misbranded; or

(6) any pesticide in a container which is unsafe due to damage.

(b) No person may:

(1) detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this Act or regulations adopted under this Act, or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this Act or the regulations adopted thereunder;

(2) use or cause to be used any pesticide contrary to its labeling or to regulations of the commissioner limiting use of the pesticide;

(3) handle, transport, store, display, or distribute a pesticide in a manner that violates the provisions of this Act or rules promulgated by the commissioner as provided in this Act; or

(4) dispose of, discard, or store any pesticide or pesticide container in a manner that is calculated to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.

(c) No person, except the person to whom a pesticide is registered, may use for his advantage or reveal, other than to properly designated state or federal officials or their employees, or to physicians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relating to pesticide formulae, trade secrets, or commercial or financial information acquired by authority of this Act and marked as privileged or confidential by the registrant.

Exemptions

Sec. 14. (a) The penalties provided for violations of Section 13 of this Act do not apply to:

(1) any carrier while lawfully engaged in transporting a pesticide or device within this state if the carrier on request permits the commissioner to copy all records showing the transactions in and movement of the pesticides or devices;

(2) public officials of this state and the federal government while engaged in the performance of their official duties in administering state or federal pesticide statutes or regulations or while engaged in pesticide research;

(3) the manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to con-

duct research in the field of pesticides, if the manufacturer or shipper holds a valid experimental use permit as provided in this Act; and

(4) a pesticide or device manufactured or formulated solely for export to a foreign country and prepared or packed according to the specifications or directions of the purchaser. If not so exported, the provisions of this Act apply.

(b) Chemical compounds being used only to develop plot data as to the possible pesticidal action of the chemicals are exempt from registration requirements of this Act.

Regulation of Pesticide Use and Application

Sec. 15. (a) The Texas Department of Agriculture is the lead agency and is responsible for coordinating activities of state agencies in the regulation of pesticide use and application and is responsible for submitting a state plan for the certification of pesticide applicators to the administrator of the federal Environmental Protection Agency. This agency shall have the responsibility for coordinating, planning, and approving of training programs and shall utilize the resources of the state, both private and public, including but not limited to state universities, colleges, junior colleges, and community colleges as well as the Texas A & M Extension Service and Experiment Stations. The agency shall make all plans in this area on the basis of convenience to applicants, thoroughness of preparation and testing, and maximum economy in expenditures for this purpose. The agency may make full use of authorizations contained in Section 31 of this Act in carrying out these provisions.

(b) The commissioner shall certify pesticide applicators involved in agricultural pest control (except animal pest control), forest pest control, ornamental and turf pest control (except as provided in the Texas Structural Pest Control Act, as amended (Article 135b,¹ Vernon's Texas Civil Statutes)), seed treatments, right-of-way pest control, regulatory pest control, and demonstration pest control.

(c) The Texas Animal Health Commission shall certify, as provided in this Act, pesticide applicators involved in animal pest control.

(d) The Texas Water Quality Board shall certify, as provided in this Act, pesticide applicators involved in aquatic pest control.

(e) The State Department of Health shall certify, as provided in this Act, pesticide applicators involved in health-related pest control.

(f) Definitions of the license use categories described in Subsections (b), (c), (d), and (e) of this section are as provided by federal statutes or regulations.

(g) A person who wants to be certified as a pesticide applicator under license use categories regulated by more than one agency may do so by paying a single license fee to the agency regulating his primary business and by meeting certification requirements for each category for which he desires certification. He must pay testing fees required by each agency.

(h) The licensing of certified commercial and noncommercial applicators is contingent on the availability of federal funds to pay costs of administering and enforcing the program. If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the commissioner shall certify the fact and discontinue the licensing of certified commercial and noncommercial applicators. The commissioner shall cause notice of discontinuance of the program to be published in the Texas Register, and the effective date of discontinuance shall be determined by the commissioner but may not be before the date of publication of notice in the register. If sufficient federal funds become available after discontinuance, the commissioner shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume licensing of certified commercial and noncommercial applicators. The commissioner shall cause notice of resumption of the program to be published in the Texas Register, and the effective date of resumption shall be determined by the commissioner but may not be before the date of publication of notice in the register. During any period of discontinuance, no person is required to have a license as provided in this Act to use pesticides but a person may be prosecuted for acts committed or omitted when the program was in effect.

¹ So in enrolled bill; should read "135b-6".

Regulations for Pesticide Application

Sec. 16. The head of each state agency with responsibility for certification of pesticide applicators, as provided in Section 15 of this Act, may, after due notice and a public hearing, promulgate regulations to carry out the provisions of this Act for which he is responsible. The regulations may prescribe methods to be used in the application of restricted-use and state-limited-use pesticides. Regulations may relate to the time, place, manner, methods, and amounts and concentrations of pesticide application and to the materials used in pesticide application, and may restrict or prohibit use of restricted-use and state-limited-use pesticides in designated areas during specified periods of time. Regulations shall be promulgated only after consideration of precautions or restrictions necessary to prevent unreasonable adverse effects on the environment.

Pesticide Use Without License or Certification

Sec. 17. No person, except an individual acting under the direct supervision of a certified applicator, or except a private applicator, may use or supervise the use of any restricted-use or state-limited-use pesticide, unless he is licensed as a certified commercial or noncommercial applicator and is authorized by his license to use restricted-use and state-limited-use pesticides in the license use categories covering his proposed pesticide use. Nothing in this Act shall be construed to prohibit any property owner from using in his house or on his lawn or in his garden any pesticide labeled for such use except one that may be registered and classified for use only by certified applicators.

Classification of Commercial and Noncommercial Licenses

Sec. 18. The head of each regulatory agency may classify commercial and noncommercial licenses under subcategories of license use categories, according to the subject, method, or place of pesticide application. An agency head shall establish separate testing requirements for licensing in each license use category for which his agency is responsible, and may establish separate testing requirements for licensing in subcategories within a license use category. Each regulatory agency may charge a nonrefundable testing fee of not more than \$10 for testing in each license use category.

Commercial Applicator License

Sec. 19. (a) No person, except an individual working under the direct supervision of a certified applicator, may apply restricted-use or state-limited-use pesticides to the land of another for hire or compensation at any time without having a valid current commercial applicator license issued by a regulatory agency for the license use categories and subcategories, if any, in which the pesticide application is to be made.

(b) Application for an original or renewal license shall be on forms prescribed by the regulatory agency and shall be accompanied by an annual license fee of not more than \$100, as determined by the head of the regulatory agency. Each license application shall include such information as is prescribed by regulation of the head of the regulatory agency.

(c) Before issuance of an original commercial applicator license, an applicant must pass an examination demonstrating his competence and knowledge of the use and effects of restricted-use and state-limited-use pesticides in the license use categories or subcategories for which he has applied to be licensed. An individual to whom a commercial applicator license is issued is a certified applicator authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and any subcategories in which he is

licensed. If a license is issued in the name of a business, the business must have a certified applicator employed at all times. Failure to have a certified applicator employed is a ground for revocation of a business commercial applicator license.

(d) A regulatory agency may not issue a commercial applicator license until the license applicant files with the agency evidence of financial responsibility, consisting either of a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety or a liability insurance policy or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant. The bond or liability insurance policy, however, need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant. The surety bond or insurance must be approved by the regulatory agency and conditioned on compliance with the requirements of this Act and any regulations promulgated as provided in this Act.

(e) The amount of the bond or liability insurance required may not be less than \$5,000 nor more than \$100,000 for property damage insurance and may not be less than \$5,000 for bodily injury insurance. The head of the regulatory agency may, by regulation, require different amounts of bond or insurance coverage for different classifications of operations under this Act. The bond or liability insurance must be maintained at not less than the sum set by the agency head at all times during a period licensed. The head of the regulatory agency shall be notified by the party taking action at least 10 days prior to any reduction requested by a licensee or any cancellation of a bond or policy; otherwise, liability of the surety or insurer for all claims is limited to the face amount of the bond or liability insurance policy. The agency head may accept a liability insurance policy or bond in the proper sum which has a deductible clause in an amount of not more than \$1,000 for the total amount of liability insurance or bond required by this section. However, if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, a policy or bond with a deductible clause may not be accepted by an agency head unless the applicant furnishes the agency with a surety bond which satisfies the amount of the deductible clause as to all claims that may arise as a result of his operation. Should the surety furnished become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond or policy of insurance. Failure to file a bond or policy of insurance and failure to maintain the security in the required amounts are grounds for suspension or revocation of a commercial applicator license.

(f) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted of a felony involving moral turpitude in the last five years;

(2) the applicant has had a previous license, authorized by this Act to be issued, revoked within the last two years;

(3) the applicant, or his representative if the applicant is a business, has been unable to satisfactorily fulfill certification requirements; or

(4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this Act applicable to the license use category for which application has been made.

Noncommercial Applicator License

Sec. 20. (a) A person not engaged in the pesticide application business who is not a private applicator, except a person acting under the direct supervision of a certified or private applicator, may not use restricted-use or state-limited-use pesticides without having a valid current noncommercial applicator license issued by a regulatory agency for the license use categories and subcategories, if any, in which the pesticide application is to be made.

(b) Application for an original or renewal license shall be on forms prescribed by the regulatory agency. A nongovernmental applicant shall accompany his application with an annual license fee of not more than \$50, as determined by the head of the regulatory agency. No license fee may be charged a governmental entity applying for a license.

(c) Before issuance of an original noncommercial applicator license, an applicant must pass an examination demonstrating his competence and knowledge of the use and effects of restricted-use and state-limited-use pesticides in the license use categories or subcategories for which he has applied to be licensed. An individual to whom a noncommercial applicator license is issued is a certified applicator authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and any subcategories in which he is licensed. If a license is issued in the name of a governmental entity, the entity must have a certified applicator employed at all times. Failure to have a certified applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.

Private Applicator Exemption

Sec. 21. A private applicator is not required to have a license or to be certified to use restricted-use or state-limited-use pesticides. The commissioner is authorized to establish a program to certify private applicators, on a voluntary basis, who wish to apply restricted use pesticides in compliance with federal law.

Reciprocal Agreements

Sec. 22. The head of a regulatory agency may waive part or all of any license examination requirements on a reciprocal basis with any other state or federal agency which has substantially the same examination standards.

License Renewal

Sec. 23. Each commercial applicator license and noncommercial applicator license expires on December 31 of the year in which it was issued. A person having a valid current license may renew the license for another year without retesting by paying to the regulatory agency an annual license fee, as provided in this Act, unless the head of the regulatory agency determines that additional knowledge is required in the license use categories or subcategories in which the licensee applies for license renewal, in which case the passing of a new examination is necessary for license renewal. However, if a certified applicator does not file with the regulatory agency by March 1 of any year his application for license renewal, accompanied by payment of the annual license fee, he must pass another examination before he may be recertified.

Maintenance of Records

Sec. 24. Each regulatory agency shall require its licensees except private applicators to maintain records of their use of pesticides. Information to be included in the records is as prescribed by regulation of the regulatory agency. A regulatory agency may require its licensees to keep records of their application of specific restricted-use and state-limited-use pesticides and may require the records to be kept separately from other business records. Records must be kept for a period of two years from the date of pesticide application. A licensee shall, on written request of the regulatory agency, furnish the agency a copy of any records requested pertaining to the application of pesticides.

Registration and Inspection of Equipment

Sec. 25. (a) Each regulatory agency shall provide for the registration and inspection of equipment used in the commercial application of restricted-use or state-limited-use pesticides and may require repairs or alterations of equipment before further use. The head of a regulatory agency shall by regulation promulgate standards that must be met before registration of equipment.

(b) Each piece of registered equipment shall be identified by a license plate or decal furnished by a regulatory agency at no cost to the licensee and attached to the equipment in a manner and location as prescribed by the regulatory agency.

Suspension and Revocation of a Certified Applicator License

Sec. 26. (a) The head of a regulatory agency which licensed a certified applicator may suspend temporarily for not more than 10 days, after written notice of noncompliance, and, after opportunity for a hearing not less than 10 days after issuance of written notice to the licensee of the time, place, and nature of the hearing, may suspend, modify, or revoke any provision in the license of a certified applicator, if he finds that the licensee has committed any of the following acts, each of which is a violation of this Act:

(1) made a pesticide recommendation or application inconsistent with the labeling or with the restrictions of the use of the pesticide imposed by the federal Environmental Protection Agency or the state;

(2) operated in a faulty, careless, or negligent manner;

(3) refused or, after notice, failed to comply with any applicable provision of this Act, the rules and regulations adopted as provided in this Act, or any lawful order of the head of a regulatory agency by which he is licensed;

(4) refused or neglected to keep and maintain the records required by this Act or to make reports when and as required;

(5) failed to maintain a bond or policy of insurance as required by this Act;

(6) made false or fraudulent records, invoices, or reports;

(7) used fraud or misrepresentation in making an application for, or renewal of, a license; or

(8) aided or abetted a licensed or an unlicensed person to evade the provisions of this Act, conspired with a licensed or an unlicensed person to evade the provisions of this Act, or allowed his license to be used by another person.

(b) In addition to revocation, modification, or suspension of a license, a licensee who violates Subsection (a) of this section is subject to the other penalty provisions of this Act. An unlicensed person who violates Subsection (a) of this section, to the extent that it is applicable to unlicensed persons, is subject to the penalty provisions of this Act.

Appeal

Sec. 27. (a) A person whose application for registration of a pesticide has been denied or whose registration for a pesticide has been cancelled may appeal the action of the commissioner by filing an appeal in the district court of Travis County within 30 days of the date of denial or cancellation by the commissioner. A copy of the notice of appeal shall be delivered to the commissioner.

(b) A person whose application for experimental use permit, pesticide dealer license, commercial applicator license, or noncommercial applicator license has been denied, or whose experimental use permit, pesticide dealer license, commercial applicator license, or noncommercial applicator license has been revoked, modified, or suspended for more than 10 days, may appeal the action of the commissioner or head of a regulatory agency by filing an appeal in the district court of the county of his residence or in the district court of Travis County, within 30 days of the date of denial, revocation, modification, or suspension. A copy of the notice of appeal shall be delivered to the person whose action has been appealed.

(c) Appeal is governed by the substantial evidence rule.

Reports of Pesticide Damage Claims

Sec. 28. (a) Any person claiming damages from a pesticide application may file with the regulatory agency which licensed the certified applicator whose action allegedly caused damage a written statement claiming that he has been damaged. To be eligible for consideration by the agency, the report must be filed within 30 days of the alleged occurrence, or if a growing crop is alleged to have been damaged, the report must be filed prior to the time that 25 percent of the crop has been harvested or within 30 days, whichever is less. The report must contain, but is not limited to, the name of the person allegedly responsible for the application of the pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred. The regulatory agency shall prepare a form to be furnished to persons to be used in filing damage reports, and the form may contain such other information as is required by the head of the regulatory agency.

(b) The regulatory agency shall, on receipt of a report, notify the licensee and the owner or lessee of the land on which the alleged acts occurred, and any other person who may be charged with responsibility for the damages claimed. The regulatory agency shall furnish copies of the report to these people on request. The regulatory agency shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage.

(c) The failure to file a report is no bar to the maintenance of any criminal or civil action. However, if the person failing to file a report is the only person claiming injury from the particular use or application of a pesticide, the regulatory agency, when in the public interest, may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this Act to a person alleged to have caused damage.

(d) If damage is alleged to have occurred, the claimant shall permit representatives of the regulatory agency and the licensee to observe within reasonable hours the land or nontarget organism alleged to have been damaged, in order that the damage may be assessed.

Storage and Disposal of Pesticides

Sec. 29. (a) The commissioner may promulgate regulations governing the storing and disposal of pesticides and pesticide containers for the purpose of preventing injury from storage or disposal to man, vegetation, crops, or animals, and preventing pollution of any waterway in a way harmful to man or wildlife.

(b) No person may store or dispose of any pesticide in violation of regulations promulgated by the commissioner as provided in this section.

Inspection by Regulatory Agency

Sec. 30. (a) The head of a regulatory agency or his authorized representatives may enter any public or private premises at reasonable times:

(1) to inspect any equipment authorized or required to be inspected under this Act, and to inspect the premises on which the equipment is kept or stored;

(2) to inspect or sample land exposed or reported to be exposed to pesticides;

(3) to inspect areas where pesticides are disposed of or stored; or

(4) to observe the use and application of restricted-use or state-limited-use pesticides.

(b) If the head of a regulatory agency or his authorized representatives are denied access to any land where access was sought at a reasonable time for any of the purposes described in Subsection (a) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of the above described purposes. On a showing of probable cause to believe that a violation of any regulation relating to a purpose of inspection described in Subsection (a) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

(c) A regulatory agency may bring suit to enjoin violations or threatened violations of provisions of this Act within its responsibility and may request the appropriate prosecuting attorney to prosecute violations of the penal provisions of this Act.

Cooperative Agreements

Sec. 31. Each regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agen-

cy, an agency of this state or a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this Act.

Penalty

Sec. 32. A person who violates any provision of this Act is guilty of a Class C misdemeanor. Each violation is a separate offense.

Persons Regulated by the Texas Structural Pest Control Act

Sec. 33. Sections 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, and 31 of this Act do not apply to persons regulated by the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes).

Repealer

Sec. 34. The Insecticide, Fungicide, and Rodenticide Act of Texas, as amended (Article 135b-5, Vernon's Texas Civil Statutes), is repealed.

Effective Date

Sec. 35. Sections 32 and 34 of this Act take effect November 1, 1976. All other sections of this Act take effect January 1, 1976.

[Acts 1975, 64th Leg., p. 995, ch. 383, §§ 1 to 31, 33 and 35, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 995, ch. 383, §§ 32 and 34, eff. Nov. 1, 1976.]

Art. 135b-6. Structural Pest Control Act

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2. (a) For purposes of this Act a person shall be deemed to be engaged in the business of structural pest control if he engages in, offers to engage in, advertises for, solicits, or performs any of the following services for compensation:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of:

(A) arthropods (insects, spiders, mites, ticks, and related pests), wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures, or the contents thereof, or

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street;

(2) making inspection reports, recommendations, estimates, or bids, whether oral or written, with respect to such infestations; or

(3) making contracts, or submitting bids for, or performing services designed to prevent, control, or eliminate such infestations by the use of

insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices.

(b) As used in this Act:

(1) "Person" means an individual, firm, partnership, corporation, association, or other organization, or any combination thereof, or any type of business entity.

(2) "Restricted-use pesticide" means a pesticide classified for restricted or limited use by the administrator of the federal Environmental Protection Agency.

(3) "State-limited-use pesticide" means a pesticide classified for restricted or limited use by the state commissioner of agriculture.

(4) "Certified applicator" means an individual who has been licensed and determined by the board to be competent to use or supervise the use of any restricted-use and state-limited-use pesticide covered by his currently valid certified applicator license.

(5) "Direct supervision" means that, in the application of a pesticide, the application is made by an individual acting under the instructions and control of a certified applicator responsible for the actions of that individual and available if and when needed for consultation or assistance although the certified applicator need not be physically present at the time and place of the pesticide application.

(6) "Branch office" means any place of business other than the primary office that has at least one (1) employee during normal business hours who is capable of answering customers' normal questions, scheduling normal inspections or work, or performing structural pest control functions; provided, however, that a facility serving solely as a telephone answering service shall not be a branch office.

(7) "Structural Pest Control Business License" means that license issued to a person entitling that person and his employees to engage in the business of structural pest control under the direct supervision of a certified applicator.

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

Licensing Standards; Rules and Regulations

Sec. 4. (a) The board shall develop standards and criteria for licensing individuals engaged in the business of structural pest control. The board may require individuals to pass an examination demonstrating their competence in the field in order to qualify for a Certified Applicator's License.

(b) The board shall develop standards and criteria for issuing Structural Pest Control Business Licenses to persons engaged in the business of structural pest

control. Persons engaged in the business of structural pest control must possess a Structural Pest Control Business License for each place of said business, including each branch office. Each structural pest control business licensee shall have in his employment at all times a certified applicator.

(c) The board shall promulgate rules and regulations governing the methods and practices of structural pest control when it determines that the public's health and welfare necessitates such regulations in order to prevent adverse effects on human life and the environment. The rules and regulations relating to the use of economic poisons shall comply with applicable standards of the federal government and the state commissioner of agriculture governing the use of such substances.

(d) The board may waive all or part of any examination requirement on a reciprocal basis with any other state or federal agency which has substantially the same standards as those prescribed by the board.

Prohibited Acts; Temporary License

Sec. 5. (a) Except as provided in Subsection (b), no person, except an individual under the direct supervision of a certified applicator, may engage in the business of structural pest control after the effective date of this Act unless he meets the standards set by the board and possesses a valid Structural Pest Control Business License issued by the board.

(b) A person who has engaged in the business of structural pest control for a period of two years next preceding the effective date of this Act may apply to the board within 90 days after the effective date of this Act and shall be issued a temporary Structural Pest Control Business License and Certified Applicator's License which shall be valid for a period not to exceed two years upon payment of the required fee and completion of a temporary licensing form as prescribed by the board without further qualifications or examination. All applicants under this subsection shall furnish evidence substantiating their eligibility before temporary licenses may be granted.

Application Forms; Expiration and Renewal; Nontransferability; Arrest and Conviction Records

Sec. 6.

[See Compact Edition, Volume 3 for text of 6(a) to (c)]

(d) The Department of Public Safety shall, upon request, supply the board arrest and conviction records of individuals applying for or holding Structural Pest Control Business Licenses or Certified Applicator's Licenses.

[See Compact Edition, Volume 3 for text of 6A]

Fees, New Developments; Proof of Study

Sec. 7. (a) An applicant for an initial or renewal Structural Pest Control Business License or a Certi-

fied Applicator's License shall accompany his application with a fee of not more than \$50 each, as determined by the board, and a fee of between \$5 and \$15, as determined by the board, for each employee of the applicant who is engaged in structural pest control services.

(b) A licensee whose license has been lost or destroyed shall be issued a duplicate license after application therefor and the payment of a fee of \$10.

(c) The board may retroactively grant a Structural Pest Control Business License or a Certified Applicator's License to the applicant for a renewal license if such applicant pays a late renewal fee of \$25 and if his application is filed with the board not more than 30 days after the expiration of his license. If such application is received between 30 and 60 days after the expiration of the applicant's license, the board may retroactively grant the renewal license when said application is accompanied by a renewal fee of \$50. An applicant who applies for a renewal license more than 60 days after the expiration of his license is subject to re-examination by the board.

(d) After September 30, 1976, each time an applicant takes a test for a license, he shall pay the board a testing fee of not more than \$25, as determined by the board, for each test taken.

(e) If the board determines that new developments in pest control have occurred that are so significant that their proper knowledge is necessary to protect the public, the board may require proof of study either by attendance of approved training courses or by taking additional examinations on the new developments only.

Security Insurance

Sec. 7A. (a) After February 29, 1976, the board may not issue or renew a Structural Pest Control Business License until the license applicant:

(1) files with the board a policy or contract of insurance approved, as to sufficiency, by the board in an amount of not less than \$30,000, insuring him against liability for damages occurring as a result of operations performed in the course of the business of structural pest control to premises under his care, custody, or control; or

(2) files with the board a certificate or other evidence from an insurance company, in the case of an applicant who has an unexpired and uncanceled insurance policy or contract on file with the board, stating that the policy or contract insures the applicant against liability for acts and damage as described in Subdivision (1) of this section and that the amount of coverage is not less than \$30,000.

(b) The policy or contract shall be maintained at all times in an amount not less than \$30,000. Failure to renew the policy or contract or maintain it in the required amount is a ground for suspension or revocation of a Structural Pest Control Business License.

Records by Licensee

Sec. 7B. The board may require each licensee to make records, as prescribed by the board, of his use of pesticides. Records required shall be maintained for at least two years on business premises of the licensee and shall be made available for inspection by the board and by its authorized agents during normal business hours.

Disposition of Fees

Sec. 8. The proceeds from the collection of the fees provided in this Act shall be deposited in a special fund in the State Treasury to be known as the Structural Pest Control Fund, and shall be used for the administration and enforcement of the provisions of this Act. Any balance in the special fund at the end of each State fiscal biennium in excess of appropriations out of that fund for the succeeding biennium shall be transferred to the general revenue fund.

License Suspension, Revocation and Refusal; Appeal

Sec. 9.

[See Compact Edition, Volume 3 for text of 9(a)]

(b) An applicant or licensee may appeal from an order or other action of the board by an action in the district court of Travis County. Notice of appeal must be filed within 30 days of issuance of the order by the board. The hearing in district court shall be governed by the substantial evidence rule.

Civil Penalties and Injunctive Relief

Sec. 10. (a) A person who violates any provision of this chapter or any rule, regulation, permit, or other order of the board is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation to be recovered as provided in this chapter. Whenever it appears that a person has violated or is threatening to violate any provision of this chapter, or any rule, regulation, license, or other order of the board, then the board, or the executive director when authorized by the board, may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to

violate any provision of this chapter or any rule, regulation, license, or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the board, or the executive director when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Criminal Penalties

Sec. 10A. (a) A person commits an offense if he:

- (1) violates Section 5 of this Act;
- (2) violates regulations adopted under Section 4 of this Act; or
- (3) intentionally makes a false statement in an application for a license or otherwise fraudulently obtains or attempts to obtain a license.

(b) Each day of violation is a separate offense.

(c) An offense under this section is a misdemeanor punishable on conviction by a fine of not less than \$50 nor more than \$200.

Exceptions

Sec. 11. The provisions of this Act shall not apply to nor shall the following persons be deemed to be engaging in the business of structural pest control:

- (1) an officer or employee of a governmental or educational agency who performs pest control services as part of his duties of employment;
- (2) a person who performs pest control work upon property which he owns, leases, or rents as his dwelling;
- (3) a nurseryman, holding a certificate from the commissioner of agriculture pursuant to Articles 126 and 126a, Revised Civil Statutes of Texas, 1925, as amended, when doing pest control work on growing plants, trees, shrubs, grass, or other horticultural plants; and
- (4) a person or his employee who is engaged in the business of agriculture or aerial application or custom application of pesticides to agricultural lands.

Board as Sole Licensing Authority

Sec. 11A. The Texas Structural Pest Control Board is the sole authority in this state for licensing persons engaged in the business of structural pest control.

[See Compact Edition, Volume 3 for text of 12]

[Amended by Acts 1975, 64th Leg., p. 2251, ch. 709, §§ 1 to 12, eff. June 21, 1975.]

CHAPTER NINE. SOIL AND WATER CONSERVATION AND PRESERVATION

Art. 165a-4. State Soil and Water Conservation

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

State Soil and Water Conservation Board

Sec. 4. A. There is hereby established to serve as an agency of the State and to perform the functions conferred on it in this Act, the State Soil Conservation Board. The Board will consist of five (5) members. The five (5) elective members of the Board shall be selected as follows: The State of Texas is hereby divided into five (5) State Districts for the purpose of selecting five (5) members of the State Soil Conservation Board. These five (5) State Districts shall be composed as follows:

State District No. 1, comprising fifty-one (51) counties: Dallam, Dawson, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Borden, Scurry, Fisher, Foard.

State District No. 2, comprising fifty-one (51) counties: Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Runnels, Coke, Sterling, Glasscock, Midland, Ector, Winkler, Loving, Reeves, Culberson, Hudspeth, El Paso, Jeff Davis, Presidio, Brewster, Pecos, Terrell, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, San Saba, Mason, Llano, Blanco, Gillespie, Crockett, Schleicher, Menard, Sutton, Kimble, Val Verde, Edwards, Real, Kerr, Kendall, Bandera, Uvalde, Medina, Kinney, Maverick.

State District No. 3, comprising fifty (50) counties: Burleson, Lee, Bastrop, Travis, Hays, Comal, Guadalupe, Caldwell, Fayette, Washington, Austin, Colorado, Lavaca, Gonzales, Wilson, Bexar, DeWitt, Jackson, Wharton, Fort Bend, Brazoria, Matagorda, Calhoun, Refugio, Bee, Karnes, Live Oak, Atascosa, McMullen, La Salle, Frio, Duval, Dimmit, Webb, Zapata, Jim Hogg, Starr, Brooks, Hidalgo, Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Jim Wells, Zavala, Goliad, Victoria.

State District No. 4, comprising fifty-one (51) counties: Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Upshur, Wood, Rains, Van Zandt, Smith, Gregg, Harrison, Henderson, Cherokee, Rusk, Panola, Shelby, Nacogdoches, Anderson, Freestone, Leon, Robertson, Brazos, Madison, Grimes, Waller, Houston, Walker, Trinity, Angelina, San Augustine, Sabine, Newton,

Jasper, Tyler, Polk, San Jacinto, Montgomery, Harris, Liberty, Hardin, Orange, Jefferson, Chambers, Galveston.

State District No. 5, comprising fifty-one (51) counties: Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin, Hunt, Collin, Denton, Wise, Jack, Archer, Baylor, Knox, Haskell, Stephens, Throckmorton, Young, Jones, Shackelford, Palo Pinto, Rockwall, Kaufman, Ellis, Parker, Tarrant, Dallas, Johnson, Hood, Somervell, Erath, Eastland, Calahan, Coleman, Brown, Comanche, Mills, Hamilton, Bosque, Hill, Navarro, Limestone, McLennan, Falls, Milam, Bell, Williamson, Burnet, Lampasas, Coryell.

[See Compact Edition, Volume 3 for text of 4, B and C]

D. Each member of the State Soil Conservation Board shall take the state constitutional oath of office, and said State Soil Conservation Board shall designate one of its elective members to serve as chairman.

Vacancies upon such board shall be filled for an unexpired term or for a full term, by the same manner in which the retiring members were respectively elected. Elective members of the board may receive compensation for their services on the board, not to exceed the sum of \$30 per diem for each day of actual service rendered, but each member shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties as a member of the board.

[See Compact Edition, Volume 3 for text of 4, E to 13]

[Amended by Acts 1975, 64th Leg., p. 156, ch. 66, § 1, eff. Sept. 1, 1975.]

CHAPTER TEN. MILK PRODUCERS AND DISTRIBUTORS

Art. 165-3. Milk Grading and Pasteurization

Definitions

Sec. 1. The following definitions shall apply in the interpretation and enforcement of this Act:

A. Sanitization. Sanitization is the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product or the health of consumers, and shall be acceptable to the health authority.

B. Milk Producer. A milk producer is any person who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station.

C. Milk Hauler. A milk hauler is any person who transports raw milk and/or raw milk products to or from a milk plant, a receiving or transfer station.

D. Milk Distributor. A milk distributor is any person who offers for sale or sells to another any milk or milk products.

E. State Health Officer. The term "State Health Officer" shall mean the Commissioner of Health of the State of Texas.

F. Health Authority. The health authority shall mean the city or county health officer or his representative. The term "Health Authority", wherever it appears in these specifications and requirements, shall mean the appropriate agency having jurisdiction and control over the matters embraced within these specifications and requirements.

G. Dairy Farm. A dairy farm is any place or premises where one or more cows or goats are kept, and from which a part or all of the milk or milk product(s) is provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

H. Milk Plant and/or Receiving Station. A milk plant and/or receiving station is any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution.

I. Transfer Station. A transfer station is any place, premises, or establishment where milk or milk products are transferred directly from one transport tank to another.

J. Official Laboratory. An official laboratory is a biological, chemical, or physical laboratory which is under the direct supervision of the State or a local health authority.

K. Officially Designated Laboratory. An officially designated laboratory is a commercial laboratory authorized to do official work by the supervising agency, or a milk industry laboratory officially designated by the supervising agency for the examination of producer samples of Grade "A" raw milk for pasteurization.

L. Person. The word "person" shall mean any individual, plant operator, partnership, corporation, company, firm, trustee, or association.

State Health Officer to Fix Specifications

Sec. 2. The State Health Officer is hereby authorized and empowered to define what shall constitute

Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, and Grade "A" pasteurized milk products and to fix specifications, rules or regulations for the production and handling of such milk and milk products, according to the safety and food value of the same and the sanitary conditions under which the same are produced and handled. Such definitions, specifications, rules or regulations shall be based upon and shall be in general harmony with (but need not be identical to) the definitions, specifications, rules or regulations relating to such milk and milk products set forth in the most recent federal definitions, specifications, rules and regulations. Such definitions, specifications, rules or regulations shall be set forth in specifications, rules or regulations promulgated by the State Health Officer in accordance with the procedures prescribed by Section 2A hereof.

Any city, county, or other political subdivision, or any Health Officer thereof, adopting any specifications, rules or regulations for any grade of milk or milk products or enforcing and administering the same, shall be governed in adopting, enforcing and administering any such specifications, rules or regulations by the specifications, rules or regulations promulgated hereunder by the State Health Officer and such specifications, rules or regulations adopted by any city, county or other political subdivision shall be in conformity with specifications, rules or regulations promulgated by the State Health Officer.

Notice and Hearing; Emergency Specifications; Advice; Filing Copy; Effective Date

Sec. 2A. Prior to the adoption, amendment, or repeal of any specification, rule or regulation, the State Health Officer shall:

(1) give at least sixty (60) days notice of his intended action. The notice shall include a statement of either the expressed terms or an informative summary of the proposed action, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be published not less than forty-five (45) nor more than sixty (60) days prior to such intended action in a newspaper of general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest U. S. Census. In addition, the notice is to be mailed to all persons who have made timely written requests of the agency for advance notice of its specification, rule or regulation making proceedings; provided, however, that failure to mail such notice shall not invalidate any actions taken or specifications, rules or regulations adopted; and

(2) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. Opportunity for oral argument must be granted if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The State Health Officer shall consider fully all written and oral submissions respecting the proposed specification, rule or regulation. Upon adoption of a specification, rule or regulation, the State Health Officer, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(3) If the State Health Officer finds that an imminent peril to the public health, safety, or welfare requires adoption of a specification, rule or regulation upon fewer than sixty (60) days notice and states in writing his reasons for that find, he may proceed without prior notice or hearing or upon any abbreviated notice and hearing that he finds practicable, to adopt an emergency specification, rule or regulation. The specification, rule or regulation may be effective for a period of not longer than one hundred twenty (120) days renewable once for a period not exceeding sixty (60) days, but the adoption of an identical specification, rule or regulation under Subsections (a)(1) and (a)(2) of this section is not precluded.

(4) No specification, rule or regulation hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any specification, rule or regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the specification, rule or regulation.

(5) The State Health Officer may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated specification, rule or regulation making. The State Health Officer is also authorized to appoint committees of experts or interested persons or representatives of the general public to advise him with respect to contemplated specification, rule or regulation making. The powers of such committees shall be advisory only.

(6) The State Health Officer shall file with the Secretary of State a certified copy of each specification, rule or regulation adopted by him and shall mail a printed copy of each specification, rule or regulation adopted by him to all County and City Health Officers.

(7) Each specification, rule or regulation adopted is effective forty-five (45) days after filing except that: (1) a later date specified in the specification, rule or regulation shall be the effective date; and (2) subject to applicable constitutional or statutory provisions, an emergency specification, rule or regulation becomes effective immediately upon filing, or at a stated date after filing, if the State Health Officer finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(8) Specifications, rules or regulations filed with the Secretary of State shall be made available upon request to any person at prices fixed by the Secretary of State to cover costs of mailing, publication and copying.

[See Compact Edition, Volume 3 for text of 2B to 6]

Sampling, Testing and Inspection of Grade "A" Milk and Milk Products

Sec. 7. The governing body of any city in the State of Texas may make mandatory the grading and labeling of milk and milk products sold or offered for sale within their respective jurisdictions; provided such milk or milk products sold or offered for sale shall be covered by the definitions, specifications and regulations promulgated by the Commissioner of Health under Section 2 for Grade "A" raw milk or milk products, and for Grade "A" pasteurized milk or milk products, by adopting an ordinance to that effect, and by providing the necessary facilities for determining the grade and for the enforcement of this Act; provided, however, the provisions of this section shall apply only to milk or milk products, sold or offered for sale by any person, partnership, or corporation, directly to the consumer of such milk or milk products.

[See Compact Edition, Volume 3 for text of 7A to 8]

[Amended by Acts 1975, 64th Leg., p. 63, ch. 35, § 1, eff. April 3, 1975.]

CHAPTER ELEVEN. COTTON

Article

165-4c. Registration of Cotton Buyers [NEW].

Art. 165-4a. National Fibers and Food Protein Commission

[See Compact Edition, Volume 3 for text of 1]

Creation of Commission; Duties

Sec. 2. The Natural Fibers and Food Protein Commission, composed of the president or successor of The Texas A & M University System, the president of The University of Texas at Austin, the president of Texas Tech University, and the presi-

dent of Texas Woman's University, is hereby created and established to cause surveys, research and investigations to be made relating to the utilization of the cotton fiber, cottonseed, wool, mohair, oilseed products, other textile products, and other products of the cotton plant, with authority to contract with any and all State and Federal Agricultural Agencies and Departments of the state, and all State Educational Institutions and State Agencies to perform any such services for the commission and for the use of their respective available facilities, as it may deem proper, and to compensate such Agencies, Departments and Institutions, to be paid from money appropriated by the Legislature for the purposes of this Act, which appropriations of moneys for research of cotton, wool, mohair, oilseed products and other products of the cotton plant or other textile products are hereby authorized; grants and gifts from the United States or private sources may be accepted for such purposes, and shall be subject only to limitations contained in such grants or gifts.

Sec. 2a. Repealed by Acts 1975, 64th Leg., p. 1935, ch. 632, § 2, eff. Sept. 1, 1975.

[See Compact Edition, Volume 3 for text of 3]
Chairman; Meetings; Liaison Officer; Executive Director

Sec. 4. The Natural Fibers and Food Protein Commission shall elect a chairman to serve for a period of two years. The commission shall meet at least once each year at a time specified by the chairman. Each member of the commission shall designate a member of his staff as a liaison officer to work with committees and staff members of the commission and agencies, departments, and institutions consulting or contracting with the commission in the daily operations of the work of the commission. The commission may employ an executive director to coordinate the operations of committees and staff members and oversee the research being done for the commission by consulting and contracting agencies, departments, and institutions.

Natural Fibers Committee; Food Protein Committee

Sec. 5. (a) The chairman, with the approval of the commission, shall appoint not more than 25 persons to a natural fibers committee. Persons appointed to the committee must be representative of the interests of persons in the natural fibers industry. Members of the committee serve for two-year terms ending on the last day of the state fiscal year in each odd-numbered year. The committee annually shall elect a chairman. The committee shall meet in January and July of each year at a time specified by the committee chairman for the purposes of (1) reviewing research being done for the commission in areas involving natural fibers, and (2) making annual recommendations to the commission for implementation of programs and further research. A

majority of the membership of the committee constitutes a quorum for the purpose of conducting a meeting.

(b) The chairman shall, with the approval of the commission, appoint not more than 25 persons to a food protein committee. Persons appointed to the committee must be representative of the interests of persons in the food protein industry. Members of the committee serve for two-year terms ending on the last day of the state fiscal year in each odd-numbered year. The committee annually shall elect a chairman. The committee shall meet in January and July of each year at a time specified by the committee chairman for the purposes of (1) reviewing research being done for the commission in areas involving food protein, and (2) making annual recommendations to the commission for implementation of programs and further research. A majority of the membership of the committee constitutes a quorum for the purpose of conducting a meeting.

Executive Committee

Sec. 6. The chairman shall, with the approval of the commission, appoint five persons to an executive committee. One person shall be representative of the wool industry; one of the mohair industry; two of the cotton industry; and one of the food protein industry. Appointed members of the committee serve for two-year terms ending on the last day of the state fiscal year in each odd-numbered year. In addition to the appointed members, the committee consists of the chairmen of the natural fibers and food protein committees. The executive committee annually shall elect a chairman. The committee shall meet semiannually at a time specified by the committee chairman. Special meetings may be authorized or called by the chairman of the commission. At its meetings the committee shall review the work of the commission and advise the commission on matters relating to programs and budgets. A majority of the membership of the committee constitutes a quorum for the purpose of conducting a meeting.

[Amended by Acts 1975, 64th Leg., p. 1934, ch. 632, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 165-4c. Registration of Cotton Buyers

Definitions

Sec. 1. In this Act:

- (1) "Commissioner" means the commissioner of agriculture.
- (2) "Cotton producer" means a person who grows cotton.
- (3) "Cotton buyer" means a person who buys cotton from a producer on a forward contract.

(4) "Person" means an individual, association, partnership, corporation, or other private entity.

Registration Required

Sec. 2. (a) No person may purchase cotton on a forward contract from a cotton producer without first having registered with the commissioner as a cotton buyer.

(b) A registration under this section is valid for a period of one year after the date of registration.

Applications

Sec. 3. (a) Each person who wants to engage in activities in this state which require registration under this Act shall file with the commissioner an application for registration.

(b) The application must include:

(1) the name and address of the applicant; and

(2) the name of each trade association relating to cotton producing and marketing of which the applicant is a member.

(c) The applicant shall submit with each application an application fee of \$25.

Registration Permitted

Sec. 4. No later than 30 days after the filing of an application for registration as a cotton buyer, the commissioner shall register the applicant.

Information

Sec. 5. The commissioner shall publish a list of all registered cotton buyers and shall provide a copy of the list to interested persons without charge. The list may include the number of years that the person has been registered in this state as a cotton buyer.

Penalty

Sec. 6. (a) It is an offense to violate Subsection (a), Section 2 of this Act.

(b) An offense under this section is a Class C misdemeanor.

Disposition of Funds

Sec. 7. All funds collected under this Act shall be deposited in the state treasury and shall be used for the purpose of administering and enforcing this Act.

Effective Date

Sec. 8. All provisions of this Act take effect January 1, 1976.
[Acts 1975, 64th Leg., p. 1863, ch. 584, §§ 1 to 8, eff. Jan. 1, 1976.]

TITLE 7

ANIMALS

1. CRUELTY TO ANIMALS

Article

182a. Disposition of Cruelly Treated Animals [NEW].

183 to 185. [Repealed].

187 to 189. [Repealed].

1. CRUELTY TO ANIMALS

Art. 182a. Disposition of Cruelly Treated Animals

Sec. 1. In this Act "cruelly treated" means tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, caused to fight with another animal, or otherwise cruelly treated.

Sec. 2. (a) If a county sheriff or an officer who has responsibility for animal control in an incorporated city or town has reason to believe that an animal has been or is being cruelly treated, he may apply to a justice court in the county where the animal is located for a warrant to seize the animal. On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court shall issue the warrant and set a time within 10 days for a hearing in the court to determine whether the animal has been cruelly treated. The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the justice court hearing.

(b) If the owner of the animal is found guilty in county court of a violation of Section 42.11, Penal Code, involving the animal, this finding is prima facie evidence at the hearing that the animal has been cruelly treated. Statements of an owner made at a hearing provided for in this Act are not admissible in a trial of the owner for a violation of Section 42.11, Penal Code. After all interested parties have been given an opportunity to present evidence at the hearing, if the court finds that the owner of an animal has cruelly treated the animal, the court shall order a public sale of the animal by auction. If the court does not find that the owner of the animal has

cruelly treated the animal, the court shall order the animal returned to the owner.

Sec. 3. (a) Notice of an auction ordered as provided in this Act must be posted on a public bulletin board where other public notices are posted for the city, town, or county. At the auction, a bid by the former owner of the animal or his representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to the expenses incurred in caring for the animal during impoundment and in conducting the auction. The officer conducting the auction shall pay any excess proceeds to the justice court ordering the auction. The court shall cause the excess proceeds to be returned to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, he may cause the animal to be destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

Sec. 4. An owner of an animal ordered sold at public auction as provided in this Act may appeal the ruling by giving notice of appeal in justice court within 10 days of the hearing. Appeal is by means of a hearing in county court in the county where the animal was impounded. At the hearing in county court, the court may assess costs of the hearing. During the pendency of an appeal under this section the animal shall not be sold, destroyed, or given away as provided in Sections 2 and 3 of this Act. [Acts 1975, 64th Leg., p. 197, ch. 77, §§ 1 to 4, eff. Sept. 1, 1975.]

Art. 183 to 185. Repealed by Acts 1975, 64th Leg., p. 197, ch. 77, § 5, eff. Sept. 1, 1975

See, now, art. 182a.

Art. 187 to 189. Repealed by Acts 1975, 64th Leg., p. 197, ch. 77, § 5, eff. Sept. 1, 1975

See, now, art. 182a.

TITLE 8

APPORTIONMENT

REPRESENTATIVE DISTRICTS

Article

195a-4. Representative Districts [NEW].

CONGRESSIONAL DISTRICTS

197e. Congressional Districts [NEW].

REPRESENTATIVE DISTRICTS

Arts. 195a to 195a-2. Repealed by Acts 1975, 64th Leg., p. 2368, ch. 727, § 4, eff. June 21, 1975

Section 5 of Acts 1971, 62nd Leg., p. 2980, ch. 981, also purported to repeal these articles. However, ch. 981 was held unconstitutional in its entirety by the Texas Supreme Court in *Smith v. Craddick* (Sup.1971) 471 S.W.2d 375. See, now, art. 195a-4.

Art. 195a-3. Unconstitutional

This article was held invalid as violative of Const. art. 3, § 26, in *Smith v. Craddick* (Sup.1971) 471 S.W.2d 375.

Art. 195a-4. Representative Districts

Sec. 1. The Representative Districts of the State of Texas shall be composed respectively of the following counties or defined areas, and each district shall be entitled to elect one representative except as otherwise provided herein:

1. Bowie County and that part of Red River County included in census enumeration districts 1, 2, 3, 4, 5, 6, 7, 8, 8B, 9, 9B, 10, 11, 14, and 23.
2. Cass, Marion, Morris, and Upshur counties and that part of Smith County included in census tracts 15 and 17 and census enumeration districts 124, 125, 126, 127, 128, 129, 130, 132, 133, and 134.
3. Harrison and Rusk counties.
4. Nacogdoches, Panola, and Shelby counties.
5. Hardin and Jasper counties and that part of Jefferson County included in census tracts 114 and 115, that part of census tract 1 west of Bi Canal, that part of census tract 3 included in block groups 6 and 7 and block tracts 503, 504, 505, 506, 507, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, 522, 523, 524, 525, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 812, 813, and 817, that part of census tract 113 west of Hillebrandt Bayou except enumeration district 210, that part of census tract 13 included in block group 5 and block tracts 422, 426, 601, 602, 603, 604, 605, 606, 607, 609, 610, 611, 622, 623, 624, 625, 901, 903, 904, 905, 906, 910, and 924 and

enumeration district 204, and census tract 116 except enumeration district 229.

6. Angelina, Newton, Sabine, and San Augustine counties.

7A. That part of Jefferson County included in census tracts 2, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, and 108, that part of census tract 1 east of Bi Canal, that part of census tract 3 included in block group 1 and block tracts 201, 202, 203, 204, 205, 219, 220, 221, 222, 905, 906, and 908 and enumeration district 203, that part of census tract 4 included in block tracts 101, 103, 104, 105, 106, 108, 109, 111, 113, 114, 115, and 116, that part of census tract 24 east of Avenue "A," that part of census tract 25 not included in district 7B, that part of census tract 26 north of U. S. Highway 287, that part of census tract 112 not included in districts 7B or 7C, that part of census tract 110.02 east of State Highway 347, that part of census tract 111.02 east of State Highway 347, and that part of census tract 109 not included in district 7C.

7B. That part of Jefferson County included in census tracts 11, 12, 14, 20, 21, 22, 23, 69, 70, 71, 110.01, and 111.01, that part of census tract 3 not included in districts 5 or 7A, that part of census tract 4 not included in district 7A, that part of census tract 13 not included in district 5, that part of census tract 24 west of Avenue "A," that part of census tract 25 included in block tracts 117, 118, 119, 201, 202, 401, 402, 403, 404, 405, 406, 407, 411, 412, 413, 414, 419, and 426, that part of census tract 26 south of U. S. Highway 287, that part of census tract 110.02 west of State Highway 347, that part of census tract 111.02 west of U. S. Highway 347, that part of census tract 113 east of Hillebrandt Bayou and enumeration district 210, that part of census tract 116 included in enumeration district 229, and that part of census tract 112 west of U. S. Highway 347.

7C. That part of Jefferson County included in census tracts 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 101, 102, 103, 104, 105, 106, and 107, that part of census tract 109 included in block group 3, and that part of census tract 112 included in enumeration districts 212, 228, and 214, and block tracts 101, 102, 103, 104, 105, 106, 936, 937, 938, and 939,

and the remaining part of enumeration district 215 south of Main Street.

8. Orange County.

9. Camp, Delta, Franklin, Lamar, and Titus counties and that part of Red River County included in census enumeration districts 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24, and 25.

10. Hopkins, Hunt, and Rains counties.

11. Kaufman, Van Zandt, and Wood counties.

12. That part of Smith County included in census tracts 1, 2.01, 2.02, 3, 4, 5, 6, 7, 8, 9, 10, 11.01, 11.02, 12, 13, 14, 16 and census enumeration districts 63, 64, 97, 98, 99, 131, 135, 136, 137, 138, 147, 148, 149, 150, 151, 152, 153, and 154.

13. Gregg County.

14. Anderson, Freestone, and Henderson counties and that part of Smith County included in census tract 21 and census enumeration districts 139, 155, 156, 157, 158, 159, 160, 161, 162, 163, 163B, and 164.

15. Cherokee, Houston, Leon, and Limestone counties.

16. Liberty, Polk, San Jacinto, Trinity, and Tyler counties.

17. Chambers County, that part of Harris County included in census tracts 359, 360, 362, 363, 365, 366, 367, 368, 369, and 370, and that part of Galveston County included in census tracts 1205, 1206, 1208, 1209, 1210, 1211, and 1217, that part of census tract 1255 West of the Houston Ship Channel and North of the Texas City Dike and a line extending from the Texas City Dike to the Houston Ship Channel, that part of census tract 1216 included in census block tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 902, 913, 920, 921, 922, 923, 924, 925, and that part of census block tracts 914 and 919 East of the Galveston, Houston and Henderson Railroad, that part of census tract 1213 East of State Highway 3, that part of census tracts 1204 and 1207 not included in district 19B, and that part of census tract 1212 East of State Highway 3 and South of Deats Road.

18. Montgomery and Walker counties.

19A. That part of Galveston County included in census tracts 1220, 1221, 1222, 1230, 1231, 1232, 1233, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1249 and 1254, that part of census tract 1216 included in census block groups 2 and 3 and census block tracts 110, 113, 114, 115, 116, 117, 118, 901, 903, and that part of census block tract 904 East of the Galveston, Houston and Henderson Railroad, that part of census tract 1219 included in that part of census block group 1 East of the Galveston, Houston and Hender-

son Railroad and census block tracts 201, 202, and 203, and that part of census block tract 204 East of the Galveston, Houston and Henderson Railroad, that part of census tract 1234 included in census block groups 1 and 2 and census block tracts 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 314, 315, 316, 317, 318, 319, and 320, and that part of census block tracts 321 and 313 East of the extension of 43rd Street South to the county line, that part of census tract 1243 included in census block tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, and 316, that part of census tract 1245 included in census block tracts 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 121, 122, 123, and 124, that part of census tract 1247 included in census block group 1 and census block tracts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220, that part of census tract 1248 included in census block group 1, that part of census tract 1255 East of the Houston Ship Channel and South of the Texas City Dike and a line extending from the Texas City Dike to the Houston Ship Channel.

19B. That part of Galveston County included in census tracts 1201, 1202, 1203, 1214, 1215, 1218, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1244, 1246, 1250, 1251, 1252, and 1253, that part of census tract 1213 West of State Highway 3, that part of census tract 1216 included in census block tracts 905, 906, 907, 908, 909, 910, 911, 912, 915, 916, 917, and 918 and that part of census block tracts 904, 914, and 919 West of the Galveston, Houston and Henderson Railroad, that part of census tract 1219 included in census block groups 3, 4, 5, 6, and 9 and census block tracts 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, and 219 and that part of census block tracts 117 and 204 West of the Galveston, Houston and Henderson Railroad, that part of census tract 1243 included in census block tracts 117, 118, 119, 201, 202, 214, 215, and 301, that part of census tract 1245 included in census block group 2 and census block tracts 106, 107, 118, and 119, that part of census tract 1248 included in census block groups 2, 3, and 4, that part of census tract 1247 included in census block groups 3 and 4 and census block tracts 221 and 222, that part of census tract 1234 included in census block tracts 322, 323, 324, and that part of census block tracts 321 and 313 West of the extension of 43rd Street South to the county line, that part of census tract 1204 South and East of a line beginning with the intersection of U. S. Highway 75 and the South boundary line

of the S. F. Austin League survey, then East and North along the S. F. Austin League survey to the boundary line of the Michael Muldoon survey, then East along the Michael Muldoon survey to a point where it intersects the Galveston, Houston and Henderson Railroad, and that part of census tract 1207 South of the South boundary line of the Michael Muldoon survey, and that part of census tract 1212 not included in district 17.

20. That part of Brazoria County not included in districts 21 and 31.

21. Fort Bend County and that part of Brazoria County included in census enumeration districts 1, 1B, 1C, 2, 2B, 3, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 50, 54, 78, 79, 86, 87, 88, 89, 90, 98, 99, and 102.

22. That part of Grayson County not included in district 23.

23. Cooke, Fannin, and Wise counties and that part of Grayson County included in census tracts 18 and 19.

24. Collin and Rockwall counties.

25. Denton County.

27. Ellis and Navarro counties.

28. Brazos and Robertson counties.

29. Austin, Burleson, Grimes, Madison, Waller, and Washington counties.

30. Bastrop, Colorado, Fayette, Gonzales, and Lee counties.

31. Matagorda and Wharton counties and that part of Brazoria County included in census enumeration districts 91, 92, 93, 94, 97, 100, 101, 103, 104A, 106, 107, 108, 160, and 160B.

32A. That part of Tarrant County included in census tracts 130, 131, 134.01, 134.02, 135.01, 135.02, 136.02, 137, 217.02, and 218, that part of census tract 65.05 East of the Handley-Ederville Road, and that part of census tract 136.01 included in census enumeration district 129 South of State Highway 121 and census block groups 3, 4, and 5.

32B. That part of Tarrant County included in census tracts 115.01, 115.02, 217.01, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, and 229.

32C. That part of Tarrant County included in census tracts 42.02, 54.01, 54.02, 55.01, 55.02, 55.03, 55.04, 56, 57.01, 57.02, 58, 59, 60.01, 60.02, 111.01, and 111.02, that part of census tract 47 South of Gambrell Street, that part of census tract 109 South of U. S. Highway 377 and South of Old Benbrook Road, and that part of census tract 110.02 North of Sycamore School Road.

32D. That part of Tarrant County included in census tracts 22, 23.01, 23.02, 24.01, 24.02, 25,

26, 27, 51, 52, 53, 106.02, 107.01, and 107.02 and that part of census tract 109 North of U. S. Highway 377 and North of Old Benbrook Road.

32E. That part of Tarrant County included in census tracts 2.01, 2.02, 3, 4, 5.01, 5.02, 6, 50.01, 50.02, 50.03, 66, 67, 104.01, 104.02, 106.01, 139, 140.01, and 140.02, that part of census tract 105 North of River Oaks Boulevard, that part of census tract 141 included in census enumeration district 47, that part of census tract 9 included in census block tracts 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 119, 202, 203, 206, 306, 307, 308, 309, 310, 315, 316, 317, 318, 405, 406, 407, 414, 415, and 416, and that part of census tract 138 North of a line formed by Watauga-Smithfield County Line Road, Whitley Road, and Prewett Road.

32F. That part of Tarrant County included in census tracts 1.01, 1.02, 49, 101, 102, 132.01, 132.02, 133.01, and 133.02, that part of census tract 12.02 North of Galvez Street, that part of census tract 103 West of Haltom Road, that part of census tract 12.01 included in block groups 1 and 2, that part of census tract 136.01 included in census enumeration districts 9A, 9B, 9C, 12, 14, 39, and 39B and that part of census enumeration district 129 North of State Highway 121, and that part of census tract 138 South of a line formed by Watauga-Smithfield County Line Road, Whitley Road, and Prewett Road.

32G. That part of Tarrant County included in census tracts 11, 14.01, 14.02, 14.03, 15, 16, 17, 35, 37.01, 46.01, 64, 65.01, 65.02, 65.03, 65.04, 216.01, 216.02, and 216.03, that part of census tract 12.02 South of Galvez Street, that part of census tract 13 North of the Texas and Pacific Railway, that part of census tract 37.02 West of Miller Road, that part of census tract 65.05 West of Handley-Ederville Road, that part of census tract 103 East of Haltom Road, and that part of census tract 12.01 not included in district 32F.

32H. That part of Tarrant County included in census tracts 32, 33, 34, 36.01, 36.02, 38, 39, 45.01, 45.03, 46.02, 46.03, 46.04, 46.05, 61.01, 61.02, 62, and 63, that part of census tract 13 South of the Texas and Pacific Railway, that part of census tract 37.02 East of Miller Road, that part of census tract 45.02 East of Bryan Street, and that part of census tract 47 North of Gambrell Street.

32I. That part of Tarrant County included in census tracts 7, 8, 10, 18, 19, 20, 21, 28, 29, 30, 31, 40, 41, 42.01, 43, 44, 48.01, and 48.02, that part of census tract 45.02 West of Bryan Street, that part of census tract 105 East of River Oaks Boulevard, and that part of census tract 9 included in census block tracts 207, 208, 209, 210,

211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 301, 302, 303, 304, 305, 319, 320, 321, 322, 323, 401, 402, 403, and 404.

33. Erath, Hood, Johnson, and Somervell counties.

33A. That part of Dallas County included in census tracts 145, 146, 147, 148, 149, 150, 151, 152, that part of census tract 143 not included in district 33B, and that part of census tract 144 not included in district 33J.

33B. That part of Dallas County included in census tracts 99, 136.01, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 141.04, 142, that part of census tract 77 included in census block groups 2 and 3, that part of census tract 97 included in census block groups 3, 4, and 5, and that part of census tract 143 included in census block groups 7, 8, and 9.

33C. That part of Dallas County included in census tracts 4.01, 4.02, 4.03, 5, 16, 17.01, 17.02, 18, 19, 21, 22.01, 22.02, 23, 28, 29, 30, 31.01, 31.02, 32.01, 35, 71.02, 100, 102, that part of census tract 25 included in census block groups 3 and 4, and that part of census tract 36 included in census block group 1.

33D. That part of Dallas County included in census tracts 181.01, 181.02, 181.03, 182, 183, 184, 186, 187, 188, 189, and that part of census tract 190.05 not included in district 33P.

33E. That part of Dallas County included in census tracts 3, 6.01, 6.02, 10, 71.01, 73.01, 73.02, 75.02, 79.01, 193.01, 193.02, 194, 195.01, 195.02, 196, 197, 198, and that part of census tract 2.01 included in census block group 1.

33F. That part of Dallas County included in census tracts 43, 44, 45, 46, 52, 53, 64, 65, 67, 68, 69, 101, 103, 104, and 199.

33G. That part of Dallas County included in census tracts 56, 57, 59.01, 59.02, 60.01, 60.02, 61, 62, 63.01, 63.02, 108, that part of census tract 51 not included in district 330, and that part of census tract 87.02 included in census block groups 2, 3, 5, 6, and 7.

33H. That part of Dallas County included in census tracts 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.01, 169.02, 169.03, 169.04, 170, 171, 172, 173.01, and that part of census tract 116 not included in district 33L.

33I. That part of Dallas County included in census tracts 120, 121, 126, 127, 173.02, 174, 175, 176.01, 176.02, 177, 178.01, 178.02, 179, 180, and 181.04.

33J. That part of Dallas County included in census tracts 105, 106, 107, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164,

165.01, and that part of census tract 144 included in census enumeration districts 69, 70, 82, and 82B.

33K. That part of Dallas County included in census tracts 7.01, 7.02, 8, 9, 11.01, 11.02, 12, 13.01, 13.02, 14, 15.01, 15.02, 24, 26, 27.01, 27.02, 39.01, that part of census tract 25 not included in district 33C, and that part of census tract 38 not included in district 33N.

33L. That part of Dallas County included in census tracts 84, 85, 90.01, 90.02, 91.01, 91.02, 92.01, 92.02, 93.01, 93.02, 115, 117, 118, 119, and that part of census tract 116 included in census block groups 1 and 2.

33M. That part of Dallas County included in census tracts 1, 2.02, 80, 81, 82, 83, 122.01, 122.02, 123, 124, 125, that part of census tract 2.01 not included in district 33E, and that part of census tract 79.02 not included in district 33Q.

33N. That part of Dallas County included in census tracts 37, 39.02, 40, 86, 87.01, 109, 110, 111.01, 111.02, 112, 113, 114.01, 114.02, 167.01, that part of census tract 36 not included in district 33C, that part of census tract 87.02 not included in district 33G, and that part of census tract 38 included in census block group 5.

33O. That part of Dallas County included in census tracts 20, 32.02, 33, 34, 41, 42, 47, 48, 49, 50, 54, 55, 88, 89, and that part of census tract 51 included in census block group 1.

33P. That part of Dallas County included in census tracts 136.02, 190.01, 190.02, 190.04, 190.06, 190.07, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, that part of census tract 190.05 included in census enumeration district 220, and that part of census tract 136.03 not included in district 33R.

33Q. That part of Dallas County included in census tracts 77, 78.01, 78.02, 78.03, 128, 129, 130.01, 130.02, 131, 133, 185.01, 185.02, 190.03, and that part of census tract 79.02 included in census block group 6.

33R. That part of Dallas County included in census tracts 74, 75.01, 76.01, 76.02, 76.03, 76.04, 94, 95, 96.01, 96.02, 96.03, 96.04, 98, 132, 134.01, 134.02, 135, that part of census tract 136.03 included in census block group 2, and that part of census tracts 72 and 97 not included in district 33B.

34. Bosque, Coryell, Hamilton, and Hill counties.

35A. That part of McLennan County included in census tracts, 1, 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 32, 33, 34, 35, 36, and 42.

35B. That part of McLennan County included in census tracts 8, 9, 10, 11, 20, 22, 23, 24, 25.01, 25.02, 26, 27, 28, 29, 30, 31, 37.01, 37.02, 38, 39, 40, and 41.

36. Falls, Milam, and Williamson counties.

37A. That part of Travis County included in census tracts 10, 13.02, 14, 23.01, 23.02, 23.03, and 24, that part of census tract 8 included in enumeration district 198, and block tracts 217, 218, 219, 220, and 221, that part of census tract 9 included in enumeration districts 202, 206, 207, 208, 209, and 210 and block tracts 113, 114, 115, 116, 117, 118, 119, 620, 621, 624, 625, and 628, that part of census tract 20 included in enumeration district 250 and block tracts 202, 203, 210, 211, 212, 213, 301, 302, 303, 304, 305, 306, and 307, that part of census tract 11 not included in district 37B, that part of census tract 21.02 included in enumeration districts 34 and 122 and census block tracts 201, 203, 204, 205, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, and 415, and that part of census tract 12 included in block tracts 118, 119, and 120.

37B. That part of Travis County included in census tracts 6, 7, 13.01, 16.02, 17.02, and 19, that part of census tract 20 not included in district 37A, that part of census tract 11 included in block tracts 101, 102, 103, 104, and 105, that part of census tract 2 included in block group 3 and block tracts 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, and 401, that part of census tract 16.01 not included in district 37C, that part of census tract 3 South of 45th Street and West of Duval Street, that part of census tract 5 West of Duval Street, and that part of census tract 12 not included in district 37A.

37C. That part of Travis County included in census tracts 1, 15.01, 15.02, 18.03, and 17.01, that part of census tract 15.03 included in block tracts 202, 203, 204, 205, 206, 207, 208, 219, 220, 221, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 403, 404, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, and 419, that part of census tract 3 West of Duval Street and North of 45th Street, that part of census tract 2 not included in district 37B, that part of census tract 16.01 included in enumeration districts 161 and 162 and block tracts 214, 215, 216, 217, 231, 202, 212, and 213, and that part of census tract 18.01 not included in district 37D.

37D. That part of Travis County included in census tracts 4, 18.02, 21.01, and 22, that part of census tract 21.02 not included in district 37A, that part of census tract 8 not included in district 37A, that part of census tract 9 not included in district 37A, that part of census tract 3 East of Duval Street, that part of census tract 5 East of Duval Street, that part of census tract 15.03 not included in district 37C, and that part of census tract 18.01 included in block tracts 428, 429, 430, and 431.

38. Caldwell, Comal, and Guadalupe counties.

39. DeWitt, Goliad, Jackson, Karnes, Lavaca, and Refugio counties.

40. Calhoun and Victoria counties.

41. Aransas and San Patricio counties and that part of Nueces County included in census tracts 36, 37, 58, 59, and 61.

42. Parker County and that part of Tarrant County included in census tracts 60.03, 108.01, 108.02, 108.03, 110.01, 112.01, 112.02, 113, 114, 115.03, 115.04, and 142, that part of census tract 110.02 South of Sycamore School Road, and that part of census tract 141 included in census enumeration districts 30 and 46.

43. Burnet, Lampasas, and Mills counties and that part of Bell County included in census enumeration districts 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 67B, 68, 69, 70, 71, 72, 73, 74, 75, 75B, 75C, 78, 78B, 90, 93, 95, 97, 98, 99, 100, 101, 102, 103, 104, and 105.

44. That part of Bell County not included in district 43.

45. Bandera, Blanco, Frio, Hays, Kendall, and Medina counties and that part of Bexar County included in census tracts 1720, 1820, 1821, and 1916.

47. Atascosa, Bee, Dimmit, LaSalle, Live Oak, McMullen, and Wilson counties.

48A. That part of Nueces County included in census tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 35, 50, 54, 56, 57, and 60, and that part of census tract 16 included in enumeration districts 110, 111, and 112 and block tracts 604, 605, 612, and 613, and that part of census tract 28 included in enumeration district 7.

48B. That part of Nueces County included in census tracts 15, 18, 19, 23, 24, 30, 31, 32, 33, and 34 and that part of census tract 16 not included in district 48A.

48C. That part of Nueces County included in census tracts 2.99, 12, 13, 14, 20, 21, 22, 25, 26, 27, 29, and 51, and that part of census tract 28 not included in district 48A.

49. Kenedy, Kleberg, and Willacy counties and that part of Hidalgo County included in census tracts 225, 226, 231, 232, 233, 234, and 243.

50. That part of Cameron County not included in district 51.

51. That part of Cameron County included in census tracts 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, and 121, and that part of Hidalgo County included in census tracts 229 and 230.

52. That part of Wichita County not included in district 53.

53. Archer, Clay, and Young counties and that part of Wichita County included in census tracts 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 136, 137, and 138.

54. Eastland Jack, Montague, Palo Pinto, and Stephens counties.

55. Brown, Callahan, Coleman, Comanche, McCulloch, and Runnels counties.

56. Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, San Saba, Schleicher, and Uvalde counties.

57. Webb and Zapata counties.

57A. That part of Bexar County included in census tracts 1511, 1521, 1608, 1609, 1610, 1611, 1613, 1614, 1615, 1617, 1618, 1619, and 1620.

57B. That part of Bexar County included in census tracts 1411, 1415, 1416, 1505, 1506, 1507, 1508, 1509, 1510, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1520, and 1612.

57C. That part of Bexar County included in census tracts 1205, 1213, 1214, 1215, 1216, 1217, 1310, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1413, 1417, 1418, 1419, 1519, and 1522.

57D. That part of Bexar County included in census tracts 1104, 1303, 1311, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1412, 1414, 1501, 1502, and 1503.

57E. That part of Bexar County included in census tracts 1101, 1102, 1103, 1109, 1110, 1201, 1202, 1301, 1302, 1304, 1305, 1306, 1307, 1308, and 1309.

57F. That part of Bexar County included in census tracts 1203, 1204, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1218, 1219, 1908, 1909, 1913, 1914, and 1917.

57G. That part of Bexar County included in census tracts 1802, 1809, 1810, 1906, 1907, 1910, 1911, and 1912.

57H. That part of Bexar County included in census tracts 1607, 1616, 1714, 1716, 1717, 1718, 1719, 1805, 1807, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, and 1915.

57I. That part of Bexar County included in census tracts 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1715, 1803, 1804, 1806, and 1808.

57J. That part of Bexar County included in census tracts 1105, 1504, 1601, 1602, 1603, 1604, 1605, 1606, 1702, and 1703.

57K. That part of Bexar County included in census tracts 1106, 1107, 1108, 1701, 1704, 1705, 1801, 1901, 1902, 1903, 1904, and 1905.

58. Brooks, Duval, Jim Hogg, Jim Wells, and Starr counties.

59A. That part of Hidalgo County included in census tracts 201, 202, 203, 204, 207, 208, 209, 210, 235, 236, 237, 238, 239, 240, 241, and 242 and that part of census tract 211 north of U. S. Highway 83.

59B. That part of Hidalgo County included in census tracts 205, 206, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, and 228 and that part of census tract 211 south of U. S. Highway 83.

60. Concho, Irion, and Tom Green counties.

61. Fisher, Jones, Mitchell, and Nolan counties and that part of Taylor County included in census tracts 120, 121, 127, 128, 129, 130, 131, 132, 133, 134, 135, and 136, and that part of census tract 126 included in census enumeration district 79.

62. That part of Taylor County not included in district 61.

63. Borden, Coke, Dawson, Howard, Scurry, and Sterling counties.

64. Dallam, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Roberts, and Sherman counties.

65. Carson and Randall counties and that part of Potter County included in census tracts 101, 117, 121, 129, 130, 133, 134, 135, 138, 141, 142, and 143.

66. Armstrong, Briscoe, Childress, Collingsworth, Donley, Floyd, Gray, Hall, Motley, and Wheeler counties.

67. That part of Potter County not included in district 65.

68. Glasscock, Midland, Reagan, and Upton counties.

69. Crane, Loving, Pecos, Reeves, Ward, and Winkler counties and that part of Ector County included in census tracts 1, 20, 21, 22, 25, and 26.

70. Brewster, Crockett, Edwards, Kinney, Maverick, Sutton, Terrell, Val Verde, and Zavala counties.

71. Culberson, Hudspeth, Jeff Davis, and Presidio counties and that part of El Paso County included in census tracts 34.02, 41.02, 42.01, 42.02, 43.01, 43.02, 43.03, and 103.

72A. That part of El Paso County included in census tracts 1.01, 1.02, 1.03, 2.01, 2.02, 3.01, 3.02, 11.01, 11.02, 12, 13, 14, and 102 and that part of census tract 101 West of the Southern Pacific Railroad.

72B. That part of El Paso County included in census tracts 15, 16, 17, 18, 4.01, 4.02, 5, 6, 7, 8, 9, and 10, that part of census tract 22 not included in district 72C, that part of census tract 23 included in enumeration districts 107, 108, 111, and 112 and block tracts 401, 402, 407, 408,

409, 410, 414, and 416, that part of census tract 25 included in enumeration district 121 and block tracts 301, 716, 717, 718, 719, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, and 819, and that part of census tract 24 included in enumeration districts 115 and 116.

72C. That part of El Paso County included in census tracts 19, 20, 21, 26, 27, 28, 29, 30, 31, 36, and 37, that part of census tract 22 included in block tracts 107, 108, 109, 110, 112, and 113, that part of census tract 23 included in enumeration district 110 and block tracts 501, 502, 503, 504, 505, 506, 507, 508, 702, 703, 704, 705, 710, 711, 712, 713, 714, and 719, that part of census tract 24 included in enumeration districts 117 and 118, that part of census tract 25 included in enumeration districts 124 and 125, and that part of census tract 38 included in enumeration districts 258, 258B, and 259.

72D. That part of El Paso County included in census tracts 105, 104, 40, 41.01, 35.02, 35.01, 32, 33, 34.01, and 39, that part of census tract 38 included in enumeration districts 260, 261, 262, and 263, that part of census tract 101 East of the Southern Pacific Railroad, and that part of census tract 25 included in enumeration districts 119 and 123 and block tracts 113, 114, 115, 116, 117, 201, 202, 213, 214, 215, 216, 302, 303, 304, 305, 306, 307, 308, 309, and 311.

73. That part of Ector County not included in district 69.

74. Bailey, Castro, Cochran, Deaf Smith, Lamb, Oldham, and Parmer counties.

75A. That part of Lubbock County included in census tracts 4.01, 4.02, 4.03, 5, 6.01, 15, 16.01, 16.02, 17.01, 17.02, 17.03, 18.01, 18.02, 19.01, 19.02, 20, and 21.

75B. That part of Lubbock County included in census tracts 1, 2.01, 2.02, 3, 6.02, 7, 8, 9, 10, 11, 12.01, 12.02, 13, 14, 22, 23, 24, and 25.

76. Hale and Swisher counties and that part of Lubbock County included in census tracts 101, 102, 103, 104, 105, 106, and 107.

77. Andrews, Gaines, Hockley, Lynn, Martin, Terry, and Yoakum counties.

78. That part of Harris County included in census tracts 234, 249, 250, 251, 252, 253, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, and 364.

79. That part of Harris County included in census tracts 125, 126, 401, 402, 403, 404, 505, 506, 512, 513, and 514.

80. That part of Harris County included in census tracts 316, 331, 332, 333, 335, 338, 339, 412, 414, and 415.

81. That part of Harris County included in census tracts 327, 328, 334, 336, 337, 340, 341, 342, 343, 428, 429, 430, 431, and 432.

82. That part of Harris County included in census tracts 507, 510, 511, 517, 518, 519, and 520.

83. That part of Harris County included in census tracts 406, 420, 421, 442, 443, 515, and 516.

84. That part of Harris County included in census tracts 523, 524, 525, 526, 527, 530, 531, and 540.

85. That part of Harris County included in census tracts 314, 315, 317, 318, 319, 329, and 330.

86. That part of Harris County included in census tracts 124, 302, 304, 305, 306, 307, 308, and 309.

87. That part of Harris County included in census tracts 121, 122, 123, 201, 301, 303, 310, 311, 312, 501, 502, and 504, that part of census tract 203 South of Interstate Highway 10, and that part of census tract 202 not included in district 98.

88. That part of Harris County included in census tracts 204, 205, 206, 207, 208, 216, and 503.

89. That part of Harris County included in census tracts 214, 215, 217, 218, 219, 225, 226, and 227.

90. That part of Harris County included in census tracts 405, 407, 408, 409, 410, 411, 413, 416, and 417.

91. That part of Harris County included in census tracts 418, 419, 423, 424, 425, and 426.

92. That part of Harris County included in census tracts 422, 439, 440, 441, 444, and 445.

93. That part of Harris County included in census tracts 427, 433, 434, 435, 436, 437, 438, 446, 447, and 449.

94. That part of Harris County included in census tracts 222, 223, 240, 241, 242, 448, 450, 451, 452, 528, 529, 534, 535, 536, 537, 538, 539, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, and 558.

95. That part of Harris County included in census tracts 220, 221, 508, 509, 521, 522, 532, and 533.

96. That part of Harris County included in census tracts 224, 228, 229, 230, 231, 235, 236, 237, 238, 239, 243, 244, 245, 246, 247, 248, 254, and 559.

97. That part of Harris County included in census tracts 313, 320, 321, 323, 324, 325, and 326.

98. That part of Harris County included in census tracts 209, 210, 211, 212, 213, 322, and 350, that part of census tract 203 North of Interstate Highway 10, and that part of census tract 202 included in block tracts 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, and 222.

99. That part of Harris County included in census tracts 232, 233, 351, 352, 353, 354, 355, 356, 357, 358, and 361.

100. That part of Harris County included in census tracts 344, 345, 346, 347, 348, 349, 371, 372, 373, 374, and 375.

101. Baylor, Cottle, Crosby, Dickens, Foard, Garza, Hardeman, Haskell, Kent, King, Knox, Shackelford, Stonewall, Throckmorton, and Wilbarger counties.

Sec. 2. This Act shall become effective for the elections, primary and general, for all representatives from the places herein specified and described to the 65th Legislature, and continue in effect thereafter for succeeding legislatures; provided specifically that this Act shall not affect the membership, personnel, or districts of the 64th Legislature; and provided further, that in case a vacancy occurs in the office of any representative of the 64th Legislature by death, resignation, or otherwise, and a special election to fill such vacancy becomes necessary, said election shall be held in the district as it was constituted on January 1, 1975.

Sec. 3. The terms "census tract" and "census enumeration district," as used in this Act, mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract. "Block tracts" are subdivisions of "block groups" as defined on census metropolitan maps.

Sec. 4. Chapter 351, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 195a, Vernon's Texas Civil Statutes), and Chapters 733 and 808, Acts of the 61st Legislature, Regular Session, 1969 (Articles 195a-1 and 195a-2, Vernon's Texas Civil Statutes), are repealed.

Sec. 5. When this Act becomes effective, the Act of October 22, 1971, of the Legislative Redistricting Board of Texas apportioning the state into representative districts, as altered by decision of the

United States District Court, Western District of Texas, is superseded.

[Acts 1975, 64th Leg., p. 2358, ch. 727, §§ 1 to 5, eff. June 21, 1975.]

CONGRESSIONAL DISTRICTS

Art. 197d. Repealed by Acts 1975, 64th Leg., p. 1393, § 27, eff. Sept. 1, 1975

See, now, art. 197e.

Art. 197e. Congressional Districts

Sec. 1. The State of Texas is apportioned into congressional districts as provided in the following sections. Each district is entitled to elect one member to the House of Representatives of the Congress of the United States.

Sec. 2. District 1 is composed of Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, San Augustine, Shelby, Titus, Upshur, and Wood counties; that part of Hunt County included in the Lone Oak census county division; and that part of Rains County included in the Emory census county division.

Sec. 3. District 2 is composed of Anderson, Angelina, Grimes, Hardin, Houston, Jasper, Leon, Liberty, Madison, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler, and Walker counties; and that part of Freestone County not included in the Streetman Town part of the Wortham census county division.

Sec. 4. District 3 is composed of that part of Collin County included in the Nevada, Plano, and Wylie census county divisions; that part of Denton County included in the Lewisville census county division; and that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.01, 7.02, 9, 10, 11.01, 11.02, 71.01, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 123, 129, 130.01, 130.02, 131, 132, 133, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 142, 143, 146, 147, 185.02, 190.02, 190.03, 190.04, 190.06, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02, 194, 195.01, 195.02, 196, 197, and 198.

Sec. 5. District 4 is composed of Grayson, Gregg, Kaufman, Rockwall, Smith, and Van Zandt counties; that part of Collin County not included in District 3; that part of Cooke County included in the Gainesville North Callisburg census county division; that part of Denton County not included in District 3; that part of Hunt County not included in District 1; and that part of Rains County not included in District 1.

Sec. 6. District 5 is composed of that part of Dallas County not included in District 3 or 6 or 24.

Sec. 7. District 6 is composed of Brazos, Ellis, Hill, Johnson, Limestone, Navarro, and Robertson counties; that part of Freestone County not included in District 2; that part of Parker County included in the Weatherford Southeast and the Weatherford Southwest census county divisions; that part of Dallas County included in census tracts 60.01, 60.02, 61, 63.01, 108, 109, 110, 111.01, 111.02, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.01, 169.02, 169.03, and 169.04; and that part of Tarrant County included in census tracts 60.03, 111.02, 112.01, 112.02, 108.03, 109, 54.01, 55.01, 54.02, 42.01, 43, 42.02, 48.01, 47, 56, 48.02, 55.02, 57.01, 58, 59, 60.02, 60.01, 110.02, 57.02, 55.03, 55.04, and 110.01.

Sec. 8. District 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 431, 432, 333, 413, 334, 536, and 430; and that part of census tract 405 included in census block group 5.

Sec. 9. District 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 521, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, 534, 254, and 353.

Sec. 10. District 9 is composed of Chambers, Galveston and Jefferson counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 256, 255, 257, 258, 235, 259, 260, 226 and 239.

Sec. 11. District 10 is composed of Austin, Bastrop, Blanco, Burleson, Fayette, Hays, Lee, Travis and Washington counties; that part of Caldwell County included in the Martindale census county division; that part of Colorado County not included in the Garwood census county division; that part of Gonzales County included in the Waelder census county division; that part of Lavaca County included in the Moulton and Shiner census county divisions; that part of Waller County not included in the Brookshire census county division; and that part of Williamson County included in the Florence, Georgetown, Jarrel, and Liberty Hill census county divisions.

Sec. 12. District 11 is composed of Bell, Bosque, Brown, Burnet, Coryell, Falls, Hamilton, Hood, Lam-

pasas, McCulloch, McLennan, Milam, Mills, San Saba, and Somervell Counties; that part of Coleman County not included in the Coleman census county division; that part of Comanche County included in the Gustine census county division; that part of Erath County included in the Stephenville South census county division; and that part of Williamson County not included in District 10.

Sec. 13. District 12 is composed of that part of Tarrant County not included in District 6 or 24.

Sec. 14. District 13 is composed of Archer, Armstrong, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, and Wilbarger counties.

Sec. 15. District 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria, and Wharton counties; that part of Colorado County not included in District 10; and that part of Lavaca County not included in District 10.

Sec. 16. District 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata counties; that part of Bee County included in the Pettus-Pawnee census county division; and that part of Karnes County included in the Kenedy census county division.

Sec. 17. District 16 is composed of Culberson, El Paso, Hudspeth, Loving, Presidio, Ward, and Winkler counties; that part of Jeff Davis County included in the Valentine census county division; that part of Reeves County included in the Pecos census county division; and that part of Ector County not included in District 19.

Sec. 18. District 17 is composed of Baylor, Borden, Callahan, Crosby, Eastland, Fisher, Floyd, Garza, Haskell, Howard, Jack, Jones, Kent, Knox, Lynn, Mitchell, Montague, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton, Wise, and Young counties; that part of Coleman County not included in District 11; that part of Comanche County not included in District 11; that part of Cooke County not included in District 4; that part of Dawson County included in the Lamesa Southeast census county division; that part of Erath County not included in District 11; and that part of Parker County not included in District 6.

Sec. 19. District 18 is composed of that part of Harris County not included in District 7 or 8 or 9 or 22.

Sec. 20. District 19 is composed of Andrews, Bailey, Castro, Cochran, Deaf Smith, Gaines, Hale,

Hockley, Lamb, Lubbock, Martin, Midland, Parmer, Terry, and Yoakum counties; that part of Dawson County not included in District 17; and that part of Ector County included in census tracts 1, 2, 3, 5, 6, 7, 8, 9, 21, 24, and 25.

Sec. 21. District 20 is composed of that part of Bexar County not included in District 21 or 23.

Sec. 22. District 21 is composed of Bandera, Brewster, Coke, Comal, Concho, Crane, Crockett, Edwards, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Llano, Mason, Menard, Pecos, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, and Val Verde counties; that part of Jeff Davis County not included in District 16; that part of Medina County in the D'Hannis and Hondo census county divisions; that part of Reeves County not included in District 16; and that part of Bexar County included in census tracts 1719, 1720, 1816, 1817, 1806, 1807, 1815, 1821, 1820, 1819, 1915, 1916, 1914, 1818, 1814, 1809, 1810, 1811, 1813, 1812, 1911, 1912, 1909, 1913, 1207, 1210, 1209, 1208, 1206, 1203, 1204, 1803, 1808, 1802, 1908, 1718, 1717, 1714, 1805, 1917, 1211, 1212, 1213, 1617, 1219, 1218, and 1215.

Sec. 23. District 22 is composed of Brazoria and Fort Bend counties; that part of Waller County not included in District 10; and that part of Harris County included in census tracts 412, 414, 415, 331, 332, 329, 366, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 410, 355, 356, 349, 357, 358, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, 323, and 344.

Sec. 24. District 23 is composed of Atascosa, DeWitt, Dimmit, Frio, Goliad, Guadalupe, Kinney, LaSalle, Maverick, Uvalde, Webb, Wilson, and Zavala counties; that part of Bee County not in District 15; that part of Caldwell County not in District 10; that part of Gonzales County not in District 10; that part of Karnes County not in District 15; that part of Medina County not in District 21; and that part of Bexar County included in census tracts 1619, 1620, 1612, 1613, 1610, 1611, 1512, 1520, 1521, 1513, 1511, 1514, 1516, 1518, 1519, 1522, 1416, 1415, 1418, 1417, 1414, 1413, 1419, 1312, 1313, 1314, 1310, 1309, 1315, 1205, 1214, 1217, 1216, 1317, 1316, 1318, 1517, 1615, 1618, and 1508.

Sec. 25. District 24 is composed of that part of Dallas County included in census tracts 20, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59.01, 59.02, 62, 63.02, 64, 65, 67, 68, 69, 86, 87.01, 87.02, 88, 89, 101, 102, 103, 104, 105, 106, 107, 112, 113, 114.01, 114.02, 141.04, 144, 145, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 167.01, and 199; and that part of Tarrant County included in census tracts 135.01, 64, 65.05, 131, 130, 218, 217.02, 217.01, 216.02, 216.01, 65.04, 65.02, 65.03, 13, 216.03, 115.01, 115.02, 222, 223, 225, 224, 221, 220, 219, 229, 228, 227, 226, 115.03, 115.04, 114, and 113.

Sec. 26. The terms "census tract" and "census county division" mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

Sec. 27. Chapter 12, Acts of the 62nd Legislature, 1st Called Session, 1971 (Article 197d, Vernon's Texas Civil Statutes), is repealed.

Sec. 28. Nothing in this Act affects the tenure in office of the present delegation in Congress, but this Act takes effect for the general election in 1976. [Acts 1975, 64th Leg., p. 1390, ch. 537, §§ 1 to 28, eff. Sept. 1, 1975.]

JUDICIAL DISTRICTS

Art. 199. Judicial Districts

[See Compact Edition, Volume 3 for text of 1 to 26]

27.—Bell, Lampasas and Mills

(a) The 27th Judicial District shall be composed of the Counties of Bell, Lampasas and Mills, and the terms of the District Court shall be held therein each year as follows:

In the County of Bell on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

In the County of Lampasas on the first Mondays in March and September and may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Mills on the first Mondays in May and November and may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such County.

See Compact Edition, Volume 3 for text of (b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, §§ 1 & 2, eff. April 30, 1975.]

[See Compact Edition, Volume 3 for text of 28 to 42]

43.—Parker

[See Compact Edition, Volume 3 for text of (a) to (e)]

(f) In addition to the compensation provided by law and paid by the state, the Judge of the 43rd

Judicial District may receive additional compensation to be determined and fixed by the Commissioners Court in an amount not to exceed \$7,800 annually, to be paid in equal monthly installments out of the general fund or officers' salary fund of Parker County, as compensation for all judicial and administrative services performed by him. The Commissioners Court of Parker County shall make proper budget provisions for the payment of this salary. [Amended by Acts 1975, 64th Leg., p. 668, ch. 281, § 1, eff. Sept. 1, 1975.]

[See Compact Edition, Volume 3 for text of 44 to 62]

63.—Val Verde, Terrell, Maverick, Kinney and Edwards

Sec. 1. The Sixty-third Judicial District shall be composed of the Counties of Val Verde, Terrell, Maverick, Kinney and Edwards, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Val Verde on the first Monday in January and the first Monday in June;

In the County of Terrell on the first Monday in February and the third Monday in August;

In the County of Maverick on the first Monday in March and the second Monday in September;

In the County of Kinney on the first Monday in April and the first Monday in October; and

In the County of Edwards on the first Monday in May and the third Monday in October.

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.

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

[Amended by Acts 1975, 64th Leg., p. 1341, ch. 500, § 1, eff. Sept. 1, 1975.]

[See Compact Edition, Volume 3 for text of 64 to 75]

76.—Titus, Camp, Morris and Marion

[See Compact Edition, Volume 3 for text of 1 to 5(c)]

(d) The County Attorney of Marion County shall represent the state in all criminal matters pending before the 76th District Court and the 115th District Court in Marion County. The District Attorney of the 76th Judicial District shall continue to represent the state in the other counties in the 76th Judicial District, and the provisions of this subsection do not affect his powers and duties in the counties of Titus, Camp, and Morris. The duties of the District Attorney of the 76th Judicial District in Marion County are divested from him and invested in the County

Attorney of Marion County. The present district attorney for the 76th Judicial District shall continue in office as the district attorney in the counties of Titus, Camp, and Morris until the general election in 1976 and until his successor is elected and has qualified. Beginning with the general election in 1976, the District Attorney of the 76th Judicial District shall only stand for election and be elected from the counties of Titus, Camp, and Morris.

[See Compact Edition, Volume 3 for text of 6]

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 1, eff. Sept. 1, 1975.]

[See Compact Edition, Volume 3 for text of 77 to 81]

82.—Falls County

Sec. 1. The 82nd Judicial District of the State of Texas is composed of the County of Falls. The terms of the District Court shall be held on the first Monday in the months of January, March, May, September and November and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term. Grand juries shall be organized at the May and November terms of said court, and at such other terms as the judge of said district may determine and order.

Sec. 2. The District Court of the 82nd Judicial District shall have all the jurisdiction prescribed by the constitution and laws of this state for district courts and also shall have and exercise original and appellate jurisdiction in all civil and criminal matters and causes over which the county courts have original or appellate jurisdiction.

[Amended by Acts 1975, 64th Leg., p. 84, ch. 39, § 2, eff. April 8, 1975.]

[See Compact Edition, Volume 3 for text of 83 to 114]

115.—Upshur, Wood and Marion Counties

[See Compact Edition, Volume 3 for text of (a) to (c)]

(d) The County Attorney of Marion County shall represent the state in all criminal matters pending before the 76th District Court and the 115th District Court in Marion County. The duties of the District Attorney of the 76th Judicial District in Marion County are divested from him and invested in the County Attorney of Marion County.

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 2, eff. Sept. 1, 1975.]

[See Compact Edition, Volume 3 for text of 116 to 145]

146.—Bell

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3. The terms of the District Court of the 146th Judicial District shall be on the first Mondays

in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

[See Compact Edition, Volume 3 for text of 4 to 6]

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, §§ 1 & 2, eff. April 30, 1975.]

[See Compact Edition, Volume 3 for text of 147 to 235]

Art. 199a. Judicial Districts Act of 1969

[See Compact Edition, Volume 3 for text of Subchapters A and B]

SUBCHAPTER C. CREATION OF DISTRICTS

[See Compact Edition, Volume 3 for text of 3.001 and 3.002]

169.—Bell

[See Compact Edition, Volume 3 for text of 3.003(a)]

(b) The terms of the 169th District Court shall be on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

[See Compact Edition, Volume 3 for text of 3.004 to 3.013]

187.—Bexar

[See Compact Edition, Volume 3 for text of 3.014(a) and (b)]

(c) The term of court of the 187th District Court beginning on the first Monday in July, 1975, shall continue until the first Monday in September, 1975. Beginning on the first Monday in September, 1975, the court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in September, one term beginning on the first Monday in November, one term beginning on the first Monday in January, one term beginning on the first Monday in March, one term beginning on the first Monday in May, and one term beginning on the first Monday in July of each year. Each term shall continue until the business is disposed of.

[See Compact Edition, Volume 3 for text of 3.015 to 3.028]

199.—Collin

[See Compact Edition, Volume 3 for text of 3.028(a)]

Subsections (b), (c), (d), and (e), are repealed by Acts 1975, 64th Leg., p. 375, ch. 166, § 9, eff. Jan. 1, 1976.

[See Compact Edition, Volume 3 for text of 3.029 to 3.035]

208.—Harris

[See Compact Edition, Volume 3 for text of 3.036(a) and (b)]

(c) The term of court of the 208th District Court beginning on the first Monday in January, 1975, shall continue until the first Monday in August, 1975. Beginning on the first Monday in August, 1975, the court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

209.—Harris

[See Compact Edition, Volume 1 for text of 3.037(a) and (b)]

(c) The term of court of the 209th District Court beginning on the first Monday in January, 1975, shall continue until the first Monday in August, 1975. Beginning on the first Monday in August, 1975, the court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

[See Compact Edition, Volume 3 for text of 3.038 to 7.003]

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, § 3, eff. April 30, 1975; Acts 1975, 64th Leg., p. 342, ch. 144, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 375, ch. 166, § 9, eff. Jan. 1, 1975; Acts 1975, 64th Leg., p. 465, ch. 199, § 1, eff. May 15, 1975.]

ADMINISTRATIVE JUDICIAL DISTRICTS

Art. 200a. Administrative Judicial Districts

Numbers and Composition

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

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

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

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

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

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

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

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

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

Ninth—Wilbarger, Baylor, Knox, King, Dickens, Motley, Cottle, Crosby, Lubbock, Hockley, Cochran, Bailey, Lamb, Hale, Floyd, Castro, Swisher, Briscoe, Parmer, Deaf Smith, Oldham, Hartley, Dallam, Sherman, Moore, Potter, Randall, Armstrong, Hansford, Ochiltree, Lipscomb, Hutchinson, Roberts, Hemphill, Carson, Gray, Wheeler, Donley, Collingsworth, Hall, Childress, Hardeman, Foard, Yoakum, Terry.

Presiding Judge

Sec. 2. It shall be the duty of the Governor, with the advice and consent of the Senate, to designate one of the regularly elected district judges, or a retired district judge, or an active or retired appellate judge with judicial experience on a district

court, who, if retired, voluntarily retired from office, who resides within the district, and who has certified his willingness to serve, in each of said districts as Presiding Judge of the Administrative Judicial District. Adequate quarters for the operation of such District and preservation of records shall be provided in the courthouse of the county in which such Presiding Judge resides. Upon the death, resignation or expiration of the term of office of such Presiding Judge, the Governor shall thereafter immediately appoint or reappoint a Presiding Judge of the Administrative District, as in the first instances above. Presiding Judges of Administrative Judicial Districts shall serve for a term of four (4) years from date of qualification as such administrative judge.

[See Compact Edition, Volume 3 for text of 3 to 10a]

Compensation for Performing Duties as Presiding Judge of Administrative Judicial Districts

Sec. 11.

[See Compact Edition, Volume 3 for text of 11(a)]

(b) In addition to and cumulative of all other compensation, expenses, and perquisites authorized by law and this Act, the Presiding Judge of any Administrative Judicial District in Texas which has forty or more district courts therein, when such Presiding Judge is a retired district judge or appellate judge, as provided in Section 2 of this Act, shall receive not less than \$5,000.00 nor more than \$15,000.00 per annum as compensation for performing duties as the Presiding Judge of such Administrative Judicial District. Biennially the Council of Judges of such Administrative Judicial District shall fix the amount of such compensation by a majority vote of the judges. Each county comprising such Administrative Judicial District shall pay out of the officers salary fund or the general fund of the county the amount of salary apportioned to it as herein provided. The aforesaid salary, or compensation, and all other expenses incidental thereto, shall be paid annually by the said counties in such Administrative Judicial District to the Presiding Judge of such Administrative Judicial District, and by said judge placed in an Administrative Fund, from which fund said salary, and other expenses incidental thereto, shall be paid. Said salary shall be paid in twelve equal monthly payments. Said salary shall be apportioned according to the assessed property valuation of each judicial district comprising such Administrative Judicial District and after so apportioned the amount apportioned shall be apportioned to each county comprising the judicial district according to the assessed property valuation of the county.

[Amended by Acts 1975, 64th Leg., p. 1193, ch. 450, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1911, ch. 614, § 1, eff. Sept. 1, 1975.]

TITLE 10A

ARCHITECTS

Art. 249a. Regulation of Practice of Architecture

[See Compact Edition, Volume 3 for text of 1 to 11]

Annual Registration and Fee; Certificate of Renewal; Failure to Renew; Suspension and Revocation

Sec. 12.

[See Compact Edition, Volume 3 for text of 12(a)]

(b) Any registered architect who shall fail to have his or her registration certificate renewed before the first day of January 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 first day of January and before the first of April of the same year shall be an additional Twenty Dollars (\$20.00) 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 April of the same year, 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 not to exceed One Hundred Dollars (\$100.00) as set by the Board; 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 during 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.

[See Compact Edition, Volume 3 for text of 12A to 14]

[Amended by Acts 1975, 64th Leg., p. 792, ch. 305, § 1, eff. May 27, 1975.]

TITLE 14

ATTORNEYS AT LAW

Article

320c. Liability of Attorney for Costs in Civil Proceeding [NEW].

Art. 320a-1. State Bar Act

[See Compact Edition, Volume 3 for text of 1 and 2]

Members of State Bar; Unlicensed Persons Prohibited From Practicing; Assistance of Law Students or Unlicensed Graduate in Trial of Cases Subject to Rules and Regulations; Licensed Persons

Sec. 3. All persons who are now or who shall hereafter be licensed to practice law in this State shall constitute and be members of the State Bar, and shall be subject to the provisions hereof and the rules adopted by the Supreme Court of Texas; and all persons not members of the State Bar are hereby prohibited from practicing law in this State except as provided below. A bona fide law student attending a law school approved by the Supreme Court of Texas who has completed two-thirds of the required curriculum for graduation as computed on an hourly basis, or one-half of the required curriculum for graduation computed on an hourly basis if the student is enrolled in a clinical legal education course for which course credit is awarded, or a graduate of an approved law school during the interim between graduation and the first offering of the state bar examination after graduation, or a graduate of an approved law school who has taken the state bar examination for the first time but has not received the results of that examination, may, with the consent of the presiding judge, assist licensed attorneys in the trial of cases. His participation in the trial of cases shall be governed by rules and regulations which shall be promulgated within 90 days after this Act becomes law by a joint committee composed of five members of the State Bar designated by the president of such bar and four members of the State Junior Bar designated by the president of such bar. The presiding officer of the joint committee shall be chosen by the committee members from the members designated by the State Bar. All rules and regulations promulgated within 90 days after this Act becomes law by the joint committee shall be subject to approval by the Supreme Court of Texas, but shall contain at least the following minimum requirements:

(1) that a qualified law student or qualified unlicensed law school graduate may file instruments and motions and handle other routine

matters before any court or administrative body of this State;

(2) that a qualified law student or qualified unlicensed law school graduate may make an appearance for the purpose of trial and the arguing of motions, provided that he is accompanied at such appearance by an attorney licensed to practice law in this State, in all courts of this State; and

(3) that a qualified law student or qualified unlicensed law school graduate may not appear in or conduct any contested hearing or trial, before any administrative tribunal or in any of the courts, unless accompanied at such appearance by an attorney licensed to practice law in this State.

Within the meaning of this section, all persons furnishing evidence of or complying with any of the following provisions shall be deemed as now licensed to practice law within this State, viz:

(a) That he is now enrolled as an attorney at law before the Supreme Court of this State.

(b) A license or the issuance of a license by the Board of Legal Examiners of this State authorizing him to practice law within this State.

(c) A license or the issuance of a license to practice law within this State by any authority, which, at the time of the issuance thereof, was authorized by the laws of this State, then in effect, to issue the license.

(d) Where an attorney, licensed before October 6, 1919, has lost or misplaced his license, issued by legal authority, and where the proof of its issuance is not available in the records of the Court in Texas in which he claims it was issued, then his status as a licensed attorney in this State may be established by a certificate of the District Judge in the District of his residence that such person has been engaged in the practice of law within this State for a period of five (5) years immediately and continuously next preceding the effective date of this Act, and, within the judgment of said District Judge, said attorney has theretofore been duly licensed to practice law under the laws of the State of Texas and is of good moral character. Before any such certificate shall be issued by a District Judge, the Judge shall give an opportunity to

the president of the local bar association in the county of said attorney's residence to be heard.

(e) Any proof satisfactory to the Supreme Court of this State that he is and was, upon the effective date of this Act, authorized to practice law within this State.

[See Compact Edition, Volume 3 for text of 4 to 7]

[Amended by Acts 1975, 64th Leg., p. 120, ch. 56, § 1, eff. Sept. 1, 1975.]

Art. 320c. Liability of Attorney for Costs in Civil Proceeding

Regardless of any law or rule to the contrary, an attorney who is not a party to a civil proceeding is not liable for payment of costs incurred by any party to the proceeding.

[Acts 1975, 64th Leg., p. 1335, ch. 498, § 1, eff. Sept. 1, 1975.]

TITLE 14—APPENDIX

CODE OF JUDICIAL CONDUCT

Adopted July 25, 1974

Effective September 1, 1974

Amended to September 24, 1974

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All his Activities.
3. A Judge Should Perform the Duties of his Office Impartially and Diligently.
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties.
6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.
7. A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office.

Compliance With The Code of Judicial Conduct.

Effective Date of Compliance.

Canon 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in all his Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily in an adjudicative proceeding as a character witness.

Canon 3

A Judge Should Perform the Duties of his Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as

authorized by law, neither initiate nor consider *ex parte* or other private communications concerning a pending or impending proceeding.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions (*Estes vs. Texas*, 381 U.S. 532; *Sheppard vs. Maxwell*, 384 U.S. 333), except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification. (Art. V, Sec. 11 Texas Constitution; Art. 15 V.A.T.S.; C.C.P. Art. 30.01).

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including, but not limited to, instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a

reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(b) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

Canon 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the admin-

istration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Canon 5

A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge should not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift,

bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family; and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental commit-

tee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Canon 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his family. Any payment in excess of such an amount is compensation.

C. A judge shall file with the Judicial Qualifications Commission of this State on or before the last Friday of April of each year a financial report consisting of the following documents:

(a) A true copy of the most recent Federal income tax return filed by him.

(b) An affidavit which asserts compliance with Article 6252-9b, Vernon's Texas Civil Statutes, the financial disclosure law.

(c) A verified list of the names of the corporations, businesses or other financial undertakings in which he has an interest. If any of the above have no name, then a description of their nature shall be given.

(d) At the expiration of two years from the time a judge by reason of death, disability or other reason is no longer subject to recall to judicial service, the Commission shall destroy the documents filed by a judge in compliance with this Canon.

The copy of income tax return called for in subparagraph (a) above shall be transmitted in a sealed envelope, placed by the Commission in safekeeping, and shall be opened only during an investigation and pursuant to a majority vote of the full Commission duly assembled.

If the federal government has granted an extension of time for the filing of an income tax return, that fact shall be made known to the Judicial Qualifications Commission on or before the last Friday of April of the year in which the tax return is due. The judge shall in that case file the copy of his income tax return with the Judicial Qualifications Commission within ten days after he files his income tax return with the government.

The list of corporations and businesses in which the judge has a financial interest called for in subparagraph (c) above shall be transmitted in a separate sealed envelope, placed by the Commission in safekeeping, and shall not be opened or the contents thereof disclosed except in the manner hereinabove providing for the opening and examination of the documents called for in subparagraph (a) above, or as hereinafter provided.

At any time during or after the pendency of a cause, any party may request information as to whether the most recent list filed by the judge or judges before whom the cause is or was pending contains the name of any specific person or corporation or other business which is a party to the cause or which has a substantial, direct, or indirect financial interest in its outcome. Neither the making of the request nor the contents thereof shall be revealed by the Chairman to any judge or other person except at the instance of the individual making the request. If the request meets the requirements hereinabove set forth, the Chairman shall render a prompt answer thereto and thereupon return the report to safekeeping for retention in accordance with the provisions hereinabove stated. All such requests shall be verified and transmitted to the Chairman of the Commission on forms to be approved by it.

Canon 7

A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or reelection, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or

political issues; or misrepresent his identity, qualifications, present position, or other fact.

Any candidate for judicial office, including an incumbent judge, and others acting on his behalf, should refrain from all conduct which might tend to arouse reasonable belief that he is using the power or prestige of his judicial position to promote his own candidacy.

Compliance with the Code of Judicial Conduct

A. The following judges shall comply with this Code:

Those elected in a statewide election.

Justices of courts of civil appeals.

Commissioners of any appellate court.

District judges.

Judges of domestic relations courts.

Judges of juvenile courts.

Judges of county courts at law.

Provided, however, that Canon 6C(b) shall apply only to those judges who are subject to Article 6252-9b, Vernon's Texas Civil Statutes.

The Code shall not apply to county judges whether they are also judges of juvenile courts or not.

B. Judge Pro Tempore. A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge who is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5C(2), D, E, F, and G, and Canon 6C, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. A retired judge who is not subject to recall for judicial service or who by reason of disability does not perform such services, which facts are shown to

the satisfaction of the Judicial Qualifications Commission is excused from compliance with Canon 5C(2), D, E, F, and G, and Canon 6C.
Amended Sept. 24, 1974.

Effective Date of Compliance

A person to whom this Code become applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds

judicial office on the date this Code becomes effective may:

A. continue to act as an officer or director of a publicly owned business for a period not to exceed four (4) years from the effective date of this Code;

B. continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

TITLE 15

ATTORNEYS—DISTRICT AND COUNTY

1. DISTRICT ATTORNEYS

Article

- 326k-38b. 49th Judicial District Attorney [NEW].
326k-64a. Representation of State in Oldham County District Court [NEW].
326k-75. Hays County Criminal District Attorney [NEW].
326k-76. Ford Bend County Criminal District Attorney [NEW].
326k-77. Rockwall County Criminal District Attorney [NEW].
326k-78. Van Zandt County Criminal District Attorney [NEW].

3. GENERAL PROVISIONS

- 332b-1. Brazoria, Ellis, Limestone, Hidalgo and Rusk Counties, Compensation of Criminal District or County Attorney [NEW].

1. DISTRICT ATTORNEYS

Art. 322. Districts Shall Elect

Sec. 1. The following Judicial Districts in this state shall each respectively elect a District Attorney, viz.: 1st, 2nd, 3rd, 5th, 7th, 8th, 9th, 12th, 21st, 22nd, 23rd, 24th, 25th, 27th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 69th, 70th, 72nd, 75th, 76th, 79th, 81st, 83rd, 90th, 100th, and 106th.

Sec. 2. There shall also be elected a Criminal District Attorney for Dallas County, a Criminal District Attorney for Tarrant County, one Criminal District Attorney for the Counties of Nueces, Kleberg, Kenedy, Willacy, and Cameron, and one Criminal District Attorney for the Counties of Callahan, Jones, and Taylor.

[Amended by Acts 1975, 64th Leg., p. 983, ch. 378, §§ 1 and 2, eff. June 19, 1975.]

Art. 326k-33. Harrison County Criminal District Attorney

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

Commission and Compensation; Private Practice of Law

Sec. 4. (a) The Criminal District Attorney of Harrison County, Texas, shall be commissioned by the Governor and shall be compensated for his services by the state in such manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the state. The Commissioners Court may pay the criminal district attorney any compensation it deems advisable but shall pay the criminal district attorney at least an amount necessary to provide him a total salary

from the county and the state of not less than \$16,000 per annum.

[See Compact Edition, Volume 3 for text of 4(b) to 8]

[Amended by Acts 1975, 64th Leg., p. 1385, ch. 533, § 1, eff. Sept. 1, 1975.]

Art. 326k-36a. 47th Judicial District Attorney

Representation of State

Sec. 1. The District Attorney of the 47th Judicial District shall represent the State of Texas in all criminal cases before all the district courts of Potter and Armstrong counties.

Appointment of Assistants, Investigations, Secretaries and Office Personnel

Sec. 2. The District Attorney of the 47th Judicial District may appoint such assistant district attorneys, investigators, secretaries, and other office personnel as necessary to the proper performance of his official duties. The number of assistants, investigators, secretaries, and other office personnel and the compensation paid are subject to the approval of the Commissioners Court of Potter County.

Salary

Sec. 3. The District Attorney of the 47th Judicial District may be paid a salary in an amount equal to the total salary paid from state and county funds to the Judge of the 47th Judicial District Court.

Payment of Salaries

Sec. 4. The Commissioners Court of Potter County is authorized to pay the salaries of the District Attorney of the 47th Judicial District and his office personnel from the officers salary fund, the general fund, any other available fund, or any combination thereof at the discretion of the commissioners court. [Amended by Acts 1975, 64th Leg., p. 1874, ch. 590, § 1, eff. Sept. 1, 1975.]

Art. 326k-38a. Repealed by Acts 1975, 64th Leg., p. 251, ch. 100, § 6, eff. April 30, 1975

See, now, art. 326k-38b.

Art. 326k-38b. 49th Judicial District Attorney

Representation of State

Sec. 1. The District Attorney of the 49th Judicial District shall represent the state in all criminal cases

in the district court for the 49th Judicial District and shall represent the state in all criminal cases in Webb County.

Compensation

Sec. 2. The district attorney shall be compensated in such amount as may be fixed by general law relating to salaries paid to district attorneys by the state and, in addition, his compensation may be supplemented by the commissioners court of any one or more of the counties composing the 49th Judicial District in an amount to be fixed by the commissioners court. Also, the commissioners court of any county in the district may supplement the salary of the district attorney for the prosecution of misdemeanor cases in the county.

Assistants, Investigators and Secretaries; Compensation

Sec. 3. The commissioners court of any county in the district may provide the salary of any assistant district attorney, investigator, or secretary and may prescribe as a qualification for retaining the job that such personnel reside in the county. Assistant district attorneys and investigators, in addition to their salaries, may be allowed actual and necessary travel expenses incurred in the discharge of their duties, not to exceed the amount fixed by the district attorney and approved by the commissioners court. All claims for travel expenses may be paid from the general fund or any other available funds of the county.

Office Equipment and Expenses; Automobiles

Sec. 4. The commissioners court of any county in the district may furnish telephone service, typewriters, office furniture, office space, supplies, and such other items and equipment as are necessary to carry out the official duties of the district attorney's office, and to pay the expenses incident to the operation of the district attorney's office. The commissioners courts are further authorized to furnish automobiles for the use of the district attorney's office for the purpose of conducting the official duties of the office, and to provide the maintenance thereof.

Gifts and Grants

Sec. 5. The commissioners court of the county or the counties composing the district may accept gifts and grants from any foundation or association for the purpose of financing adequate and effective prosecution programs within the county or district. [Acts 1975, 64th Leg., p. 251, ch. 100, §§ 1 to 5, eff. April 30, 1975.]

Art. 326k-59. Victoria County Criminal District Attorney

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

Salary; Payment

Sec. 4. The criminal district attorney shall receive as compensation an annual salary from the

State of Texas in such amount as may be fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the officers' salary fund of Victoria 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.

[See Compact Edition, Volume 3 for text of 5 to 8]

[Amended by Acts 1975, 64th Leg., p. 1951, ch. 642, § 1, eff. Sept. 1, 1975.]

Art. 326k-61. 85th Judicial district; District Attorney, Assistants and Personnel

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

Sec. 4. The district attorney is entitled to compensation for his services in an amount as may be fixed by the general law relating to the salary paid to district attorneys by the state. In addition to the salary paid the district attorney by the state, the Commissioners Court of Brazos County may supplement the salary of the district attorney in an amount to be fixed by the commissioners court.

Sec. 5. (a) The district attorney, with the approval of the Commissioners Court of Brazos County, may appoint such assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel as he deems necessary to carry out the duties of his office.

(b) An assistant district attorney shall be licensed to practice law in this state and may perform for the state and the county all duties conferred and imposed by law on the district attorney. An investigator need not be licensed to practice law. An investigator shall have authority, under the direction of the district attorney, 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.

(c) Each assistant district attorney, investigator, stenographer, secretary, clerk, and other personnel may be required by the district attorney to make bond in such amount as the district attorney may direct, and all personnel are subject to removal at the will of the district attorney. Each assistant district attorney and investigator, when appointed, shall take the constitutional oath of office.

(d) Salaries of the assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel shall be fixed by the district attorney, subject to the approval of the Commissioners Court of Brazos County. In addition to their salaries, the district attorney and each assistant district

attorney, investigator, stenographer, secretary, clerk, and other personnel shall be allowed the actual and necessary travel expenses incurred in the proper discharge of their duties, and other necessary expenses incident to carrying out the official duties of the district attorney and his office, subject to the approval of the district attorney and the commissioners court. The salaries and expenses may be paid by the county from county funds or from a grant or funds from other sources available for this purpose.

(e) The Commissioners Court of Brazos County is authorized to furnish telephone service, typewriters, office furniture, office space, law library, supplies, and such other items and equipment as are necessary to carry out the official duties of the district attorney's office and to pay the expenses incident to the operation of the district attorney's office. The commissioners court is further authorized to furnish automobiles for the use of the district attorney's office for the purpose of conducting the official duties of the office and to provide the maintenance thereof. The commissioners court is further authorized to pay an automobile expense allowance to the district attorney, assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel.

(f) The Commissioners Court of Brazos County may accept gifts and grants from any individual, partnership, corporation, trust, foundation, association, or political subdivision for the purpose of financing adequate and effective prosecution, crime prevention, or rehabilitation programs within the county or district, approved and administered by the district attorney.

[Amended by Acts 1975, 64th Leg., p. 364, ch. 156, §§ 1 and 2, eff. Sept. 1, 1975.]

Art. 326k-64. Deaf Smith County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 6]

Compensation and Expenses

Sec. 7. The criminal district attorney is entitled to the compensation paid district attorneys by the state which is provided for in the General Appropriations Act. The Commissioners Court of Deaf Smith County may supplement his state compensation. In addition, the District Attorney of Deaf Smith County, Texas, shall receive the same travel, office, and other necessary expenses as provided for district attorneys in the General Appropriations Act from the State of Texas.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 578, ch. 234, § 1, eff. May 20, 1975.]

Art. 326k-64a. Representation of State in Oldham County District Court

Sec. 1. The County Attorney of Oldham County shall represent the State of Texas in all matters pending before the district court in Oldham County. The Criminal District Attorney of Deaf Smith County shall assist the county attorney in Oldham County on his request or, in the event of his inability to act, on appointment by the judge of the district court in Oldham County. If there is no county attorney in Oldham County, the Criminal District Attorney of Deaf Smith County shall represent the State of Texas in all matters pending before the district court in Oldham County on appointment by the judge of the district court in Oldham County.

Sec. 2. The Criminal District Attorney of Deaf Smith County shall be entitled to the expenses and allowances as provided in the General Appropriations Act for district attorneys who serve more than one county. The state shall pay Oldham County a sum equal to 30 percent of the salary paid to district attorneys by the state.

[Acts 1975, 64th Leg., p. 1965, ch. 649, §§ 1 and 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 Act provided:

"There is appropriated out of the General Revenue Fund the sum of \$7,000 for the fiscal year ending August 31, 1976, and the sum of \$7,000 for the fiscal year ending August 31, 1977, for expenses and allowances to the Criminal District Attorney of Deaf Smith County as provided in Section 2 of this Act. There is appropriated out of the General Revenue Fund the sum of \$6,990 for the fiscal year ending August 31, 1976, and the sum of \$7,440 for the fiscal year ending August 31, 1977, as payment to Oldham County as provided in Section 2 of this Act."

Art. 326k-67. Collin County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1]

Qualifications; Oath; Bond; Private Practice of Law

Sec. 2. (a) The criminal district attorney shall possess the qualifications, take the oath, and give the bond required by the Constitution and laws of this state of district attorneys.

(b) The criminal district attorney shall not, after January 1, 1979, actively engage in the private practice of law while serving as criminal district attorney in and for Collin County.

[See Compact Edition, Volume 3 for text of 3 to 7]

[Amended by Acts 1975, 64th Leg., p. 1355, ch. 512, § 1, eff. Sept. 1, 1975.]

Art. 326k-68. Eastland County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 6]

Commission; Compensation; Payment

Sec. 7. The Criminal District Attorney of Eastland County, Texas, shall be commissioned by the

Governor. The Criminal District Attorney is entitled to the compensation paid district attorneys by the state as provided in the General Appropriations Act. The Commissioners Court of Eastland County may supplement his state compensation in an amount not to exceed \$9,700 a year. The sum paid by the county shall be paid out to the Officers Salary Fund of Eastland 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.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 393, ch. 172, § 1, eff. Sept. 1, 1975.]

Art. 326k-75. Hays County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Hays County is created.

Qualifications; Oath; Bond; Residence

Sec. 2. The Criminal District Attorney of Hays County shall be at least 25 years of age, a practicing attorney in this state for five years, and a resident of Hays County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Hays County during his term of office.

Duties; Fees, Commissions and Perquisites; District Attorney of 22nd Judicial District; Application of Act

Sec. 3. (a) It is the duty of the Criminal District Attorney of Hays County or his assistants to be in attendance on each term and all sessions of the district courts in Hays County and all sessions and terms of the inferior courts of Hays County held for the transaction of criminal business, and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on 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 provided by law for similar services rendered by district and county attorneys of this state.

(b) From and after the effective date of this Act, the District Attorney of the 22nd Judicial District shall only represent the State of Texas in the counties of Caldwell and Comal. The provisions of this Act apply only to Hays County and do not affect the office of district attorney or the duties and powers of the district attorney in the counties of Caldwell and Comal. The District Attorney of the 22nd Judicial District shall continue to fulfill the duties of district attorney in the counties of Caldwell and Comal, but his duties in the County of Hays are

divested from him and invested in the Criminal District Attorney of Hays County.

Appointment; Election and Term

Sec. 4. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Hays County, who shall hold office until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a criminal district attorney for Hays County for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution.

(b) A vacancy occurring in the office of Criminal District Attorney of Hays County shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(c) From and after the effective date of this Act, the District Attorney of the 22nd Judicial District shall only stand for election and be elected from the counties of Caldwell and Comal. The present district attorney for the 22nd Judicial District shall continue in office as the district attorney in the counties of Caldwell and Comal until the general election in 1976 and until his successor is elected and qualified.

Compensation

Sec. 5. The Criminal District Attorney of Hays County shall be compensated for his services by the state in such a manner and 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 in such amount as it deems advisable.

Abolition of County Attorney's Office

Sec. 6. The office of County Attorney of Hays County is abolished from and after the effective date of this Act.

[Acts 1975, 64th Leg., p. 1038, ch. 402, §§ 1 to 6, eff. June 19, 1975.]

Art. 326k-76. Fort Bend County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Fort Bend County is created.

Powers and Duties

Sec. 2. The criminal district attorney or his assistants shall be in attendance on each term and all sessions of any district court in Fort Bend County. The criminal district attorney and his assistants shall

represent the state in criminal and civil cases, unless otherwise provided by law, pending in the district courts and inferior courts having jurisdiction in Fort Bend County. He shall have and exercise, in addition to the specific powers given and duties imposed on him and his assistants by this Act, all powers, duties, and privileges within Fort Bend County conferred on district attorneys and county attorneys in the various counties and judicial districts of this state relative to criminal and civil matters for and in behalf of the county and the State of Texas.

Qualifications; Oath; Bond

Sec. 3. The criminal district attorney shall possess the qualifications, take the oath, and give the bond required by the constitution and laws of this state of district attorneys.

Assistants: Appointment; Compensation; Removal

Sec. 4. The criminal district attorney shall appoint assistant criminal district attorneys and other assistants necessary to the proper performance of his official duties, with the approval of the commissioners court. The assistants shall be paid a salary to be set and approved by the commissioners court and paid out of the general fund of the county. The assistants are subject to removal at the will of the criminal district attorney and are authorized to perform any duty conferred by law on the criminal district attorney.

Stenographers; Appointment; Compensation; Removal

Sec. 5. The criminal district attorney may appoint stenographers, who may or may not possess the qualifications prescribed by law for district and county attorneys, who shall perform the necessary stenographic work assigned by the criminal district attorney, and who shall receive as compensation a salary set by the commissioners court payable out of the county funds. The stenographers are subject to removal at the will of the criminal district attorney.

Offices Expenses

Sec. 6. Fort Bend County is authorized to set aside each year a sum of money to be expended by the criminal district attorney in the preparation and conduct of criminal affairs of the office.

Compensation

Sec. 7. The criminal district attorney shall be compensated for his services by the state in such manner and 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 in such amount as it deems advisable.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Fort Bend County is abolished from and after the effective date of this Act.

Appointment; Election and Term; Vacancy; Private Practice of Law

Sec. 9. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Fort Bend County, who shall hold office until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a criminal district attorney for Fort Bend County for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) Any vacancy occurring in the office of the Criminal District Attorney of Fort Bend County shall be filled by the Commissioners Court of Fort Bend County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(c) After January 1, 1977, the Criminal District Attorney of Fort Bend County and any assistant criminal district attorneys may not actively engage in the private practice of law while serving as criminal district attorney or assistant criminal district attorney in and for Fort Bend County.

District Attorney of 23rd Judicial District

Sec. 10. (a) On the effective date of this Act the District Attorney of the 23rd Judicial District of Texas shall only represent the State of Texas in the counties of Wharton and Matagorda.

The provisions of this Act shall not affect the office of district attorney or the duties and powers of the district attorney in the counties of Wharton and Matagorda, and the District Attorney of the 23rd Judicial District shall continue to perform his duties in the counties of Wharton and Matagorda. This Act applies only to Fort Bend County. From the effective date of this Act, the duties of the District Attorney of the 23rd Judicial District in Fort Bend County are divested from him and invested in the Criminal District Attorney of Fort Bend County, who shall represent the state in all district courts having jurisdiction in Fort Bend County.

(b) From and after the effective date of this Act, the District Attorney of the 23rd Judicial District shall only stand for election and be elected from the counties of Wharton and Matagorda. The present district attorney of the 23rd Judicial District shall continue in office as the district attorney in the counties of Wharton and Matagorda until the general election in 1976 and until his successor is elected and has qualified.

Effective Date

Sec. 11. The effective date of this Act is September 1, 1975.

[Acts 1975, 64th Leg., p. 1333, ch. 497, §§ 1 to 11, eff. Sept. 1, 1975.]

Art. 326k-77. Rockwall County Criminal District Attorney

[Text of article effective Jan. 1, 1977]

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Rockwall County is created.

Qualifications; Oath; Bond; Residence

Sec. 2. The Criminal District Attorney of Rockwall County shall be a practicing attorney in this state and a resident of Rockwall County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Rockwall County during his term of office.

Duties; Fees; Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Rockwall County or his assistants to be in attendance on each term and all sessions of the district courts in Rockwall County and all sessions and terms of the inferior courts of Rockwall County held for the transaction of criminal business, and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on 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 provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment; Private Practice of Law

Sec. 4. (a) The Criminal District Attorney of Rockwall County shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts as appropriated by the legislature. In addition, the Criminal District Attorney of Rockwall County may be paid in equal bimonthly installments out of the officers' salary fund of Rockwall County an amount which, when added to the amount paid by the State of Texas, equals an amount not to exceed 90 percent of the total salaries paid to the Judge of the 86th Judicial District by the State of Texas and Rockwall, Kaufman, and Van Zandt counties.

(b) The Criminal District Attorney of Rockwall County shall not engage in the private practice of law.

Assistants, Investigators, etc.; Appointment and Compensation; Expenses

Sec. 5. The Criminal District Attorney of Rockwall County may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as are required for the proper and efficient operation and administration of the office. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the advice and consent of the commissioners court and shall be paid by the commissioners court in equal bimonthly installments from the officers' salary fund of Rockwall County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Rockwall County may allow the criminal district attorney, his assistants, and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Rockwall County shall take, on appointment, the constitutional oath of office. The assistant criminal district attorneys of Rockwall County are authorized to administer oaths, file information, examine witnesses before the grand jury, and generally perform any duty devolving on the Criminal District Attorney of Rockwall County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Rockwall County.

Abolition of County Attorney's Office

Sec. 7. The office of County Attorney of Rockwall County is abolished from and after the effective date of this Act.

Election and Term; Vacancy

Sec. 8. (a) At the general election in 1976, there shall be elected by the qualified voters of Rockwall County a Criminal District Attorney for Rockwall County for a two-year term beginning on January 1, 1977.

(b) At the general election in 1978 and every four years thereafter, the criminal district attorney shall be elected for a regular four-year term, as provided by the Texas Constitution.

(c) A vacancy occurring in the office of criminal district attorney shall be filled by appointment by the governor, and the appointee shall hold office

until the next general election and until his successor is elected and has qualified.

Effective Date

Sec. 9. Except as provided by Section 8 of this Act, the provisions of this Act take effect on January 1, 1977.

[Acts 1975, 64th Leg., p. 1923, ch. 625, §§ 1 to 9, eff. Jan. 1, 1977.]

Art. 326k-78. Van Zandt County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Van Zandt County is created to become effective on September 1, 1975.

Qualifications; Oath; Bond; Residence

Sec. 2. (a) The Criminal District Attorney of Van Zandt County shall be at least 25 years of age, a practicing attorney in this state for two years, and a resident of Van Zandt County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Van Zandt County during his term of office.

(b) If no person with the qualifications of age and experience required in Subsection (a) has filed for this office 30 days prior to the filing deadline these qualifications of age and experience will be waived for the election involved only.

Duties; Fees, Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Van Zandt County or his assistants to be in attendance on each term and all sessions of the district courts in Van Zandt County and all sessions and terms of the inferior courts of Van Zandt County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on 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 provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment

Sec. 4. The Criminal District Attorney of Van Zandt County shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid

district attorneys by the State of Texas and shall be paid by the comptroller of public accounts, as appropriated by the legislature. In addition, the Criminal District Attorney of Van Zandt County shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Van Zandt County, out of the officers' salary fund of Van Zandt County an amount which, when added to the amount paid by the State of Texas, equals an amount not less than 90 percent of the total salaries paid to the Judge of the 86th Judicial District by the State of Texas and Kaufman, Van Zandt, and Rockwall counties.

Assistants; Investigators, etc.; Appointment and Compensation; Expenses

Sec. 5. The Criminal District Attorney of Van Zandt County, for the purpose of conducting the affairs of his office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as the Commissioners Court of Van Zandt County may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly or bimonthly installments from the officers' salary fund of Van Zandt County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Van Zandt County may allow the criminal district attorney, his assistants and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Van Zandt County shall take, on appointment, the constitutional oath of office. The criminal district attorney and his assistants shall have the exclusive right and duty to represent the State of Texas in all criminal cases pending in any court of Van Zandt County, as well as perform other statutory or constitutional duties imposed on district and county attorneys of this state. The assistant criminal district attorneys of Van Zandt 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 of Van Zandt County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Van Zandt County.

Private Practice of Law

Sec. 7. The Criminal District Attorney of Van Zandt County and his assistants shall not engage in

the private practice of law while serving as criminal district attorney or assistant criminal district attorney of Van Zandt County. This section becomes effective on September 1, 1975.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Van Zandt County is abolished from and after the effective date of this Act.

County Attorney Commissioned; Election and Term; Vacancy

Sec. 9. (a) On the effective date of this Act, the County Attorney of Van Zandt County shall be commissioned as the Criminal District Attorney of Van Zandt County. He shall fill the office of criminal district attorney until the general election in 1976 and until his successor is lawfully elected and has qualified. The person elected at the general election in 1976 shall fill the office of criminal district attorney until the general election in 1978 and until his successor is lawfully elected and has qualified.

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) Any vacancy occurring in the office of Criminal District Attorney of Van Zandt County after the office is filled initially by the County Attorney of Van Zandt County, as provided in Subsection (a) of this section, shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

[Acts 1975, 64th Leg., p. 1959, ch. 646, §§ 1 to 9, eff. Sept. 1, 1975.]

Section 10 of the 1975 Act provided:

"If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid."

3. GENERAL PROVISIONS

Art. 332b. Denton, Randall, Collin, Grayson, Gregg, Orange, Lamar, and Fannin Counties; Compensation of Criminal District or County Attorney

Sec. 1. Denton County, Randall County, Collin County, Grayson County, Gregg County, and Orange

County, in all of which counties there is either the office of criminal district attorney or the office of county attorney performing the duties of a district attorney, shall receive annually from the state an amount equal to the compensation paid by the state to district attorneys as authorized by Article V, Section 21, Constitution of Texas. Such compensation shall be paid into the salary fund of each county in 12 equal monthly installments.

Sec. 1a. Lamar County and Fannin County, in which counties there is the office of county attorney performing the duties of a district attorney, shall each receive \$5,000 annually from the state. Such compensation shall be paid into the salary fund of each county in 12 equal monthly installments.

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

[Amended by Acts 1975, 64th Leg., p. 1899, ch. 606, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1951, ch. 642, § 2, eff. Sept. 1, 1975.]

Sections 2 and 3 of Acts 1975, 64th Leg., ch. 606, provided:

"Sec. 2. There is hereby appropriated out of the general revenue fund the sum of \$5,000 for each fiscal year of the biennium for each county attorney, beginning September 1, 1975, to fund the state's cost under this Act."

"Sec. 3. This Act shall become effective on September 1, 1975."

Art. 332b-1. Brazoria, Ellis, Limestone, Hidalgo and Rusk Counties; Compensation of Criminal District or County Attorney

Brazoria County, Ellis County, Limestone County, Hidalgo County, and Rusk County, in all of which counties there is either the office of criminal district attorney or the office of county attorney performing the duties of a district attorney, the official performing such services shall be compensated for his services by the State in such manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the State. The Commissioners Court may pay such official any compensation it deems advisable and shall pay such official sufficient compensation to insure that his total compensation is not less than the total compensation received by such official on the effective date of this Act.

[Acts 1975, 64th Leg., p. 1853, ch. 578, § 1, eff. Sept. 1, 1975.]

TITLE 16

BANKS AND BANKING

CHAPTER FOUR. STOCK, STOCKHOLDERS, BY-LAWS, DIRECTORS, OFFICERS, EMPLOYEES

Art. 342-410. Directors, Officers and Employees— Liability—Reimbursement for Expenses

Except as otherwise provided by statute, directors and officers of state banks shall be liable for financial losses sustained by state banks to the extent that directors and officers of other corporations are now responsible for such losses in equity and common law. Any officer or director who does not approve of any act or omission of the board, and desires to relieve himself from any personal liability for such act or omission shall promptly announce his opposition to such act or omission and cause such opposition to be spread upon the minutes of the directors' meeting. If for any reason such opposition is not spread upon the minutes of the directors' meeting, he shall promptly report the facts to the Commissioner.

Any person may be indemnified or reimbursed by a state bank, through action of its board, for reasonable expenses actually incurred by him in connection with any action, suit or proceeding to which he is a party by reason of his being or having been a director, officer or employee of said bank. The board may authorize the purchase by the bank of insurance covering the indemnification of directors, officers or employees. If there is a compromise of such an action or threatened action, there shall be no indemnification or reimbursement for the amount paid to settle the claim or for reasonable expenses incurred in connection with such claim without the vote, or the written consent, of the owners of record of a majority of the stock of the bank. No such person shall be indemnified or reimbursed if he has been finally adjudged to have been guilty of, or liable for, willful misconduct, gross neglect of duty, or a criminal act. This article shall not bar any right or action to which such person would be entitled at common law or any other statute of this State.

[Amended by Acts 1975, 64th Leg., p. 650, ch. 270, § 1, eff. Sept. 1, 1975.]

CHAPTER NINE. GENERAL PROVISIONS

Art. 342-903. Branch Banking Prohibited

No State, national or private bank shall engage in business in more than one place, maintain any

branch office, or cash checks or receive deposits except in its own banking house. For purposes of this article "banking house" means the building in whose offices the business of the bank is conducted and which is functionally one place of business, including (a) office facilities whose nearest wall is located within five hundred (500) feet of the nearest wall of the central building and is physically connected to the central building by tunnel, passageway or hallway providing direct access between the central building and the connected office facility or by closed circuit television or pneumatic tube or other physically connected delivery device, and (b) in addition, if authorized in the manner hereinafter provided, not more than one (1) automobile drive-in facility whose nearest boundary is located within two thousand (2,000) feet of the nearest wall of the central building but more than five hundred (500) feet therefrom and is connected to the central building by tunnel, passageway or hallway providing direct access between the central building and the connected automobile drive-in facility or by closed circuit television, pneumatic tube or other physically connected delivery device. The entire banking house shall for all purposes under the law be considered one integral banking house. The term "automobile drive-in facility" as herein used shall mean a facility offering banking services solely to persons who arrive at such facility in an automobile and remain therein during the transaction of business with the bank.

An automobile drive-in facility whose nearest boundary is located within two thousand (2,000) feet of the nearest wall of the central building but more than five hundred (500) feet therefrom shall be authorized only in the following manner: Written application for authority to operate the same shall be filed with the Commissioner by the bank proposing such facility, which application shall specify the location of the proposed facility. Promptly upon the filing of such written application the Commissioner shall, by registered United States mail, postage prepaid, notify each bank, if any, whose central building is situated within a one (1) mile radius of said proposed facility, hereinafter called the "Interested Banks," of the filing of such application, transmitting with such notice a true copy of said application. If within thirty (30) days following the mailing of such notice no written protest to the operation of the

said proposed facility has been filed with the Commissioner by an Interested Bank, or, if there are no Interested Banks, said proposed facility shall thereupon be fully authorized without the necessity of any further action by the applying bank or by the Commissioner. However, if a written protest to the operation of said proposed facility is filed with the Commissioner during said thirty (30) day period by one or more of the Interested Banks, said application shall be promptly considered by the State Banking Board at a public hearing duly called, noticed and held in the same manner as hearings to consider applications for the granting of bank charters, and authorization to operate said proposed facility shall be granted at such hearing unless the State Banking Board shall find that the operation thereof will substantially and adversely affect one or more of the Interested Banks, in which case authorization shall be denied. National banks and private banks doing business in this State shall voluntarily submit to the jurisdiction of the State Banking Board, and abide by the determination of the Board as to whether or not permission should be granted to establish and operate an additional drive-in facility authorized under this article, provided that any national bank which does not abide by the determination of the Board shall immediately forfeit all rights it may have under State law to act as reserve depository for any State chartered bank and to act as depository for the public funds of the State and any county, city, municipality, school district or any other political subdivision of the State, and such funds shall be immediately withdrawn by the depositor and shall not be deposited thereafter in said national bank unless and until the Commissioner certifies to the depositor that said national bank is conducting its business in compliance with the Board's determinations and orders. In addition the Attorney General shall seek an injunction against any violation of the Board's orders under this article by any national bank or private bank. Any bank adversely affected by a violation of this article may, and the Attorney General, upon request of the Commissioner, shall bring suit in a court of competent jurisdiction to enjoin a violation of this article. The party who prevails in such proceeding shall recover costs of suit and reasonable attorney's fees.

[Amended by Acts 1975, 64th Leg., p. 531, ch. 215, § 1, eff. Sept. 1, 1975.]

Art. 342-910a. Legal Holidays for Banks or Trust Companies—Alternative Legal Holidays for Banks or Trust Companies—Discrimination Prohibited

Sec. 1. Legal Holidays For Banks Or Trust Companies. Notwithstanding any existing provisions of law relative to negotiable or nonnegotiable instruments or commercial paper, but subject to the provi-

sions of Section 2 of this article, only the following enumerated days are declared to be legal holidays for banking purposes on which each bank or trust company in Texas shall remain closed: Saturdays, Sundays, January 1, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and December 25.

When the dates January 1, July 4 or December 25 fall on Saturday, then the Friday immediately preceding such Saturday shall also be a legal holiday for banking purposes on which each bank or trust company in Texas shall remain closed, and when such dates fall on Sunday, then the Monday next following such Sunday shall also be a legal holiday for banking purposes on which each bank or trust company in Texas shall remain closed.

All such legal holidays shall be neither business days nor banking days under the laws of this State or the United States, and any act authorized, required or permitted to be performed at or by any bank or trust company on such days may be performed on the next succeeding business day and no liability or loss of right of any kind shall result therefrom to any bank or trust company.

Sec. 2. Alternative Legal Holidays For Banks Or Trust Companies. Any bank or trust company may elect to designate days on which it may close for general banking purposes pursuant to the provisions of this section, instead of Section 1 of this article, provided that any bank or trust company which has elected to be governed by this section shall remain closed on the following enumerated days, which days are declared to be legal holidays for banking purposes: Sundays, January 1, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and December 25. When the dates January 1, July 4 or December 25 fall on Saturday, then the Friday immediately preceding such Saturday may also, if the board of directors so elects, be a legal holiday for all banking purposes on which each bank and trust company so electing shall remain closed, and when such dates fall on Sunday, then the Monday next following each Sunday shall also be a mandatory legal holiday for banking purposes on which each bank or trust company which has elected to be governed by this section shall remain closed. Except as herein provided, any bank or trust company doing business in this state may, at its option, elect to be governed by this section and close for general banking purposes either on Saturday or on any other weekday of any week in the year and may elect to be closed on the preceding Friday when January 1, July 4 or December 25 fall on a Saturday, provided:

(a) such day is designated at least 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

(b) notice of the day or days designated in such resolution is posted in a conspicuous place in such bank or trust company for at least 15 days in advance of the day or days designated; and

(c) a copy of such resolution certified by the president or cashier of such bank or trust company is filed with the office of the commissioner of 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 resolution and notices, above provided, with respect to closing for general banking purposes. Limited banking services may include such of the ordinary and usual services provided by the bank as the board of directors may determine, except the following: making loans, renewing or extending loans, certifying checks, issuing cashier's checks, and providing access to safety deposit boxes or to property held in safekeeping by the bank.

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 a legal holiday 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.

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

[Amended by Acts 1975, 64th Leg., p. 14, ch. 11, § 2, eff. Sept. 1, 1975.]

Art. 342-951. Mortgage Banking Institutions— Supervision by Commissioner

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. On or before February 1 of each year, any mortgage banking institution that meets the requirements of Section 1 shall file with the Banking Commissioner of Texas a statement of its condition as of the previous December 31. The statement of condition shall be filed in the form prescribed by the banking commissioner and shall be accompanied by a filing fee of \$50. The statement of condition is for the information of the banking commissioner and his employees only and its contents shall not be made public except in the course of some judicial proceeding in this state.

Sec. 3. The banking commissioner shall annually examine or cause to be examined the books and accounts of any mortgage banking institution which meets the requirements of Section 1. The institution being examined shall pay the actual expenses incident to the examination and a fee of not more than \$50 per day per person engaged in the examination. Such fees, together with all other fees, penalties and revenues collected by the banking department, shall be retained by the department and shall be expended only for the expenses of the department.

[See Compact Edition, Volume 3 for text of 4
and 5]

[Amended by Acts 1975, 64th Leg., p. 1369, ch. 523, §§ 3 and 4, eff. Sept. 1, 1975.]

TITLE 17

BEES

Article

565b. Labeling and Sale of Honey, Honey Products and Imitation Honey [NEW].

Art. 565b. Labeling and Sale of Honey, Honey Products and Imitation Honey

Sec. 1. In this Act:

(1) "Pure honey" means the nectar of plants which has been transformed by, and is the natural product of, honeybees, and is either in a honeycomb or has been taken from a honeycomb and packaged in a liquid, crystallized, or granular condition.

(2) "Label" means, as a noun, written or printed material accompanying a product and furnishing identification or description, including material attached to a product or its immediate container, material attached to packaging containing a product in its immediate container, and material inserted in an immediate container or other packaging of a product.

(3) "Label" means, as a verb, to attach or insert a label.

(4) "Person" means an individual, firm, partnership, corporation, or association of individuals.

Sec. 2. (a) No person may label, sell, keep, expose, or offer for sale a product identified on its

label as "honey," "liquid or extracted honey," "strained honey," or "pure honey," unless the product consists exclusively of pure honey.

(b) No person may label or sell, or keep, expose, or offer for sale, any product that resembles honey and that has on its label a picture or drawing of a bee, beehive, or honeycomb, unless the product consists exclusively of pure honey.

(c) No person may label or sell, or keep, expose, or offer for sale, any product that resembles honey and is identified on its label as "imitation honey" in any form.

(d) No person may label or sell, or keep, expose, or offer for sale, any product consisting of honey mixed with any other ingredient, unless the product bears a label with a list of ingredients, and unless the word "honey" appears in the list of ingredients in the same size type or print as the other ingredients.

(e) No person may label or sell, or keep, expose, or offer for sale, any product consisting of honey mixed with any other ingredient and containing the word "honey" in the product name in a larger size of type or print or in a more prominent position than the other words in the product name.

Sec. 3. A person who violates the provisions of this Act is guilty of a Class B misdemeanor. [Acts 1975, 64th Leg., p. 1872, ch. 588, §§ 1 to 3, eff. Sept. 1, 1975.]

TITLE 19

BLUE SKY LAW—SECURITIES

Article

581-25-1. Receivership of Persons or Assets of Persons Acting as Dealers [NEW].

581-28-1. Adoption of Rules and Regulations [NEW].

Art. 581-5. Exempt Transactions

Except as hereinafter in this Act 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. (1) 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 engaged in the business of selling securities and the sale or sales are isolated transactions not made in the course of repeated and successive transactions of a like character; 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), and provided further, that any person acting as agent for said vendor shall be registered pursuant to this Act;

(2) Sales 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 when made or intended, either directly or indirectly, for the benefit of any other company as that term is defined in this Act.

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. Any offer and any transaction pursuant to any offer by the issuer of its securities to its existing security holders (including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants) if no commission or other remuneration (other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holder in this state.

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 issue or sale of securities (a) by one corporation to another corporation or the security holders thereof pursuant to a vote by one or more classes of such security holders, as required by the certificate of incorporation or the applicable corporation statute, in connection with a merger, consolidation or sale of corporate assets, or (b) by one corporation to its own stockholders in connection with the change of par value stock to no par value stock or vice versa, or the exchange of outstanding shares for the same or a greater or smaller number of shares; provided that in any such case such security holders do not pay or give or promise

and are not obligated to pay or give any consideration for the securities so issued or sold other than the securities of the corporation then held by them.

H. The sale of any security to any bank, trust company, building and loan association, insurance company, surety or guaranty company, savings institution, investment company as defined in the Investment Company Act of 1940,¹ small business investment company as defined in the Small Business Investment Act of 1958, as amended,² or to any registered dealer actually engaged in buying and selling securities; or the issue or sale of any investment contract in connection with an employees' stock bonus, annuity, pension, profit-sharing or similar employee benefit plan provided the securities purchased under the plan either would be exempt if sold by a registered dealer under Section 6 hereof or shall be qualified under Section 7 hereof or purchased in a transaction exempt under Section 5 hereof.

I. Provided such sale is made without any public solicitation or advertisements, (a) the sale of any security by the issuer thereof so long as the total number of security holders of the issuer thereof does not exceed thirty-five (35) persons after taking such sale into account; (b) the sale of shares of stock pursuant to the grant of an employees' restricted stock option as defined in the Internal Revenue Laws of the United States; or (c) the sale by an issuer of its securities during the period of twelve (12) months ending with the date of the sale in question to not more than fifteen (15) persons (excluding, in determining such fifteen (15) persons, purchasers of securities in transactions exempt under other provisions of this Section 5, purchasers of securities exempt under Section 6 hereof and purchasers of securities which are part of an offering registered under Section 7 hereof), provided such persons purchased such securities for their own account and not for distribution.

The issuer shall file a notice not less than five (5) days prior to the date of consummation of any sale claimed to be exempt under the provisions of clause (c), of this Subsection I, setting forth the name and address of the issuer, the total amount of the securities to be sold under this clause, the price at which the securities are to be sold, the date on which the securities are to be sold, the names and addresses of the proposed purchasers, and such other information as the commissioner may reasonably require, including a certificate of a principal officer of the issuer that reasonable information concerning the plan of business and the financial condi-

tion of the issuer has been furnished to the proposed purchasers. The commissioner may by order revoke or suspend the exemption under this clause (c) 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 the purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. The revocation or suspension of this exemption shall be inapplicable to the issuer until such issuer shall have received actual notice from the commissioner of such revocation or suspension.

J. 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;

K. 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;

L. 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;

M. 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;

N. 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 non-members, or when the sale of such securities is made to members or non-members and a commission is paid or contracted to be paid to the said agents or salesmen;

O. The sale by a registered dealer of outstanding securities provided that:

(1) Such securities 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; and

(2) Securities of the same class, of the same issuer, are outstanding in the hands of the public; and

(3) Such securities are offered for sale, in good faith, at prices reasonably related to the current market price of such securities at the time of such sale; and

(4) No part of the proceeds of such sale are paid directly or indirectly to the issuer of such securities; and

(5) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provision of this Act; and

(6) The right to sell or resell 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

(7) The right to sell such securities has not been revoked or suspended by the commissioner under any of the provisions of this Act, or, if so, revocation or suspension is not in force and effect; and

(8) At the time of such sale, the issuer of such securities shall be a going concern actually engaged in business and shall then be neither in an organization stage nor in receivership or bankruptcy; and

(9) Such securities or other securities of the issuer of the same class have been registered by qualification, notification or coordination under Section 7 of this Act; or at the time of such sale at least the following information about the issuer shall appear in a recognized securities manual or in a statement, in form and extent acceptable to the commissioner, filed with the commissioner by the issuer or by a registered dealer:

(a) A statement of the issuer's principal business;

(b) A balance sheet as of a date within eighteen (18) months of the date of such sale; and

(c) Profit and loss statements and a record of the dividends paid, if any, for a

period of not less than three (3) years prior to the date of such balance sheet or for the period of existence of the issuer, if such period of existence is less than three (3) years.

The term "recognized securities manual" shall include the manuals published by Moody's Investment Service, Standard & Poor's Corporation, Best's Life Insurance Reports, and such other nationally distributed manuals of securities as may be approved for use hereunder by the commissioner.

The commissioner may issue a stop order or by order prohibit, revoke or suspend the exemption under this Subsection O 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 review in the manner provided by Section 24 of this Act. Notice of any court injunction enjoining the sale, or resale, of any such security, or of an order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by certified or 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 (6) and (7) above of this Subsection O shall be inapplicable to any dealer until he has received actual notice from the commissioner of such revocation or suspension.

Except for the manuals published by Moody's Investment Service, Standard & Poor's Corporation, and Best's Life Insurance Reports, the commissioner may for cause shown revoke or suspend the recognition hereunder of any manuals previously approved by the commissioner under this Subsection but no such action may be taken by the commissioner unless upon notice and opportunity for hearing as provided by Section 24 of this Act. Any interested party aggrieved by any decision of the commissioner pursuant to such hearing may appeal to the district court of Travis County, Texas, in the manner provided by Section 27 of this Act. A judgment sustaining the commissioner in the action complained of shall not bar after one year an application by the plaintiff for approval of its manual or manuals hereunder, nor shall a judgment in favor of the plaintiff prevent the commissioner from thereafter revoking such recognition for any proper cause which may thereafter accrue or be discovered.

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;

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

R. The sale by the issuer itself, or by a subsidiary of such issuer, of any securities which would be exempt if sold by a registered dealer under Section 6 (other than Subsection 6-E) of this Act.

S. The sale by or through a registered dealer of any option if at the time of the sale of the option

(1) the performance of the terms of the option is guaranteed by any broker-dealer registered under the federal Securities Exchange Act of 1934, as amended,³ which guaranty and broker-dealer are in compliance with such requirements or regulations as may be approved or adopted by the board;

(2) the option is not sold by or for the benefit of the insurer of the security which may be purchased or sold upon exercise of the option;

(3) the security which may be purchased or sold upon exercise of the option is either (a) exempted under Subsection F of Section 6 of this Act or (b) quoted on the National Association of Securities Dealers Automated Quotation system and meets the requirements of Paragraphs (1), (6), (7), and (8) of Subsection O of Section 5 of this Act; and

(4) such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provisions of this Act.

For purposes of this subsection the term "option" shall mean and include any put, call, straddle, or other option or privilege of buying or selling a specified number of securities at a

specified price from or to another person, without being bound to do so, on or prior to a specified date, but such term shall not include any option or privilege which by its terms may terminate prior to such specified date upon the occurrence of a specified event.

[Amended by Acts 1975, 64th Leg., p. 199, ch. 78, § 1, eff. Sept. 1, 1975.]

¹ 15 U.S.C.A. § 80a-1 et seq.

² 15 U.S.C.A. § 631 et seq.

³ 15 U.S.C.A. § 78a et seq.

Art. 581-25-1. Receiverships of Persons or Assets of Persons Acting as Dealers

A. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that:

(1) any person or company, a substantial portion of whose business consists of acting as a dealer (as defined in Subsection C of Section 4 of this Act), whether or not duly registered by the commissioner as in this Act provided, shall have engaged in any act, transaction, practice, or course of business declared by Section 32 of this Act to be a fraudulent practice;

(2) such person or company shall have acted as a dealer in connection with such fraudulent practice; and

(3) the appointment of a receiver for such person or company, or the assets of such person or company, is necessary in order to conserve and protect the assets of such person or company for the benefit of customers, security holders, and other actual and potential claimants of such person or company the commissioner may request the attorney general to bring an action for the appointment of a receiver for such person or company or the assets of such person or company.

B. Upon request by the commissioner pursuant to Subsection A of this Section 25-1, and if it appears to the attorney general that the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25-1 exist with respect to any person or company, the attorney general may bring an action in the name and on behalf of the State of Texas for the appointment of a receiver for such person or company. The facts set forth in the petition for such relief shall be verified by the commissioner upon information and belief. Such action may be brought in a district court of any county wherein the fraudulent practice complained of has been committed in whole or part, or of any county wherein any defendant with respect to whom appointment of a receiver is sought has its principal place of business, and such district court shall have jurisdiction and venue of such action; this provision shall be superior to any other provision of law fixing jurisdiction or venue with regard to suits for receivership. In any such action 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 any hearing, to testify and give evidence concerning matters relevant to the appointment of a receiver.

C. In any action brought by the attorney general pursuant to Subsection B of this Section 25-1, the court, upon a proper showing by the attorney general of the existence of the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25-1 with respect to any person or company, may appoint a receiver for such person or company or the assets of such person or company. If such receiver is appointed without notice to and opportunity to be heard for such person or company, such person or company shall be entitled to apply in writing to the court for an order dissolving the receivership, and, if such application is made within 30 days after service upon such person or company of the court's order making such appointment, shall be entitled to a hearing thereon upon 10 days written notice to the attorney general.

D. No person shall be appointed a receiver pursuant to this Section 25-1 unless such person be found by the court, after hearing the views of the attorney general, the commissioner, and, if deemed by the court to be practicable, the person or company against whom such relief is sought, to be qualified to discharge the duties of receiver giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case. No bond for receivership shall be required of the commissioner or attorney general in any proceeding under this Section 25-1 but the court shall require a bond of any receiver appointed hereunder, conditioned upon faithful discharge of the receiver's duties, in an amount found by the court to be sufficient giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case.

E. The remedy of receivership provided by this Section 25-1 shall be in addition to any and all other remedies afforded the commissioner or the attorney general by other provisions of statutory or decisional law of this state, including, without limitation of the generality of the foregoing, any such provision authorizing receiverships.

[Acts 1975, 64th Leg., p. 199, ch. 78, § 4, eff. Sept. 1, 1975.]

Art. 581-28-1. Adoption of Rules and Regulations

A. For purposes of this Section 28-1, the term "rule and regulation" shall mean any statement by the board of general and future applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice

requirements of the board. The term includes the amendment or repeal of a prior rule or regulation, but does not include statements concerning only the internal management of the board not affecting private rights or procedures or forms or orders adopted or made by the board or the commissioner pursuant to other provisions of this Act.

B. The board may, from time to time, in accordance with the provisions of this Section 28-1, make or adopt such rules and regulations as may be necessary to carry out and implement the provisions of this Act, including rules and regulations governing registration statements, applications, notices, and reports, and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this Act. For the purpose of adoption of rules and regulations, the board may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes. The board may, in its discretion, waive any requirement of any rule or regulation in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

C. No rule or regulation may be made or adopted unless the board finds, after notice and opportunity for comment in accordance with the provisions of this Section 28-1, that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act.

D. The board may, by rule or regulation adopted in accordance with this Section 28-1, delegate to the commissioner or the deputy commissioner such of the authority granted to the board under this Section 28-1 to hold hearings for adoption of rules and regulations and to make or adopt rules and regulations, or to waive the requirements thereof, as it may, from time to time, deem appropriate. All rules and regulations made or adopted by the commissioner or the deputy commissioner pursuant to such delegated authority shall be made or adopted in accordance with this Section 28-1.

E. No provision of this Act imposing any liability or penalty applies to any act done or omitted in good faith in conformity with any rule or regulation of the board, notwithstanding that the rule or regulation may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

F. In exercising the power granted by this Section 28-1 to make or adopt rules and regulations, the board shall be bound by and shall follow the provisions of any administrative procedure act or other like act of general applicability to state boards, commissions, or departments having statewide juris-

diction, heretofore or hereafter adopted by the legislature of this state, with respect to procedures for adoption, filing, and taking effect, availability, and declaratory judgments on the validity or applicability of rules and regulations; provided, however, that, if there is no such act of general applicability, the board shall be bound by and shall follow the provisions of Subsections G through L of this Section 28-1 with respect to such matters.

G. A notice of any proposed rule or regulation shall be published in a newspaper of general circulation in Travis County and shall set forth the full text of any proposed rule or regulation or a summary thereof indicating the place where copies of the full text of such proposed rule or regulation may be obtained, the date on which the board intends its action to be effective, the place or places to which any person may mail or at which any person may deposit written data, views or arguments relating to the proposed action and the final date by which such data, views or arguments must be received for consideration by the board, which date shall not be earlier than 30 days from the date on which notice was first published in accordance with this Section 28-1.

H. The board, at its discretion, may call a hearing to take public testimony concerning a proposed rule or regulation. If the board calls a hearing, a notice setting forth the time, place, and nature of the hearing shall be published in a newspaper of general circulation in Travis County at least 20 days prior to the hearing date. All hearings shall be public.

I. After consideration of all relevant matters presented to the board, the board may make any modifications to the proposed rule or regulation that it shall find necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act and the rule or regulation as originally promulgated. The board may then promulgate the rule or regulation, as modified, provided that it shall not be effective until at least 45 days after the date the notice of proposed action was first published pursuant to Subsection G of this Section 28-1. Notice of the adoption of any proposed rule or regulation shall be published in a newspaper of general circulation in Travis County and shall set forth the full text of the rule or regulation, as adopted, or a summary thereof indicating the place where copies of the full text of the rule or regulation may be obtained.

J. At the time of publication of any notice published pursuant to Subsections G, H, or I of this Section 28-1, the board shall mail a copy of such notice to each person who has requested in writing that copies of such notices be mailed to him and who has paid to the board the fee, if any, prescribed by the board therefor. The failure of the board to mail a copy of any notice to any person or persons or the failure of any person or persons to receive any such copy shall not affect the validity of any rule or regulation adopted by the board pursuant to this Section 28-1 or of any proceedings in connection therewith or pursuant thereto.

K. The board shall maintain a copy of all rules and regulations in effect, for public inspection, at the principal office of the board.

L. The validity of any rule or regulation adopted pursuant to the power granted by Subsection B of this Section 28-1 may be determined in any proceeding brought pursuant to any other section of this Act to which the board or the commissioner is a party; otherwise, the validity of any such rule or regulation may be determined only in an action for declaratory judgment in the District Court of Travis County, and not elsewhere, and then only if it is alleged that the rule or regulation, or its threatened application, interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff. The board shall be made a party to any such declaratory judgment action. A declaratory judgment may be rendered whether or not the plaintiff has requested the board to pass upon the validity or applicability of the rule or regulation in question.

[Acts 1975, 64th Leg., p. 199, ch. 78, § 2, eff. Sept. 1, 1975.]

Art. 581-34. 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 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 shall not apply (1) to any transaction exempted by Section 5 of this Act, nor (2) to the sale or purchase of any security exempted by Section 6 of this Act.

[Amended by Acts 1975, 64th Leg., p. 199, ch. 78, § 3, eff. Sept. 1, 1975.]

TITLE 20

BOARD OF CONTROL

CHAPTER ONE. GENERAL PROVISIONS

Article

606a. State Telecommunications Act of 1975 [NEW].

Art. 606a. State Telecommunications Consolidation Act of 1975

Short Title

Sec. 1. This Act may be cited as the State Telecommunications Consolidation Act of 1975.

Definitions

Sec. 2. In this Act:

(1) "Telecommunications services" as used in this Act pertains to intercity communications facilities or services, provided that any dedicated circuits included as part of the consolidated system are considered to begin and end at the main connecting frame. "Telecommunications services" does not include single agency point-to-point radio systems or facilities or services of criminal justice information communication systems.

(2) "Consolidated telecommunications systems" is the network of telecommunications services serving the government of the State of Texas.

(3) "State agency" or "agency" means:

(A) any department, commission, board, office, or other agency that:

(i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state; and

(iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college or community college.

System of Telecommunications Services

Sec. 3. (a) The State Board of Control shall plan, establish, and manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular telecommu-

nications services requirements and the site at which the service shall be provided.

(b) The board shall fulfill the telecommunication requirements of each state agency to the extent possible and to the extent that funds are appropriated or available for this purpose.

(c) The board may negotiate rates and execute contracts with telecommunication service utilities for services, lease transmission facilities on a competitive bid basis if possible, and develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system established under this Act.

(d) All contracts with telecommunications carriers shall contain the provision that the State Board of Control or any participating agency may obtain any data relating to the costs to the state of parallel tolls.

Policies and Guidelines

Sec. 4. (a) In order to insure efficient utilization of telecommunication systems at minimum cost to the state, the board shall promulgate and disseminate to all agencies appropriate policies, guidelines, operating procedures, and telephone directories.

(b) Each agency shall comply with the policies, guidelines, and operating procedures promulgated by the board. The board, with the advice of the State Auditor, shall maintain records relating to the consolidated telecommunications system as necessary to enable the board to analyze the cost effectiveness of the system to the state agencies, and shall advise the legislature at each session as to the cost effectiveness of the system. If, in the opinion of the board, the total cost of the system reaches a level which would justify total state ownership and operation of the system, the board shall recommend to the legislature the implementation of such action.

Balancing of Technological Advancements and Existing Facilities

Sec. 5. In the planning, design, implementation, and operation of the telecommunication systems and facilities, the board shall maintain an appropriate balance between the adoption of technological advancements and the efficient utilization of existing facilities and services in order to avoid misapplication of state funds and degradation or loss of the integrity of existing systems and facilities.

Facilities and Services to be Integrated or Shared

Sec. 6. Telecommunication facilities and services, to the extent feasible and desirable, shall be provided on an integrated or shared basis, or both, to avoid waste of state funds and manpower.

Payment for Services and Facilities

Sec. 7. (a) The board shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunication system, which allocates the total state cost to each entity serviced based on proportionate usage.

(b) The comptroller of public accounts shall establish in the State Treasury a revolving account for the administration of this Act. The account shall be used as a depository for funds received from entities served and as a source of funds to purchase, lease, or otherwise acquire services, supplies, and equipment, and to pay salaries, wages, and other costs directly attributable to the provisions and operations of the system.

(c) In order to provide an adequate cash flow as may be necessary for purposes of this Act, using state agencies and other entities, upon proper notification, shall make monthly payments into the telecommunication revolving fund account from appropriated or other available funds. The legislature, in its discretion, may appropriate funds for the operation of the system directly to the board. In that case the revolving fund shall be used to receive funds due from local government entities and other agencies to the extent that their funds are not subject to legislative appropriation.

Participation by Local Governments, et cetera

Sec. 8. The board may contract with each house of the legislature, legislative agencies, counties, cities, districts, and other political subdivisions and agencies not within the definition of "state agency," for utilization of the state telecommunication system.

Designated Agent

Sec. 9. The board is designated as the agency of this state responsible for obtaining telecommunication services.

[Acts 1975, 64th Leg., p. 875, ch. 333, §§ 1 to 9, eff. June 6, 1975.]

CHAPTER THREE. PURCHASING DIVISION

Article

664-5. Pilot Program of Blind-Made Products and Services [NEW].

664-6. Purchase of Blind-Made Goods and Services by State Agencies, Departments and Institutions [NEW].

Art. 664-3. State Purchasing Act of 1957

[See Compact Edition, Volume 3 for text of 1 to 12]

Products of Mentally Retarded or Physically Handicapped Persons

Sec. 13. The following manufactured products, if they meet the state specifications as to quantity, quality, and price, shall have preference in purchases made of those types of items by the Board: Products of workshops, organizations, or corporations whose primary purpose is training and employing mentally retarded persons or physically handicapped persons.

[See Compact Edition, Volume 3 for text of 13A]

Not Applicable to Blind-made Goods or Services

[Text of Sec. 13B as added by Acts 1975, 64th Leg., p. 1927, ch. 626, § 12]

Sec. 13B. The provisions of this Act are not applicable to state purchases of blind-made goods or services when the blind-made goods or services are offered for sale to state agencies and departments as a result of efforts made by the Texas Committee on Purchases of Blind-made Products and Services¹ acting in accordance with legislation applicable to the committee.

¹ See art. 664-6.

[Text of Sec. 13B as added by Acts 1975, 64th Leg., p. 2393, ch. 734, § 18]

Sec. 13B. The foregoing provisions of this Act are not applicable to state purchases of blind-made goods or services when such blind-made goods or services are offered for sale to state agencies and departments, or agencies and departments of political subdivisions, as a result of efforts made by the Texas Committee on Purchases of Blind-Made Goods and Services¹ acting in accordance with legislation applicable to the committee.

¹ Article 664-5.

[See Compact Edition, Volume 3 for text of 14 to 16]

[Amended by Acts 1975, 64th Leg., p. 1927, ch. 626, §§ 11 and 12, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2393, ch. 734, §§ 17 and 18, eff. June 21, 1975.]

Art. 664-5. Pilot Program for Purchase of Blind-Made Products and Services

[For similar provisions, enacted by Acts 1975, 64th Leg., p. 1925, ch. 626, see article 664-6.]

Purpose

Sec. 1. (a) The purpose of this article is to further the State of Texas' policy of encouraging and assisting handicapped citizens to achieve maximum personal independence by engaging in useful and productive activities.

(b) This article is additionally based on legislative findings that:

(1) the program herein established will result in job opportunities needed by multiply handicapped blind persons who, unless provided with such employment opportunities, have no practical alternative other than to become lifetime, nonproductive residents of state institutions; and

(2) the immense savings in costs of permanent institutionalization of such multiply handicapped blind persons will greatly exceed the nominal costs of the program hereby established.

(c) The further purpose of this article is to research, demonstrate, and develop approaches through which the state's purchase of blind-made goods and services may, if shown to be sound and effective in meeting the needs of severely handicapped individuals, be generally extended to disability groups other than the blind.

Texas Committee on Purchases of Blind-Made Products and Services

Sec. 2. There is hereby established a committee to be known as the Texas Committee on Purchases of Blind-Made Products and Services (hereinafter referred to as the committee) to be composed of a private citizen conversant with the problems incidental to the employment of the blind, a representative of a sheltered workshop for the blind organized under the laws of the State of Texas, a representative of a sheltered workshop organized under the laws of the State of Texas for the purpose of serving disability groups other than the blind, a representative of a volunteer organization operated primarily for the purpose of serving a disability group or groups other than the blind, and a representative of each of the following agencies or departments of the government of the State of Texas: the State Board of Control, the department of any state-supported institution of higher education offering an advanced degree in vocational rehabilitation counseling, the department of the Central Education Agency concerned with vocational education or with special education, the State Commission for the Blind, and the State Department of Mental Health and Mental Retardation. The members of the committee shall be appointed by the administrator of the Governor's Coordinating Office for the Visually Handicapped for terms of two years expiring on January 31 of odd-numbered years, shall serve without compensation other than reimbursement for expenses actually incurred in the performance of services performed in connection with the work of the committee, and shall designate one of their number to be chairman. A member of the committee who is unable personally to attend a scheduled meeting of the committee may designate a person from his agency or department to represent him at the meeting.

Fair Market Price, Determination, Revision; Distribution of Orders

Sec. 3. It shall be the duty of the committee to determine the fair market price of all suitable products and services manufactured by the blind and offered for sale to the various agencies and departments of the government of the State of Texas and of the political subdivisions of the state by any nonprofit agency for the blind organized under the laws of the State of Texas and recognized by the State Commission for the Blind as capable of contributing to the purposes of this article, to revise such prices from time to time in accordance with changing market conditions, and to make such rules and regulations regarding specifications, time of delivery, authorization of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind, and other relevant matters of procedure as shall be necessary to carry out the purposes of this article. The needs of various state agencies shall be processed by requisition through the State Board of Control and in accordance with those rules and regulations to be established by the State Board of Control.

Procurement at Determined Price

Sec. 4. All suitable products or services hereinafter procured in accordance with applicable state specifications by or for any state department or agency, including agencies and departments of political subdivisions, shall be procured from such nonprofit agencies for the blind in all cases where such products or services are available within the period specified at the price determined by the committee to be the fair market price for the products or services so procured, unless otherwise specifically provided by the Constitution of the State of Texas.

Technical Consultation From Governor's Budget Office and Legislative Budget Board

Sec. 5. In carrying out the duties specified in this article, the committee shall have available to it technical consultation by representatives of the governor's budget office and the Legislative Budget Board on matters relating to the cost-benefit consequences of this program for the government of the State of Texas, and such representatives of the governor's budget office and the Legislative Budget Board shall have complete access to all records pertinent to the program herein established and shall make such reports to the legislature as they might from time to time deem indicated.

Coordination with Texas Department of Corrections

Sec. 6. It is the intent of the legislature that there be close cooperation between the committee and the Texas Department of Corrections in furthering the purposes of this article and in contributing to the economy of state government. To these ends, the committee and the Texas Department of Corrections are authorized to enter into such contractual

agreements, cooperative working relationships, or other arrangements as might be determined necessary for effective coordination and the efficient realization of the objectives of the committee and the Texas Department of Corrections.

Correlation with Related Federal Programs

Sec. 7. The committee is expressly authorized to adopt, insofar as applicable, procedures, practices, and standards utilized by any presently existing or subsequently authorized federal program of like effect to the state program herein established.

Feasibility Study; Reports; and Recommendations

Sec. 8. As part of its activities under this article, the committee shall study the feasibility of extending the program herein established to severely handicapped individuals whose disabilities are not of a visual nature. The study shall include an assessment of the potential market of the State of Texas and its political subdivisions for goods and services manufactured by severely handicapped individuals in nonprofit, sheltered workshop facilities throughout Texas, estimated number of individuals who might benefit from an extension of the program and who are not being effectively served through other available state-supported programs of education and special services for the handicapped, consideration of the manufacturing capabilities of sheltered workshops throughout the state, and consideration of additional costs, if any, or additional savings, if any, accruing to the state's general revenue fund in the event of the program's expansion. The committee shall report its findings to the governor and the legislature, together with the committee's specific recommendations as to any indicated statutory changes and timetables for the implementation and administration of an expansion of the program, if the committee recommends expansion of the program in the future.

Research

Sec. 9. In order to conduct the feasibility study authorized in Section 8 of this article, the committee and cooperating sheltered workshops are authorized to utilize the labor and services of individuals with various types of disabilities of a nonvisual nature in manufacturing goods and services for the State of Texas and its political subdivisions.

Rules

Sec. 10. The Governor's Coordinating Office for the Visually Handicapped is authorized, following consultation with and recommendation by the committee, to promulgate such rules as might be necessary for the effective implementation and administration of this article.

[Added by Acts 1975, 64th Leg., p. 2390, ch. 734, § 16, eff. June 21, 1975.]

Art. 664-6. Purchase of Blind-Made Goods and Services by State Agencies, Departments and Institutions

[For similar provisions, enacted by Acts 1975, 64th Leg., p. 2390, ch. 734, § 16, see article 664-5]

Purpose

Sec. 1. (a) The purpose of this Act is to further the State of Texas' policy of encouraging and assisting handicapped citizens to achieve maximum personal independence by engaging in useful and productive activities.

(b) This Act is based on legislative findings that:

(1) the program established by this Act will result in job opportunities needed by multiple-handicapped blind persons who, unless provided with employment opportunities, have no practical alternative other than to become lifetime, nonproductive residents of state institutions; and

(2) the immense savings in costs of permanent institutionalization of multiple-handicapped blind persons will greatly exceed the nominal costs of the program.

Texas Committee on Purchases of Blind-Made Products and Services

Sec. 2. The Texas Committee on Purchases of Blind-made Products and Services is created. In this Act the Texas Committee on Purchases of Blind-made Products and Services is referred to as the "committee." The committee is composed of a private citizen conversant with the problems incident to the employment of the blind, a representative of a sheltered workshop for the blind organized under the laws of this state, a representative of a sheltered workshop organized under the laws of this state for the purpose of serving disability groups other than the blind, a representative of a volunteer organization operated primarily to serve a disability group other than the blind, and a representative of each of the following agencies or departments of this state: the State Board of Control, the department of a state-supported institution of higher education offering an advanced degree in vocational rehabilitation counseling, the department of the Central Education Agency concerned with vocational education or with special education, the State Commission for the Blind, and the state Department of Mental Health and Mental Retardation. The members of the committee shall be appointed by the governor for terms of two years expiring on January 31 of odd-numbered years, shall serve without compensation other than reimbursement for expenses actually incurred in the performance of services in connection with the work of the committee, and shall designate one of their number to be chairman.

A member of the committee who is unable personally to attend a scheduled meeting of the committee may designate a person from his agency or department to represent him at the meeting.

Fair Market Price; Determination; Revision; Distribution of Orders

Sec. 3. The committee shall determine the fair market price of all suitable products and services manufactured by the blind and offered for sale to the various agencies and departments of the State of Texas by a nonprofit agency for the blind organized under the laws of this state and recognized by the State Commission for the Blind as capable of contributing to the purposes of this Act, may revise the prices in accordance with changing market conditions, and may make the rules and regulations regarding specifications, time of delivery, authorization of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind, and other relevant matters of procedure necessary to carry out the purposes of this Act. The needs of the various state agencies shall be processed by requisition through the State Board of Control and in accordance with those rules and regulations to be established by the State Board of Control.

Procurement at Determined Price

Sec. 4. All suitable products or services procured by or for a state department or agency shall be procured from nonprofit agencies for the blind if the products or services are available within the period specified and at the price determined by the committee to be the fair market price for the products or services unless otherwise specifically provided by the Constitution of the State of Texas. However, in no event, shall the price paid be in excess of the cost of comparable products or services available from other sources.

Technical Consultation From Governor's Budget Office and Legislative Budget Board

Sec. 5. The governor's budget office and the Legislative Budget Board shall advise the committee on matters relating to the cost-benefit consequences of this program for the government of the State of Texas. The committee shall provide the governor's budget office and the Legislative Budget Board complete access to all records pertinent to the program established by this Act.

Coordination with Texas Department of Corrections

Sec. 6. The committee shall cooperate with the Texas Department of Corrections in furthering the purposes of this Act and in contributing to the economy of state government. The committee and the Texas Department of Corrections may enter into the contractual agreements, cooperative working relationships, or other arrangements necessary for effective coordination of the objectives of the committee and the Texas Department of Corrections.

Correlation with Related Federal Programs

Sec. 7. The committee may adopt procedures, practices, and standards utilized by any agency or program of the United States.

Feasibility Study; Reports; Recommendations

Sec. 8. (a) The committee shall study the feasibility of extending the program established by this Act to handicapped persons whose disabilities are not visual.

(b) The study shall include:

(1) an assessment of the state as a potential market for goods and services manufactured by severely handicapped persons in nonprofit, sheltered workshop facilities in this state;

(2) the estimated number of persons who would benefit from an extension of the program and who are not being effectively served through other available state-supported programs;

(3) consideration of the manufacturing capabilities of sheltered workshops in this state; and

(4) consideration of additional costs or savings that would accrue to the state if the program is expanded.

(c) The committee shall report to the governor and to the presiding officer of each house of the legislature its findings and specific recommendations, if any, for statutory changes and procedures for expansion of the program, if the committee recommends expansion.

Research

Sec. 9. The committee and cooperating sheltered workshops may utilize the labor and services of individuals with nonvisual disabilities in manufacturing goods and services for the state.

Rules

Sec. 10. The governor may, after consulting with the committee, promulgate the rules necessary for the effective implementation and administration of this Act.

[Acts 1975, 64th Leg., p. 1925, ch. 626, §§ 1 to 10, eff. Sept. 1, 1975.]

CHAPTER FOUR. PUBLIC BUILDINGS AND GROUNDS DIVISION

Article

678i. Energy Conservation in Buildings Act [NEW].

Art. 666. Salvage and Surplus Act of 1957

[See Compact Edition, Volume 1 for text of 1 to 6]

Transfer or Sale of Surplus and Salvage Equipment or Material

Sec. 6a. (a) When a state agency reports to the Board of Control that it has surplus or salvage

equipment or material, the Board shall inform other state agencies of the existence, kind, number, location and condition of the equipment or material and it shall maintain a mailing list, renewable annually, of county, municipal, school district, or junior college district purchasing agents or other officers performing similar functions who have asked for information on such surplus or salvage equipment or material as the State may have available.

(b) The county, municipal, school district, or junior college district purchasing agent or other officer shall notify the Board of Control within 30 days from the date of the notice of the Board of Control if he desires to negotiate for surplus or salvage equipment or material.

(c) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice of the Board of Control, and if the Board of Control determines that the equipment or material will not satisfy a state need, the Board may authorize the sale or transfer of surplus or salvage material or equipment to any county, municipality, school district, or junior college district which has expressed a desire to negotiate.

(d) The Board of Control shall adopt rules and regulations to govern occasions when more than one county, municipality, school district, or junior college district, or any combination thereof expresses a desire to negotiate for the same surplus or salvage material or equipment. The Board may adopt other necessary rules and regulations to govern the sale or transfer of surplus or salvage material and equipment to counties, municipalities, school districts, and junior college districts.

(e) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice from the Board of Control and no county, municipality, school district, or junior college district has expressed a desire to negotiate, or if one or more counties, municipalities, school districts, or junior college districts, or any combination thereof has expressed a desire to negotiate but is unable to negotiate a sale or transfer of the equipment or material within 40 days from the date of the notice from the Board of Control, the Board may offer the equipment or material to the organization known as the Texas Partners of the Alliance, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development. The equipment or material shall be offered at its fair market value as determined by mutual agreement between the Board of Control and the Texas Partners of the Alliance.

[See Compact Edition, Volume 1 for text of 6(f) to 11]

[Amended by Acts 1975, 64th Leg., p. 934, ch. 348, § 1, eff. June 19, 1975.]

Art. 678e. Protection and Policing of State Buildings and Grounds

Trespass or Damage to Capitol, Governor's Mansion, State Office Buildings and Grounds; State Cemetery; Board of Control Warehouse and Storage Area

Sec. 1. It shall be unlawful for any person to trespass upon the grass plots or flowerbeds, or to damage or deface any of the buildings, or cut down, deface, mutilate or otherwise injure any of the statues, monuments, memorials, trees, shrubs, grasses or flowers on the grounds or commit any other trespass upon any property of the state, real or personal, located on the grounds of the State Capitol, the Governor's Mansion, or other property owned by the State of Texas known as the Capitol complex, in the area bounded on the south by Eleventh Street, on the north by Nineteenth Street, on the west by Lavaca Street, and on the east by Trinity Street in the City of Austin; or on state properties located on Block No. 109, Block No. 122, Block No. 123, and Block No. 124 in the original City of Austin; or on the State Cemetery grounds bounded by Seventh Street, Comal Street, Eleventh Street and Navasota Street in the City of Austin; or on the Board of Control warehouse and storage area bounded by First Street, Trinity Street, Waller Creek, and the alley in Block No. 183 in the City of Austin. The performance of construction, landscaping, and gardening work authorized by the Legislature, the Board of Control, or the State Building Commission shall not be construed to be prohibited under the provisions of this Act.

Parking on State Property

Sec. 2. It is an offense to park a vehicle in a place other than a space marked and designated for parking by the State Board of Control, or to block or impede traffic on the driveways of property owned or leased by the state in the area described in Section 1 of this Act. The State Board of Control may regulate the flow and direction of traffic in the Capitol complex and may erect the structures necessary to implement this authority.

Assignment of Parking Spaces

Sec. 3. (a) When the Legislature is in session, the State Board of Control shall assign and mark, for unrestricted use by members and administrative staff of the Legislature, the reserved parking spaces in the Capitol complex requested by the respective houses of the Legislature. A request for parking spaces reserved pursuant to this subsection shall be limited to spaces in the Capitol driveways and the additional spaces in state parking lots proximately located to the Capitol.

(b) When the Legislature is not in session, the State Board of Control shall, at the request of the respective legislative bodies, assign and mark the

spaces requested for use by members and administrative staff of the Legislature, in the areas described in Subsection (a) of this section.

(c) The State Board of Control shall assign and mark reserved parking spaces on the Capitol drive-ways for the Governor, Lieutenant Governor, Speaker of the House of Representatives, and Secretary of State for their unrestricted use.

(d) The State Board of Control may assign parking spaces to elected state officials and appointed heads of state agencies who occupy space in state buildings located within the bounds set forth in Section 1 of this Act.

(e) If spaces are available, the State Board of Control may assign parking spaces to handicapped state employees and other state employees of state agencies occupying space in state buildings located in the area described in Section 1 of this Act.

(f) The State Board of Control may designate and mark parking spaces for state-owned vehicles and visitor and business parking within the bounds set forth in Section 1 of this Act.

(g) The State Board of Control may establish and collect a reasonable monthly parking charge for each assigned parking space within the bounds set forth in Section 1 of this Act, except those parking spaces assigned to the respective houses of the Legislature on the Capitol driveways.

(h) A person who parks an unauthorized vehicle in a space assigned under the provisions of this Act commits an offense.

(i) The provisions of Section 3 of this Act do not apply to the property or the parking facility under the management and control of the Texas Employment Commission and located within the bounds set forth in Section 1 of this Act.

Marking and Designation of Parking Spaces

Sec. 4. The State Board of Control is hereby authorized to request the State Highway Department to assist it in the marking and/or designation of such parking spaces as the Board of Control shall deem necessary and to maintain the painting of lines, curb markings and furnish such directional or informational signs as the Board of Control shall deem necessary in the area described in Section 1 of this Act. The Texas Department of Public Safety shall provide advice and assistance to the Board of Control when requested and shall at all times have at least one commissioned officer assigned to duty in the Capitol area.

[See Compact Edition, Volume 3 for text of 5 and 6]

Security Officers; Designation as Peace Officers; Powers and Duties; Bond

Sec. 7. The State Board of Control is authorized to employ security officers for the purpose of carrying out the provisions of this Act and may commission such security officers as it deems necessary as

peace officers. When so commissioned, said officers are hereby vested with all the powers, privileges and immunities of peace officers; provided, that such peace officers shall take and file the oath required of peace officers and shall execute and file with the State Board of Control a good and sufficient bond in the sum of One Thousand Dollars (\$1,000) payable to the Governor of this state and his successors in office with two or more good and sufficient sureties conditioned that he will fairly and faithfully perform all of the duties as may be required of him by law, and that he will fairly and impartially enforce the law of this state and that he will pay over any and all monies, or turn over any and all property, to the proper person legally entitled to the same, that may come into his possession by virtue of such office. Said bond shall not be void for the first recovery but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor punishable as provided in this Act for any person or persons to impersonate any of said officers.

[See Compact Edition, Volume 3 for text of 7a]

Powers and Duties Exercised on any State Property; Reimbursement of Costs

Sec. 8. The powers and duties conferred on the State Board of Control by this Act may, at the request of a state agency, be exercised on any property owned or leased by the state. The cost of any service performed by the State Board of Control under this section, for a requesting agency, when performed by the Board outside the areas described in Section 1 of this Act, shall be reimbursed to the Board by that agency pursuant to a contract executed in accordance with The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 3 for text of 9 to 11]

Sec. 12. Repealed by Acts 1975, 64th Leg., p. 861, ch. 329, § 2, eff. June 2, 1975.

[See Compact Edition, Volume 3 for text of 13 to 15]

[Amended by Acts 1975, 64th Leg., p. 861, ch. 329, §§ 1 and 2, eff. June 2, 1975.]

Art. 678g. Construction of Public Buildings and Facilities for Use by Handicapped Persons

[See Compact Edition, Volume 3 for text of 1 to 18]

Hazards

Sec. 19.

[See Compact Edition, Volume 3 for text of 19(a) to (e)]

(f) Lighting on ramps shall be at least equal to that prescribed by the specifications of American

Standards Association, Inc. Exit signs shall be in accordance with specifications of American Standards Association, Inc., except as modified by Section 18 of this Act.

[See Compact Edition, Volume 3 for text of 20 and 21]

[Amended by Acts 1975, 64th Leg., p. 1950, ch. 641, § 1, eff. Sept. 1, 1975.]

Art. 678i. Energy Conservation in Buildings Act

Short Title

Sec. 1. This Act may be cited as the Energy Conservation in Buildings Act.

Purpose

Sec. 2. The purpose of this Act is to provide for the development of improved design, lighting, insulation, and architectural standards to promote efficient energy use in state buildings including buildings of state-supported institutions of higher education, to reduce wasteful or uneconomic consumption of energy by balancing the cost of energy procurement against the cost of energy conserving building practices to achieve the minimum lifetime cost for all new state buildings, including new buildings of state-supported institutions of higher education, measured by combined construction and operating costs, and to provide information to the public relating to energy saving uses, designs, construction methods, and techniques for all new and existing buildings.

Adoption and Promulgation of Standards for State Buildings

Sec. 3. (a) Within one year after the effective date of this Act, the State Building Commission, after consultation with the Governor's Energy Advisory Council, shall adopt and publish energy conservation design standards that all new state buildings, including buildings of state-supported institutions of higher education, are required to meet. These standards shall include both performance and procedural standards for maximum energy conservation allowed by the latest and most effective technology consistent with the requirements of public health and safety regulations and economic considerations.

(b) The standards shall be promulgated in terms of energy consumption allotments and shall take into consideration the various classes of building uses. Performance standards shall allow for design flexibility since only the total allotment of energy is prescribed.

(c) Procedural standards shall be directed toward specific design and building practices that produce good thermal resistance and low air leakage and toward requiring practices in the design of mechani-

cal and electrical systems which conserve energy. The procedural standards shall address, when applicable, the following items:

- (1) insulation,
- (2) lighting, according to the lighting necessary for the tasks for which each area is intended to be used,
- (3) ventilation,
- (4) the potential use of new systems for saving energy in ventilation, climate control, and other areas, and
- (5) any other item which the State Building Commission deems appropriate.

Design Standards by Other Entities

Sec. 4. (a) The boards of regents and boards or governing bodies of state agencies, commissions, and institutions exempted under the State Building Construction Administration Act (Article 678, Vernon's Texas Civil Statutes), shall adopt and publish energy conservation design standards as provided in Section 3 of this Act for all new buildings under their authority. The standards shall be consistent with those promulgated by the State Building Commission for other state buildings and be prepared in cooperation and consultation with the State Building Commission and the Governor's Energy Advisory Council.

(b) The State Building Commission shall assist the boards and governing bodies of state agencies, commissions, and institutions subject to the provisions of Subsection (a) of this section with the preparation of energy conservation standards by providing technical assistance and advice.

Technical Assistance Program

Sec. 5. The State Building Commission, after consultation with the Governor's Energy Advisory Council and the Texas Department of Community Affairs, shall prepare model energy conservation building codes and make them available for use by cities in enacting or amending their ordinances.

Staff

Sec. 6. The State Building Commission may employ staff necessary to carry out the provisions of this Act.

Energy Conservation Manual

Sec. 7. (a) Within 180 days after the effective date of this Act, the State Building Commission shall produce and publish an energy conservation manual for potential use by designers, builders, and contractors of residential and nonresidential buildings. The manual shall be furnished on request at a reasonable price sufficient to cover the costs of printing and

help defray research costs in establishing design standards. The manual shall contain the following:

- (1) guidelines for energy conservation established by the State Building Commission;
- (2) forms, charts, tables, and other data to assist designers and builders in meeting the guidelines;
- (3) design suggestions for meeting or exceeding the guidelines; and
- (4) any other information which the State Building Commission finds will assist persons to become familiar with the latest technologies that they might use in meeting the guidelines.

(b) The manual shall be updated periodically as significant new energy conservation information becomes available.

[Acts 1975, 64th Leg., p. 235, ch. 89, §§ 1 to 7, eff. Jan. 1, 1976.]

Section 8 of the 1975 Act added subd. 35 to art. 1175; § 9 thereof provided: "This Act takes effect on January 1, 1976."

CHAPTER SEVEN A. CHILD WELFARE

Article

- 695a-2. Interstate Compact on the Placement of Children [NEW].
 695a-3. Child Care Licensing Act [NEW].
 695a-4. Administration of Federally Established Day Care Programs [NEW].
 695a-5. Placement of Children from Another State [NEW].

Art. 695a. Child Welfare

[See Compact Edition, Volume 3 for text of 1 to 5]

Secs. 6, 7. Repealed by Acts 1975, 64th Leg., p. 2404, ch. 736, § 8, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2407, ch. 739, § 1, eff. Sept. 1, 1975.

[See Compact Edition, Volume 3 for text of 8] Filing Charter; Notice by Secretary of State

Sec. 9. On filing a charter for any person, association, or corporation, whether operating for charity or revenue, in any way having to do with the care of children through child care facilities, child-placing agencies, or family homes or other places subject to licensing or registration by the State Department of Public Welfare where care or custody is provided to children under eighteen (18) years of age, the Secretary of State shall give written notice of the filing to the State Department of Public Welfare and transmit a copy of such charter to said Department.

[See Compact Edition, Volume 3 for text of 10 to 12]

[Amended by Acts 1975, 64th Leg., p. 403, ch. 179, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2404, ch. 736, § 8, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2407, ch. 739, § 1, eff. Sept. 1, 1975.]

Art. 695a-2. Interstate Compact on the Placement of Children

Adoption of Compact

Sec. 1. The Interstate Compact on the Placement of Children is adopted by this state and entered into with all other jurisdictions joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(b) "Sending agency" means a party state, officer, or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) the name, date, and place of birth of the child;
- (2) the identity and address or addresses of the parents or legal guardian;
- (3) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;
- (4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to Paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any

license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in Paragraph (a) hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

- (1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact

in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) the sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(b) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Definitions

Sec. 2. In this Act:

(1) "Appropriate public authorities," with reference to this state, means the Commissioner of the State Department of Public Welfare.

(2) "Appropriate authority in the receiving state," with reference to this state, means the Commissioner of the State Department of Public Welfare.

(3) "Executive head," with reference to this state, means the governor.

(4) "Commissioner" means the Commissioner of the State Department of Public Welfare.

(5) "Compact" means the Interstate Compact on the Placement of Children.

(6) "Department" means the State Department of Public Welfare.

Financial Responsibility for Child

Sec. 3. (a) Financial responsibility for a child placed as provided in the compact is determined, in the first instance, as provided in Article V of the compact. After partial or complete default of performance under the provisions of Article V assigning financial responsibility, the commissioner may bring suit under the provisions of Section 14.05, Family Code, and may file a complaint with the appropriate prosecuting attorney, claiming a violation of the provisions of Section 25.05, Penal Code.

(b) After default, if the commissioner determines that financial responsibility is unlikely to be assumed by the sending agency or the child's parents, he shall cause the child to be returned to the sending agency.

(c) After default, the department shall assume financial responsibility for the child until the responsibility is assumed as provided in Article V of the compact, until it is assumed by the child's parents, or until the child is safely returned to the sending agency.

Approval of Placement or Discharge

Sec. 4. The commissioner may not approve the placement of a child in this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed. The commissioner may not approve the discharge of a child placed in a public institution in this state without the concurrence of the head of the institution.

Placement in Another State

Sec. 5. A juvenile court may place a delinquent child in an institution in another state as provided in

Article VI of the compact. After placement in another state, the court retains jurisdiction of the child as provided in Article V of the compact.

Compact Administrator

Sec. 6. The governor shall appoint the commissioner as compact administrator.

[Acts 1975, 64th Leg., p. 2166, ch. 697, §§ 1 to 6, eff. Sept. 1, 1975.]

Art. 695a-3. Child Care Licensing Act

Title

Sec. 1. (a) This Act may be cited as the Child Care Licensing Act.

Legislative Intent and Declaration of Purpose and Policy

(b) It is the legislative intent to protect the health, safety, and well-being of the children of the state who reside in child care facilities. Toward that end, it is the purpose of this Act to establish state-wide minimum standards for the safety and protection of children in child care facilities, to insure maintenance of these standards, and to regulate such conditions in such facilities through a program of licensing. It shall be the policy of the state to insure protection of children under care in child care facilities, and to encourage and assist in the improvement of child care programs. It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this Act shall give any governmental agency jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the curriculum of a school sponsored by a church or religious organization.

Definitions

Sec. 2. As used in this Act:

- (1) "Department" means the State Department of Public Welfare.
- (2) "Division" means the division established or designated by the State Department of Public Welfare to carry out the provisions of this Act.
- (3) "Child care facility" means a facility providing care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the service offered by it.
- (4) "Child" means an individual under 18 years of age.

(5) "Person" includes an individual, a public or private agency, an association, or a corporation.

(6) "Child caring institution" means a child care facility which provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.

(7) "Foster group home" means a child care facility which provides care for 7 to 12 children for 24 hours a day.

(8) "Foster family home" means a child care facility which provides care for not more than 6 children for 24 hours a day.

(9) "Day care center" means a child care facility which provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(10) "Group day care home" means a child care facility which provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(11) "Registered family homes" means a child care facility which regularly provides care in the caretaker's own residence for not more than 6 children under 14 years of age, excluding the caretaker's own children, and which provides care after school hours for not more than 6 additional elementary school siblings of the other children given care, provided that the total number of children including the caretaker's own does not exceed 12 at any given time.

(12) "Family day home" means a child care facility which provides care for not more than 6 children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of such children.

(13) "Agency home" means a private home providing care for not more than 6 children, which is used only by a licensed child placing agency, and which meets division standards.

(14) "Child placing agency" means a person other than the natural parents or guardian of the child who plans for the placement of or places a child in an institution, agency home, or adoptive home.

(15) "State of Texas" or "state" does not include political subdivisions of the state.

(16) The term "facilities" without the modifier "child care" includes child care facilities and child placing agencies.

Division

Sec. 3. (a) The State Department of Public Welfare shall establish or designate a division within the department for the licensure and regulation of child care facilities and child placing agencies and the enforcement of the provisions of this Act and the regulations and standards adopted pursuant thereto and such other duties and responsibilities as the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division an individual qualified in one of the following ways:

(1) by meeting the qualifications required of a child care administrator by Chapter 231, Acts of the 63rd Legislature, Regular Session, 1973 (Article 695a-1, Vernon's Texas Civil Statutes);

(2) by holding a graduate degree in social science or law and having five years administrative experience in a field related to child care; or

(3) by having 10 years' experience in a field related to child care, at least five of which must be administrative.

(c) The department shall employ sufficient personnel and shall provide adequate training to the persons employed to carry out the provisions of this Act.

(d) The director may divide the state into regions for the purposes of administering this Act.

Required License

Sec. 4. (a) No person may operate a child care facility or child placing agency unless he holds a valid license issued by the division.

(b) This section does not apply to:

(1) state-operated facilities;

(2) agency homes;

(3) facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or individuals in charge of the children are attending church services, shopping, or engaging in other activities on or near the premises, which with respect to churches or other religious institutions shall include but not be limited to Sunday school, retreats, or weekly catechism or other schools or classes for religious instruction;

(4) schools or classes for religious instruction conducted by churches during the summer months for not more than two weeks, known as vacation Bible schools;

(5) youth camps licensed by the State Department of Health;

(6) hospitals licensed by the Texas Department of Mental Health and Mental Retardation or the State Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operate primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two and does not provide custodial care for more than one hour during the hours before or after the customary school day, and are members of an organization which promulgates, publishes, and requires compliance with the health, safety, fire, and sanitation standards at least equal to those required by state, municipal, and county health, safety, fire, and sanitation codes;

(9) kindergarten or preschool educational programs operated as part of the public schools of this state or of private schools accredited by the Central Education Agency that offer educational programs through grade six and that do not provide custodial care during the hours before or after the customary school day.

(10) registered family homes as defined in Section 2 of this Act.

(c) In the event that a child caring institution operates facilities that are noncontiguous, but of a near proximity and demonstrable singleness of operation (as determined by patterns of staffing, finance, administrative supervision, and programs) a single license may be issued to the institution noting the addresses and facilities appropriate.

Rules, Regulations, and Standards

Sec. 5. (a) The department shall promulgate reasonable rules and regulations to carry out the provisions of this Act.

(b) The department shall promulgate minimum standards for child care facilities covered by this Act which will:

(1) promote the health, safety, and welfare of children attending any facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) insure adequate supervision of the children by capable, qualified, and healthy personnel;

(4) insure adequate and healthy food service, where it should be offered;

(5) prohibit racial discrimination by child care facilities; and

(6) include procedures by which parents and guardians are given opportunity for consultation in formulation of the children's educational and therapeutic programs.

(c) In promulgating minimum standards for child care facilities, the department should take cognizance of the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child care institutions must require an intake study before a child is placed in an institution. The study may be conducted at a community mental health and mental retardation center.

(d) In promulgating minimum standards the department may take cognizance of, and may differentiate with respect to, the following child care facilities: child caring institutions, foster homes, day care centers, group day care homes, family day homes, registered family homes, and agency homes.

(e) The department shall promulgate minimum standards for child placing agencies.

(f) The department shall promulgate standard forms for applications and inspection reports.

(g) The department shall promulgate a standard procedure for receiving and recording complaints and a standard form for complaints.

(h) Before adoption of minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child Care Facilities for its review and comment and shall send a copy of the proposed standards to each licensee covered by the proposed minimum standards at least 60 days prior to the effective date of the proposed standards in order to enable the persons to review the proposed standards and make written suggestions to the department and the council.

(i) A comprehensive review of all standards, rules, and regulations must be made at least every six years.

(j) The department shall not regulate or attempt to regulate or control the content or method of any instruction or the curriculum of a school sponsored by a church or religious organization.

(k) The department may in specific instances waive the compliance with a minimum standard on a determination that the economic impact is sufficiently great to make such compliance impractical.

Rules Relating to Immunization of Children

Sec. 6. (a) The department shall promulgate rules and regulations relating to immunization of children admitted to facilities.

(b) The rules shall require the immunization of each child at an appropriate age against diphtheria, tetanus, poliomyelitis, rubella, and rubeola and a test for tuberculosis, and the immunization must be ef-

fective on the date of first entry into the facility; provided, however, a child may be provisionally admitted if he has begun the required immunizations and if he continues to receive the necessary immunizations as rapidly as is medically feasible.

(c) The State Department of Health shall promulgate rules and regulations relating to the provisional admission of children to facilities. The State Board of Health may modify or delete any of the immunizations listed in this section or may require immunization against additional diseases as a requirement for admission to facilities; but no form of immunization shall be required for a child's admission to a facility if the person applying for the child's admission submits either an affidavit signed by a doctor in which it is stated that, in the doctor's opinion, the immunization would be injurious to the health and well-being of the child or of any member of his family or household, or an affidavit signed by the parent or guardian of the child stating that the immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member.

(d) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(e) The State Department of Health shall provide the required immunizations to children in areas where no local provision exists to provide these services.

Inspection

Sec. 7. (a) An authorized representative of the division may visit a child care facility or child placing agency during the hours of operation for purposes of investigation, inspection, and evaluation.

(b) The division shall inspect all facilities licensed or certified by the division at least once a year and may inspect other facilities as necessary. At least one of the yearly visits must be unannounced, and all may be unannounced.

(c) An investigation visit must be made if a complaint is received by the division. The division representative must notify the director or authorized representative of the director of the facility being investigated that a complaint is being investigated. The results of the investigation must be reported in writing to the director.

(d) The division may call on political subdivisions and governmental agencies for appropriate assistance within their authorized fields.

Consultation

Sec. 8. (a) The department shall offer consultation to potential applicants, applicants, licensees, and

holders of certification in meeting and maintaining standards for licensing and certification and in achieving programs of excellence related to the care of children served.

(b) The department shall offer consultation to prospective and actual users of facilities.

Advisory Opinions and Declaratory Orders

Sec. 9. (a) The director of the division may give advisory opinions on compliance of planned facilities or planned changes in existing facilities with division rules, regulations, and minimum standards.

(b) If a written opinion signed by the director of the division and the division representative administering this Act in a division region is acted on by an applicant or licensee, it is binding upon the division as a declaratory order.

Records

Sec. 10. (a) All persons operating a licensed or certified child care facility or child placing agency shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) All persons operating a licensed facility, other than a child care facility which provides care for less than 24 hours a day, or an agency home, shall have its books audited annually by a certified public accountant and include a copy of the accountant's statement of income and disbursements with each application for a license.

Issuance of License

Sec. 11. (a) A person desiring to operate a child care facility or child placing agency shall apply in writing to the division for a license.

(b) The division shall supply the applicant with the appropriate application forms and a copy of the appropriate minimum standards.

(c) On receipt of the application, the division shall conduct an investigation of the applicant and the plan of care for children.

(d) The division shall complete its investigation and render a decision on the application within two months after receipt of the application.

(e) If the division determines that the facility has reasonably satisfied all requirements, it shall issue a license.

(f) In issuing a license, the division may impose restrictions on the facility, including, but not limited to, the number of children to be served and the type of children to be served.

(g) A variance of an individual standard set forth in the standards may be granted for good and just cause by the division.

(h) A license applies only to the location stated on the application and license issued and is not transferable from one person to another or from one place to another. If the location of the facility is changed or the owner of the facility is changed, the license is automatically revoked.

(i) The licensee must display the license in a prominent place at the facility.

(j) Prior to expiration of its license, a facility may apply for a new license in accordance with the provisions of this Act and the rules and regulations promulgated by the division. The application must be completed and acted on prior to the expiration of a license. Evaluation to determine if the applying facility meets all requirements must include a specified number of visits to the facility and review of all required forms and records.

Provisional License

Sec. 12. (a) The division shall issue a provisional license to a facility whose plans meet the department requirements but which is (1) not currently operating, (2) not licensed for the location stated in the application, or (3) changing ownership.

(b) A provisional license is valid for six months from the date of issuance and is nonrenewable.

Biennial License

Sec. 13. (a) A biennial license will be issued if the division determines that the facility meets all requirements on a continuing basis. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records.

(b) A biennial license shall be valid for two years.

Certification and Registration

Sec. 14. (a) Child care facilities and child placing agencies operated by the state, and registered family homes, are exempt from the licensing requirements of this Act, but state operated facilities must receive certification of approval from the division and registered family homes must be registered.

(b) To be certified, the facilities must meet all department standards, rules and regulations, and provisions of this Act that apply to licensed facilities of the same category. The operator of a certified facility must display the certification in a prominent place at the facility. Certification of approval must be renewed every two years.

(c) To be registered, the facility must meet department standards, rules, regulations, and provisions of this Act that apply to registered facilities.

Agency Homes

Sec. 15. (a) An agency home is exempt from the licensing requirements of this Act but shall be considered part of the child placing agency operating the home when the agency is licensed.

(b) The agency homes must meet all department standards, rules and regulations, and provisions of this Act that apply to child care facilities caring for a similar number of children for a similar number of hours each day.

(c) The operator of the licensed agency must display a copy of the license in a prominent place at an agency home used by the agency.

(d) If an agency home fails to meet the requirements of Subsection (b) of this section, the division shall suspend or revoke the license of the child placing agency.

State Advisory Committee

Sec. 16. (a) The State Advisory Committee on Child Care Facilities is hereby established.

(b) The commissioner of the department shall appoint 15 citizens to serve as members of the committee for terms of two years.

(c) The members must represent the following groups:

- (1) parents, guardians, or custodians of the children who use the facilities;
- (2) child advocacy groups;
- (3) operators of the facilities; and
- (4) experts in various professional fields which are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and regulations and minimum standards relating to child care facilities and child placing agencies promulgated by state agencies, and shall advise the department and the division, the council, and state agencies on problems of child care facilities and child placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem.

Annual Report

Sec. 17. (a) The division shall present to the governor, lieutenant governor, and members of the legislature an annual report of its activities.

(b) The annual report must include:

(1) a report by regions of applications; provisional licenses issued, denied, suspended, and revoked; licenses issued, denied, suspended, and revoked; emergency closures and injunctions; and compliance of state operated agencies with certification requirements;

(2) a summary of the amount and kinds of in-service training and other professional growth opportunities provided to division staff;

(3) a summary of training and other professional growth opportunities offered to child care facilities staff;

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be made available to any citizen of the state upon request.

Suspension

Sec. 18. (a) If a facility has temporarily suspended operations but has definite plans for renewing operations within the time limits of the issued license, the division may suspend the license.

(b) If the division finds repeated noncompliance with standards that do not endanger the health or safety of the children, the division has the option of suspending the license for a definite period of time instead of denying or revoking the license. In order to qualify for suspension under this subsection, the facility must:

(1) show it can meet the standards within the suspension period, and

(2) suspend its operations.

(c) If a facility does not comply with standards after the suspension, the division must deny or revoke its license.

Denial or Revocation

Sec. 19. (a) If the division finds that a facility does not comply with the provisions of this Act, the department standards, department rules and regulations, or the specific terms of a license or certification, it must deny or revoke the license or certification of approval.

(b) The division must notify the person operating or proposing to operate the facility of the reasons for the denial or revocation and the person's right of appeal within 30 days of receipt of the director's notification.

(c) If the person wishes to appeal, he must notify the director by certified mail within 30 days and must state in the notification the reasons against denial or revocation. The person must send a copy of the notification to the assigned division representative.

(d) Within two weeks following the date the appeal notification was mailed, the director shall notify the person that the request for an appeal hearing is denied, or he shall appoint an advisory review board to hear the appeal.

(e) Within two weeks following notification to the person that an advisory review board will hear his case, the director shall appoint five of the person's peers to an advisory review board and shall set a date for the hearing. The date for the hearing must be within four weeks following the date of the appointment of the members.

(f) The advisory review board shall hear the appeal and render an advisory opinion to the director within one week of the hearing. The board members shall receive actual travel expenses and state per diem for each day of the hearing.

(g) The advisory opinion will be reviewed by a committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this Act in the region in which the facility is located. The committee shall render a decision within two weeks after receiving the advisory opinion and shall notify by certified mail the person of its decision.

(h) Within 30 days after receipt of the committee's decision, the person whose license has been denied or revoked may challenge the decision in a suit filed in a district court of Travis County or the county in which the facility is located. The trial shall be de novo.

(i) On request by a person challenging a division decision in a court suit, the division shall supply him with a copy of the verbatim transcript of his advisory review board hearing, at his expense. Records of the hearing shall be kept for one year after a final decision is rendered.

(j) Unless the division uses the procedures set forth in Section 22 or 23 of this Act, a person may continue to operate a facility during an appeal of the denial or revocation of its license.

Application of Administrative Procedure Act

Sec. 20. The Administrative Procedure Act, S.B. No. 41, Acts of the 64th Legislature, Regular Session, 1975,¹ applies to all procedures and proceedings under this Act, except where it is contrary or inconsistent with the provisions of this Act, in which case the provisions of this Act shall govern.

¹ Article 6252-13a.

Closure of a Facility

Sec. 21. (a) If the division finds any violation of this Act or the department's minimum standards or rules and regulations by a facility other than a state-operated facility that places the children in the facility in immediate peril, it may close the facility and place the children attending the facility in another facility.

(b) A division representative finding conditions that place children in a facility in peril shall immediately contact the director of the division and request the director or his designee to immediately inspect the facility for verification of the conditions.

(c) If the division finds any violation of this Act or the department's minimum standards or rules and regulations by a state operated facility that threatens serious harm to the children in the facility, the division representative shall immediately report the finding to the governor and the commissioner of the department.

(d) Closure under this section is an emergency measure. After closing a facility, the division must seek an injunction against continued operation of the facility as prescribed in Section 22 of this Act.

Injunctive Relief

Sec. 22. (a) Whenever it appears that a person has violated or is violating or threatening to violate any provision of this Act or of any rule, regulation, or standard of the department, the division may cause a civil suit to be instituted in a district court of Travis County or in the county in which the facility is located, for injunctive relief, including temporary restraining orders, to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalties. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, standard, or order of the board, the district court shall grant the injunctive relief the facts may warrant.

(b) At the request of the division, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Civil Penalty

Sec. 23. Any person who violates any provision of this Act or rule, regulation, or standard of the department which threatens serious harm to the

children in the facility, or who violates any provision of this Act or rule, regulation, or standard of the department three or more times within a period of a year, or who operates a facility without a license or certification as required under this Act, or who places a public advertisement for an unlicensed facility, is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation, as the court may deem proper. Civil penalties shall be cumulative and in addition to the remedies of injunction and criminal penalties provided in this Act.

Criminal Penalty

Sec. 24. (a) A person operating a child care facility or child placing agency without a license is guilty of a Class B misdemeanor.

(b) A person placing a public advertisement for an unlicensed facility is guilty of a Class C misdemeanor.

Prior Issued Licenses

Sec. 25. Licenses issued before the effective date of this Act remain valid for a period not to exceed two years from the effective date of this Act.

Repealer

Sec. 26. Section 8(a), The Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes), is repealed.

Effective Date

Sec. 27. This Act shall take effect January 1, 1976.

[Acts 1975, 64th Leg., p. 2240, ch. 708, §§ 1 to 27, eff. Jan. 1, 1976.]

Art. 695a-4. Administration of Federally Established Day Care Programs

State Agency

Sec. 1. The State Department of Public Welfare is hereby designated the state agency to administer a day care program established by federal law and financed partially or totally by federal funds.

General Administrative Rules and Regulations

Sec. 2. (a) The Commissioner of Public Welfare shall promulgate rules and regulations to carry out the administrative provisions of the program consistent with federal law and regulations.

(b) The rules must include procedures to allow operators of day care centers to review and comment on proposed rules and policies.

(c) The rules must establish procedures for input by the parents of the children in a day care center into the operation of the center.

(d) The commissioner may promulgate eligibility standards for admittance into the program, provided such standards make provision for exceptions where deemed necessary to maintain family self-sufficiency and integrity.

Administration of Federal-local Program

Sec. 3. (a) If the program is to be funded through political subdivisions of the state or local agencies approved by the department matching federal grants, the department shall promulgate procedures for effective delivery of services consistent with this section and with federal law and regulations.

(b) If the services are provided through contracting with operators of day care centers upon request from political subdivisions or local agencies, the department may not promulgate standards for selection of the type of centers more restrictive than required by federal law or regulations.

(c) The department shall establish an accounting system consistent with federal law and regulations which will provide that an operator of a day care center contracting with the department:

(1) shall receive prepayment in accordance with policies and procedures mutually agreed upon by the state comptroller of public accounts and the Department of Public Welfare, and

(2) shall be paid on the basis of legitimate and reasonable expenses, insofar as possible, given federal regulations and the Department of Public Welfare policy, instead of being paid on the basis of number of children attending the center, provided that upon being monitored by the department, the contracting operator can substantiate that there were sufficient preparations in the development of the services offered.

[Acts 1975, 64th Leg., p. 2369, ch. 729, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 695a-5. Placement of Children From Another State

Definitions

Sec. 1. In this Act:

(1) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(2) "Child care facility" means any facility that provides care, training, education, custody, treatment, or supervision for any minor child who is not related by blood, marriage, or adoption to the owner or operator of the facility, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the service offered by it.

(3) "Commissioner" means the Commissioner of the State Department of Public Welfare.

(4) "Department" means the State Department of Public Welfare.

(5) "Placement" means an arrangement for the care of a child in a family free, in a boarding home, or in a child care facility or institution, including any institution caring for the mentally ill, mentally defective, or epileptic, but does not include any institution primarily educational in character or any hospital or other primarily medical facility.

(6) "Sending agency" means a state, a subdivision of a state, an officer or employee of a state or a subdivision of a state, a court of a state, or a person, partnership, corporation, association, charitable agency, or other entity, located outside this state, which sends, brings, or causes to be sent or brought any child into this state.

Notice of Intention to Place Child in State; Additional Information; Notice to Sending Agency; Requisites for Approval

Sec. 2. (a) Prior to the placement in this state of a child from another state, the sending agency shall furnish the department written notice of its intention to place the child in this state. The notice must contain:

(1) the name and the date and place of birth of the child;

(2) the names and addresses of the child's parents or legal guardian, and the legal relationship of the named persons to the child;

(3) the name and address of the person, agency, or institution with which the sending agency proposes to place the child; and

(4) a full statement of the reasons for the placement and evidence of the authority under which the placement is proposed to be made.

(b) After receipt of a notice provided for in Subsection (a) of this section, the commissioner may request additional or supporting information as he deems necessary from any appropriate authority in the state where the child is located.

(c) No sending agency may send, bring, or cause to be sent or brought into this state any child for placement, until the commissioner notifies the sending agency in writing that the proposed placement does not appear to be contrary to the best interests of the child.

(d) The commissioner may not approve the placement in this state of a child from outside this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed.

(e) No child care facility in this state may receive a child for placement unless the placement conforms to requirements of this Act.

Retention of Jurisdiction and Financial Responsibility of Sending Agency; Failure to Support; Concurrence in Discharge

Sec. 3. (a) After placement in this state, the sending agency retains jurisdiction over the child sufficient to determine all matters relating to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the commissioner. The sending agency may cause the child to be returned to it or transferred to another location, except as provided in Subsection (e) of this section.

(b) The sending agency has financial responsibility for support and maintenance of the child during each period of placement in Texas. If the sending agency fails wholly or in part to provide financial support and maintenance during placement, the commissioner may bring suit under the provisions of Section 14.05, Family Code, and may file a complaint with the appropriate prosecuting attorney, claiming a violation of the provisions of Section 25.05, Penal Code.

(c) After failure of the sending agency to provide support or maintenance, if the commissioner determines that financial responsibility is unlikely to be assumed by the sending agency, or by the child's parents or guardian, if not the sending agency, he shall cause the child to be returned to the sending agency.

(d) After failure of the sending agency to provide support or maintenance, the department shall assume financial responsibility for the child until responsibility is assumed again by the sending agency, until it is assumed by the child's parents or guardian, or until the child is safely returned to the sending agency.

(e) The commissioner may not concur in the discharge of a child placed in a public institution in this state without the concurrence of the head of the institution.

Delinquent Child

Sec. 4. No child adjudicated delinquent in another state may be placed in Texas unless the child has received a court hearing, after notice to a parent or guardian, and at the hearing, the child had an opportunity to be heard and the court made findings that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in Texas is in the best interests of the child and will not produce undue hardship.

Private Charitable Agencies

Sec. 5. This Act does not prevent a private charitable agency authorized to place children in this state from performing services or acting as agent in this state for a private charitable agency in a sending state, nor prevent the agency in this state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of a sending agency, without altering financial responsibility as provided in Section 3 of this Act.

Exemptions

Sec. 6. This Act does not apply to:

(1) the sending or bringing of a child into this state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian, and the leaving of the child with any person described in this subdivision or with any nonagency guardian in this state; or

(2) any placement, sending, or bringing of a child into this state under the provisions of an

interstate compact to which both Texas and the state from which the child is sent or brought are parties.

Penalties

Sec. 7. (a) An individual or corporation which violates Subsections (a) or (c) of Section 2 of this Act is guilty of a Class B misdemeanor.

(b) A child care facility in this state which violates Subsection (e) of Section 2 of this Act is guilty of a Class B misdemeanor. On conviction, the court shall revoke any license to operate as a child care facility or child-caring institution issued the facility by the department.

Repealer

Sec. 8. Sections 6 and 7, Chapter 194, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 695a, Vernon's Texas Civil Statutes), are repealed.

Effective Date

Sec. 9. This Act takes effect September 1, 1975. [Acts 1975, 64th Leg., p. 2402, ch. 736, §§ 1 to 9, eff. Sept. 1, 1975.]

TITLE 20A

BOARD AND DEPARTMENT OF PUBLIC WELFARE

Art. 695c. Public Welfare Act of 1941

[See Compact Edition, Volume 3 for text of 1 to 8]

Child-Caring Institutions

Sec. 8(a). As used in this Act, the following terms, words, and provisions shall be construed as defined and set forth herein.

1. Definitions.

[See Compact Edition, Volume 3 for text of 8(a), 1(a) to 8(a), 1(j)]

(k) Person. Person includes an individual, an agency, an association, or a corporation.

2. Provisions for License to Operate.

[See Compact Edition, Volume 3 for text of 8(a)2(a) to 8(a)2(d)]

(e) Fees. (1) Child-placing agencies, in cases either of placement for adoption or of placement for care and custody, shall not be prohibited from charging a reasonable fee for placement, consultation or other child-placing activities either from the parents or other person responsible for the child involved, or from the foster parents receiving the child; provided that no person engaged in child-placing activity may make the availability of services or the amount of the fee for services (other than legal services) contingent upon the retention of a particular attorney or an attorney from a particular group of attorneys; provided further that the natural parents, legal guardian, or foster parents may pay such agency a reasonable amount for staff and other services, board, maintenance, and medical care of such child and may reimburse the agency for medical care and maintenance plus staff and other services on behalf of the mother of such child in accordance with rules and regulations prescribed by the State Department of Public Welfare as hereinafter provided. (2) License to operate, for each type of facility as herein defined, shall be issued without fee, and under such reasonable and uniform rules and regulations as the State Department of Public Welfare shall prescribe as hereinafter provided; and the type of facility for which a license is issued shall be indicated on such license.

[See Compact Edition, Volume 3 for text of 8(a)2(f) to 8(a)4]

4a. Health Certificate.

(a) No person operating a child care facility may allow an individual to prepare or dispense food served in the facility if the individual does not possess as a minimum requirement a health certificate signed by a licensed physician within the previous 12-month period.

(b) The State Department of Public Welfare shall check the certificates during its inspection visits.

(c) The Department of Public Welfare may, after consultation with the Department of Public Health, require additional minimum public health safety requirements of the persons covered by this Act.

[See Compact Edition, Volume 3 for text of 8(a)5 to 8(a)11]

12. Misdemeanor.

Any person who (i) impersonates an official, employee, representative, agent, or solicitor of any licensed institution or agency within the scope of this Act, (ii) falsely represents himself as representing a licensee under this Act, (iii) solicits funds in the name of, or for, any licensee under this Act without authorization, (iv) without a license conducts a child-caring institution, a commercial child-caring institution, a child-placing agency, or places children for adoption, or (v) violates the provisions of Subsection 4a of this section, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than One Thousand Dollars (\$1,000), or confinement in county jail for not more than one (1) year, or both. Each day of violation shall be considered a separate offense.

13. Sale or Purchase of Child.

(a) No person who possesses a child or who has the custody, conservatorship, or guardianship of a child whether or not in actual possession of the child, may offer or agree to accept or accept anything of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption.

(b) No person may offer or agree to give or give anything of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

(c) This section does not apply to the payment of a fee to a child-placing agency when authorized under Subsection 2(e) of this section, to fees of an attorney or physician for actual services rendered in the usual course of a legal or medical practice, nor to the reimbursement of actual medical or legal expenses incurred by any person for the benefit of the child.

(d) A person who violates this subsection is guilty of a Class B misdemeanor unless the person has been convicted previously of violating this subsection, in which case, the subsequent violation is a felony of the third degree.

Repeal

Section 8(a) of this article is repealed by Acts 1975, 64th Leg., p. 2250, ch. 708, § 26, effective January 1, 1976. See, now, art. 695a-3.

[See Compact Edition, Volume 3 for text of 9 to 18-A]

Child Support Collection, Parent Locator and Paternity Determination Services

Sec. 18-B. (a) The State Department of Public Welfare, as the single state agency designated to administer a statewide plan for child support, is authorized to provide child support collection, parent locator, and paternity determination services to enable it to participate in programs established by federal law.

(b) The State Department of Public Welfare is authorized to:

(1) accept, transfer, and expend funds made available by the government of the United States, the State of Texas, or public or private source, for the purpose of carrying out the provisions of this section;

(2) promulgate rules and regulations to provide the child support services;

(3) initiate legal actions needed to implement the provisions of this section;

(4) enter into contracts or agreements necessary to administer this section; and

(5) request agencies of the state and political subdivisions of the state to search their records to help locate absent parents.

(c) An applicant for or recipient of financial assistance shall be required to assign to the State Department of Public Welfare any rights to support from any other person, which the applicant or recipient may have in his own behalf or for a child for whom the applicant or recipient is claiming assistance, including the right to an amount accrued at the time the assignment is executed. The State Department may distribute support payments or parts of payments received by it to the family for whom the payments are made and for providing assistance and services to and on behalf of needy dependent children.

(d) If an assignment has been made pursuant to this section, child support payments shall be made to the State Department of Public Welfare. If a court has ordered support payments to be made to an applicant for or recipient of financial assistance who has assigned support rights, the State Department may file notice of the assignment with the court ordering the payments. The notice shall include:

(1) a statement that the assignment has been made;

(2) the name of the child and caretaker for whom support has been ordered by the court;

(3) the style and cause number of the case in which support was ordered; and

(4) a request that the payments ordered be made to the State Department of Public Welfare. Upon receipt of the notice and without a requirement of a hearing, the court shall order that the payments be made to the State Department.

(e) In fulfilling its child support obligations, the State Department of Public Welfare may assist in the judicial determination of the paternity of an illegitimate child whose support rights have been assigned to the department, and shall attempt to locate absent parents and shall cooperate with federal agencies, other agencies of the State of Texas, and other states in locating the parents.

(f) The State Department of Public Welfare may make parent locator, child support collection, or paternity determination services available to an individual not otherwise eligible for the services upon application of the individual. A reasonable application fee and costs may be assessed for the services under rules and regulations developed by the State Department.

(g) Money received by the State Department of Public Welfare under assignments or as fees pursuant to this section shall be deposited in a special fund in the State Treasury or in accounts in financial institutions and may be expended for administration of the programs provided for in this section and to provide assistance and services to and on behalf of needy dependent children. All other funds received pursuant to this section shall be deposited in a special fund in the State Treasury.

(h) All files and records on recipients of the assistants and services provided under this section and on an alleged father of an illegitimate child are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent locator, or aid to families with dependent children programs. Information may be released to public officials un-

der rules and regulations developed by the State Department of Public Welfare.

[See Compact Edition, Volume 3 for text of 19 to 32]

Disclosure of Information Prohibited; Names of Recipients

Sec. 33. (1) It shall be unlawful, except for purposes directly connected with the administration of general assistance, aid to dependent children, or social services programs, and in accordance with the rules and regulations of the State Department, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of, or names of, or any information concerning, persons applying for or receiving such assistance, directly or indirectly derived from the records, papers, files, or communications of the State Department or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

(2) The rule-making power of the State Department shall include the power to establish and enforce reasonable rules and regulations governing the custody, use, and preservation of the records, papers, files, and communications of the State Department and its local offices. Wherever, under provisions of law, names and addresses of recipients of public assistance or services are furnished to or held by any other agency or department of government, such agency or department of government shall be required to adopt regulations necessary to prevent the publication of lists thereof or their use for purposes not directly connected with the administration of public assistance or social services programs.

[See Compact Edition, Volume 3 for text of 34 to 47]

[Amended by Acts 1975, 64th Leg., p. 746, ch. 292, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1124, ch. 424, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1273, ch. 476, § 56, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1343, ch. 502, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1937, ch. 634, § 1, eff. June 19, 1975.]

Art. 695c-2. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 881, ch. 398, § 1, added a § 9 to this article, providing a penalty for failure to report. Said § 9 was repealed by Acts 1975, 64th Leg., p. 1273, ch. 476, § 57. See, now, Family Code, § 34.07.

Art. 695g. Federal Old Age and Survivors Insurance Coverage for County and Municipal Employees

Definitions

Sec. 1. The following definitions of words and terms shall apply as used in this Act:

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

(d) The term "State Agency" means the Employees Retirement System of Texas.

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

Administration of Act

Sec. 2. The Employees Retirement System of Texas is designated the State Agency to administer the provisions of this Act. The Executive Director of the department shall act for it and shall direct and administer its functions under this Act.

[See Compact Edition, Volume 3 for text of 3 and 4]

Rules and Regulations; Terms of Agreements

Sec. 5. The Employees Retirement System of Texas is authorized and directed to promulgate all reasonable rules and regulations it deems necessary to govern applications for and eligibility to participate in this program, and it shall prescribe the terms of the agreements necessary to carry out the provisions of this Act and to insure financial responsibility on the part of participating counties, municipalities or other political subdivisions of the State.

[See Compact Edition, Volume 3 for text of 6 to 13a]

[Amended by Acts 1975, 64th Leg., p. 965, ch. 366, § 1(a), eff. Sept. 1, 1975.]

Art. 695h. Federal Old Age and Survivors Insurance Coverage for State Employees

Definitions

Sec. 1. The following definitions of words and terms shall apply as used in this Act:

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

(d) The term "State Agency" means the Employees Retirement System of Texas.

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

Administration of Act

Sec. 2. The Employees Retirement System of Texas 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.

[See Compact Edition, Volume 3 for text of 3 to 11]

[Amended by Acts 1975, 64th Leg., p. 965, ch. 366, § 1(b), eff. Sept. 1, 1975.]

Art. 695k. Texas State Committee on Aging

[See Compact Edition, Volume 3 for text of 1 to 5]

Community Senior Citizens Employment Programs

Sec. 5a.

[See Compact Edition, Volume 3 for text of 5a(a)]

(b) The Committee may contract with a public agency or a private nonprofit organization experienced in management of such programs, to employ persons under this program in providing recreation, beautification, conservation, restoration services, or public service employment positions for state, county, city, regional governments, or school districts. The Committee may not contract with any organization which is not a subscriber under Texas work-

men's compensation law or which does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

[See Compact Edition, Volume 3 for text of 5a(c) to 7]

[Amended by Acts 1975, 64th Leg., p. 1817, ch. 553, § 1, eff. Sept. 1, 1975.]

Art. 695l. Uniform System of Accounting; Counties, Hospital Districts and Certain Cities; Quarterly Reports

[See Compact Edition, Volume 1 for text of 1 to 4]

Sec. 4a. Cities, counties, and hospital districts that do not participate in welfare assistance programs are not subject to the provisions of this Act. [Amended by Acts 1975, 64th Leg., p. 936, ch. 349, § 1, eff. June 19, 1975.]

TITLE 22

BONDS—COUNTY, MUNICIPAL, ETC.

CHAPTER ONE. GENERAL PROVISIONS AND REGULATIONS

Article

715b. Bond Registration Act [NEW].

717k-5. Validation of Contracts, Warrants and Refunding Bonds Authorized by Counties, Cities of Towns [NEW].

717n-1. Counties over 1,000,000; Issuance of Certificates of Indebtedness for Certain Purposes [NEW].

717o. Local Government Sport Centers [NEW].

Art. 715b. Bond Registration Act

Citation of Act

Sec. 1. This Act may be cited as the "Bond Registration Act."

Definitions

Sec. 2. As used in this Act:

(1) "Comptroller" means the comptroller of public accounts.

(2) "Fully registrable" means, with reference to the public securities, that the principal of and interest on such securities are payable only to the registered owner thereof, the principal thereof being payable upon presentation of the securities at the place of payment and the interest thereon being payable to the registered owner at the most recent address of said registered owner shown on the books of the registrar.

(3) "Issuer" means the State of Texas, any department, board, agency, or instrumentality of the State of Texas, any municipal corporation, any political subdivision, any district, authority, or any other political corporation of the State of Texas having the authority to issue public securities.

(4) "Public securities" means bonds, notes, certificates of obligation, certificates of indebtedness, or other obligations for the payment of money lawfully issued by an issuer.

(5) "Registered owner" means the payee named in a fully registrable public security, his legal representative or successor.

(6) "Registrar" means the comptroller of public accounts or a commercial bank meeting the requirements of this Act which is named as registrar in the proceedings authorizing public securities.

Form of Public Securities; Denomination

Sec. 3. (a) Any issuer may provide in the proceedings authorizing the issuance of public securities that such public securities may be in a form:

(1) having appertaining thereto coupons and being unregistrable;

(2) having appertaining thereto coupons and being registrable as to principal only; or

(3) being fully registrable. Such proceedings may provide that public securities of the same issue or series may be of one or more of such types and may be exchangeable in whole or in part for one or more of such types.

(b) Any issuer may also provide in the proceedings authorizing the issuance of public securities that such public securities shall be in a form having initially appertaining thereto coupons and being permitted to become fully registrable in accordance with Section 5 of this Act.

(c) Public securities may be issued in any denomination or denominations, provided that if such public securities are authorized to be in a denomination or denominations in excess of \$1,000, they shall be in a denomination or denominations that are multiples of \$1,000.

Registrar of Securities; Rules and Regulations

Sec. 4. If the proceedings authorizing public securities provide that such securities can be fully registrable, the registrar therefor shall be the comptroller or a banking corporation or association at which the principal of such public securities shall be payable. They may be registered under such reasonable rules and regulations not inconsistent herewith as such proceedings may provide.

Comptroller as Registrar: Attachment or Removal of Coupons

Sec. 5. If the comptroller of public accounts is named the registrar in proceedings authorizing the issuance of public securities, in accordance with such proceedings such public securities may be originally issued with coupons appertaining thereto and subsequently become fully registrable by the removal by the comptroller of the coupons appertaining thereto upon the presentation of the securities to the comptroller, and may be originally issued fully registrable and subsequently become public securities with coupons appertaining thereto by attachment of the cou-

pons appertaining thereto by the comptroller upon presentation of such securities to the comptroller. Such attachment and removal may occur successively from time to time. No matured coupon will be attached or reattached by the comptroller.

Exchange or Change in Form of Securities

Sec. 6. (a) If the proceedings authorizing the issuance of public securities provide or have heretofore provided that such public securities having appertaining thereto coupons or being fully registrable may be exchanged or such public securities change form by attachment or removal of coupons in accordance with Section 5 hereof, and such public securities on initial issuance are approved by the attorney general in accordance with law and registered by the comptroller, upon exchange or their change in form by attachment or removal of coupons in accordance with this Act, it shall not be necessary for the attorney general to again approve and it shall not be necessary for the comptroller to again register such public securities, resulting from such exchange or change in form, but the public securities resulting from such exchange or change in form shall as a matter of law be considered as having been approved by the attorney general and registered by the comptroller.

(b) If such public securities are exchanged, the registrar shall cause to be placed on the public securities received in exchange an appropriate inscription manually signed verifying that the public securities received in exchange are in lieu of the public securities presented for exchange.

Change of Registered Owner or Address; Replacement for Damaged, Destroyed, Lost or Stolen Bonds; Form and Identity Changes

Sec. 7. (a) If the comptroller is named as registrar in the proceedings authorizing the issuance of public securities, upon the change on the registration books of the registrar of the registered owner or his address, the comptroller shall notify all places of payment with reference to such change or changes.

(b) In the event application is made to the comptroller for the replacement of damaged, destroyed, lost, or stolen bonds, pursuant to Chapter 334, Acts of the 59th Legislature, Regular Session, 1965 (Article 715a, Vernon's Texas Civil Statutes), and any such bond or bonds as described in said application do not appear in the comptroller's records in the form and bear the identity as originally registered by the comptroller, the applicant for such replacement shall furnish the comptroller a chronology of the changes from the original, registered form and identity as to enable the comptroller, under regulations promulgated by him to effect such purpose, to trace the changes in form and identity by such chronology, of such bond or bonds into the original, registered form and identity.

Cost and Expenses for Registration and Exchange of Securities

Sec. 8. Where the proceedings authorizing public securities provide for public securities to be fully registrable whether initially or through exchange or conversion, such proceedings shall provide to the extent the issuer is to pay the cost and expenses in connection with the registration and exchange of such public securities including the fees of the registrar therein named. The comptroller shall adopt reasonable regulations for his performing the services provided for herein, and shall publish a schedule of fees for performing such services.

Cumulative Effect; Conflicting Provisions

Sec. 9. (a) The provisions of this Act shall be cumulative of all laws or parts of laws, general or special, and specifically are not intended to qualify the Texas Uniform Commercial Code or limit the negotiability of public securities as provided therein.

(b) In the event of conflict between the provisions of this Act and the provisions of any city charter the provisions of this Act shall prevail.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person, political subdivision, or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Act, which can be given effect without the invalid provisions or application, and to this end the provisions of the Act are declared to be severable.

[Acts 1975, 64th Leg., p. 1132, ch. 431, § 1, eff. June 19, 1975.]

Art. 717k-5. Validation of Contracts, Warrants and Refunding Bonds Authorized by Counties, Cities or Towns

Sec. 1. In every instance where the commissioners court of a county or the governing board of a city, including home-rule cities, or town in this state has entered into contracts for, or has determined the advisability thereof by giving notice of intention to issue interest-bearing time warrants in payment therefor, the construction of public works or improvements, the purchase of land or interests in land, or for the purchase of materials, supplies, equipment, labor, supervision, wages, salaries, or professional or personal services, and has heretofore adopted orders or ordinances to authorize the issuance of scrip or time warrants to pay or evidence the indebtedness of such county or city, including home-rule cities, or town for the cost of such public works or improvements, land, material, supplies, equipment, labor, supervision, wages, salaries, or professional or personal services, all such contracts, scrip and time warrants, and the proceedings adopt-

ed by the commissioners court or governing body, as the case may be, relating thereto are hereby in all things validated, ratified, confirmed, and approved. All scrip warrants and time warrants heretofore issued by the commissioners court or governing body, as the case may be, in payment of work done by such county or city, including home-rule cities, or town and paid for by the day as the work progressed, and for materials and supplies purchased in connection with such work and for professional or personal services rendered to the county, city, or town, and each of these are hereby in all things validated, ratified, confirmed, and approved and all such warrants shall be payable in accordance with their respective terms. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any contract, scrip warrant, or time warrant executed or issued by any county with a population in excess of 350,000, according to the last preceding federal census, or any contract, scrip warrant, or time warrant, the validity of which is involved in litigation at the time this Act becomes effective if the question is ultimately determined against the validity thereof.

Sec. 2. All proceedings, governmental acts, orders, ordinances, resolutions, and other instruments heretofore adopted or executed by a commissioners court or governing body of a city, including home-rule cities, or town, and of all officers and officials thereof authorizing the issuance of or pertaining to refunding bonds for the purpose of refunding scrip or time warrants issued by any county or city, including home-rule cities, or town and all such warrants and all refunding bonds, heretofore issued for such purpose, and each of these are hereby in all things validated, ratified, approved, and confirmed. Such refunding bonds now in process of being issued and authorized by proceedings, ordinances, and resolutions heretofore adopted may be issued, irrespective of the fact that the commissioners court or governing body in giving the notice of intention to issue refunding bonds may not have in all respects complied with statutory provisions. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any proceedings, governmental acts, orders, resolutions, or other instruments, or bonds executed, adopted, or issued by any county with a population in excess of 350,000, according to the last preceding federal census, or any proceedings, governmental acts, orders, ordinances, resolutions, or other instruments, or bonds, the validity of which is involved in litigation at the time this Act becomes effective if the question is ultimately determined against the validity thereof; nor shall this Act be construed as validating any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction.

Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act or application thereof to any person or circumstance is held invalid such holding shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions despite such invalidity. [Acts 1975, 64th Leg., p. 1195, ch. 452, §§ 1 to 3, eff. June 19, 1975.]

Art. 717n-1. Counties over 1,000,000; Issuance of Certificates of Indebtedness for Certain Purposes

Authorization

Sec. 1. Any county having a population in excess of 1,000,000, according to the most recent Federal Census, is authorized, subject to the limitations contained in this Act, to issue certificates of indebtedness:

(1) in the amount of not more than \$2,000,000 for the purpose of constructing, enlarging, furnishing, equipping and repairing county buildings and other permanent improvements; and

(2) in the amount of not more than \$3,500,000 for the purchase of right-of-way in participation with the Texas Highway Department in connection with designated state highways and for the construction of curbs, gutters and drainage facilities for such designated highways.

(3) If bonds are not issued under this Act by January 1, 1980, this Act will no longer be in effect.

Maturity; Interest; Negotiability; County Registration; Amount

Sec. 2. Such certificates shall be authorized by order of the commissioners court and shall mature in not to exceed 35 years from their date. Interest may be evidenced by coupons. Said certificates shall be sold for cash, and they shall be fully negotiable. Said certificates shall be signed by the county judge, attested by the county clerk, and registered by the county treasurer. Certificates shall not be issued under this Act in excess of \$5,500,000.

Tax Levy and Assessment

Sec. 3. When such certificates are issued, it shall be the duty of the commissioners court to levy and have assessed and collected a tax under Article VIII, Section 9 of the Constitution, sufficient to pay the principal of and the interest on the certificates as such principal and interest become due.

Approved by Attorney General; Registration

Sec. 4. 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 the State of Texas, who shall endorse his certificate of registration thereon, and thereafter they shall be incontestable.

Legal and Authorized Investments; Security for Deposits

Sec. 5. The certificates of indebtedness shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, savings and loan associations, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such certificates shall be eligible to secure the deposit of any and all public funds of the State of Texas, and of any and all public funds of cities, towns, villages, counties, school districts, and other political subdivisions of the State of Texas; and such certificates shall be lawful and sufficient security for said deposits to the extent of their face value or to the extent of their market value, whichever value is the smaller, when accompanied by all unmaturing coupons appurtenant thereto.

[Acts 1975, 64th Leg., p. 1873, ch. 589, §§ 1 to 5, eff. Sept. 1, 1975.]

Art. 717o. Local Government Sport Centers

Definitions

Sec. 1. In this Act:

(1) "Local government" means a county, an incorporated city or town, or an independent school district.

(2) "Ordinance," in the case of an independent school district, means "resolution," and in the case of a county means "order."

(3) "Sport center" means a facility used for sporting activities and events, including auxiliary facilities such as parking areas and restaurants.

Application of Act

Sec. 2. A local government may take advantage of this Act only if all or most of its territory is located in a county that has a population of more than 650,000, according to the last preceding federal census.

General Authority

Sec. 3. (a) A local government may construct, acquire, lease, improve, enlarge, and operate one or more sport centers under this Act.

(b) Two or more local governments acting jointly may do anything authorized by this Act to be done

by a single local government. When two or more local governments act jointly, joint action by all local governments involved is necessary to perform any official act. Two or more local governments may act jointly under this subsection only if each of them is authorized individually to take advantage of this Act and all or most of the territory of each of them is located in the same county or in adjacent counties.

(c) A local government or combination of them acting under this Act may contract with any public or private entity including a coliseum advisory board or similar body, for the performance of any function authorized under this Act other than the performance of an official governmental act that is required to be done by the governing body of a local government.

Issuance of Revenue Bonds

Sec. 4. For any purpose authorized under Section 3 of this Act, the governing body of a local government may issue revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenue derived from a facility authorized under this Act.

Terms and Conditions of Bonds

Sec. 5. (a) The bonds may be issued to mature serially or otherwise within not to exceed 40 years from their date, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the resolution authorizing the issuance of the bonds.

(b) The bonds, and any interest coupons appertaining thereto, are negotiable instruments within the meaning and for all purposes of the Texas Uniform Commercial Code. The bonds may be issued registrable as to principal alone or as to both principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in the bond ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition or construction of any facilities to be provided through the issuance of the bonds, for paying expenses of operation and maintenance of facilities authorized under this Act, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for creating any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed,

all to the extent, and in the manner provided, in the bond ordinance.

Rentals, Rates, and Charges

Sec. 6. The local government is authorized to fix and collect fees, rentals, rates, and charges for the occupancy, use, or availability of all or any of its property, buildings, structures, or other facilities authorized under this Act in such amounts and in such manner as may be determined by the governing body of the local government.

Pledges

Sec. 7. (a) The local government may pledge all or any part of the revenues, income, or receipts from such fees, rentals, rates, and charges to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged fees, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the facilities authorized under this Act.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the facilities authorized under this Act owned or to be acquired by the local government, and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body of the local government may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The local government may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

(d) No holder of any bond or bonds issued under this Act shall ever have the right to demand payment thereof out of any funds raised or to be raised by taxation.

Public Purpose

Sec. 8. The acquisition, purchase, construction, improvement, enlargement, equipment, operation, and maintenance of any property, buildings, structures, or other facilities authorized under this Act are public purposes and proper functions of local governments.

Refunding Bonds

Sec. 9. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose, under any terms or conditions, as are determined by ordinance of the governing body of the local government. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a local government under this Act also may be refunded in the manner provided by any other applicable law.

Approval and Registration of Bonds

Sec. 10. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable in any court or other forum for any reason, and are valid and binding obligations for all purposes in accordance with their terms.

Authorized Investments and Security for Deposits

Sec. 11. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other

kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect

Sec. 12. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds

and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control. A local government has the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

[Acts 1975, 64th Leg., p. 1198, ch. 454, §§ 1 to 12, eff. June 19, 1975.]

TITLE 24

BUILDING—SAVINGS AND LOAN ASSOCIATIONS

Art. 852a. Savings and Loan Act

[See Compact Edition, Volume 3 for text of 1.01 to 4.04]

Power to Act Under Federal Self-Employed Retirement Plans

Sec. 4.05. Any association and any Federal association (insofar as its charter and applicable Federal rules and regulations permit) may exercise all powers necessary to qualify as a trustee or custodian for retirement plans meeting the requirements of 26 U.S.C. sec. 401(d) or sec. 408 or any similar plans permitted or recognized by Federal law and may invest any funds held in such capacities in the savings accounts of the institution if the trust or custodial retirement plan does not prohibit such investment.

[See Compact Edition, Volume 3 for text of 5.01 to 10.04]

CHAPTER ELEVEN. MISCELLANEOUS

Exemption from Securities Laws

Sec. 11.01. Savings accounts, certificates, and other evidences of interests in the savings liability of associations subject to this Act and of Federal associations are not "securities" for any purpose under The Securities Act, as amended (Article 581-1, et seq., Vernon's Texas Civil Statutes). Securities of these associations other than interests in the savings liability of the associations are not subject to the registration requirements of The Securities Act, as amended. Any person whose principal occupation is that of an officer of an association is exempt from the registration and licensing provisions of The Securities Act, as amended, with respect to that person's participation in a sale or other transaction involving securities of the association of which the person is an officer.

[See Compact Edition, Volume 3 for text of 11.02 to 11.18]

[Amended by Acts 1975, 64th Leg., p. 54, ch. 30, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 401, ch. 177, § 1, eff. Sept. 1, 1975.]

TITLE 25

CARRIERS

6. REGULATION OF MOTOR CARRIERS

Art. 911b. Motor Carriers and Regulation by Railroad Commission

[See Compact Edition, Volume 3 for text of 1 to 17]

Identification Plate on Motor Vehicles

Sec. 18. It shall be unlawful for any motor carrier as hereinbefore defined to operate any motor vehicle within this State unless there shall be displayed and firmly fixed upon the front of such vehicle an identification plate to be furnished by the Commission. Each plate shall be designed so as to identify the vehicle on which the same is attached as being a vehicle authorized to operate under the terms of this law; said plate shall bear the number given to the vehicle by the Commission and such other marks of identification as may be necessary. The plate for common carrier vehicles and the plate

for contract carrier vehicles shall be different in design. The identification plate provided for herein shall be in addition to the regular license plates required by law. It shall be the duty of the Commission to provide the plate and each motor vehicle operating in this State shall display such plate as soon as the same is received and such plate shall be issued annually thereafter and attached to each motor vehicle not later than September 1st of each year, or as soon thereafter as possible. The Commission shall be authorized to collect from the applicant a fee of one dollar (\$1) for each plate so issued, and all fees for such plates shall be deposited in the State Treasury to the credit of the "Motor Carrier Fund."

[See Compact Edition, Volume 3 for text of 18a to 23]

[Amended by Acts 1975, 64th Leg., p. 1976, ch. 657, § 1, eff. June 19, 1975.]

TITLE 26

CEMETERIES

Art. 912a-1. Definitions

Words used in this Act in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; "writing" includes "printing" and "typewriting"; "oath" includes "affirmation." When used in this Act, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

The term "cemetery", within the meaning of this title, is hereby defined as a place dedicated to and used and intended to be used for the permanent interment of the human dead. It may be either a burial park, for earth interments; a mausoleum for vault or crypt interments, a crematory, or crematory and columbarium for cinerary interments, or a combination of one or more thereof.

The term "perpetual care cemetery" shall mean a cemetery for the benefit of which a perpetual care fund shall have been established in accordance with the provisions of this Act.

The term "nonperpetual care cemetery" shall mean a cemetery for the benefit of which no perpetual care fund has been established in accordance with the provisions of this Act.

The term "perpetual care" shall mean to keep the sod in repair, to keep all places where interments have been made in proper order, and to care for trees and shrubs, providing for the administration of perpetual care funds in instances wherein those administering such funds fail or refuse to act.

"Burial Park" means a tract of land which has been dedicated to the purposes of and used, and intended to be used, for the interment of the human dead in graves.

"Grave" means a space of ground in a burial park intended to be used for the permanent interment in the ground of the remains of a deceased person.

"Mausoleum" means a structure or building of most durable and lasting fireproof construction used, or intended to be used, for the permanent interment in crypts and vaults therein of the remains of deceased persons.

"Crypt" or "Vault" as herein used means the chamber in a mausoleum of sufficient size to inter the uncremated remains of a deceased person.

"Lawn Crypts" or "Garden Crypts," sometimes called cryptoriums, means subsurface concrete and reinforced steel receptacles installed in multiple units, for burial of the remains of a deceased person in a casket.

"Columbarium" means a structure or room or other space in a building or structure of most durable and lasting fireproof construction or a plot of earth, containing niches, used, or intended to be used, to contain cremated human remains.

"Crematory" means a building or structure containing one or more furnaces used, or intended to be used, for the reduction of bodies of deceased persons for cremated remains.

"Crematory and columbarium" means a building or structure of most durable and lasting fireproof construction containing both a crematory and columbarium, used, or intended to be used, for the permanent interment therein by inurnment of the remains of deceased persons.

"Niche" is a recess in a columbarium, used, or intended to be used, for the permanent interment of the cremated remains of one or more deceased persons.

"Lot" or "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association, or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and shall apply with like effect to one, or more than one, adjoining graves; one, or more than one, adjoining crypts or vaults; or one, or more than one, adjoining niches.

"Temporary receiving vault" as herein used means a vault in a structure of most durable and lasting construction used and intended to be used for the temporary deposit therein for a reasonable time only of the remains of a deceased person.

"Interment" means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment or burial.

"Cremation" as herein used means the interment of a body of a deceased person by reduction to cremated remains in a crematory and the deposit of the cremated remains in a grave, vault, crypt, or niche.

"Inurnment" means placing the cremated remains in an urn and permanently depositing the same in a niche.

"Entombment" means the permanent interment of the remains of a deceased person in a crypt or vault.

"Remains" means the body of a deceased person.

"Cremated remains" means remains of a deceased person after incineration in a crematory.

"Cemetery business," "cemetery businesses" and "cemetery purposes" are herein used interchangeably and shall mean any and all business and purposes requisite or necessary for or incident to establishing, maintaining, managing, operating, improving, and conducting a cemetery and the interring of the human dead, and the care, preservation and embellishment of cemetery property.

The terms "cemetery association" and "association" are herein used interchangeably and shall mean any corporation now or hereafter organized, or any association not operated for a profit, which is or shall be authorized by its articles to conduct any one or more or all of the businesses of a cemetery.

"Directors" as herein used, means the board of directors, board of trustees, or other governing body of the cemetery association.

The term "plot owner," "owner," or "lot proprietor" as used herein means any person in whose name a burial plot stands, as owner of the exclusive right of sepulture therein, in the office of the association, or who holds from such association a conveyance of the exclusive right of sepulture, or a certificate of ownership of the exclusive right of sepulture, in a particular lot, plot, or space.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 1, eff. Sept. 1, 1975.]

Art. 912a-3. Receipt and Disbursement of Filing Fees, Examination Fees, Penalties and Revenues

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 Fifty Dollars (\$50.00), and each cemetery filing same which serves a city the population of which is great-

er 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 One Hundred Dollars (\$100.00). Filing fees, examination fees, penalties and other revenues collected under this Act shall be received and disbursed by the Banking Department of Texas as provided by and in accordance with Article 12 of Chapter I, the Texas Banking Code of 1943, as amended,¹ 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; provided, that a reasonable part of the amount transferred each year of the biennium by the Banking Department to the General Revenue Fund, to cover the cost of governmental service rendered by other departments, may be made up from fees, penalties and other revenues collected under the provision of this Act.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 2, eff. Sept. 1, 1975.]

¹Article 342-112.

Art. 912a-15. Establishment and Maintenance of Perpetual Care

Every cemetery association which has established and is now maintaining, operating or conducting a perpetual care cemetery and every association which shall hereafter establish, maintain, operate or conduct a perpetual care cemetery within this state, pursuant to this Act, shall establish with a trust company or a bank with trust powers, no two (2) of the directors of which shall be directors of the cemetery association for the benefit of which such fund is established, an endowment fund of which the income only can be used for the general perpetual care of its cemetery and to place its cemetery under perpetual care; provided, however, that if there is no such trust company or bank with trust powers, qualified and willing to accept such trust funds at the regular fees established by the Texas Trust Act,¹ located within the county within which such cemetery association is located, then and only then, such endowment fund may be established with a Board of Trustees composed of three (3) or more persons, no two (2) of the trustees of which shall be directors of such cemetery association. The principal of such fund for perpetual care shall never be voluntarily reduced, but shall remain inviolable and shall forever be maintained separate and distinct by the trustee or trustees from all other funds. Any such trustee or trustees and the perpetual care trust operated by them shall in all respects be governed by the provisions of the Texas Trust Act. The principal of such

fund shall be invested, from time to time reinvested, and kept invested as required by law for the investment of such funds, and the net income arising therefrom shall be used solely for the general care and maintenance of the property entitled to perpetual care in the cemetery for which the fund is established, and shall be applied in such manner as the Board of Directors may from time to time determine to be for the best interest of the cemetery for which such fund is established, but shall never be used for improvement or embellishment of unsold property to be offered for sale. In the event the Board of Directors shall fail to generally care for and maintain that portion of the cemetery entitled to perpetual care, as hereinbefore provided, any five (5) or more lot owners in said cemetery whose lots are entitled to perpetual care shall have the right by suit for mandatory injunction or for a Receiver to take charge of and expend said net income, filed in the District Court of the county in which the cemetery is located, to compel the expenditure either by the Board of Directors or by such Receiver of the net income from the perpetual care fund for the purpose hereinabove set forth.

If a cemetery association is operating a cemetery without provision for perpetual care, and if it is authorized by law and wishes to operate said cemetery as a perpetual care cemetery, it shall so notify the Banking Commission of the State of Texas and shall, in accordance with the foregoing provisions hereof, establish a perpetual care fund equal to the amount which would have theretofore have been paid into such a fund, in accordance with provisions of this Act, if such cemetery had been operated as a perpetual care cemetery from and after the date of the first sale of burial space therein, or the minimum amount provided in Section 29 of this Act,² whichever is the greater. If the amount of the perpetual care fund so established is the minimum amount provided in Section 29 of this Act, such cemetery association or corporation shall be entitled to a credit against amounts hereafter required by the provisions of this Act to be paid by it unto such perpetual care fund equal to the excess of the amount of such perpetual care fund, as originally established by it, over what would have been the amount thereof if its amount had been determined without regard to Section 29 of this Act.

In establishing its perpetual care trust fund the association may from time to time adopt plans for the general care, maintenance and embellishment of its cemetery.

A cemetery association which has established a perpetual care fund may also take, receive, and hold therefor and as a part thereof or as an incident thereto any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it therefor.

The perpetual care trust fund authorized by this Section and all sums paid therein or contributed thereto are, and each thereof is hereby, expressly permitted and shall be and be deemed to be for charitable and eleemosynary purposes. Such perpetual care shall be deemed to be a provision for the discharge of a duty due from the person or persons contributing thereto to the persons interred and to be interred in the cemetery and likewise a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming places of disorder, reproach, and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for such general perpetual care shall be or be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating said trust, nor shall said fund or any contribution thereto be or be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

Each perpetual care cemetery shall deposit in its perpetual care trust fund an amount equivalent to such amount as may have been stipulated in any contract under which perpetual care property was sold prior to March 15, 1934, plus a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until such fund reaches a minimum of One Hundred Thousand Dollars (\$100,000.00), after which each such cemetery shall deposit an amount equivalent to a minimum of ten cents (10¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until September 3, 1945. Each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after September 3, 1945, until July 1, 1963. A minimum of Fifteen Dollars (\$15.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property and a minimum of Five Dollars (\$5.00) per each niche interment right for columbarium interment sold or disposed of as perpetual care property between March 15, 1934, and July 1, 1963, shall also be placed in such perpetual care trust fund. From and after July 1, 1963, until September 1, 1975, each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of fifty cents (50¢) per square foot of ground area sold or disposed of as perpetual care property between said dates. A minimum of Forty Dollars (\$40.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property, except that on crypts accessible only through another crypt the minimum requirement shall be Twenty Dollars (\$20.00) per each such crypt, and a minimum of Ten

Dollars (\$10.00) per each niche interment right for columbarium interment sold or disposed of subsequent to July 1, 1963, shall also be placed in such perpetual care trust fund. Such minimum requirements shall apply to all property in which the exclusive right of sepulture has been sold and paid for, whether used for interment purposes or not.

After July 1, 1963, each agreement for the sale of burial space in a perpetual care cemetery shall set out separately the part of the aggregate amount agreed to be paid by the purchaser which is to be deposited in the perpetual care trust fund. If the aggregate amount agreed to be paid by the purchaser is payable in installments, all amounts paid thereon shall be applied, first, to the part thereof not required to be deposited in the perpetual care trust fund, to the extent thereof, and the remainder shall, when received by the seller, be deposited in the perpetual care trust fund. Any funds required to be deposited in its perpetual care trust fund by a seller of burial space shall be so deposited not later than ten (10) days after the end of the calendar month during which they are received. If the seller shall fail to so deposit such funds within the time required hereunder, it shall be liable for and the Banking Commissioner shall collect as a penalty the sum of Ten Dollars (\$10.00) per day for the period of such failure, and, upon the relation of the Banking Commissioner of the refusal of the seller to pay to the Banking Commissioner such penalty, the Attorney General shall institute a suit to recover said penalty and for costs and such other relief by the state as in the judgment of the Attorney General is proper and necessary. No cemetery shall hereafter operate as a perpetual care, permanent maintenance, or free care cemetery until the provisions hereof are complied with.

The amount to be deposited in the perpetual care trust fund shall be separately shown on the original purchase agreement and a copy thereof shall be delivered to the purchaser. In the sale of burial space, no commission shall be paid a broker or salesman on the amount to be deposited in the fund.

Notwithstanding any other provision of the laws of the State of Texas or any provision in a trust agreement executed for the purpose of providing perpetual care for a cemetery, such trust agreement may, by agreement entered into between the cemetery association and the trustee or trustees acting under such trust agreement, be amended so as to include any provision which is not inconsistent with any provision in this Act.

From and after September 1, 1975, each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of seventy-five cents (75¢) per square foot of ground area sold or disposed of as perpetual care property after

said date. A minimum of Fifty Dollars (\$50.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property, except that on crypts accessible only through another crypt the minimum requirement shall be Twenty-Five Dollars (\$25.00) per each such crypt, and a minimum of Fifteen Dollars (\$15.00) per each niche interment right for columbarium interment sold or disposed of subsequent to September 1, 1975, shall also be placed in such perpetual care trust fund. The amount of money to be placed in the perpetual care trust fund for lawn crypts shall be the same as crypts in an aboveground mausoleum.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 3, eff. Sept. 1, 1975.]

¹ Article 7425b-1 et seq.

² Article 912a-29.

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.¹ 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), Fifteen Thousand Dollars (\$15,000); those serving a city having a population of fifteen thousand (15,000) but not more than twenty-five thousand (25,000) inhabitants, Thirty Thousand Dollars (\$30,000); those serving a city of twenty-five thousand (25,000) or more inhabitants, Fifty Thousand Dollars (\$50,000).

Nothing contained in this Section 28² 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.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 4, eff. Sept. 1, 1975.]

¹ Article 912a-29.

² This article.

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 Fifteen Thousand Dollars (\$15,000) must deposit with the trustee,

as provided by law, a Perpetual Care and Maintenance Guarantee Fund of Fifteen Thousand Dollars (\$15,000) in cash.

Those with a Capital Stock of Thirty Thousand Dollars (\$30,000), a Perpetual Care and Maintenance Guarantee Fund of Thirty Thousand Dollars (\$30,000) in cash; and,

Those with a Capital Stock of Fifty Thousand Dollars (\$50,000), or more, a Perpetual Care and Maintenance Guarantee Fund of Fifty Thousand Dollars (\$50,000) 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.¹ 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 29² 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.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 5, eff. Sept. 1, 1975.]

¹ Article 912a-15.

² Article 912a-29.

Art. 912a-31. Examinations of Cemetery Associations' Perpetual Care Trust Funds and Records; Fees and Expenses

It shall be the duty of the Banking Commissioner to examine, or cause to be examined, each of such perpetual care cemetery associations annually or as often as necessary, for which the examined association shall pay to the Commissioner a fee not to exceed Seventy-Five Dollars (\$75.00) per day or fraction thereof, for each examiner, the total fee not to exceed Three Hundred Dollars (\$300.00) for any one regular examination.

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. [Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 6, eff. Sept. 1, 1975.]

TITLE 28

CITIES, TOWNS AND VILLAGES

CHAPTER ONE. CITIES AND TOWNS

Article

974d-20. Validation of Consolidation of Certain Cities [NEW].

974d-21. Validations of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions [NEW].

974d-22. Validation of Incorporation, Charters and Amendments of Cities over 5,000; Boundary Lines; Governmental Proceedings; Revenue Bonds; Exceptions [NEW].

Art. 970a. Municipal Annexation Act

[See Compact Edition, Volume 3 for text of 1 to 6]

Limitation on Annexations

Sec. 7.

[See Compact Edition, Volume 3 for text of 7A and 7B]

B-1. (a) No home rule or general law city may annex any area, whether publicly or privately owned, unless the width of such area at its narrowest point is at least 500 feet, except that a city having a population of twelve thousand (12,000) inhabitants or less may annex an area that is less than 500 feet in width if the corporate limits of the city are contiguous with the property on at least two sides.

[See Compact Edition, Volume 3 for text of 7B-1(b) to 10]

[Amended by Acts 1975, 64th Leg., p. 1865, ch. 585, § 1, eff. Sept. 1, 1975.]

Art. 974a. Platting and Recording Subdivisions or Additions

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3. 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, 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 a city has a City Planning Commission, the governing body may, by ordinance, additionally require approval of said plan; plat, or replat by the governing body. 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, or both, 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, or both, 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, if there be one, or with the governing body if there is no Commission. The Commission, or governing body, as the case may be, 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 by the Commission, or the governing body if there is no Commission. If a city with a Commission has required that approval be given by the governing body, then the governing body shall act upon the same within thirty (30) days after the approval by the Commission, or after the approval by reason of nonaction. If said plat be not disapproved by the governing body within said thirty (30) days, it shall be deemed to have been approved by the governing body. A certificate showing the filing dates hereunder and the failure to take actions thereon within the periods herein prescribed 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 of the Governing Body when appropriate under this Act. 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.

[See Compact Edition, Volume 3 for text of 4 to 10]

[Amended by Acts 1975, 64th Leg., p. 1289, ch. 482, § 1, eff. Sept. 1, 1975.]

Art. 974d-20. Validation of Consolidation of Certain Cities

Sec. 1. In each instance where an election has heretofore been held in each of two adjoining incorporated cities within the same county in this state on the question of the consolidation or merger of the two cities under one government, and a majority of the voters of each city who participated in the election voted in favor of the proposition submitted to them, and thereafter the officers of the smaller city turned over to the officers of the larger city the record books and assets of the smaller city and the officers of the larger city entered upon the performance of their duties as officers of the consolidated city, and the consolidated city is now functioning or attempting to function as a validly constituted municipality, the consolidation is hereby validated in all respects as of the date of the consolidation or attempted consolidation. All proceedings involved in the consolidation are hereby validated, and the consolidation shall not be held invalid by reason of the fact that the election proceedings in either or both of the elections may not have been in accordance with law in regard to the prerequisites for ordering the election, the time of holding the election, the wording of the ballot proposition, the registration of the results, or any other procedure.

Sec. 2. All governmental proceedings performed by the governing body and other officers of a consolidated city which is within the terms of this Act are hereby validated as of the date of the proceedings against any claim of invalidity because of any defect in the consolidation proceedings or because of any purported authorization for or utilization of advisory services of former officers of the smaller city during a period following the consolidation.

Sec. 3. This Act does not apply to any proceedings or actions the validity of which is involved in litigation on the effective date of this Act if such litigation is ultimately determined against the validity thereof; nor does it apply to any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction before the effective date.

[Acts 1975, 64th Leg., p. 373, ch. 164, §§ 1 to 3, eff. May 8, 1975.]

Art. 974d-21. Validations of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions

Sec. 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Sec. 2. The boundary lines of the cities and towns, including any extensions by annexation before June 3, 1975, are validated in all respects, except that the incorporation in or extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Sec. 3. All governmental proceedings performed by the governing bodies of the cities and towns since their incorporation are validated in all respects as of the date of the proceedings.

Sec. 4. The provisions of this Act shall not apply to any city or town now involved in litigation questioning any of the acts or proceedings, other than incorporation proceedings or boundary extensions, hereby validated if such litigation is ultimately determined against the legality thereof; nor shall this Act be construed as validating any proceeding which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1975, 64th Leg., p. 1848, ch. 576, §§ 1 to 4, eff. Sept. 1, 1975.]

Art. 974d-22. Validation of Incorporation, Charters and Amendments of Cities over 5,000; Boundary Lines; Governmental Proceedings; Revenue Bonds; Exceptions

Sec. 1. The incorporation proceedings of cities and towns (including home-rule cities) heretofore incorporated or attempted to be incorporated under the general laws of the State of Texas, and which have functioned or attempted to function as incorporated cities or 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

incorporation proceedings may not have been in accordance with law.

Sec. 2. That each charter, and amendment to a charter adopted by any city of more than 5,000 inhabitants in this state, or where such city has amended or attempted to amend or adopt such charter, since the enactment of Chapter 147, Acts of the Regular Session of the 33rd Legislature of the State of Texas, 1913, and as thereafter amended, relating to home rule, and all of the amendments and proceedings had under same, and that all bonds issued under any amendment where said bonds issued under the attorney general and registered with the comptroller of public accounts are hereby fully validated, ratified, and confirmed and are hereby declared to be in full force and effect as is adopted in strict compliance with all of the requirements of said Chapter 147, Acts of the 33rd Legislature, and as thereafter amended, and the general laws of Texas relating thereto.

Sec. 3. The boundary lines of all such cities and towns, including both the boundary lines covered by the original incorporation proceedings and any subsequent extensions thereof, are hereby in all things validated.

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

Sec. 5. Where any city in the state which operated under the general law or pursuant to a home-rule charter has heretofore at an election submitted to the qualified electors who own taxable property in said city and who have duly rendered the same for taxation propositions for the issuance of the bonds of such city for the purposes stated in such propositions, such bonds being payable from the revenues stated in such proposition or payable from ad valorem taxes to be levied therefor, and such propositions having carried by the vote of a majority of the persons voting in such election, all of the proceedings heretofore had by such city, including all proceedings had and acts done in connection with the calling and holding of the election, despite any failure or failures in such proceedings to comply with the pertinent statutes and all proceedings heretofore had by any such city to authorize the issuance of revenue bonds under the provisions of Section 11 of Article 2368a, Vernon's Texas Civil Statutes (irrespective of the location of the improvements to be constructed or acquired with bond proceeds), are hereby ratified, validated, and confirmed. The governing body of each such city is authorized to adopt

all proceedings necessary or desirable to complete the issuance of such bonds. All of such proceedings relating to the authorization of bonds shall be submitted to the Attorney General of Texas, and when such bonds have been or are hereafter approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts, they shall be incontestable.

Sec. 6. 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; nor shall this Act be construed as validating any proceeding which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1975, 64th Leg., p. 1897, ch. 605, §§ 1 to 6, eff. Sept. 1, 1975.]

CHAPTER THREE. DUTIES AND POWERS OF OFFICERS

Article

999d. Purchase of Liability Insurance for Certain Municipal Employees [NEW].

Art. 999d. Purchase of Liability Insurance for Certain Municipal Employees

A municipality may insure the officers and employees of the fire and police departments and other municipal employees who drive emergency vehicles against liability to third persons arising from and out of the use and operation of automobiles, motor trucks, and other motor vehicles used as municipal emergency medical, fire, or police vehicles in the line of duty by procuring policies for that purpose with insurance companies authorized to do business in this state. All insurance taken out by a municipality shall be on forms approved by the State Board of Insurance. No municipality may purchase liability insurance in excess of \$20,000 because of bodily injury to or death of one person in any one accident, \$100,000 because of bodily injury to or death of two or more persons in any one accident, and \$5,000 because of injury to or destruction of property of others in any one accident.

[Acts 1975, 64th Leg., p. 970, ch. 369, § 1, eff. June 19, 1975.]

CHAPTER FOUR. THE CITY COUNCIL

Art. 1011i. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

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

Art. 1015j-1. Promotional Advertising for Growth and Development in Cities of Not More Than 500,000; Board of Development; Appropriations and Expenditures Authorized; Appointment of Manager

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

Sec. 3a. To assist it in carrying out the provisions of this Act, the governing body may appoint a person to manage the promotion, development, tourism, and convention activities of the city, or it may designate a city official to carry out that function. The person appointed or designated shall serve ex officio as the secretary of the board of development.

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

[Amended by Acts 1975, 64th Leg., p. 1988, ch. 661, § 1, eff. June 19, 1975.]

CHAPTER FIVE. TAXATION

Art. 1042b. Assessment and Collection of Taxes in Cities, Towns, Villages, Drainage Districts, and Other Districts

[See Compact Edition, Volume 3 for text of 1 to 3]
Valuation

Sec. 4. The property situated within and subject to taxation in said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, fresh water supply districts, navigation districts or hospital districts taking advantage of this Act shall be assessed at the same value as it is assessed for county and state purposes, except that real property in all incorporated cities in counties of 830,460 population or greater, according to the last preceding federal census, by ordinance of the city government may be assessed at a greater rate of value than the same property is assessed for state and county purposes.

[See Compact Edition, Volume 3 for text of 5]

[Amended by Acts 1975, 64th Leg., p. 663, ch. 278, § 1, Sept. 1, 1975.]

Art. 1066c. Local Sales and Use Tax Act

[See Compact Edition, Volume 3 for text of 1 to 11]

Delinquent Taxes; Collection Suits; Notice and Limitations; Parties; Seizure and Sale of Property

Sec. 12. A. In any city where the Local Sales and Use Tax has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bring-

ing suit for the collection of such delinquent tax and penalty shall be the same as that provided in Article 20.09, Chapter 20, Title 122A. Where any person is delinquent in payment of taxes under this Act, the Comptroller shall notify the Tax Collector of the city to which delinquent taxes are due under this Act by United States Registered Mail or Certified Mail and shall send a copy of the notice to the Attorney General. The city, acting through its attorney, may join in any suit brought by the Attorney General as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such city. The notice sent by the Comptroller to the tax collector of the city showing the delinquency of a taxpayer for the local sales and use tax constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of local sales and use tax set forth in the notice.

[See Compact Edition, Volume 3 for text of 12B]

C. (1) A city that has adopted the tax authorized by this Act may bring suit for the collection of sales, excise, or use taxes imposed by this Act which have been certified as provided in Subsection A of this Section and are owed to the city under this Act if at least 60 days before the filing of the suit, written notice by certified mail of the tax delinquency and of the intention to file suit is given to the taxpayer, the Comptroller, and the Attorney General and if neither the Comptroller nor the Attorney General disapproves the suit by written notice to the city.

(2) The Comptroller or Attorney General may disapprove the institution of tax suit by a city if:

(i) negotiations between the State and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the State and the city seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the State and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the State will bring suit against the taxpayer for the collection of all sales, excise, and use taxes due under Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of State law or a provision of the Texas or United States Constitution in which the State has an overriding interest.

(3) A notice of disapproval to a city must give the reason for the determination of the Comptroller or Attorney General. A disapproval is final and not subject to review. A city, after one (1) year from the date of the disapproval, may proceed again as provided in paragraph (1) of Subsection C of this

Section, even though the liability of the taxpayer includes taxes for which the city has previously given notice and the Comptroller or Attorney General has previously disapproved the suit.

(4) In any suit under this Subsection for the collection of city tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by another city or the State unless the State is a party to the action.

(5) A copy of the final judgment in favor of a city in a case in which the State is not a party shall be abstracted by the city and a copy of the judgment together with a copy of the abstract shall be sent to the Comptroller. The city shall collect the taxes awarded to it under the judgment as provided by Article 20.09(G)(4), Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by a city on a judgment, notice of the amount collected shall be sent by certified mail to the Comptroller. The Comptroller may prescribe a form for the notice to be used by cities.

[See Compact Edition, Volume 3 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 44, ch. 23, § 1, eff. March 20, 1975.]

CHAPTER NINE. STREET IMPROVEMENTS

Article

1105b-4. Validation of Assessments and Reassessments for Street, Sewer and Water Improvements [NEW].

Art. 1105b-4. Validation of Assessments and Reassessments for Street, Sewer and Water Improvements

Sec. 1. In this Act, "highway" has the meaning given it in Section 2, Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927, as amended (Article 1105b, Vernon's Texas Civil Statutes).

Sec. 2. This Act applies to:

(1) the levy of assessments or reassessments against property abutting a highway or portion of one and against the owners of the property for improvements to the highway or portion of it, where the city acted or purported to act under the authority of Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927, as amended (Article 1105b, Vernon's Texas Civil Statutes);

(2) the levy of assessments or reassessments against benefitted property and the owners of the property for improvements to a sanitary sewer system or water system or both within the limits of the city levying the assessments or reassessments, where the city acted or purport-

ed to act under the authority of Chapter 192, Acts of the 58th Legislature, 1963, as amended (Article 1110c, Vernon's Texas Civil Statutes); and

(3) the levy or purported levy of assessments or reassessments as described in Subdivision (1) of this section in conjunction with the levy of assessments or reassessments as described in Subdivision (2) of this section, in a joint proceeding where the city has acted or purported to act under the authority of Section 18, Chapter 192, Acts of the 58th Legislature, 1963 (Article 1110c, Vernon's Texas Civil Statutes).

Sec. 3. Where a city acting through its governing body before the effective date of this Act levied or purported to levy an assessment or reassessment against property and the owners of property as described in Section 2 of this Act, all proceedings of the city relating to the levy or purported levy are validated, ratified, and confirmed as of the time they took place and in accordance with their terms, and the proceedings shall have the full force and effect as is provided under the law under which the city acted or purported to act. The liens created or purported to be created by the levies or purported levies are also validated, ratified, and confirmed, and they shall be effective from and after the respective times provided by the assessment proceedings, except a lien purported to be created against property that at the time was exempt under the Texas Constitution from a lien of special assessment or reassessment for local improvements is not validated, ratified, or confirmed by this Act.

Sec. 4. All assignable certificates of special assessment relating to a proceeding validated by this Act are also validated.

Sec. 5. This Act does not apply to a matter that on the effective date of this Act is involved in litigation in a court of competent jurisdiction instituted for the purpose of attacking the validity of the matter if the litigation is ultimately determined against the validity of the matter.

[Acts 1975, 64th Leg., p. 1306, ch. 490, §§ 1 to 5, eff. Sept. 1, 1975.]

CHAPTER TEN. PUBLIC UTILITIES

2. ENCUMBERED CITY SYSTEM

Art. 1118w. Mass Transportation Systems; Power to Own, Acquire, Construct, Operate, Etc.; Federal Grants and Loans; Revenue Bonds

[See Compact Edition, Volume 3 for text of 1 to 10]

Management Pending Encumbrance; Lease of System

Sec. 11. During the time any such system is encumbered either as to its revenues or as to both its

physical properties and revenues, the management and control of such system may by the terms of the instrument evidencing such encumbrance, be placed with the governing body of such city, or may be placed with a board of trustees to be named in such instrument, consisting of not less than three (3) nor more than nine (9) members, one (1) of whom shall be the mayor of such city. The compensation of such trustees shall be fixed by such instrument, but shall never exceed two per cent (2%) of the gross receipts of such system in any one (1) year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be specified in such instrument. In all matters where such instrument is silent, the laws and rules controlling the governing body, of such city shall govern said board of trustees so far as applicable. The governing body of any such city or any board of trustees in whose management and control any such system may be placed, with the approval of the governing body of such city, evidenced by adoption of a resolution, in lieu of operating any such system, shall have power and authority to enter into any lease or other contractual arrangement for the operation of same by any privately owned and operated corporation in consideration of such rentals either guaranteed or contingent, based on revenues or gross profits or net profits, or any other basis of compensation, which may be determined to be reasonable by such governing body or such board as the case may be; providing however, that any such lease or contractual arrangement between such city and private corporation, shall be preceded by a public notice and request for the submission of bids in the manner required by law for the taking of bids for public construction contracts, and said city shall accept the best bid submitted, taking into consideration the rental to be paid, the experience and financial responsibility of the corporations submitting such bids.

[Amended by Acts 1975, 64th Leg., p. 1187, ch. 445, § 1, eff. June 19, 1975.]

Art. 1118x. Metropolitan Rapid Transit Authorities

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2. The following words and terms, wherever used and referred to in this Act, have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Metropolitan area" means any area within the State of Texas having a population density of not less than 250 persons per square mile and containing not less than 51 percent of the incorporated territory comprising a city having a population of not less than 600,000 inhabitants

according to the last preceding or any future federal census, and in which there may be situated other incorporated cities, towns and villages and the suburban areas and environs thereof; provided, however, that bi-county metropolitan areas as subsequently defined herein, are not included or in any way affected by this Act.

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

Creation of Rapid Transit Authority

Sec. 3. (a) The governing body of a principal city in a metropolitan area may, on its own motion, and shall, upon being presented with a petition so requesting signed by not less than 5,000 qualified voters residing within such metropolitan area, institute proceedings to create a rapid transit authority in the manner prescribed in this section.

(b) Such governing body shall by ordinance or resolution fix a time and place for holding a public hearing on the proposal to create such an authority, which ordinance or resolution shall define the boundaries of the area proposed to be included in such authority. The initial territory included in an authority shall be all the territory included in the county in which the major portion of the principal city is situated.

(c) Notice of the time and place of such public hearing, including a description of the area proposed to be included in such authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in such metropolitan area, the first publication to be not less than 15 days prior to the date fixed for such hearing. The governing body of any principal city shall furnish to the Texas Mass Transportation Commission or any successor thereof, a copy of the notice described herein.

(d) The governing body of the principal city shall conduct said hearing at the time and place specified in such notice, and may continue such hearing from day to day and from time to time until completed. Any interested person may appear and offer evidence for or against the creation of the proposed authority, and may present evidence as to whether or not the creation of such proposed authority and the construction and operation of a mass transit system in such metropolitan area

(1) would be of benefit to persons and property situated within the boundaries of the proposed authority,

(2) would be of public utility, and

(3) would be in the public interest, as well as any other facts bearing upon the creation of such an authority and the construction and operation of such system.

(e) If, after hearing the evidence adduced at such hearing, the governing body of the principal city finds that the creation of such an authority, and the operation of such a system, would be of benefit to persons and property situated within the boundaries of the proposed authority, would be of public utility, and would be in the public interest, such governing body shall adopt an ordinance creating the authority and prescribing the territory to be included, but the actual territory included in the authority is subject to the results of the election provided for in this Act. The authority shall bear a name to be designated in the ordinance creating the authority and when so created and confirmed at an election held for that purpose, shall have and may exercise the powers authorized by this Act.

(f) After such hearing by the governing body of the principal city, it shall submit the proposed plan to the governor's interagency transportation council for their review and comment.

Transit Authority Board

Sec. 4. (a) Until such time as the composition of the board is changed in accordance with other provisions of this Act, the management, control, and operation of an authority and its properties shall be vested in a board composed of five members, who shall be appointed by the governing body of the principal city and shall serve for a term of two years.

(b) All vacancies on the board, whether by death or resignation shall be filled for the remainder of the term in the manner provided for the original appointment. On expiration of the terms of office of the members of the board, all or any may be reappointed or another person may be appointed to replace a member for the succeeding term.

(c) Each member of the board shall be entitled to the sum of \$50 for each meeting of the board which he attends, not to exceed five meetings in any calendar month; and shall be reimbursed for his necessary and reasonable expenses incurred in the discharge of his duties. Payment to members for attendance at meetings held before the authority has received any revenues, from taxes or otherwise, shall be deferred until funds become available to make the payment.

(d) The members of the board, who shall be resident citizens and qualified voters of the authority, shall elect from among their number a chairman, a vice-chairman and a secretary, except that if the board is constituted in the manner provided in Subsection (c) of Section 6B of this Act, the chairman shall be selected as specified in that subsection. The board may appoint such assistant secretaries, either members or nonmembers of the board, as it deems necessary. The secretary and assistant secretaries

shall, in addition to keeping the permanent records of all proceedings and transactions of the authority, perform such other duties as may be assigned to them by the board. No member of the board or officer of the authority shall be pecuniarily interested or benefitted, directly or indirectly, in any contract or agreement to which the authority is a party.

(e) Any member of the board may be removed from office by a majority vote of the remaining members of the board for inefficiency, neglect of duty or malfeasance in office; provided, however, that the board shall furnish to such member a statement in writing of the nature of the charges as grounds for such removal which shall become final unless the member, within 10 days, requests a hearing before the board and opportunity to be heard in person or through counsel. After any such hearing, if the board by a majority vote finds that the charges are true, then its decision shall be final.

(f) The board shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman or the general manager may call special meetings as may be necessary. The board, when organized, shall by resolution spread upon the minutes, set the time, place and day of the regular meetings, and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings. A majority of the members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and action may be taken by the authority upon a vote of a majority of the board members present unless the bylaws require a larger number for a particular action.

Confirmation and Tax Election

Sec. 5. (a) After the original board is organized, at such time as it deems implementation of the authority to be feasible, it shall call a confirmation and tax election in accordance with the provisions of this section.

(b) Before ordering an election the board shall by order entered in its minutes determine the nature and rate of any tax that it desires to levy.

(c) Before ordering an election, the board shall notify the commissioners court of the county of its intention to do so. Within 30 days after receipt of the notice, the commissioners court by order shall create not more than five designated election areas in the unincorporated portion of the county. Each designated election area's outer boundaries, to the extent practicable, shall coincide with a boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided between two different designated election areas. The total area of all designated election areas shall include all of the unincorporated portions of the county.

(d) When the board orders a confirmation and tax election, it shall submit to the qualified voters within the authority the following proposition:

"Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?"

(e) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held under the provisions of this Act shall be furnished to the Texas Mass Transportation Commission¹ or its successor.

(f) The election shall be conducted so that votes are separately tabulated and canvassed and that the result is declared in separate units of election within the authority, as follows:

(1) the portion of the principal city inside the initial limits of the authority plus any incorporated cities or towns which are wholly located within the perimeter of the outer boundary of the principal city constitutes a unit of election;

(2) each designated election area created by the commissioners court constitutes a unit of election;

(3) every other incorporated city or town wholly located within the initial limits of the authority shall constitute a unit of election.

(g) Immediately after the election, the presiding judge of each election precinct shall return the results to the board, which shall canvass the returns and declare the results separately with respect to each unit of election. In those units of election where a majority of the votes cast is in favor of the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall continue to exist and be comprised of those units. In those units of election where a majority of the votes cast is against the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall cease to exist. Unless the vote is favorable in the unit of election which includes the principal city, the authority shall cease to exist in its entirety. If the votes cast are such that the authority will continue to exist, the board shall enter the results on its minutes and adopt an order declaring that the creation of the authority is confirmed and describing the territory which comprises the authority. A certified copy of the order shall be filed with the Texas Mass Transportation Commission or its successor and in the deed records of the county in which the authority is located.

(h) If the votes cast are such that the authority ceases to exist in its entirety, the board shall enter an order so declaring and file a certified copy of the order with the Texas Mass Transportation Commis-

sion or its successor, and the authority shall be dissolved.

(i) The cost of the confirmation and tax election shall be paid by the principal city.

(j) If the election results in the confirmation of an authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the board may levy and collect the proposed tax within those limits.

¹ See, now, State Department of Highways and Public Transportation, art. 6663 et seq.

Powers of the Authority

Sec. 6. (a) The authority, when created and confirmed, shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, but not limited to, the following powers granted in this section.

(b) The authority shall have perpetual succession.

(c) The authority may sue and be sued in all courts of competent jurisdiction and may institute and prosecute suits without giving security for costs and may appeal from a judgment or judgments without giving supersedeas or cost bond.

(d) The authority may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease or dispose of, real and personal property of every kind and nature whatsoever, and licenses, patents, rights and interests necessary, convenient or useful for the full exercise of any of its powers pursuant to the provisions of this Act.

(e) The authority shall have the power to acquire, construct, complete, develop, own, operate and maintain a system or systems within its boundaries, and both within and without the boundaries of incorporated cities, towns and villages and political subdivisions, and for such purposes shall have the right to use the streets, alleys, roads, highways and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of, any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance and operation of the system, or to cause each and all of said things to be done at the authority's sole expense. The authority shall not proceed with any action to change, alter or damage the property or facilities of the state, its municipal corporations, agencies or political subdivisions or of owners rendering public services, or which shall disrupt such services being provided by others, or to otherwise inconvenience the owners of such property or facilities, without having first obtained the written con-

sent of such owners or unless the authority shall have first obtained the right to take such action under its power of eminent domain as herein specified. In the event the owners of such property or facilities desire to handle any such relocation, raising, change in the grade of, or alteration in the construction of such property or facilities with their own forces, or to cause the same to be done by contractors of their own choosing, the authority shall have the power to enter into agreements with such owners providing for the necessary relocations, changes or alterations of such property or facilities by the owners and/or such contractors and the reimbursement by the authority to such owners of the costs incurred by such owners in making such relocations, changes or alterations and/or in causing the same to be accomplished by such contractors.

(f) In the event the authority, in exercising any of the powers conferred by this Act, makes necessary the relocation, adjustment, raising, lowering, rerouting or changing the grade of or altering the construction of any street, alley, highway or road, any railroad track, bridge or other facilities or properties, any electric lines, conduits or other facilities or properties, any telephone or telegraph lines, conduits or other facilities or properties, any gas transmission or distribution pipes, pipelines, mains or other facilities or properties, any water, sanitary sewer or storm sewer pipes, pipelines, mains or other facilities or properties, any cable television lines, cables, conduits or other facilities or properties, or any other pipelines and any facilities or properties relating thereto, any and all such relocations, adjustments, raising, lowering, rerouting or changing of grade or altering of construction shall be accomplished at the sole cost and expense of the authority, and all damages which may be suffered by the owners of such property or facilities shall be borne by the authority.

(g) The authority shall have the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under and above lands, including, without limitation, easements, rights-of-way, rights of use of air space or subsurface space, or any combination thereof; provided that such right shall not be exercised in a manner which would unduly interfere with interstate commerce or which would authorize the authority to run its vehicles on railroad tracks which are used to transport property.

(h) Eminent domain proceedings brought by the authority shall be governed by the provisions of Title 52, Eminent Domain, Revised Civil Statutes of Texas, 1925, as they now exist or hereafter may be amended,¹ insofar as such provisions are not inconsistent with this Act. Proceedings for the exercise of the power of eminent domain shall be commenced by the adoption by the board of a resolution declaring the public necessity for the acquisition by the

authority of the property or interest therein described in the resolution, and that such acquisition is necessary and proper for the construction, extension, improvement or development of the system and is in the public interest. The resolution of the authority shall be conclusive evidence of the public necessity of such proposed acquisition and that such real or personal property or interest therein is necessary for public use.

(i) The authority shall have the power to enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of their respective facilities, installations and properties of whatever kind and character within the authority and to establish through routes, joint fares or transfer of passengers.

(j) The authority shall establish and maintain rates, fares, tolls, charges, rents or other compensation for the use of the facilities of the system acquired, constructed, operated or maintained by the authority which shall be reasonable and nondiscriminatory and which, together with receipts from taxes collected by the authority, shall be sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

(2) to pay the interest on and principal of all bonds issued by the authority under this Act which are payable in whole or in part from such revenues, when and as the same shall become due and payable;

(3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues, when and as the same shall become due and payable; and

(4) to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf.

(k) It is the intention of this Act that taxes levied and the rates, fares, tolls, charges, rents and other compensation for the use of the facilities of the system shall not be in excess of what may be necessary to fulfill the obligations imposed upon the authority by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control such taxes, rates, fares, tolls, charges, rents and other compensation, 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 powers hereby vested in the authority to establish and collect such taxes, rates, fares, tolls, charges, rents and other compensation as will produce revenues sufficient to pay the items specified in

Subdivisions (1), (2), (3) and (4), Subsection (j) of this subsection, or in any way to impair the rights or remedies of the holders of the bonds, or of any person in their behalf, until the bonds, together with the interest thereon, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of the authority in connection with such bonds, are fully met and discharged.

(l) The authority may make contracts, leases and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid.

(m) The authority may sell, lease, convey or otherwise dispose of any of its rights, interests or properties which are not needed for, or, in the case of leases, which are not inconsistent with, the efficient operation and maintenance of the system. It may sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(n) The authority shall by resolution make all rules and regulations governing the use, operation and maintenance of the system and shall determine all routings and change the same whenever it is deemed advisable by the authority.

(o) The authority shall have power to lease the system or any part thereof to, or contract for the use or operation of the system or any part thereof by, any operator; provided, however, that a lease of the entire system shall be subject to the written consent and approval of the governing body of the principal city.

(p) The acquisition of any land or interest therein pursuant to this Act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities, and the exercise of any other powers herein granted an authority, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

(q) The authority may contract with any city, county, or other political subdivision for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties.

¹ Article 3264 et seq.

Addition of Territory

Sec. 6A. (a) Territory may be added to an authority only according to the provisions of this section.

(b) The governing body of any incorporated city or town wholly located within the county in which the authority is situated may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall certify the results of the election to the board of the authority, and the city or town shall become a part of the authority.

(c) The commissioners court of the county in which is located the greatest geographical portion of the principal city may hold an election in any one or more of the designated election areas formed in accordance with the provisions of Section 5 of this Act on the question of whether the area in which the election is held shall be annexed to the authority. If a majority of the qualified voters in any area where such an election is held votes in favor of annexation, the commissioners court shall certify the results of the election to the board of the authority, and the area shall become a part of the authority.

(d) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the authority, the annexed territory becomes a part of the authority.

(e) At the time territory is added to an authority under the provisions of this section, any tax which the board of the authority has already been authorized to levy applies to the added territory.

Composition of the Board

Sec. 6B. (a) If less than 50 percent of that part of the population of the county (the county in which the authority is situated) which is outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority shall consist of the original five members or their successors plus one additional member to be appointed jointly by the mayors of all incorporated municipalities except the principal city within the authority as confirmed, and one other additional member to be appointed by the commissioners court of the county in which the authority is situated.

(b) If more than 50 percent but less than 75 percent of the population of the county outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority consists of the original five members or their successors, plus two additional members to be appointed jointly by the mayors of all incorporated municipalities, except the principal city, located within the authority, and two other members appointed by the commissioners court of the county. Population figures shall be computed on the basis of the last preceding United States census.

(c) If 75 percent or more of the population of the county outside the corporate limits of the principal city resides within the limits of the authority, the board consists of 11 members, including the original five members or their successors, two additional members appointed jointly by the mayors of all incorporated municipalities except the principal city located within the authority, three other additional members appointed by the commissioners court of the county, and one member, who serves as chairman, who is appointed by the other ten members.

(d) When this Act requires that the mayors of municipalities except the principal city appoint a member of the board, the mayor of the municipality of greatest population among the municipalities shall serve as chairman of an appointment board composed of the mayors of all appropriate municipalities and shall, by notice in writing to all members, call meetings of the appointment board as necessary to make the appointments. Appointments shall be made within 60 days after a position comes into existence or becomes vacant.

(e) The terms of office of additional members of the board appointed under the provisions of this section are two years, but the appointing agency may shorten the initial terms to make the expiration dates coincide with those of the previously existing positions.

(f) Vacancies on the board are filled by appointment by the same agency that made the original appointments for the vacant positions. Each member of the board whose term expires shall continue to serve until his successor has been appointed.

(g) In the event the membership of the board must be increased under the provisions of this section, the board as previously constituted may continue to act as the governing board of the authority until the additional members have been appointed and seated.

Bonds and Notes

Sec. 7.

[See Compact Edition, Volume 3 for text of 7(a) and (b)]

(c) In order to secure the payment of such bonds or notes, such authority shall have full power and

authority to encumber and pledge all or any part of the revenue realized from any tax which the authority is authorized to levy, and all or any part of the revenues of its rapid transit system or systems, and to mortgage and encumber all or any part of the properties thereof, and everything pertaining thereto acquired or to be acquired and to prescribe the terms and provisions of such bonds and notes in any manner not inconsistent with the provisions of this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any such authority shall have full power and authority to encumber separately any item or items of real estate or personalty, including motorbuses, transit cars and other vehicles, machinery and other equipment of any nature, and to acquire, use, hold or contract for any such property under any lease arrangement, chattel mortgage or conditional sale, including, but not limited to, transactions commonly known as equipment trust transactions. Nothing herein shall be construed as prohibiting any such authority from encumbering any one or more rapid transit systems for the purpose of purchasing, building, constructing, enlarging, extending, repairing or reconstructing, another one or more of said systems and purchasing necessary property, both real, personal and mixed, in connection therewith.

[See Compact Edition, Volume 3 for text of 7(d) to (g)]

(h) Bonds payable solely from revenues may be issued by resolution of the board, but no bonds, except refunding bonds, payable wholly or partially from taxes, may be issued until authorized by a majority vote of the qualified voters of the authority voting in an election called and held for that purpose.

Motor Vehicle Emission Taxes

Sec. 8. (a) Subject to approval at an election, the board of an authority shall be authorized to levy and cause to be collected motor vehicle emission taxes as herein provided. No increase in taxes as originally authorized may be levied unless the increase is approved at an election. Such taxes shall be collected by the county tax assessor-collector of each county, situated in whole or in part within the authority from each motor vehicle owner whose residence is within such county and within the authority. Not later than November 1 of each year, the board shall certify to the county tax assessor-collector of each county situated in whole or in part within the authority's boundaries the rate of tax prescribed for each class of motor vehicles for the ensuing tax year. At the time the owner of a motor vehicle applies each year to the State Highway Department through the county tax assessor-collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the

ensuing or current motor vehicle registration year or unexpired portion thereof, such owner shall pay to the county tax assessor-collector the motor vehicle emission taxes due or to become due to such authority on such motor vehicle for the ensuing or current tax year at the applicable rate prescribed by the board. The county tax assessor-collector shall refuse to issue a registration license for a motor vehicle until the emission tax thereon for the period covered by such registration license has been paid.

[See Compact Edition, Volume 3 for text of 8(b) to 11]

General Powers of Taxation

Sec. 11A. (a) In addition to or in lieu of the motor vehicle emission taxes provided for in this Act, the board of an authority may levy and collect any kind of tax, other than an ad valorem tax on property or sales or use tax, which is not prohibited by the Texas Constitution.

(b) No tax of any kind may be levied and collected by the board until a proposition proposing the tax has first been submitted to and approved by a majority of the qualified electors of an authority voting at an election held by the board for that purpose. A separate proposition must be submitted for each kind of tax proposed, and propositions may be submitted in the alternative with provision for the method of determining the results of the election. Each proposition must include a brief statement of the nature of the proposed tax. The notice of the election must include a statement or description of the basis of or rate at which the tax is proposed to be levied. Any subsequent increase in a tax must also be approved at an election.

(c) Prior to an election to authorize a tax other than motor vehicle emission taxes or a sales and use tax, the board shall adopt a complete tax code and rules and regulations providing for the nature and amount of any tax with provisions for complete administration and enforcement, including the time and manner of payment, exemptions, liens, interest, penalties, discounts for advance payment, refunds for erroneous payment, fees for collection, collection procedures, manner of enforcement, required returns, registration and reports of taxpayers, the duties and responsibilities of tax officers and taxpayers, the delegation to tax officers to make additional rules and regulations and determinations and to obtain records as may be appropriate, and every other provision which may be determined to be desirable, including incorporation of any tax laws and remedies for the administration and enforcement that are available to the state or any political entities under general law.

(d) A tax code and rules and regulations may be amended by the board from time to time after an election approving a tax, but no amendment may

increase the amount of a tax unless the increase is approved at an election.

[See Compact Edition, Volume 3 for text of 12 to 15]

County Authority to Contract with Authority

Sec. 15A. A commissioners court may contract with an authority for the authority to provide public transportation services to any unincorporated area outside the boundaries of the authority for a term and on those conditions as are determined to be desirable by the commissioners court and the board. The county may levy and collect taxes or pledge and encumber other receipts or revenues as may be required to make any payments to the authority under the provisions of the contract.

Elections

Sec. 15B. (a) This section governs all elections ordered by the board except elections held under the provisions of Section 5 of this Act.

(b) Notice of an election ordered by the board shall be given by publication once a week for three consecutive weeks with the first publication in a newspaper with general circulation in the authority at least 21 days before the election.

(c) A resolution calling an election and the notice of the election are sufficient if the date and hours of the election, the voting places within voting precincts for the election, and the propositions to be voted on are specified. The board may define and declare voting precincts, determine the manner of absentee voting, and prescribe the election officers.

(d) As soon as practicable after an election, the board shall canvass the returns of the election and declare the results.

(e) Where not otherwise provided in this section, the general election laws apply.

[See Compact Edition, Volume 3 for text of 16 and 17]

Eligibility of Excepted Areas for Federal Funds

Sec. 17A. Ratification by referendum of a regional authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the National Mass Transportation Assistance Act of 1974,¹ or any subsequent federal statutes.

¹ See 49 U.S.C.A. § 1601b et seq.

[See Compact Edition, Volume 3 for text of 18 and 19]

[Amended by Acts 1975, 64th Leg., p. 2273, ch. 712, §§ 1 to 10, eff. June 21, 1975.]

3. CITY REGULATION

Art. 1119. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

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

Arts. 1121, 1122. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

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

Art. 1124. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

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

Art. 1125 to 1132. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

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

CHAPTER ELEVEN. TOWNS AND VILLAGES

Art. 1145. Quorum May Pass By-laws

The mayor shall be the president of the board of aldermen. At the first meeting of each new board of aldermen or as soon as practicable, the board shall elect one alderman to serve as president pro tempore for a term of one year and to perform the duties of the mayor in the event of the mayor's failure, inability, or refusal to act. The mayor shall, with three of the aldermen, constitute a quorum for the transaction of business. In the mayor's absence, any four of the aldermen constitute a quorum. The quorum has the power to appoint any alderman as a presiding officer at any meeting at which the mayor and president pro tempore are absent. The quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of this State as shall be deemed proper for the government of the corporation.

[Amended by Acts 1975, 64th Leg., p. 644, ch. 265, § 1, eff. Sept. 1, 1975.]

CHAPTER THIRTEEN. HOME RULE

Art. 1175. Enumerated Powers

Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

[See Compact Edition, Volume 3 for text of 1 to 34]

Amendment

[Text of subd. 35 as added by Acts 1975, 64th Leg., p. 235, ch. 89, § 8, eff. Jan. 1, 1976]

35. A home-rule city may require all buildings to be constructed in accordance with energy conservation standards included in the building code, if any.

[Text of subd. 35 as added by Acts 1975, 64th Leg., p. 627, ch. 258, § 1]

35. A home-rule city may adopt an ordinance which requires the demolition or repair of buildings which are dilapidated, substandard, or unfit for human habitation and which constitute a hazard to the health, safety, and welfare of the citizens. The ordinance must establish minimum standards for continued use and occupancy of structures, and these standards shall apply to buildings regardless of when they were constructed. The ordinance must provide for proper notice to the owner and a public hearing. After the hearing, if the building is found to be substandard, the city may direct that the building be repaired or removed within a reasonable time. After the expiration of the allotted time the city has the power to remove the building at the expense of the city and assess the expenses on the land on which the building stood or to which it was attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the removal expenses. The means of recovering removal expenses may not include forced sale of the land by the city.

[Amended by Acts 1975, 64th Leg., p. 235, ch. 89, § 8, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 627, ch. 258, § 1, eff. Sept. 1, 1975.]

Sections 1 to 7 of Acts 1975, 64th Leg., ch. 89, were classified as art. 678i; § 9 thereof provided: "This Act takes effect on January 1, 1976."

CHAPTER FOURTEEN. CITIES ON NAVIGABLE WATERS

Art. 1187f. Harbor and Port Facilities; Cities and Towns Over 5,000 on Gulf or Connecting Waters; Bonds

[See Compact Edition, Volume 3 for text of 1 and 2]

Pledge of Revenues; Collection of Fees and Charges; Payment of Interest and Principal; Sale of Revenue Bonds

Sec. 3. Revenue bonds may be issued secured solely by a pledge of and payable from the net revenues derived from the operation of all or any designated part or parts of the improvements and facilities then in existence or to be improved, constructed, or otherwise acquired, with the duty of the city to charge and collect fees, tolls, and charges, so long as any of the revenue bonds or interest thereon are outstanding and unpaid, sufficient to pay all maintenance and operation expenses of the improvements and facilities (the net revenues of which are pledged), the interest on such bonds as it accrues, the principal of such bonds as it matures, and to make any and all other payments as may be prescribed in the bond ordinance and other proceedings authorizing and relating to the issuance of such bonds. "Net revenues" as used herein shall mean the gross revenues derived from the operation of those improvements and facilities the net revenues

of which are pledged to the payment of the bonds less (a) the reasonable expenses of maintaining and operating said improvements and facilities, and said maintenance and operation expenses shall include, among other things, necessary repair, upkeep, and insurance of said improvements and facilities, and (b) if the city is operating under a Home Rule Charter, any annual payment of the city as may be set out in said Charter. Revenue bonds issued hereunder may be sold at public or private sale, notwithstanding the provisions or restrictions of any general or special law or Charter to the contrary.

[See Compact Edition, Volume 3 for text of 4 to 12]

[Amended by Acts 1975, 64th Leg., p. 874, ch. 332, § 1, eff. June 6, 1975.]

CHAPTER SIXTEEN. MUNICIPAL COURT

PARTICULAR MUNICIPAL COURTS

Article

1200bb. Midland [NEW].

1200cc. Cities Over 1,200,000 [NEW].

PARTICULAR MUNICIPAL COURTS

Art. 1200bb. Midland

Creation; Formation by Ordinance

Sec. 1. There is created in the city of Midland a court of record to be known as the "City of Midland Municipal Court," to be held in that city if the governing body of the city of Midland, by ordinance, finds and determines that the formation of a municipal court of record is necessary in order to provide a more efficient disposition of appeals arising from the municipal court.

The authority of the governing body of the city of Midland to create a municipal court of record in the city of Midland includes the authority to establish, in the manner set forth in this section, more than one municipal court of record if the governing body determines that it is necessary in order to dispose of the cases arising in the city. If more than one municipal court of record is created, the judges of the municipal courts may at any time exchange benches and sit and act for and with each other in a case, matter, or proceeding pending in a municipal court, and any and all acts thus performed by a judge are valid and binding on all parties to the case, matter, and proceeding.

The municipal court of record authorized in this section is referred to in this Act as the "municipal court."

Application of Other Laws Regarding Municipal Courts

Sec. 2. The general laws of the state regarding municipal courts, and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of Midland relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judge; Qualifications

Sec. 3. The municipal court shall be presided over by a judge, who shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. He need not be a resident of the city at the time of his appointment, but he shall maintain his residence in the city during his tenure of office. He shall devote his entire time to the duties of his office and shall not engage in the private practice of law while in office. He shall be appointed by the governing body of the city. He shall be paid a salary to be determined by the governing body of the city. The salary shall not be based on or in any way contingent on the fines, fees, or costs collected by the municipal court.

If more than one municipal court is created by the governing body of the city, a judge shall be appointed for each court and the governing body of the city shall designate a judge to be the presiding judge.

Court Clerk

Sec. 4. The governing body of the city shall provide a clerk of the municipal courts, and such deputy clerks, warrant officers, and other municipal court personnel, including at least one bailiff for each court, as are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter

Sec. 5. For the purpose of preserving a record in the cases tried before the municipal court, the city shall provide a court reporter, who shall be appointed by the municipal court judge and whose compensation shall be determined by the governing body of the city. The qualifications of the court reporter shall be determined by the judge, or if there is more than one judge, by the presiding judge.

The record of proceedings may be preserved by the court reporter by written notes, transcribing equipment, recording equipment, or any combination of them. The court reporter is not required to take testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Ordinances; Judicial Notice

Sec. 6. The municipal court shall take judicial notice of the ordinances of the city.

Appeal; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The County Court of Midland County has jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a less sum than \$100. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall always include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court; and
- (8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court if so instructed in writing by either the defendant or the prosecuting attorney.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Criminal Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. (a) A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial.

(b) The court reporter shall transcribe any portion of his notes of the court proceedings in the case at the request of the defendant. The defendant shall pay for the transcription. The cost to the defendant for the transcription shall not exceed the fees or charges normally being made by court reporters in the county for similar transcriptions. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to affidavit by the defendant, that he is too poor to pay or give security for the transcriptions.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Criminal Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Criminal Appeals, except that the points of error on appeal shall be confined to those points of error set forth in the defendant's motion for new trial.

(b) The defendant shall file his brief with the clerk of the appellate court within fifteen days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his briefs with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

Procedure on Appeal; Review or Error

Sec. 18. The appellate court shall hear and determine appeals from the municipal court at the earliest practical time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal. Oral arguments before the appellate court shall be under the rules which the appellate court may determine, and the parties may submit the case on the records and briefs without oral arguments.

Disposition on Appeal; Presumptions; Decision

Sec. 19. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed

by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 20. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a *capias* for the defendant, or issue an execution against his property.

New Trial

Sec. 21. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Criminal Appeals; Record

Sec. 22. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Criminal Appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeals to the Court of Criminal Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the Court of Criminal Appeals except that:

- (1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Criminal Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and
- (2) the record and briefs shall be filed directly with the Court of Criminal Appeals.

Sec. 23. All laws in conflict or inconsistent with the provisions of this Act are hereby conformed to the provisions of this Act.

[Acts 1975, 64th Leg., p. 228, ch. 87, §§ 1 to 23, eff. Sept. 1, 1975.]

Art. 1200cc. Cities Over 1,200,000

Creation of Municipal Courts of Record; Vacation of Additional Municipal Courts

Sec. 1. (a) A municipal court of record is created in any city with a population of more than 1,200,000 as determined by the last preceding federal census.

(b) Additional municipal courts of record may be created and judges for such courts may be authorized in any city with a population of more than 1,200,000 as determined by the last preceding federal census by action of the governing body of the city through a legally adopted ordinance that specifies that the condition of dockets in the other municipal courts of the city is such as to require additional municipal courts in order to properly dispose of the cases on the dockets of these courts, and that enumerates the number of additional municipal courts necessary to properly dispose of those cases. Municipal courts that are in existence on the effective date of this Act and that were created pursuant to any Article in Title 28, Revised Civil Statutes of Texas, 1925, as amended,¹ shall on such date become municipal courts of record and may, subject to meeting other requirements provided by law for municipal courts, continue their operation under the authority of this Act without passage of such ordinance.

(c) After the establishment of an additional municipal court or courts, if the governing body of the city determines that the continued existence of some or all of the additional municipal courts is not required in order to properly dispose of cases on the dockets of all the municipal courts, the governing body shall by legally adopted ordinance declare the offices of some or all of the additional municipal judges vacated at the end of the term or terms for which such judge or judges were last selected. In that event, any cases pending in a vacated municipal court shall be transferred to the proper court having jurisdiction of the offense.

¹ Article 961 et seq.

Jurisdiction

Sec. 2. Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding \$200.

Judges; Additional Judges; Presiding Judge; Qualifications

Sec. 3. (a) Municipal courts shall be presided over by judges to be known as "municipal judges."

(b) The city shall provide by charter or by ordinance for the selection of its municipal judges, provided the selection shall be for a definite term in office of not less than two nor more than four years, whose duration within these limits shall be determined by charter, ordinance, or the method prescribed in Article XI, Section 11, of the Texas Constitution. Any definite term or indefinite period in office that a municipal judge has begun on the

effective date of this Act shall terminate no later than four years after such effective date. A municipal judge may continue in office after the end of his term for not more than 90 days or until his successor is selected and qualified, whichever occurs first.

(c) If there is more than one municipal judge in the city the mayor and city council of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, such judge shall be the presiding municipal judge for all purposes of this Act.

(d) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judge in order that the business of the courts will be continually equalized and distributed among them;

(3) temporarily assign various judges of the municipal courts to exchange benches for other such judges and to sit and act for each other in any case, matter, or proceeding pending in their courts, when necessary for the expeditious disposition of the business of the courts;

(4) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested party;

(5) cause to be maintained as part of the records of the municipal courts an index of municipal-court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts; and

(6) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records of such courts, subject to the same requirements provided by law for the preservation by microfilm of records under the custody of county clerks.

(e) A judge of a municipal court created under the provisions of this Act shall be a licensed attorney in good standing in this state. No person may serve in the office of municipal judge while he holds any other office or employment in the government of such city, and the holding of such other office or employment by any person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his term of office. The governing body shall predetermine the salary of the municipal judge prior to his appointment, if he is appointed, or at least two weeks prior to the deadline for filing for election, if he is elected.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for such position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy.

(b) While a municipal judge is temporarily unable to act for any reason, the governing body of the city may appoint a person meeting the qualifications required by law for such position to sit for the regular municipal judge. The appointee shall have all the powers and duties of the office and shall receive the same compensation as is payable to the regular municipal judge while he is so acting.

(c) A municipal judge may be removed from office only under the procedures outlined in Article V, Section 1-a, of the Texas Constitution.

Court Facilities

Sec. 6. The governing body of the city shall provide such courtrooms, juryrooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities as the governing body determines are necessary for the proper operation of the municipal courts.

Appeals; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The county criminal court of such county where said court is situated shall have jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a less sum than \$50. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts, which may be prepared by a certified court reporter of such court or from mechanical recordings of the proceedings or from video-tape recordings of the proceedings. If the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security for the record on appeal, the court will order the reporter to make such transcription without charge to the defendant.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall include the following:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict, if the trial is by jury;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) all written motions and pleas and orders of the court; and
- (8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared from mechanical recordings or video-tape recordings of the proceedings.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Criminal Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. A statement of facts, when included in the record on appeal, shall consist of:

- (a) a transcription of all or any part of the municipal court proceedings, in the case, as provided herein, that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or
- (b) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or
- (c) a partial transcription and the agreed statement of the facts of the case proven at the trial; or
- (d) a transcription of all or any part of the municipal court proceedings in the case that are prepared from the mechanical recordings or video-tape recordings of said proceedings.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Criminal Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Criminal Appeals.

(b) The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his brief with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

Disposition on Appeal; Presumptions; Decision

Sec. 18. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read

to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 19. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a *capias* for the defendant, or issue an execution against his property.

New Trial

Sec. 20. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Criminal Appeals; Record

Sec. 21. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Criminal Appeals if the fine assessed against the defendant in the municipal court exceeded \$100. The appeals to the Court of Criminal Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the Court of Criminal Appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Criminal Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Criminal Appeals.

Court Personnel

Sec. 22. (a) Each municipal judge in his discretion is authorized to appoint a court reporter to transcribe the trial proceedings, including testimony, voir dire examination, objections, and final arguments and shall appoint a court reporter when the defendant or the state requests it prior to trial. Each reporter shall be a sworn officer of the court when transcribing testimony and shall be well skilled in his profession. Each reporter shall be compensated by the city in such manner as the governing body of the city shall determine.

(b) It shall be the duty of the clerk to perform such clerical duties, insofar as they are applicable, as are prescribed by law for the municipal judge and for the county clerk of a county court at law.

(c) The governing body of the city shall provide the municipal courts with such other municipal court personnel as the governing body determines is necessary for the proper operation of the court. Such personnel shall perform their duties under the direction and control of the municipal judge to whom assigned. The governing body shall determine the salaries of such personnel.

Seal

Sec. 23. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court in _____, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or his clerk to authenticate all official acts of the clerk and the municipal judge.

Effective Date

Sec. 24. This Act is effective beginning January 1, 1976.

Repealer

Sec. 25. To the extent that any local, special, or general law, including Acts of the 64th Legislature, Regular Session, 1975, conflicts with any provision of this Act, that law is repealed.
[Acts 1975, 64th Leg., p. 1299, ch. 489, §§ 1 to 25, eff. Jan. 1, 1976.]

CHAPTER NINETEEN. ABOLITION OF CORPORATE EXISTENCE

Art. 1241a. Procedure for Abolition of Cities and Towns

[See Compact Edition, Volume 3 for text of 1]

Petition and Election

Sec. 2. When four hundred of the qualified voters resident in any such city, town, or village desire the abolishment of such corporation, they may peti-

tion the mayor to that effect, who shall thereupon order an election to be held in such city, town, or village on the same date provided by law for the next general election for mayor therein. If a majority of the qualified voters resident in any such city, town, or village is less than four hundred in number, then the mayor shall order an election as above provided upon the presentation to him of a petition signed by two-thirds of the resident voters of such city, town, or village.

[See Compact Edition, Volume 3 for text to 3 to 5]

[Amended by Acts 1975, 64th Leg., p. 648, ch. 267, § 1, eff. Sept. 1, 1975.]

CHAPTER TWENTY. MISCELLANEOUS PROVISIONS

Article

1269j-4.15. Park Purposes; Acquisition and Improvement of Property by Cities of 1,200,000 or More [NEW].

Art. 1267. Oil, Gas or Mineral Lands

Sec. 1. Cities and towns chartered or organized under the general laws of Texas, or by special Act or charter, which may own oil, gas or mineral lands, shall have the power and right to lease such oil, gas or mineral lands for the benefit of such town or city in such manner and upon such terms and conditions as the governing body of such town or city may determine, but shall not lease for such purposes any street or alley or public square in said town or city; and no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred feet of any private residence.

Sec. 2. If any portion of this Act is held unconstitutional by a court of competent jurisdiction, the remaining portion shall nevertheless be valid the same as if the invalid portion had not been a part hereof. A lease executed pursuant to the provisions of this Act shall not be deemed to be a sale within the meaning of the laws of this state relating to the sale of city land. The provisions of this Act shall be cumulative of all other laws which are by their terms expressly applicable to city land, and any such laws which are not by their terms expressly so applicable shall not be construed as affecting the right and power granted to towns and cities by this Act.

[Amended by Acts 1975, 64th Leg., p. 806, ch. 312, § 1, eff. May 27, 1975.]

Art. 1268. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

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

Art. 1269j-4.1. Public Improvements in City, Town or Village; Bonds; Occupancy Tax

Applicability of Act

Sec. 1. In this Act, "city" means a home-rule city or a city, town, or village incorporated under general law.

[See Compact Edition, Volume 3 for text of 2 to 10]

[Amended by Acts 1975, 64th Leg., p. 43, ch. 22, § 1, eff. March 20, 1975.]

Art. 1269j-4.15. Park Purposes; Acquisition and Improvement of Property by Cities of 1,200,000 or More

Applicability of Act

Sec. 1. This Act shall be applicable to all incorporated cities, including home-rule cities, having a population of 1,200,000 or more according to the last preceding federal census.

Acquisition, Construction and Improvement of Property; Operating Contracts

Sec. 2. Any such city is authorized to acquire by purchase, lease, or otherwise, any or all, property (real, personal, or mixed) and to construct or otherwise acquire, improve, and equip any property for park purposes, including, but not by way of limitation: establishing, acquiring, leasing, or contracting as lessee or lessor, purchasing, constructing, improving, enlarging, equipping, repairing, operating, or maintaining (any or all) golf courses, clubhouses, and pro shops, tennis courts, and facilities, swimming pools, marinas, recreation centers, rugby fields, baseball fields, zoos, clarification lakes or pools, park transportation systems and equipment, theaters, bicycle trails, multipurpose shelters, service facilities, and any other recreational facilities, all or any (hereinafter called "Facility" or "Facilities"), together with all necessary water, sewer, and drainage facilities, and to establish, acquire, lease, or contract as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) structures, parking areas, or parking facilities to be used in connection with such Facilities for parking and storage of motor vehicles or other conveyances; and provided that any of such leases or contracts may be on such terms and conditions as said city shall deem appropriate. Also, such city shall have authority to enter into a contract or agreement under which the Facilities may be operated on behalf of the city, such operating contracts or agreements to contain such terms or conditions as said city shall deem appropriate. Each and all of the foregoing purposes are hereby found and declared to be public purposes and proper municipal functions.

Revenue Bonds Authorized

Sec. 3. For any purpose or purposes authorized under Section 2 of this Act, the governing body of the city may issue its revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenues derived from any Facility or Facilities.

Issuance of Bonds; Proceeds From Sale of Bonds; Ad Valorem Tax

Sec. 4. (a) Said bonds may be issued when authorized by ordinance duly adopted by the city's governing body and may mature serially or otherwise within not to exceed 40 years from their date or dates, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the ordinance authorizing the issuance of the bonds.

(b) Said bonds, and any interest coupons appertaining thereto, shall be deemed and construed to be a "Security" within the meaning of Chapter 8, Investment Securities, Business & Commerce Code.¹ The bonds may be issued registrable as to principal alone or as to principal and interest and shall be executed and may be made redeemable prior to maturity and may be issued in such form, denominations, and manner and under such terms, conditions, and details and may be sold in such manner, at such price, and under such terms, and such bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in said ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition, construction, or improvement of any Facility, for paying expenses of operation and maintenance of said Facilities, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for establishing any other funds. The proceeds of sale of the bonds may be placed on time deposit or invested, until needed, all to the extent and in the manner provided in the bond ordinance.

(d) Any such city shall also be authorized to levy and pledge to the payment of the operation and maintenance of any Facility or Facilities, either as a supplement to the pledge of revenues for such purpose or in lieu thereof, a continuing annual ad valorem tax at a rate on each \$100 valuation of taxable property within said city sufficient for such purposes, all as may be provided in said ordinance authorizing the issuance of such bonds; provided, that such taxes shall be within any constitutional or charter limit for cities included by this Act; and provided further, that no part of any moneys raised by such taxes shall ever be used for the payment of

the interest on or principal of any bonds issued hereunder. The proceeds of any such taxes thus pledged shall be utilized annually to the extent required by or provided in the ordinance for operation and maintenance of such Facilities, and such city in its discretion may covenant in such ordinance that certain costs of operating and maintaining such Facilities, as may be enumerated therein, or all of such costs will be paid by the city from the proceeds of such tax.

¹ Business and Commerce Code, § 8.101 et seq.

Fees, Rentals, Rates and Charges

Sec. 5. Each such city shall be authorized to fix and collect fees, rentals, rates, and charges for the occupancy, use, or availability of all or any of the Facilities in such amounts and in such manner as may be determined by the governing body of the city.

Pledge of Revenues, Income or Receipts; Mortgages or Deeds of Trust

Sec. 6. (a) The city may pledge all or any part of the revenues, income, or receipts from such fees, rentals, rates, and charges to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged fees, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the Facilities.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the Facilities owned or to be acquired by the city and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body of the city may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The city may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 7. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose under

any terms or conditions as are determined by ordinance of the governing body of the city. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a city under this Act also may be refunded in the manner provided by any other applicable law.

Examination, Approval and Registration of Bonds

Sec. 8. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration, the bonds and any contract or lease relating to them are incontestable for any reason and are valid and binding obligations for all purposes in accordance with their terms.

Legal and Authorized Investments; Security for Deposit of Public Funds

Sec. 9. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns,

villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect; Conflicting Provisions

Sec. 10. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any law or home-rule charter provision, the provisions of this Act shall prevail and control. A city shall have the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1975, 64th Leg., p. 640, ch. 264, §§ 1 to 11, eff. Sept. 1, 1975.]

Art. 1269j-5.1. Airport Revenue Bonds

Sec. 1. This Act shall be applicable to all incorporated cities, including Home Rule Cities.

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

[Amended by Acts 1975, 64th Leg., p. 46, ch. 24, § 1, eff. March 20, 1975.]

CHAPTER TWENTY-ONE. HOUSING

Article

1269I-4. Community Development Act of 1975 [NEW].

Art. 1269I-3. Urban Renewal Law

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

Definitions

Sec. 4. The following terms wherever used or referred to in this Act, shall have the following

meanings, unless a different meaning is clearly indicated by the context.

[See Compact Edition, Volume 3 for text of 4(a) to (w)]

(x) When this Act is applied to a county, "mayor" means county judge, "city council" means the commissioners court, and the "city" means county, unless the context clearly requires otherwise.

Finding of Necessity; Powers of Counties

Sec. 5. (a) No city shall exercise any of the powers conferred upon cities by this Act until after the City Council shall have adopted a resolution, after giving notice and ordering an election on the question of whether the City Council shall adopt such resolution, finding that: (1) one or more slum or blighted areas exist in such city; and (2) the rehabilitation, conservation, or slum clearance and redevelopment, or a combination thereof, of such area or areas is necessary in the interest of public health, safety, morals or welfare of the residents of such city. Such notice shall be published at least twice in the newspaper officially designated by the City Council and shall state that on a date certain, which date shall be stated in the notice and shall be not less than sixty (60) days after the publication of the first of such notices, the City Council will consider the question of whether or not it will order an election to determine if it should adopt such a resolution. On the date specified in the notice to consider such question the City Council may, on its own motion, call an election to determine whether it shall adopt such a resolution and shall, in any event, call such election if there has been presented to it during such period a petition that such election be held, signed by at least five per cent (5%) of the legally qualified voters residing in such city and owning taxable property within the boundaries thereof, duly rendered for taxation. If it be determined to call such an election, at least thirty (30) day's notice thereof shall be given. Notwithstanding any other provisions of this Act, no powers granted by this Act shall be exercised by any city until an election shall have been held as herein provided with a majority of the votes cast at such election being cast in favor of the exercise of such powers by such city. Only qualified voters residing in said city, owning taxable property within the boundaries thereof, who have duly rendered the same for taxation, shall be entitled to vote at such election. If a majority of those voting at such election shall vote in favor of the adoption of such resolution, the City Council shall then be authorized to adopt it. If a majority of those voting at such election shall vote against the adoption of such resolution, the City Council shall not adopt it and such resolution shall not again be proposed within the period of one (1) year.

(b) Any county that has a population of more than 700,000, according to the last preceding federal census, may exercise all powers provided for cities under this Act. Those powers may be exercised only with respect to areas of the county not inside the corporate limits of a city or town. The county may not exercise any power under this Act unless the commissioners court adopts a resolution as provided in Subsection (a) of this section, the adoption of which has been first approved at an election. The election shall be held throughout the county in the same way an election is held in a city under Subsection (a) of this section. The adoption of a resolution is not approved unless a majority of the voters voting on the question in the entire county as well as in each incorporated city and town in the county approves adoption. In cities only partly in the county, only voters residing in the county may vote.

[See Compact Edition, Volume 3 for text of 5a to 22]

[Amended by Acts 1975, 64th Leg., p. 107, ch. 47, §§ 1 & 2, eff. April 15, 1975.]

Art. 1269I-4. Community Development Act of 1975

Short Title

Sec. 1. This Act may be cited as the "Texas Community Development Act of 1975."

Public Purposes

Sec. 2. It is hereby found and declared that the activities specified in Sections 4 and 6 of this Act contribute to the development of viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities for eligible persons as defined by the federal Housing and Community Development Act of 1974;¹ and that the objectives of such activities are matters of public interest and legitimate public purposes for municipalities within this state.

¹ 42 U.S.C.A. § 5301 et seq.

Definitions

Sec. 3. In this Act:

(a) "Community Development Program" means a planned and publicized program of work designed to improve the living and economic conditions of primarily low and moderate income persons, and which includes any of the activities or functions specified for a community development program under this Act.

(b) "Governing body" means the governing body of any municipality in this state.

(c) "Municipality" means any city, town, or village incorporated under the laws of this state.

(d) "Texas Urban Renewal Law" means Chapter 298, Acts of the 55th Legislature, Regu-

lar Session, 1957, as amended (Article 1269L-3, Vernon's Texas Civil Statutes).

Powers of Municipalities; Limitations

Sec. 4. (a) Any municipality is hereby authorized to implement a community development program upon adoption by the governing body of an ordinance or resolution enacting the same.

(b) A community development program implemented by any municipality may include the following activities:

(1) the acquisition of real property, including air rights, water rights, and other interests therein which is blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; appropriate for rehabilitation or conservation activities; appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities or the guidance of urban development; to be used for the provision of public works, facilities, and improvements eligible for assistance under this Act, or to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation of public works, facilities, and sites or other improvements, including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways and parks, playgrounds, and recreation facilities, flood and drainage facilities, and parking facilities, solid waste disposal facilities, and fire protection services and facilities which are located in or which serve designated community development areas;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements, including interim assistance and financing the rehabilitation of privately owned properties when incidental to other activities;

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary

periods housing units to be utilized for the relocation of individuals and families displaced by program activities under this title;

(7) disposition, through sale, lease, donation or otherwise, of any real property acquired pursuant to this Act or its retention for public purposes;

(8) provision of public services not otherwise available in areas where other activities authorized under this Act are being carried out, if such services are determined to be necessary or appropriate to support such other activities, and/or if such services are directed toward improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and coordinating public and private development programs;

(9) payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of a local community development program;

(10) payment of the cost of completing a project funded under Title I of the federal Housing Act of 1949;¹

(11) relocation payments and assistance for individuals, families, businesses, organizations, and farm operations displaced by activities assisted under this Act;

(12) activities necessary to develop a comprehensive community development plan, and to develop a policy-planning-management capacity, so that recipients of assistance under this Act may more rationally and effectively determine their needs, set long-term goals and objectives, devise programs and activities to meet these goals and objectives, evaluate the progress of such programs in accomplishing these goals and objectives, and carry out management, coordination, and monitoring of activities necessary for effective planning implementation; and

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provisions of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities.

(c) Any municipality may provide for and implement programs to provide financing for the rehabilitation of privately owned buildings through the use of loans and grants from federal money remitted to a municipality for the purposes of this Act; except

that municipalities are prohibited from providing municipal property or funds for private purposes. Any program established for financing the rehabilitation of buildings from federal funds may prescribe procedures under which the owner(s) of such building(s) shall agree to partially or fully reimburse the municipality for the cost of such rehabilitation.

¹ 42 U.S.C.A. § 1450 et seq.

Required Procedures

Sec. 5. Prior to the exercise of powers established under Section 4 of this Act, the governing body of any municipality shall:

(a) identify areas of the municipality in which predominantly low and moderate income persons dwell, and set out within the community development program areas of the municipality where community development activities, building rehabilitation, or the acquisition of privately owned buildings or land are proposed to be undertaken; and

(b) adopt, by resolution or ordinance, a plan under which citizens may publicly comment on the proposed community development program; and

(c) conduct public hearings on the proposed community development program at least 15 days prior to its final adoption by the governing body; and

(d) adopt the provisions of the community development program by resolution or ordinance.

Limitations on Powers

Sec. 6. For the purpose of implementing any of the activities enumerated in Section 4 of this Act, compliance with Section 5 shall be sufficient; provided, however, that in no event shall a municipality implementing any of the activities enumerated in Section 4 have the power of condemnation for the purpose of rehabilitating or removing buildings or for the purpose of acquiring real property of any kind for the purpose of resale. Nothing in this Act shall be construed to grant municipalities the authority to implement an urban renewal project under the terms and provisions of the Texas Urban Renewal Law without an enabling referendum passed by the voters or to exercise powers of eminent domain as granted by the Texas Urban Renewal Law. In order to exercise such powers, the municipality must have adopted the provisions of the Texas Urban Renewal Law in the manner prescribed by such Act.

Continuation of Urban Renewal

Sec. 7. This Act shall not be construed to alter or change the status, operations, contracts, or obligations of any existing urban renewal agency adopted pursuant to the Texas Urban Renewal Law, nor

should any provisions of this Act be construed as to prevent the governing body of any municipality from adopting the provisions of and authority granted under the Texas Urban Renewal Law.

Scope

Sec. 8. The powers of municipalities described in this Act are granted in addition to all other powers of municipalities, and are intended to be cumulative thereof.

Validation of Previous Proceedings

Sec. 9. All ordinances or resolutions heretofore passed and adopted by the governing body of any such municipality implementing a community development program as defined and authorized by this Act are hereby validated as of the date of such ordinance or resolution, and are declared fully enforceable to the same extent as if such ordinance or resolution had been passed in accordance with laws duly enacted by the legislature of this state specifically providing for the passage and adoption of such ordinances or resolutions. All governmental proceedings and acts heretofore performed by the governing bodies of such municipalities and all officers thereof in implementing a community development program as authorized by this Act are hereby ratified as of the date of such proceedings and acts.

Applicability to "New Towns"

Sec. 10. Nothing in this Act shall be construed to authorize the use of the powers or federal funds referred to herein to establish any "new town" or "new town in town" pursuant to Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C.A. 3901 et seq.), Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C.A. 4501 et seq.), or Section 107(a) of the Housing and Urban Development Act of 1974 (42 U.S.C.A. 5307).

Severability

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.

[Acts 1975, 64th Leg., p. 2058, ch. 677, §§ 1 to 11, eff. Sept. 1, 1975.]

**CHAPTER TWENTY-TWO. CIVIL SERVICE
FIREMEN AND POLICEMEN**

Art. 1269m. Firemen's and Policemen's Civil Service in Cities Over 10,000

[See Compact Edition, Volume 3 for text of 1 to 8]

Cities of 1,200,000 or more, Educational or Training Incentive Pay

Sec. 8A. (a) In any city in this state having a population of 1,200,000 or more inhabitants, accord-

ing to the last preceding federal census, said City Council or legislative body may authorize either educational incentive pay or training incentive pay in such amounts and upon such basis as may, by ordinance of such city, be determined, which amounts shall be in addition to the regular pay for members of the police department or fire department of such municipality, save and except the chief or head of the department to whom this incentive pay shall be inapplicable in every particular, as follows:

(1) Education incentive pay shall relate to the successful completion of at least 60 semester hours in an accredited college or university with a minimum of 12 semester hours in police science or other law enforcement fields of study, such as courses dealing with technical support and administrative staff services, having been completed. The phrase "technical support," as used herein, shall mean fields of study which deal with criminal laboratory analysis and interpretations, the technical criminal aspects of identification and photography, the technical phases of police radio communications, and any other field of study relating to police technical support which is directly related to the proper and efficient operation of the police department as may be determined by the chief or head of such department. The phrase "administrative staff services," as used herein, shall mean fields of study which deal with police administration, police personnel, including nonclassified personnel, and police training procedures, including basic and in-service training. This phrase shall also include fields of study which deal with police press relations, police community relations, and any other administrative field of study which may be directly related to the proper and efficient operation of the police department, as may be determined by the chief or head of such department.

(2) Additional incentive pay may be offered upon the successful completion of 120 semester hours in an accredited college or university and the attainment of a bachelor's degree, provided that such degree is in connection with a major in police science or other law enforcement fields of study as fully described above.

(b) Such training incentive pay shall relate to the successful completion of education, training, and experience, and the successful achievement of additional certification by the Texas Commission on Law Enforcement Standards and Education.¹ The phrase "additional certification," as used herein, shall mean certification by the Texas Commission on Law Enforcement Officer Standards and Education in excess of the basic peace officer's certification. This phrase is intended to include but is not limited to the

intermediate and advanced certificates authorized by said commission. The City Council or legislative body may offer different amounts of incentive pay for different levels of certification.

(c) Education incentive pay shall relate to the successful completion of at least 60 semester hours in an accredited college or university with a minimum of 12 semester hours in fire science or other fire protection field of study, such as courses dealing with technical support and administrative staff services, having been completed. The phrase "technical support," as used herein, shall mean fields of study which deal with fire suppression, fire prevention, fire prevention education, enforcement of building, fire, and other codes related to the protection of life or property, photography, arson or fire investigation, criminal identification, polygraph training, the technical phases of fire and emergency radio communication, and any other field of study relating to fire technical support which is directly related to the proper and efficient operation of the fire department as may be determined by the chief or head of such department. The phrase "administrative staff services" as used herein shall mean fields of study which deal with fire administration, fire personnel including nonclassified personnel, and fire training procedures including basic and in-service training. This phrase shall also include fields of study which deal with fire press relations, fire community relations, and any other administrative fields of study which may be directly related to the proper and efficient operation of the fire department as may be determined by the chief or head of such department.

Additional incentive pay may be offered upon the successful completion of 120 semester hours in an accredited college or university and the attainment of a bachelor's degree, provided that such degree is in connection with a major in fire science, fire protection, or any other field of study as fully described above.

Such training incentive pay shall relate to the successful completion of education, training, and experience and the successful achievement of additional certification by the Texas Commission on Fire Protection Personnel Standards and Education.² The phrase "additional certification" as used herein shall mean certification by the Texas Commission on Fire Protection Personnel Standards and Education in excess of the basic fire fighter certification. This phrase is intended to include but is not limited to the intermediate, advanced, or other certificates authorized by said Commission. The City Council or legislative body may offer different amounts of incentive pay for different levels of certification.

¹ See art. 4413(29aa).

² See art. 4413(35).

[See Compact Edition, Volume 3 for text of 9 to 17]

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. The court may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party. If the court finds for the fireman or policeman, the court shall order the city to pay lost wages to the fireman or policeman.

[See Compact Edition, Volume 3 for text of 19 to 26(a)]

Cities of 650,000 or More; Termination of Service; Accumulated Sick and Vacation Leave; Lump Sum Payment

Sec. 26(b). (a) In any city in this State having a population of six hundred and fifty thousand (650,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason or the beneficiaries of any fireman or policeman who loses his life as a result of a line of duty injury or illness shall receive in a lump sum payment the full amount of his salary for the period of his accumulated sick leave. Sick leave shall be accumulated without limit.

(b) In any city in this State having a population of six hundred and fifty thousand (650,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason shall receive in a lump sum payment the full amount of his salary for the period of his accumulated vacation leave, provided that such payment shall be based upon not more than sixty (60) working days of accumulated vacation leave. Any fireman or policeman who leaves the classified service or loses his life as the result of a line of duty injury or illness or the beneficiaries of such fireman or policeman shall be paid the full amount of his salary for the total number of his working days of accumulated vacation leave.

[See Compact Edition, Volume 3 for text of 27 to 28(a)]

[Amended by Acts 1975, 64th Leg., p. 302, ch. 131, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 484, ch. 207, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1963, ch. 648, § 1, eff. Sept. 1, 1975.]

TITLE 33

COUNTIES AND COUNTY SEATS

CHAPTER THREE. CORPORATE RIGHTS AND POWERS

Art. 1580. Agents to Contract for County

Counties of 74,000 or more

Acts 1939, 46th Leg., Spec.Laws, p. 602, § 1 as amended by Acts 1939, 46th Leg., Spec.Laws, p. 605, § 1; Acts 1947, 50th Leg., p. 491, ch. 288, § 1; Acts 1949, 51st Leg., p. 713, ch. 376, § 1; Acts 1955, 54th Leg., p. 815, ch. 302, § 1; Acts 1957, 55th Leg., p. 382, ch. 185, § 1; Acts 1959, 56th Leg., p. 913, ch. 418, § 1; Acts 1965, 59th Leg., p. 343, ch. 161, § 1; Acts 1969, 61st Leg., 2nd C.S., p. 166, ch. 24, § 1; Acts 1971, 62nd Leg., p. 2550, ch. 837, § 1; Acts 1975, 64th Leg., p. 748, ch. 294, § 1, read as follows:

"Section 1. (a) In all counties of this state having a population of seventy-four thousand (74,000) or more inhabitants according to the last preceding Federal Census, a majority of a Board composed of the judges of the District Courts and the County Judge of such county, may appoint a suitable person who shall act as the county purchasing agent for such county, who shall hold office, unless removed by said judges, for a period of two (2) years, or until his successor is appointed and qualified, who shall execute a bond in the sum of Five Thousand Dollars (\$5,000), payable to said county, for the faithful performance of his duties.

"(b) 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.

"(c) 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 provided by law; provided that the county purchasing agent may lawfully cooperate with the purchasing agent for any incorporated city or cities in such county to purchase such items in volume as may be necessary, and the County Treasurer shall honor any warrant drawn by the county auditor to reimburse any city purchasing agent making such purchase for the county.

"(d) 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 examine carefully such inventory and to make an accounting for all property purchased or previously inventoried and not appearing in such inventory.

"(e) 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 division, 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.

"(f) Such agent shall receive as compensation for his services a salary of not less than Five Thousand Dollars (\$5,000) 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 and shall be set by the Board as designated in Section 1(a) of this Act.

"(g) Said agent may have assistants to aid in the performance of his duties as county purchasing agent.

"(h) Said agent and said assistants 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."

CHAPTER FIVE. COUNTY SEATS

Art. 1605a. Branch Office Buildings in Cities of 15,000 or More Outside County Seat

Sec. 1. The Commissioners Court of each county of this State shall have the power and authority to provide, maintain, and repair an office building and/or jail in one or more cities, other than the

county seat, having a population of Fifteen Thousand (15,000) or more, according to the last preceding federal census in the same manner as the Commissioners Court may now provide for and maintain a courthouse and jail at the county seat, and upon the acquisition or construction of such office building, the Commissioners Court may authorize, in the same manner as authorized by Article 1605, the maintaining of branch offices in each of said cities, except the District Clerk, County and District Judges, County Clerk, and County Treasurer, provided that all officers shall keep all original records at the county seat, and deputies may be provided as authorized in Article 1605. The Commissioners Court shall have the care and custody of such buildings and may place such limitations as it may see fit on the authorization and maintenance of branch offices.

Sec. 2. Said office building and/or jail may be provided for, maintained and repaired by the issuance of bonds as is provided by Chapters 1 and 2, Title 22, Revised Civil Statutes, 1925, and all amendments thereto,¹ or to provide, maintain, the repair the same through the issuance of evidences of indebtedness in the same manner as courthouses and jails at the county seats, and the taxes may be levied therefor in the same manner and subject to the same limitations as for courthouses and jails at the county seat; provided, however, that the cost of any such office building and/or jail shall not exceed more than two percent of the taxable values of the county for the last preceding year.

Sec. 3. All acts heretofore taken and proceedings heretofore adopted by the Commissioners Court in any county providing for the purchasing of a site, and erecting and equipping an office building for county officers in any city other than the county seat of such county, all evidences of indebtedness heretofore authorized to finance the same, and all tax levies heretofore made in behalf of such evidences of indebtedness are in all things confirmed, approved and validated; provided, however, nothing in this Act shall validate any evidence of indebtedness the validity of which is in question in a court of competent jurisdiction on the effective date of this Act if the ultimate decision of the court is against the validity thereof.

[Amended by Acts 1975, 64th Leg., p. 645, ch. 266, § 1, eff. May 20, 1975.]

¹Article 701 et seq.

TITLE 34

COUNTY FINANCES

1. GENERAL PROVISIONS

Article

1644e. Fiscal Year [NEW].

2. COUNTY AUDITOR

1645e-3. Compensation of County Auditors in Counties of 90,000 to 97,500 [NEW].

1. GENERAL PROVISIONS

Art. 1644e. Fiscal year

Sec. 1. The commissioners court of a county at a regular meeting may adopt an order making the fiscal year of the county a one-year period beginning on October 1 of each year.

Sec. 2. The fiscal year of a county is a calendar year unless the commissioners court has adopted a fiscal year that begins on October 1 pursuant to Section 1 of this Act.

Sec. 3. If the commissioners court of a county adopts a fiscal year that begins on October 1, it may revert to a fiscal year based on a calendar year by adopting an order to that effect at a regular meeting.

Sec. 4. If a law prescribes a certain date or month each year for taking action with regard to a county budget, and the law is based on the assumption that the county fiscal year is a calendar year, in counties that have a fiscal year that begins on October 1 the law shall be construed as prescribing a date or month three months earlier than the date or month specified in the law.

[Acts 1975, 64th Leg., p. 1928, ch. 627, §§ 1 to 4, eff. Sept. 1, 1975.]

2. COUNTY AUDITOR

Art. 1645e-3. Compensation of County Auditors in Counties of 90,000 to 97,500

In all counties with a population of more than 90,000 but not more than 97,500, according to the last preceding federal census, the annual salary of the county auditor shall be in an amount determined by the district judge or judges having authority to appoint the county auditor, and shall not exceed the annual salary of the county judge.

[Acts 1975, 64th Leg., p. 1243, ch. 466, § 1, eff. June 19, 1975.]

Art. 1650a. Mileage Expenses

The commissioners court may reimburse the county auditor for expenses incurred in traveling to and from the county seat in his personal automobile to perform his official duties and to attend conferences and seminars relating to the performance of his official duties. However, the commissioners court may not reimburse the auditor for expenses incurred in traveling between his personal residence and county office, or for expenses incurred in any other travel of a personal nature. The commissioners court by order shall fix the rate of reimbursement, not to exceed 10 cents a mile. Reimbursement shall be made monthly from the appropriate county funds on submission of sworn expense reports by the county auditor.

In all counties having a population of 1,500,000 or more according to the last preceding or any future federal census, the commissioners court may reimburse the county auditor and his assistants for expenses incurred in traveling to and from the county seat in their personal automobiles to perform official duties and to attend conferences and seminars relating to the performance of official duties. However, the commissioners court may not reimburse the auditor or his assistants for expenses incurred in traveling between their personal residence and county office, or for expenses incurred in any other travel of a personal nature. The commissioners court by order shall fix the rate of reimbursement at a reasonable rate. Reimbursement shall be made monthly from the appropriate county funds on submission of sworn expense reports by the county auditor and his assistants.

[Amended by Acts 1975, 64th Leg., p. 1190, ch. 447, § 1, eff. June 19, 1975.]

Art. 1659a. Counties of 800,000; Bids for Supplies or Materials; Advertisement; Filing

In all counties having a population of eight hundred thousand (800,000) or more, according to the last preceding or any future Federal Census, supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the Commissioners Court, has submitted the lowest and best bid. Where the total expenditure for any such

purchase or any such contract shall exceed Two Thousand Dollars (\$2,000), advertisements for bids for such supplies and material, according to specifications giving in detail what is needed, shall be made by the county purchasing agent once each week for two (2) successive weeks in a daily newspaper published and circulated in the county. Such advertisements shall state where the specifications are to be found, and shall state the time and place for receiving such bids. All bids shall be publicly opened on the day and time appointed. A copy of such competitive bids shall be kept on file after opening by the county auditor as a part of the records of his office, and shall be subject to inspection by anyone desiring to see them. All bids received shall be furnished by the county purchasing agent to the Commissioners Court; and when the bids received are not satisfactory to the Commissioners Court, the Commissioners Court shall reject that bid or bids and readvertise for new bids.

In the event of an emergency which precludes the obtaining of bids in accordance with the foregoing provisions, or in the case of a public calamity, where it becomes necessary to appropriate supplies or other materials to preserve the property of the county, or to relieve the necessity of its citizens, the Commissioners Court may by order specifically setting forth the nature of the emergency or public calamity permit the purchase of supplies, road and bridge

materials, or any other materials without first taking bids in the manner described above.

All bids taken pursuant to the provisions of this article which shall exceed the amount of Two Thousand Dollars (\$2,000) may be secured by a certified check, cashiers check, or a bid bond, in the amount of 5 percent of the amount of the bid, payable to the county and conditioned in the case of a bid bond that the successful bidder will supply the materials or supplies described in the bid. In addition, if so described in the specifications to which the bid is directed, a bidder shall condition the bid bond which shall be required in the specifications upon the further condition that the successful bidder will enter into a performance bond for the supplying of the supplies, road and bridge materials, or any other materials, if awarded the contract for which the bid is submitted. The bond, if one is required by the Commissioners Court, shall be in a sum equal to the amount of money to be paid by the county under the contract and shall be executed by a surety company authorized to do business in Texas and having an agent within the county, and having a capital stock of \$100,000 or more. All bonds which may be tendered hereunder shall be filed with the office of the County Clerk.

[Amended by Acts 1975, 64th Leg., p. 1120, ch. 420, § 1, eff. June 19, 1975.]

TITLE 35

COUNTY LIBRARIES

2. LAW LIBRARY

Art. 1702j. Law Libraries in Counties of 700,000 to 1,000,000

Application of Act; Costs

Sec. 1. For the purpose of establishing and maintaining a county law library for each county coming within the terms of this Act, there shall be charged as costs, and taxed, collected, and paid as other costs, a sum to be fixed by order of the Commissioners

Court, of not more than \$5, in each civil case, except suits for delinquent taxes, hereafter filed in every district or county court, including county courts at law, in each county having a population of not less than 700,000 nor more than 1,000,000, according to the last preceding federal census. In no case shall the county be liable for the cost imposed by this Act.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1975, 64th Leg., p. 1901, ch. 609, § 1, eff. Sept. 1, 1975.]

TITLE 39

COURTS OF CIVIL APPEALS

CHAPTER ONE. TERMS AND JURISDICTION

Article

1817b. Thirteenth Supreme Judicial District, Places Where Business Transacted [NEW].

Art. 1817b. Thirteenth Supreme Judicial District, Places Where Business Transacted

The Court of Civil Appeals for the Thirteenth Supreme Judicial District may transact its business at the county seat of any of the counties within its district, as the Court shall determine it necessary and convenient, providing that all cases originating in Nueces County shall be heard and transacted in such county.

[Added by Acts 1975, 64th Leg., p. 2357, ch. 726, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

CHAPTER TWO. CLERKS AND EMPLOYEES

Article

1831a. Thirteenth Supreme Judicial District; Reproduction Recording and Retention of Records [NEW].

Art. 1831a. Thirteenth Supreme Judicial District; Reproduction Recording and Retention of Records

Plan for Reproduction

Sec. 1. The clerk of the court of civil appeals for the Thirteenth Supreme Judicial District may, pursuant to his duty to preserve:

- (1) all records certified to his court,
- (2) all papers relative thereto,
- (3) all orders and opinions of the judges of said court, and

(4) all other documents of or proceedings in said court, provide a plan for the reproduction by microfilm or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all such records for which the said clerk is or may become responsible by law.

The plan shall be in writing and shall include provisions for maintenance, retention, security, and retrieval of all records so microfilmed or otherwise duplicated.

Requirements of Plan

Sec. 2. Any such plan shall provide for the following requirements:

(1) All original instruments and records shall be recorded and released into the file system within a specified minimum time period after presentation to the clerk.

(2) Original paper records may be used during the pendency of any proceeding.

(3) The plan shall include setting standards for organizing, identifying, coding, and indexing so that the image produced during the microfilming or other duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly.

(4) All materials used in the microfilming or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records, as herein authorized, and all processes of development, fixation, and washing of said photographic duplicates shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

(5) The plan shall provide for permanent retention of the records and shall provide security provisions to guard against physical loss, alterations, and deterioration.

Adoption of Plan

Sec. 3. The clerk may present such plan in writing to the justices of the court of civil appeals for the Thirteenth Supreme Judicial District. If a majority of such justices determine that the plan meets the requirements set forth in Section 2 of this Act, they shall so inform the clerk in writing, and the clerk may adopt the plan. The decision of the justices shall be entered in the minutes of said court, and thereafter all reproductions of original documents of said court made in accordance with the plan shall be considered to be the original records for all purposes and shall be so accepted by courts and administrative agencies in this state. All transcripts, exemplifications, copies, or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

Destruction of Original Records

Sec. 4. Upon certification of the clerk to the librarian of the state that all requirements have been met and are on record as provided by this plan, the clerk may destroy all records which have been filed with or left in the possession of the clerk in any hearing or proceeding in the court, including all original documents generated by the court in connection with said hearing or proceeding, after one year has elapsed following the time at which the judgment of said court of civil appeals has become final and times for appeal have expired without having perfected appeal, or mandate which is finally

decisive of such matters has been issued, further providing, that after these requirements are reached and prior to actual destruction of the instruments and records by the clerk, any party or parties or the state librarian by petitioning the court may move for the return of such documents and records.

Repealer

Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

[Acts 1975, 64th Leg., p. 1364, ch. 520, §§ 1 to 5, eff. Sept. 1, 1975.]

TITLE 40

COURTS—DISTRICT

CHAPTER TWO. DISTRICT CLERK

Article

1899b. Recording Proceedings of More Than One Court [NEW].

Art. 1899b. Recording Proceedings of More Than One Court

Combining the Minutes: Civil and Criminal Separate

Sec. 1. (a) All district clerks who have duties in more than one district court are authorized to combine all the minutes of the civil business of the several courts into one record book.

(b) All aforesaid district clerks are also authorized to combine the criminal minutes in the same manner.

(c) The civil minutes are to be kept in a book separate from the criminal minutes.

Manner of Entry

Sec. 2. Entry of all business in the minutes of both the civil book and the criminal book are to be made sequentially, regardless of the district court from which the business originates.

[Added by Acts 1975, 64th Leg., p. 1183, ch. 441, § 1, eff. June 19, 1975.]

CHAPTER THREE. POWERS AND JURISDICTION

Article

1918a. Court Coordinator System in Counties over 700,000 [NEW].

Art. 1907. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

See, now, Probate Code, § 5.

Art. 1918a. Court Coordinator System in Counties over 700,000

The criminal district courts and the district courts of general jurisdiction giving preference to criminal cases in counties with a population in excess of 700,000 according to the last preceding federal census may establish and maintain a court coordinator system. The district courts shall, by rule, designate the duties to be performed by the coordinators to improve criminal justice and expedite the processing of criminal cases through the district courts. The

court coordinators in each county shall cooperate with administrative judges and state agencies having duties in the area of the operation of the courts to promote uniform and efficient administration of justice in the state. The court coordinators serve by appointment of the district courts and at the pleasure of the district courts, and shall receive reasonable compensation to be determined by the judges of those courts, not to exceed 70 percent of the salary paid by the state to the judges of those courts. The district courts may appoint appropriate staff and supporting personnel according to the needs of each local jurisdiction. The commissioners court of each county shall provide from the fines and fees collected by these courts the necessary funding for the court coordinator system on order and directive of the district courts to be served, provided that if said fines or fees are insufficient to provide the total funding for this program the county shall provide the additional funds needed.

[Acts 1975, 64th Leg., p. 589, ch. 240, § 1, eff. May 20, 1975.]

CHAPTER FIVE. CRIMINAL DISTRICT COURTS

JEFFERSON COUNTY

Art. 1926-63. Criminal Judicial District of Jefferson County

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

Sec. 4. (a) The Criminal District Attorney of Jefferson County shall be commissioned by the Governor and may receive as compensation a salary in an amount not more than the total salary, including all supplements, paid to the highest paid district judge in the district. The salary shall be fixed by the Commissioners Court of Jefferson County, to be paid out of the Officer's Salary Fund of Jefferson County if adequate; if inadequate the Commissioners Court shall transfer necessary funds from the General Fund of the County to the Officer's Salary Fund.

(b) Jefferson County shall receive annually from the State of Texas under the provisions of this Act an amount equal to the amount paid district attorneys by the State of Texas, and shall be paid by the comptroller of public accounts as appropriated by the legislature in 12 equal installments. Such funds

shall be paid into the salary fund of Jefferson County.

(c) The Criminal District Attorney of Jefferson County shall not engage in the private practice of law in that he shall not appear and practice as an attorney at law in any court of record in this state

except in behalf of the State of Texas or Jefferson County as herein provided.

[See Compact Edition, Volume 3 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 1821, ch. 557, § 1, eff. Sept. 1, 1975.]

TITLE 41

COURTS—COUNTY

CHAPTER ONE. THE COUNTY JUDGE

Article
1933a. Appointment of Special County Judges in Certain Counties
[NEW].

Art. 1933a. Appointment of Special County Judges in Certain Counties

Sec. 1. The provisions of this Article apply only to counties in which there is no statutory county court at law or statutory probate court, and in which all duties of the county court devolve upon the county judge. The provisions hereof are cumulative of all other provisions of law for appointment or election of special county judges, and existing provisions are repealed hereby only to the extent of any conflict.

Sec. 2. The county judge may at any time appoint a special county judge, with respect to any pending matter, whether of civil or criminal nature, in accordance with the provisions following:

(a) Such action may be taken on the motion of any counsel of record in such pending matter, or on the court's own motion.

(b) All counsel of record are entitled to notice and hearing on such motion.

(c) If the county judge finds that good cause exists therefor, he shall appoint a special county judge, at his discretion, except: (1) the person so appointed must be a duly licensed attorney at law; (2) the person so appointed must be the person agreed upon by all counsel of record in the pending matter, if they are able to so agree; and (3) due consideration shall be given by the court to such recommendations as may be made by the attorneys of such court for the further implementation of this Act and the accomplishment of the purposes hereof.

(d) The motion for, and order appointing, the special county judge, shall be noted in the docket, and may be reduced to writing and filed among the papers in the pending cause.

(e) Thereafter, the special county judge, while sitting in the matter in which he is so appointed, shall have and exercise all powers of

a county judge in relation to the matter involved; and shall be entitled to compensation in such amount as the commissioners court of the county may provide.

[Acts 1975, 64th Leg., p. 1251, ch. 475, §§ 1, 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 Act, the emergency provision, provides, in part:

"The purpose of this Act is to improve the administration of justice in county courts, in view of the problems inherent in the crowded condition of the dockets of constitutional county courts, in the numerous and diverse nature of other nonjudicial duties devolving upon county judges, and in the fact county judges are not required to be licensed attorneys although confronted by questions of increasing legal complexity. * * *"

CHAPTER FIVE. MISCELLANEOUS PROVISIONS

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

DALLAS COUNTY

Article
1970-31.30. Retired Judges as Substitutes in Dallas County
[NEW].

1970-31c. Probate Court No. 3 of Dallas County [NEW].

TARRANT COUNTY CRIMINAL COURTS

1970-62d. County Criminal Court No. 4 of Tarrant County [NEW].

HARRIS COUNTY

1970-110c.3. County Criminal Court at Law No. 8 and 9 [NEW].

POTTER COUNTY

1970-311b. County Court at Law No. 2 of Potter County [NEW].

TITUS COUNTY

1970-330a. Jurisdiction of Titus County Court and District Courts
[NEW].

GRAYSON COUNTY

1970-332a. County Court at Law No. 2 of Grayson County [NEW].

GALVESTON COUNTY

1970-348a. County Court at Law No. 2 of Smith County [NEW].

BELL COUNTY

1970-350a. County Court at Law No. 2 of Bell County [NEW].

BRAZOS COUNTY

1970-359. County Court at Law of Brazos County [NEW].

WEBB COUNTY

1970-360. County Court at Law of Webb County [NEW].

NACOGDOCHES COUNTY

1970-361. County Court at Law of Nacogdoches County [NEW].

COLLIN COUNTY

1970-362. County Court at Law of Collin County [NEW].

MONTGOMERY COUNTY

1970-363. County Court at Law No. 1 of Montgomery County [NEW].

FORT BEND COUNTY

1970-364. County Court at Law of Fort Bend County [NEW].

HOUSTON COUNTY

1970-365. County Court at Law of Houston County [NEW].

HENDERSON COUNTY

1970-366. County Court at Law of Henderson County [NEW].

ACTS CREATING COUNTY COURTS AT LAW
AND SIMILAR COURTS, AND AFFECTING PAR-
TICULAR COUNTY COURTS, AND DECISIONS
THEREUNDER

DALLAS COUNTY

**Art. 1970-31.10. County Criminal Court of Dallas
County, Creation, Jurisdiction, etc.**

*[See Compact Edition, Volume 3 for text of 1
to 8]*

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the county criminal court 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, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

*[See Compact Edition, Volume 3 for text of 10
to 13]*

[Amended by Acts 1975, 64th Leg., p. 1348, ch. 507, § 1, eff. Sept. 1, 1975.]

**Art. 1970-31.11. County Criminal Court No. 2 of
Dallas County**

*[See Compact Edition, Volume 3 for text of 1
to 8]*

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court 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 Two, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court Number Two of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

*[See Compact Edition, Volume 3 for text of 10
to 13]*

[Amended by Acts 1975, 64th Leg., p. 1348, ch. 507, § 2, eff. Sept. 1, 1975.]

**Art. 1970-31.12. County Criminal Court No. 3 of
Dallas County**

*[See Compact Edition, Volume 3 for text of 1
to 8]*

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. The Judge of the County Criminal Court Number Three of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

*[See Compact Edition, Volume 3 for text of 10
to 13-A]*

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 3, eff. Sept. 1, 1975.]

**Art. 1970-31.13. County Criminal Court No. 4 of
Dallas County**

*[See Compact Edition, Volume 3 for text of 1
to 8]*

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court Number Four of Dallas County, Texas; and 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 Four,

Dallas County, Texas." The Sheriff of Dallas County, Texas, shall, in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court Number Four of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 14]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 4, eff. Sept. 1, 1975.]

Art. 1970-31.14. County Criminal Court No. 5 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court Number Five of Dallas County, Texas; and 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 Five, Dallas County, Texas." The sheriff of Dallas County, Texas, shall, in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court Number Five of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 14]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 5, eff. Sept. 1, 1975.]

Art. 1970-31.20. County Criminal Court of Appeals of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 9]

Sec. 10. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court of Appeals, 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 of Appeals, Dallas County, Texas." The Sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court of Appeals of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 11 to 15]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 6, eff. Sept. 1, 1975.]

Art. 1970-31.30. Retired Judges as Substitutes in Dallas County

Sec. 1. (a) When the regular judge of a county court at law, county criminal court, county criminal court of appeals, or probate court for Dallas County is absent or is from any cause disabled or disqualified from presiding, the presiding judge of the First Administrative Judicial District may appoint a retired judge to sit for the regular judge, provided the retired judge:

- (1) voluntarily retired from office;
- (2) resides within the First Administrative Judicial District;
- (3) certifies his willingness to serve;
- (4) has previous judicial experience; and
- (5) otherwise meets the qualifications required of the regular judge.

(b) When the docket of a county court at law, county criminal court, county criminal court of appeals, or probate court for Dallas County becomes so excessive that the presiding judge deems it an emergency, he may appoint a retired judge who meets the qualifications set out in Subsection (a) of this section to sit for the regular judge for as long as the emergency exists.

Sec. 2. A retired judge appointed to sit for a regular judge under the provisions of this Act shall execute the bond and take the oath of office which is required by law for the regular judge for whom he is sitting.

Sec. 3. A retired judge appointed under the provisions of this Act has all the power and jurisdiction of the court and the regular judge for whom he is sitting and may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

Sec. 4. A retired judge appointed to sit for the regular judge under the provisions of this Act shall receive for the services actually performed the same amount of compensation which the regular judge is entitled to receive for such services. The amount to be paid for such services shall be paid out of the county funds on certification by the presiding judge of the First Administrative Judicial District that the retired judge has rendered the services and is entitled to receive the compensation. No part of the amount paid to a retired judge sitting for the regular judge shall be deducted or paid out of the salary of the regular judge.

Sec. 5. The provisions of the Act are cumulative of all laws pertaining to the election or appointment of a special judge, and if, in addition to a retired judge appointed to sit temporarily for a regular judge, a special judge is needed, he shall be appointed or elected as now authorized by law.

[Acts 1975, 64th Leg., p. 582, ch. 237, §§ 1 to 5, eff. May 20, 1975.]

Art. 1970-31c. Probate Court No. 3 of Dallas County

Sec. 1. There is created a county court to be held in and for Dallas County to be called the Probate Court Number 3 of Dallas County.

Sec. 2. Probate Court Number 3 of Dallas County shall have the general jurisdiction of the probate court within the limits of Dallas County concurrent with the jurisdiction of the Probate Court of Dallas County, the Probate Court Number 2 of Dallas County, and of the County Court of Dallas County in such matters and proceedings. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and administrative, settle accounts of executors, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings, and the apprenticing of minors as provided by law. It is the intention of this Act that the Probate Court Number 3 of Dallas County shall have the primary responsibility, at all times, for all mental illness proceedings.

Sec. 3. On the first day of the initial term of Probate Court Number 3 of Dallas County there shall be transferred to the docket of the court under the jurisdiction of the county judge and of the judges of the Probate Court of Dallas County and the Probate Court Number 2 of Dallas County, and by order entered on the minutes of the County Court of Dallas County and of the Probate Court of Dallas County and of the Probate Court Number 2 of Dallas County, such number of such proceedings and matters then pending in the Probate Court of Dallas County, in the Probate Court Number 2 of Dallas County, and in the County Court of Dallas County as will equalize the number of such cases pending on the dockets of each of said four courts, with the Probate Court Number 3 of Dallas County having responsibility, at all times, for all mental illness proceedings. However, should an emergency or an overcrowded docket preclude the Probate Court Number 3 of Dallas County from effectively diminishing the number of mental illness proceedings before it, such cases may be transferred, with the concurrence of the judge of one or more of the other

probate courts in Dallas County, to the dockets of one or more of the other probate courts of Dallas County. All writs and processes theretofore issued by or out of the Probate Court of Dallas County, Probate Court Number 2 of Dallas County, and County Court of Dallas County in such matters or proceedings shall be returnable to the Probate Court Number 3 of Dallas County as though originally issued therefrom. All new mental illness proceedings filed on said day or thereafter filed with the County Clerk of Dallas County irrespective of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk in the Probate Court Number 3 of Dallas County in the order in which the same are deposited with him for filing.

Sec. 4. The County Court of Dallas County shall retain as heretofore the powers and jurisdiction of the court existing at the time of the passage of this Act and shall exercise its own powers and jurisdiction as a probate court with respect to all matters and proceedings of such nature other than those provided hereinabove to be transferred to and filed in the Probate Court Number 3 of Dallas County. The County Judge of Dallas County shall be the Judge of the County Court of Dallas County and all ex officio duties of the County Judge of Dallas County as they now exist shall be exercised by the County Judge of Dallas County except insofar as the same shall have been committed heretofore to the Judge of the Probate Court of Dallas County, or to the Judge of the Probate Court Number 2 of Dallas County, or as the same shall by this Act expressly be committed to the Judge of the Probate Court Number 3 of Dallas County. Nothing in this Act shall be construed as in anywise impairing or affecting the jurisdiction of the County Court of Dallas County, the Probate Court of Dallas County, the Probate Court Number 2 of Dallas County, the County Courts of Dallas County at Law Numbers 1, 2, 3, and 4, or any other County Court at Law of Dallas County heretofore or hereafter created.

Sec. 5. There shall be two terms of Probate Court Number 3 of Dallas County in each year and the first term shall be known as the January-June term, which 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 of such terms shall be known as the July-December term and shall begin on the first Monday in July and continue until and including Sunday next before the first Monday in the following January. The initial term of the court shall begin on the first Monday after the effective date of this Act.

Sec. 6. The Judge of the Probate Court Number 3 of Dallas County shall be well informed on the laws of the state and shall have been a duly licensed and practicing member of the bar of this state for

not less than five consecutive years prior to his election. A judge of the court shall be appointed by the Commissioners Court of Dallas County as soon as may be possible after the passage of this Act, who shall hold office from the date of his appointment until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Dallas County a judge of the Probate Court Number 3 of Dallas County for a regular term of four years as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitution.

Sec. 7. The Judge of the Probate Court Number 3 of Dallas County shall execute a bond and take the oath of office as required by the laws relating to county judges.

Sec. 8. Any vacancy in the office of the Judge of Probate Court Number 3 of Dallas County may be filled by the Commissioners Court of Dallas County by appointment of a judge of the court who shall serve until the next general election and until his successor shall be duly elected and qualified.

Sec. 9. In case of the absence, disqualification, or incapacity of the Judge of the Probate Court Number 3 of Dallas County, the County Judge of Dallas County shall sit and act as judge of the court and may hear and determine either in his own courtroom or in the courtroom of the court any matter or proceeding there pending and may enter such orders in such matters or proceedings as the Judge of said Probate Court Number 3 of Dallas County might enter if personally presiding therein.

Sec. 10. The Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County may sit for the Judge of the Probate Court Number 3 of Dallas County, and the Judge of the Probate Court Number 3 of Dallas County may sit for the Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County on any matters or proceedings pending in any of the courts. In the case of the absence, disqualification, or incapacity of the County Judge of Dallas County, the Judge of the Probate Court of Dallas County, the Judge of the Probate Court Number 2 of Dallas County, and the Judge of the Probate Court Number 3 of Dallas County, a special judge of the Probate Court Number 3 of Dallas County may be appointed or elected as provided by the general laws relating to county courts and to the judges thereof.

Sec. 11. The County Clerk of Dallas County shall be the Clerk of the Probate Court Number 3 of Dallas County. The seal of the court shall be the same as that provided by law for county courts except that the seal shall contain the words "Probate

Court Number 3 of Dallas County, Texas." The Sheriff of Dallas County shall in person or by deputy attend the court when required by the judge thereof. The Judge of the Probate Court Number 3 of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Sec. 12. The Judge of the Probate Court Number 3 of Dallas County shall collect the same fees as are now or hereafter established by law relating to county judges as to matters within the jurisdiction of the court, all of which shall be paid by him into the county treasury as collected and from after the date of his qualification as Judge of said Probate Court Number 3 of Dallas County he shall receive an annual salary to be fixed by order of the Commissioners Court of Dallas County which shall be the same salary as that paid to the Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County.

Sec. 13. All laws and parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only. All other laws applicable to the Probate Court of Dallas County and the Probate Court Number 2 of Dallas County shall be applicable to Probate Court Number 3 of Dallas County. As to all other laws and parts of laws this Act shall be cumulative.

[Acts 1975, 64th Leg., p. 359, ch. 153, §§ 1 to 13, eff. May 8, 1975.]

TARRANT COUNTY CRIMINAL COURTS

Art. 1970-62d. County Criminal Court No. 4 of Tarrant County

Sec. 1. There is created a county court to be held in and for Tarrant County to be called the County Criminal Court No. 4 of Tarrant County.

Sec. 2. The County Criminal Court No. 4 of Tarrant County shall have and same is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is vested in the county courts having jurisdiction in criminal cases under the constitution and laws of Texas. Any appeals from convictions had under the laws of the State of Texas and ordinances of the municipalities located in Tarrant County in justice courts, corporation courts, and other municipal courts in the county may be transferred from the County Criminal Court No. 3 to the County Criminal Court No. 4 at the discretion of the judge of the County Criminal Court No. 3 and with the consent of the judge of the County Criminal Court No. 4.

Sec. 3. The County Criminal Court No. 4 of Tarrant County, or its judge, has the power to issue writs of injunction and all writs necessary for the

enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the County Criminal Court No. 4 has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 4. The terms of the County Criminal Court No. 4 of Tarrant County and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms of the County Criminal Court No. 4 shall be held not less than four times each year, and the Commissioners Court of Tarrant County shall fix the time at which the court shall hold its terms until the same may be changed according to law.

Sec. 5. As soon as possible after the passage of this Act, there shall be appointed by the Commissioners Court of Tarrant County a judge of the County Criminal Court No. 4, 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 has qualified. At the next general election, there shall be elected a judge of the County Criminal Court No. 4 who shall hold office for the unexpired term. The judge of the court elected at the general election in 1978 and thereafter shall hold office for four years and until his successor has qualified. No person is eligible to be judge of the court unless he is a citizen of the United States and of this state who has been a practicing lawyer of this state or a judge of a court in this state for four years next preceding his appointment or election, and who shall have resided in the County of Tarrant for two years next preceding his appointment or election.

Sec. 6. The judge of the County Criminal Court No. 4 of Tarrant County shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 7. A special judge of the County Criminal Court No. 4 of Tarrant County may be appointed or elected as provided by the laws relating to County Courts and the judges thereof.

Sec. 8. The County Clerk of Tarrant County, Texas, shall be the clerk of the County Criminal Court No. 4 of Tarrant County. The seal of the court shall be the same as provided for county courts except that the seal shall contain the words "The County Criminal Court No. 4, Tarrant County, Texas." The sheriff of Tarrant County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 9. The judge of the County Criminal Court No. 4 of Tarrant County shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The judge of the County Criminal Court No. 4 shall receive the same compensation as provided by law and fixed by the commissioners court for the judges of the County Criminal Courts Nos. 1, 2, and 3 of Tarrant County, to be paid monthly out of the county treasury by the commissioners court. The judge shall not engage in the practice of law while in office.

Sec. 10. The judge of the County Criminal Court No. 4 of Tarrant 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. 11. 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 No. 4 of Tarrant County 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 apply in all their provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed, and the reporter is entitled to the same fees and salary and shall perform the same duties and shall take the same oath as provided for the stenographers of district courts of this state, and shall be governed by any other laws covering the stenographers of the district courts of this state.

Sec. 12. After this Act becomes effective, the judges of the County Criminal Courts Nos. 1, 2, 3, and 4 of Tarrant County shall make a just and fair division of the cases pending on the dockets of the County Criminal Courts Nos. 1, 2, and 3, and after such division is made the clerk shall transfer to the docket of the County Criminal Court No. 4 of Tarrant County all cases allotted to the County Criminal Court No. 4 of Tarrant County in the division so made by the judges. Thereafter, the judge of a county criminal court in Tarrant County may, in his discretion, transfer any cause 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. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. The judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if such cause or causes were originally

instituted in that court. In cases transferred to any one of the county criminal courts in Tarrant County, as provided in this Act, all process extant at the time of the transfer shall be returned to and filed in the court to which the transfer is made, and shall be as valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 13. The judges of the County Criminal Courts Nos. 1, 2, 3, and 4 of Tarrant County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same. [Acts 1975, 64th Leg., p. 1844, ch. 574, §§ 1 to 13, eff. Sept. 1, 1975.]

HARRIS COUNTY

Art. 1970-110a.2. Probate Court No. 2 of Harris County

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

Sec. 4. On the first day of the initial term of said Probate Court No. 2 of Harris County, Texas, there shall be transferred to the docket of said Court, under the direction of the County Judge and by order entered on the Minutes of the County Court of Harris County, Texas, such number of such proceedings and matters then pending in the County Court of Harris County, Texas, as shall be, as near as may be, four-fifths in number of the total of all of same then pending, and all writs and processes theretofore issued by or out of said County Court of Harris County in such matters or proceedings shall be returnable to the Probate Court No. 2 of Harris County, Texas, as though originally issued therefrom. All such new matters and proceedings filed on said day, or thereafter filed, with the County Clerk of Harris County, irrespective of the Courts or Judge to which the matter or proceeding is addressed, shall be filed by said Clerk alternately in said Probate Court No. 1 of Harris County and said Probate Court No. 2 of Harris County in the order in which the same are deposited with said Clerk for filing, beginning first with the Probate Court No. 1 of Harris County, filing the next with the Probate Court No. 2 of Harris County, and continuing alternately thereafter, and further, said Clerk shall keep separate dockets for each of said Courts. The County Judge of Harris County, in his discretion, may, by an order entered upon the Minutes of the County Court of Harris County, on or after the first day of the initial term of said Probate Court No. 2 of Harris County, transfer to said Probate Court No. 2 any such matter or proceeding then or thereafter pending in the County Court of Harris County and all processes extant at the time of such transfer shall be returned to and filed in the Court to which such transfer is made and shall be as valid and binding as though originally issued out of the Court to which such transfer may be made. Each of the Judges of the

County Court and said Probate Courts Nos. 1 and 2 may, at any time, with the consent of the Judge of the County Court or the Judge of the Probate Court to which transfer is to be made by an order entered upon the Minutes of the County Court or of such Probate Court of Harris County, transfer to said County Court or other Probate Court any such matter or proceeding then or thereafter pending in such County or Probate Court of Harris County, and all processes extant at the time of such transfer shall be returnable to and filed in the County Court or the Probate Court to which such transfer is made and shall be as valid and binding as though originally issued out of the County Court or the Probate Court to which such transfer may be made.

[See Compact Edition, Volume 3 for text of 5 to 13]

Sec. 14. Repealed by Acts 1975, 64th Leg., p. 1118, ch. 421, § 2, eff. June 19, 1975.

[See Compact Edition, Volume 3 for text of 15 and 16]

[Amended by Acts 1975, 64th Leg., p. 1118, ch. 421, §§ 1, 2, eff. June 19, 1975.]

Art. 1970-110c.3. County Criminal Court at Law Nos. 8 and 9

(a) There are hereby created two courts to be held in Harris County, Texas, to be called the "County Criminal Court at Law No. 8 of Harris County, Texas," and the "County Criminal Court at Law No. 9 of Harris County, Texas."

(b) The County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall have, and they are 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 all appeals in criminal cases from justice courts and corporation courts within Harris County, and the judges of said courts 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; provided that said courts shall have no jurisdiction over any of those matters which are now vested exclusively in the County Court of Harris County, or in the judge thereof.

(c) When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge of the County Criminal Court at Law No. 8 of Harris County, Texas, and a judge of the County Criminal Court at Law No. 9 of Harris County, Texas, who shall have the qualifications herein prescribed and shall serve until the next general election and until their successors shall be duly elected and qualified.

At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of each of the County Criminal Courts at Law Nos. 8 and 9 of Harris County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution. The judge shall have been a duly licensed and practicing member of the bar of this state for not less than five years; and he shall be compensated as provided by law, and shall be paid out of the county treasury by the commissioners court in equal monthly installments; but such judge shall not collect any fee from the county for disposing of any criminal case, as provided in the Code of Criminal Procedure of Texas. Any vacancy occurring in the office of the judge of said County Criminal Court at Law No. 8 of Harris County, Texas, or in the office of the judge of said County Criminal Court at Law No. 9 of Harris County, Texas, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified. Said courts or the judges thereof shall have the power to issue writs of habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction.

(d) The judges of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall each appoint an official shorthand reporter for his 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 are hereby made to apply in all its provisions, insofar as they are applicable to the official shorthand reporters herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act, and such official shorthand reporters shall be entitled to the same compensation as applicable to official shorthand reporters in the district courts of Harris County, Texas, paid in the same manner that compensation of official shorthand reporters of the district courts of Harris County is paid.

(e) The district clerk of Harris County, Texas, shall act as and be the clerk of said County Criminal Court at Law No. 8 of Harris County, Texas, and of said County Criminal Court at Law No. 9 of Harris County, Texas. The district clerk shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas.

(f) The sheriff of Harris County, either in person or by deputy, shall attend said courts when required by the judges thereof; and the various sheriffs and constables of this state executing process issued out of said courts shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

(g) The seals of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seals shall contain the words "County Criminal Court at Law No. 8 of Harris County, Texas," and the words "County Criminal Court at Law No. 9 of Harris County, Texas," respectively, and said seals shall be judicially noticed.

(h) A special judge of each of said courts may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

(i) The terms of the courts hereby created shall begin on the first Monday of the months of June, August, October, December, February, and April of each year. The sessions of said courts shall be held in such places as may be provided therefor by the Commissioners Court of Harris County.

(j) When this Act becomes effective, the district clerk of Harris County, Texas, shall alternately file the first 200 cases to be filed in the said County Criminal Court at Law No. 8, and the said County Criminal Court at Law No. 9, with 100 cases being filed in each of the two said courts. Thereafter, cases shall be filed in rotation so thereafter of every 9 cases filed, each of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 shall each receive one case.

(k) The judges of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, may exchange benches with each other and with the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas, in the same manner that the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas, are authorized to exchange benches. The judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, may transfer criminal causes between said courts by entry of an order on the docket of the court from which the cause is transferred, provided that no cause shall be transferred without the consent of the judge of the court to which transferred.

(l) The practice in said County Criminal Courts at Law Nos. 8 and 9 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.

(m) In cases transferred to any one of the County Criminal Courts at Law of Harris County, Texas, as provided in 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 shall be made. [Acts 1975, 64th Leg., p. 928, ch. 346, § 1, eff. Jan. 1, 1976.]

Section 2 of the 1975 Act provided:

"Sec. 2. The provisions of this Act shall take effect on January 1, 1976."

EL PASO COUNTY

Art. 1970-141.2. County Court at Law No. 3 of El Paso County

[See Compact Edition, Volume 3 for text of 1 to 4]

Sec. 5.

[See Compact Edition, Volume 3 for text of 5(a)]

(b) The judges of the county courts at law now in existence or which shall hereafter be created in El Paso County and the judge of the county court shall receive an annual salary in an amount not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in El Paso County. The salary shall be paid out of the general fund of El Paso County in equal monthly installments by warrants drawn on the county treasury on orders of the Commissioners Court of El Paso County. The judge of the county court and the judges of each county court at law in El Paso County shall not collect any fee from the county for disposing of any criminal case.

[See Compact Edition, Volume 3 for text of 6 to 14]

[Amended by Acts 1975, 64th Leg., p. 1383, ch. 531, § 1, eff. Sept. 1, 1975.]

PARTICULAR COUNTY COURTS

Art. 1970-310. Other Acts Creating or Affecting Jurisdiction of Particular County Courts

Brazos—Jurisdiction—Acts 1959, 56th Leg., p. 4, ch. 2; amended by Acts 1975, 64th Leg., p. 112, ch. 50, § 8, eff. Jan. 1, 1977.

Falls—Jurisdiction: Acts 1917, March 20, ch. 89, p. 243; amended by Acts 1975, 64th Leg., p. 84, ch. 39, § 1, eff. April 8, 1975.

POTTER COUNTY

Art. 1970-311b. County Court at Law No. 2 of Potter County

Text of article effective Jan. 1, 1977

Sec. 1. There is created a court to be held in Amarillo, Potter County, Texas, which shall be known as the County Court at Law No. 2 of Potter County.

Sec. 2. The County Court at Law No. 2 of Potter County shall have original and concurrent jurisdic-

tion with the County Court of Potter County and the County Court at Law of Potter County in all matters and causes, civil, criminal, and probate, original and appellate, over which by the general laws of this state, county courts have jurisdiction. This provision shall not affect the jurisdiction of the commissioners court or the county judge of Potter County as the presiding officer of the commissioners court as to roads, bridges and public highways, and matters which are now within the jurisdiction of the commissioners court or the judge of Potter County.

Sec. 3. The County Court at Law No. 2 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 on justice courts. Neither the County Court at Law No. 2 of Potter County nor the judge thereof shall have jurisdiction to act as a coroner or to preside at inquests, or have jurisdiction of claims which come within the jurisdiction of the Small Claims Court as prescribed by Chapter 309, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 2460a, Vernon's Texas Civil Statutes).

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 No. 2 of Potter County in civil cases of which the court had appellate or original concurrent jurisdiction with the justice court where the judgment or amount in controversy would not exceed \$100, exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the justice courts of jurisdiction now conferred on them by law, but only to give concurrent original jurisdiction to the County Court at Law No. 2 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 No. 2 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 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 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 the 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 judges of the County Courts at Law of Potter County.

Sec. 7. The terms of the County Court at Law No. 2 of Potter County shall be as prescribed by the laws relating to the county courts. The terms of the County Court at Law No. 2 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. No person may be elected or appointed judge of the court who is not a resident citizen of Potter County. He also shall have been a licensed attorney of the State of Texas for at least four years immediately prior to his appointment or election. The person elected 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 No. 2 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 No. 2 of Potter County, who shall hold his office until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Potter County a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The commissioners court shall provide suitable quarters for the holding of the court.

Sec. 11. The judge of the County Court at Law No. 2 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 No. 2 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 No. 2 of Potter County may be appointed or elected as provided by law relating to county courts and to the judge thereof. He shall receive a sum of money for each day he actually serves equal to the compensation for each day paid to the regular judge of County Court at Law No. 2 of Potter County, 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 No. 2 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 the case or cases in which the judge of the County Court at Law No. 2 of Potter County is disqualified. In case of the selection of a special judge by agreement of the parties or their attorneys, the special judge shall draw the same compensation as that provided in Section 13 of this Act.

Sec. 15. The County Court at Law No. 2 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 the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Sec. 16. The county clerk of Potter County shall be the clerk of the County Court at Law No. 2 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 No. 2 of Potter County."

Sec. 17. The sheriff of Potter County shall in person or by deputy attend the County Court at Law No. 2 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 No. 2 of Potter County and the judge thereof; but jurors and talesmen summoned for either of the county courts at law or county court may by order of the judge of the court in which they are summoned be transferred to one 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. On concurrence of the judges of the county courts at law of Potter County and the judge of the county court of Potter County, jurors may be summoned for service in all county courts and shall be used interchangeably in

all 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 the 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 No. 2 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 has qualified.

Sec. 20. The judges of the County Court at Law of Potter County and the County Court at Law No. 2 of Potter County may each be paid an annual salary of not more than the total salary paid any District Judge in and for Potter County to be paid out of the general fund of Potter County by the County Treasurer of Potter County, on the order of the commissioners court of the county.

Sec. 21. The judge of the County Court at Law No. 2 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 specified in Section 20 of this Act.

Sec. 22. The judge of the County Court at Law No. 2 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. The 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 are hereby made to apply in all provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed and insofar as they are not inconsistent with this Act.

Sec. 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 No. 2 of Potter County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law No. 2 of Potter County.

Sec. 24. The County Clerk of Potter County shall distribute the cases filed, both civil and criminal. All cases with even numbers shall be filed and docketed in the County Court at Law of Potter County and all cases with odd numbers shall be filed and docketed in the County Court at Law No. 2 of Potter County. With the consent of the judge of the court to which a case is transferred, the judge of either county court at law or the county court shall have the power to transfer to the other courts any case pending upon the docket of his court over which the courts have concurrent jurisdiction, except in cases where the writ of certiorari has been granted. The judges of the county courts at law may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Sec. 25. The effective date of this Act is January 1, 1977.
[Acts 1975, 64th Leg., p. 1955, ch. 645, §§ 1 to 25, eff. Jan. 1, 1977.]

MARION COUNTY

Art. 1970-322a. County Court of Marion County; Concurrent Jurisdiction of Certain Criminal Matters

[See Compact Edition, Volume 3 for text of 1
and 3]

Sec. 4. The County Attorney of Marion County shall represent the state in all misdemeanor and felony cases before the District Court of Marion County, Texas.

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 3, eff. Sept. 1, 1975.]

TITUS COUNTY

Art. 1970-330. Repealed by Acts 1975, 64th Leg., p. 1366, ch. 521, § 5, eff. June 19, 1975

See, now, art. 1970-330a.

Art. 1970-330a. Jurisdiction of Titus County Court and District Courts

Sec. 1. The County Court of Titus County has the full jurisdiction granted by the constitution and general law to county courts.

Sec. 2. The district courts having jurisdiction in Titus County have the jurisdiction granted by the constitution and general law to district courts.

Sec. 3. (a) All cases pending on the effective date of this Act in the district courts having jurisdiction in Titus County which are within the jurisdiction of the county court under Section 1 of this Act are transferred to the County Court of Titus County.

(b) All writs and process relating to cases transferred under Subsection (a) of this section are returnable to the next term of the County Court of Titus County.

Sec. 4. The provisions of this Act may not be construed to affect judgments rendered by the district courts having jurisdiction in Titus County prior to the effective date of this Act. The clerks of the district courts having jurisdiction in Titus County shall issue all executions and orders of sale and proceeding thereunder, which shall be valid and binding.

[Acts 1975, 64th Leg., p. 1366, ch. 521, §§ 1 to 4, eff. June 19, 1975.]

GRAYSON COUNTY

Art. 1970-332. Grayson County; County Court at Law; Jurisdiction; Terms; Judge; Prosecutor; Writs; Clerk and Court Reporter

[See Compact Edition, Volume 3 for text of 1 to 15]

Sec. 16. (a) The Judge of the County Court at Law of Grayson County may receive an annual salary up to an amount equal to the total annual salary of the County Attorney of Grayson County to be paid out of the County Treasury of Grayson County, Texas, on the order of the Commissioners Court of said County, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law of Grayson County shall assess the same fees as are now prescribed by law relating to the County Judge's fee, 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 said Judge, but he shall draw the salary as above specified in this Section.

(b) The Judge of the County Court at Law of Grayson County may not actively engage in the private practice of law while serving as judge of the county court at law.

[See Compact Edition, Volume 3 for text of 17 to 20]

[Amended by Acts 1975, 64th Leg., p. 628, ch. 259, § 1, eff. Sept. 1, 1975.]

Art. 1970-332a. County Court at Law No. 2 of Grayson County

Sec. 1. On the date determined by the provisions of Section 19 of this Act, there is created a court to be held in Sherman, Grayson County, Texas, which shall be known as the County Court at Law No. 2 of Grayson County.

Sec. 2. The County Court at Law No. 2 of Grayson County shall have and exercise the jurisdiction in all matters and cases, civil, criminal, juvenile, and probate, original and appellate, over which by the general laws of this state county courts have jurisdiction, and has jurisdiction concurrent with the County Court at Law of Grayson County in matters and cases, civil and criminal, original and appellate.

The County Court of Grayson County shall have and retain, as heretofore, the general jurisdiction of a probate court and has jurisdiction concurrent with the County Court at Law No. 2 of Grayson County in probate matters and cases. The provisions of this Act do not affect the jurisdiction of the Commissioners Court nor of the County Judge of Grayson County as presiding officer of the commissioners court as to roads, bridges, and public highways, or matters which are now in the jurisdiction of the Commissioners Court or the Judge of the County Court of Grayson County. The County Judge of Grayson County shall be the judge of the county court of the county, and all ex officio duties of the county judge shall be exercised by the judge of the County Court of Grayson County, except insofar as the same shall by this Act be committed to the County Court at Law No. 2 of Grayson County.

Sec. 3. The County Court at Law No. 2 of Grayson County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 4. (a) The County Court at Law No. 2 of Grayson County shall have and exercise original concurrent jurisdiction with the justice courts in all civil and criminal matters which by the general laws of this state are conferred upon justice courts.

(b) 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 No. 2 of Grayson County in civil cases of which the court has appellate or original concurrent jurisdiction with the justice court, where the judgment or amount in controversy does not exceed \$100, exclusive of interest and costs.

(c) This Act shall not be construed to deprive the justice courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the County Court at Law No. 2 of Grayson County over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal to the County Court at Law No. 2 of Grayson County from the justice court where the right of appeal to the county court now exists by law.

Sec. 5. The terms of the County Court at Law No. 2 of Grayson County, and the practice therein, 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 No. 2 of Grayson County shall be held in the Courthouse of Grayson County, and shall begin on the first Monday in February, April, June, August, October, and December of each year, and shall continue in session until the Saturday before the first Monday in

April, June, August, October, December, and February of each year.

Sec. 6. The judge of the County Court at Law No. 2 of Grayson County shall be a qualified voter in Grayson County, shall be a regularly licensed attorney at law in this state, shall be a resident of Grayson County, and shall have been actively engaged in the practice of law for a period of not less than one year next preceding his appointment or election.

Sec. 7. At the general election in 1978 and every four years thereafter, a judge shall be elected for a regular four-year term by the qualified electors of Grayson County.

Sec. 8. Any vacancy in the office of the judge of the County Court at Law No. 2 of Grayson County may 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. 9. In the case of the disqualification of the judge of the County Court at Law No. 2 in any case pending in this court, the county judge or the judge of the County Court at Law of Grayson County may sit in such case, or, 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 Grayson County shall elect a judge to try such cases where the judge of the County Court at Law No. 2 is disqualified.

Sec. 10. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 11. The County Court at Law No. 2 of Grayson County, or 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 jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court, or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Sec. 12. The County Attorney of Grayson County shall represent the state in all prosecutions pending in the County Court at Law No. 2 of Grayson County, and shall be entitled to the same fee as now prescribed by law for such prosecutions in the county courts.

Sec. 13. The County Clerk of Grayson County shall be the clerk of the County Court at Law No. 2 of Grayson 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 No. 2 of Grayson County."

Sec. 14. The jurisdiction or authority now vested by law in the county court for the selection and service of jurors shall be exercised by the County Court at Law No. 2 of Grayson County.

Sec. 15. (a) The judge of the County Court at Law No. 2 of Grayson County may receive an annual salary up to an amount equal to the total annual salary of the County Attorney of Grayson County to be paid out of the county treasury of Grayson County on the order of the commissioners court of the county, and the salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 2 of Grayson County shall assess the same fees as are now prescribed by law relating to the county judge's fee, 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 specified in this section.

(b) The judge of the County Court at Law No. 2 of Grayson County may not actively engage in the private practice of law while serving as judge of the county court at law.

Sec. 16. All cases appealed from the justice court and other inferior courts in Grayson County, Texas, shall be made direct to the County Court at Law of Grayson County or the County Court at Law No. 2 of Grayson County, under the provisions heretofore governing such appeals.

Sec. 17. The judge of the County Court at Law No. 2 of Grayson 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. 18. The judge of the County Court at Law No. 2 of Grayson County may appoint an official shorthand reporter for his court in the manner now provided for district courts in this state who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official shorthand reporter shall receive a salary of not more than the compensation paid the official shorthand reporters of the district courts of Grayson County. The salary shall be fixed, determined, set, and allowed by the commissioners court of Grayson County, and shall be in addition to transcript fees, fees for statement of facts, and all other fees. The salary when so fixed and determined by the commissioners court shall be paid monthly out of the general fund, or the jury fund, or out of any fund available for the purpose as may be determined by the commissioners court, in the same manner as salaries of other county officers are paid. From and after passage of this Act, all provisions relating to official shorthand reporters and their duties in district courts shall in all respects govern, except that the salary of the official shorthand reporter as provided for in this Act shall be fixed and determined by the commissioners court of Grayson County.

Sec. 19. The County Court at Law No. 2 of Grayson County is created on January 1, 1979, or on a date determined by the Commissioners Court of Grayson County by an order entered on its minutes, whichever date is earlier. If the County Court at Law No. 2 is created on January 1, 1979, the office of the judge is initially filled by the judge elected at the general election in 1978. If the County Court at Law No. 2 is created on an earlier date by order of the commissioners court, the governor shall appoint a judge of the County Court at Law No. 2 of Grayson County, who shall serve until the next general election and until his successor shall be duly elected and has qualified.

[Acts 1975, 64th Leg., p. 2027, ch. 669, §§ 1 to 19, eff. Sept. 1, 1975.]

HILL COUNTY

Art. 1970-333. Hill County; Jurisdiction; Clerk's Duties; Shorthand Reporter; County Attorney's Duties

Sec. 1. The County Court of Hill County shall have and exercise the general jurisdiction of a probate Court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the parti-

tion, settlement and distribution of estates of deceased persons pending in such Court; to conduct lunacy hearings; to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such provisions as now or may be provided for by General Law governing County Courts throughout the State; and in addition thereto, the County Court of Hill County and the Judge thereof, subject to the conditions stated in this Act, shall have jurisdiction over matters of original civil jurisdiction, original criminal jurisdiction, appellate civil jurisdiction, and appellate criminal jurisdiction as are normally exercised by County Courts under the Constitution and General Laws of this State; provided, however, that all future Statutes pertaining to probate matters enacted by the Legislature of the State of Texas, shall be operative in said Hill County as fully as though this Statute had not been enacted.

Sec. 2. The Judge of the 66th District Court in Hill County will be the presiding Judge, insofar as the District Court and the county court are concerned, over original and appellate jurisdiction in all civil and criminal matters in causes over which by the laws of this State the County Court of Hill County would have original or appellate jurisdiction; and all such causes will be filed with the District Clerk of Hill County in the District Court. The Judge of the District Court may, in his discretion, assign to the County Court of Hill County, for trial and disposition, cases, or portions of cases, of original and appellate jurisdiction in civil and criminal matters and causes over which, by the General Laws of this State, the County Court of Hill County would have original or appellate jurisdiction. The assignments shall be made by docket notation. The purpose and intent of this Statute is to vest the 66th District Court and the County Court of Hill County with concurrent jurisdiction over matters of original and appellate jurisdiction in all civil and criminal matters over which, by the General Laws of this State, the County Court of Hill County would have original or appellate jurisdiction, subject to the control over assignments of the cases, or parts of the cases, by the District Court, as provided in this section.

Sec. 3. The District Clerk of Hill County shall continue to perform all the clerical functions of the County Court of Hill County as to all matters and causes over which the District Court and County Court have concurrent jurisdiction, as provided in this Act. Insofar as all cases over which the District Court and County Court have concurrent jurisdiction, the Clerk shall charge fees at the rate set by law for County Court cases.

Sec. 4. The Judge of the County Court of Hill County may appoint an official shorthand reporter for his Court in the manner provided for District Courts in this State, who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. In addition to transcript fees, fees for statement of facts and all other fees, the official shorthand reporter shall receive a salary to be fixed by the Commissioners Court of Hill County in an amount not more than the compensation paid the official shorthand reporter of the District Court in Hill County and to be paid out of the General Fund, or the Jury Fund, or out of any fund available for the purpose, as may be determined by the Commissioners Court, in the same manner as salaries of other County officers are paid. All provisions relating to official shorthand reporters and their duties in District Courts shall in all respects govern, except that the salary of the official shorthand reporter shall be fixed and determined by the Commissioners Court of Hill County.

Sec. 5. The duties of the County Attorney of Hill County shall not be changed or affected by this Act, and the County Attorney shall perform the same duties as were performed prior to the passage of this Act.

[Amended by Acts 1975, 64th Leg., p. 657, ch. 274, § 1, eff. May 20, 1975.]

NUECES COUNTY

Art. 1970-339. County Court at Law No. 1 of Nueces County

[See Compact Edition, Volume 3 for text of 1 to 16]

Sec. 17. The Judge of the County Court at Law No. 1 of Nueces County shall receive a salary of Twenty-Five Thousand Dollars per annum, to be paid out by the County Treasury by order of the commissioners court, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law No. 1 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 said Judge, but he shall draw the salary as above specified in this section.

[Amended by Acts 1975, 64th Leg., p. 1940, ch. 636, § 1, eff. Sept. 1, 1975.]

Art. 1970-339A. County Court at Law No. 2 of Nueces County

[See Compact Edition, Volume 3 for text of 1 to 17]

Sec. 18. The Judge of the County Court at Law No. 2 of Nueces County shall receive a salary of Twenty-Five Thousand Dollars per annum, to be

paid out of the County Treasury by order of the commissioners court, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law No. 2 of Nueces County shall assess the same fees as are now prescribed or may be established by law, relating to 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 said Judge, but he shall draw the salary as above specified in this section.

[See Compact Edition, Volume 3 for text of 19 to 27]

[Amended by Acts 1975, 64th Leg., p. 1940, ch. 636, § 2, eff. Sept. 1, 1975.]

Art. 1970-339C. County Court at Law No. 3 of Nueces County

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

Judge

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (d)].

(e) The judge of County Court at Law No. 3 shall receive an annual salary of Twenty-Five Thousand Dollars. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners courts. The judge shall assess the fees prescribed by law for county judges, which fees shall be collected by the clerk of the court and paid into the county treasury.

[See Compact Edition, Volume 3 for text of 4(f) to 9]

[Amended by Acts 1975, 64th Leg., p. 1941, ch. 636, § 3, eff. Sept. 1, 1975.]

HIDALGO COUNTY

Art. 1970-341. County Court at Law of Hidalgo County

[See Compact Edition, Volume 3 for text of 1 to 9]

Sec. 10. The Judge of the County Court at Law shall 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 said Judge. The duties of such reporter shall be the same as provided by general law for reporters of the District Courts and the salary of the reporter shall be set by the Judge as provided by general law for reporters of District Courts and paid monthly by the Commissioners Court out of any funds available for the purpose. The clerk of the Court shall tax as costs in each case, civil, criminal and probate where a record or any part thereof is made of the evidence in said case by the reporter, a stenographer's fee of Three Dollars (\$3). Said fee shall be paid as other costs in the case

and paid by the clerk, when collected, into the general fund of the County.

[See Compact Edition, Volume 3 for text of 11 to 18]

[Amended by Acts 1975, 64th Leg., p. 1018, ch. 387, § 1, eff. June 19, 1975.]

GALVESTON COUNTY

Art. 1970-342. Probate Court of Galveston County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The Commissioners Court of Galveston County shall fix the yearly salary of the Judge of the Probate Court of Galveston County at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge sitting in Galveston County. The salary shall be paid out of the general fund of the County in equal monthly installments by warrants drawn upon the County Treasury upon orders of the Commissioners Court of Galveston County, Texas.

[See Compact Edition, Volume 3 for text of 10]

[Amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 2, eff. Sept. 1, 1975.]

Art. 1970-342a. County Court No. 1 of Galveston County

[See Compact Edition, Volume 3 for text of 1 to 10]

Sec. 11.

[See Compact Edition, Volume 3 for text of 11(a)]

(b) The Commissioners Court of Galveston County shall fix the yearly salary of the Judge of the County Court No. 1 of Galveston County at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge in and for Galveston County. The salary shall be paid to each Judge in equal monthly installments out of the General Fund of Galveston County, Texas, by warrants drawn upon the County Treasury upon orders of the Commissioners Court of Galveston County, Texas.

[See Compact Edition, Volume 3 for text of 12 to 14]

[Amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 1, eff. Sept. 1, 1975.]

Art. 1970-348a. County Court at Law No. 2 of Smith County

Sec. 1. There is created a court to be held in Tyler, Smith County, Texas, which shall be known as the County Court at Law No. 2 of Smith County.

Sec. 2. The County Court at Law No. 2 of Smith County shall have jurisdiction in all matters, causes,

and proceedings, civil, criminal, and probate, original and appellate, over which by the general laws of this state county courts have jurisdiction, and jurisdiction of the County Court at Law No. 2 is concurrent with that of the County Court of Smith County and the County Court at Law of Smith County. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Smith County as the presiding officer of the commissioners court. The County Judge of Smith County shall be the judge of the County Court of Smith County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Smith County, except insofar as the same shall, by this Act, be committed to the judge of the county court at law.

Sec. 3. The County Court at Law No. 2 of Smith County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

Sec. 4. The terms of the County Court at Law No. 2 of Smith County shall be the same as the terms of the County Court of Smith County and may be changed in accordance with the laws governing the change in the terms of the County Court of Smith County.

Sec. 5. (a) The judge of the County Court at Law No. 2 of Smith County shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, shall be well-informed in the laws of the state, and shall have resided in and been actively engaged in the practice of law in Smith County, Texas, for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Smith County shall appoint a judge to the County Court at Law No. 2 of Smith County, and shall provide suitable quarters for the holding of the court. The judge appointed serves until the general election in 1976, and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the County Court at Law No. 2 for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the County Court at Law No. 2 shall be elected for a regular four year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the County Court at Law No. 2 shall be filled by the Commissioners Court of Smith County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

Sec. 6. The judge of the County Court at Law No. 2 of Smith 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. 7. The judge of the County Court at Law No. 2 of Smith 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. 2 of Smith County may be appointed or elected as provided by law relating to county courts and to the judge thereof. He shall receive for each day he actually serves the same compensation as provided for a special judge of the County Court at Law of Smith County, to be paid out of the general fund of the county by the commissioners court.

Sec. 9. In the case of the disqualification of the judge of the County Court at Law No. 2 of Smith County to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge to try the case or cases where the judge of the County Court at Law No. 2 of Smith County is disqualified. In case of the selection of a special judge by agreement of the parties or their attorneys, the special judge shall draw the same compensation as that provided for a special judge in the County Court at Law of Smith County.

Sec. 10. The County Court at Law No. 2 of Smith 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 the county of inferior jurisdiction to the county court at law. The County Court at Law No. 2, or the judge thereof, shall also have the power to punish for contempt as prescribed by law for county courts.

Sec. 11. (a) The judge of the County Court at Law No. 2 may sit in the absence from the courtroom of the County Judge of Smith County in all matters, causes, and proceedings without the necessity of transferring those matters, causes, and proceedings, except matters coming under the jurisdiction of the commissioners court where the county judge would be the presiding officer of that court.

(b) The county judge, if a duly licensed attorney, may sit in the absence from the courtroom of the judge of the County Court at Law No. 2 in all matters and causes without the necessity of transferring those matters and causes. The judges of the county courts at law may freely exchange benches

and courtrooms with each other without the necessity of transferring the case involved.

(c) Except in cases where the writ of certiorari has been granted, the judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 12. The Criminal District Attorney of Smith County shall represent the state in all prosecutions in the County Court at Law No. 2 of Smith 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. 13. The County Clerk of Smith County shall be the clerk of the County Court at Law No. 2 of Smith 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 No. 2 of Smith County."

Sec. 14. The Sheriff of Smith County shall in person or by deputy attend the County Court at Law No. 2 of Smith County when required by the judge thereof.

Sec. 15. The jurisdiction and authority now vested by law in the County Court of Smith 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 No. 2 of Smith County and the judge thereof. Jurors and talesmen summoned for either of the county courts at law or the county court may by order of the judge of the court in which they are summoned be transferred to the other courts for service and may be used as if summoned for the court to which they may be thus transferred. On concurrence of the judges of the county courts at law and the judge of the County

Court of Smith County, jurors may be summoned for service in all of those courts and shall be used interchangeably in all 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 the 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. 16. 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 No. 2 of Smith County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law No. 2 of Smith County.

Sec. 17. The judge of the County Court at Law No. 2 of Smith County shall receive an annual salary equal to the annual salary of the judge of the County Court at Law of Smith County as set by the commissioners court, to be paid out of the county treasury on the order of the commissioners court. The salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 2 of Smith 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, no part of which shall be paid to the judge, but he shall draw the salary as above specified in this section.

Sec. 18. The judge of the County Court at Law No. 2 of Smith County may appoint an official shorthand reporter for the 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. The reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Smith County to be paid out of the county treasury of Smith County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall be and are hereby made to apply in all provisions in so far as they are applicable to the official shorthand reporter authorized to be appointed and in so far as they are not inconsistent with this Act.

Sec. 19. The judge of the County Court at Law No. 2 of Smith County, with the consent of the commissioners court, may employ a secretary. The

secretary is entitled to a salary as determined by the commissioners court.

[Acts 1975, 64th Leg., p. 2031, ch. 672, §§ 1 to 19, eff. Sept. 1, 1975.]

BELL COUNTY

Art. 1970-350. County Court at Law No. 1 of Bell County

[See Compact Edition, Volume 3 for text of 1]

Change of Name

Sec. 1A. The name of the County Court at Law of Bell County is changed to County Court at Law No. 1 of Bell County, and all laws heretofore or hereafter enacted by the Legislature applicable or relating to the County Court at Law of Bell County shall hereafter be applicable and shall relate to the County Court at Law No. 1 of Bell County.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1975, 64th Leg., p. 79, ch. 37, § 7, eff. April 3, 1975.]

Art. 1970-350a. County Court at Law No. 2 of Bell County

Sec. 1. (a) On the effective date of this Act, the County Court at Law No. 2 of Bell County is created.

(b) The County Court at Law No. 2 has the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with that of the County Court of Bell County and the County Court at Law of Bell County.

(c) The County Court at Law No. 2 of Bell County, or its judge, may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court; and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court of inferior jurisdiction in the county. The court and judge also have the power to punish for contempt as prescribed by law for county courts.

(d) The County Judge of Bell County is the Judge of the County Court of Bell County. All ex officio duties of the county judge shall be exercised by the Judge of the County Court of Bell County unless by this Act committed to the Judge of the County Court at Law No. 2.

Sec. 2. The Commissioners Court of Bell County, by order duly entered of record, shall prescribe not less than four terms each year for the County Court at Law No. 2 of Bell County.

Sec. 3. (a) As soon as practicable after this Act becomes effective, the Commissioners Court of Bell County shall appoint a judge to the County Court at Law No. 2 of Bell County. The judge appointed serves until January 1, 1977, and until his successor has qualified. At the general election in 1976, a successor shall be elected to serve until January 1, 1979. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Bell County a judge of the County Court at Law No. 2 of Bell County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) The Judge of the County Court at Law No. 2 of Bell County must have been a duly licensed and practicing member of the State Bar of Texas for not less than three years, be well informed in the laws of this state, and must have resided and been actively engaged in the practice of law in Bell County for a period of not less than two years prior to his election or appointment. During his term of office the Judge may not appear and plead as an attorney at law in any court of record in this state.

(c) If any vacancy occurs in the office of the Judge of the County Court at Law No. 2, the commissioners court shall appoint the Judge of the County Court at Law No. 2, who must have the same qualifications prescribed in Subsection (b) of this section, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and qualified.

(d) The Judge of the County Court at Law No. 2 shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(e) The Judge of the County Court at Law No. 2 shall receive a salary in an amount determined by the commissioners court not to exceed the salary prescribed by the commissioners court for the County Judge of Bell County. Such salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The Judge of the County Court at Law No. 2 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judge.

(f) A special judge of the County Court at Law No. 2 may be appointed in the manner provided by law for the appointment of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) The Judge of the County Court at Law No. 2 shall be a member of the Juvenile Board of Bell County, and for this additional work as a member of the juvenile board he shall be allowed compensation in like manner as other members of said juvenile board, such compensation to be determined and fixed by order of the commissioners court and to be paid in addition to any other compensation to which he is entitled under the provisions of law.

Sec. 4. (a) The County Attorney, County Clerk, and Sheriff of Bell County, Texas, shall serve as County Attorney, Clerk, and Sheriff, respectively, of the County Court at Law No. 2 of Bell County. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices in Bell County.

(b) The Judge of the County Court at Law No. 2 may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Bell County.

Sec. 5. (a) Practice in the County Court at Law No. 2 of Bell County shall conform to that prescribed by law for the County Court of Bell County.

(b) The Judge of each of the County Courts at Law or the County Court of Bell County may, in his discretion, either in term-time or in vacation, on motion of any party or on agreement of the parties, or on his own motion, transfer any cause, civil or criminal, on his docket to the docket of either of those courts, and the judges of those courts may, in their discretion, exchange benches from time to time. Whenever a judge of one of those courts is disqualified, he shall transfer the case from his court to one of the other courts, and either judge may, in his own courtroom, try and determine any case or proceeding pending in either of the county courts at law or the county court, without having the case transferred, or may sit in the other court and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The 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 county court at law or the county court. In case of absence, sickness, or disqualification of the judge of either of the county courts at law or the county court, either of the other judges may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the county courts at law or the county court and determine the same or may hear and determine any question in any case, and either judge may complete the hearing and render judgment.

ment in the case. In cases transferred to one of the county courts at law or the county court by order of the judge of one of the other courts, all process, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in the cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law and by this Act. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken in the cases, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) Jurors regularly impaneled for the week by the District Courts of Bell County, Texas, may at the request of either the Judge of the County Court, the County Court at Law, or the County Court at Law No. 2 be made available by the district judges in the numbers requested and shall serve for the week in either the County Court, the County Court at Law, or the County Court at Law No. 2.

[Acts 1975, 64th Leg., p. 79, ch. 37, §§ 1 to 5, eff. April 3, 1975; Acts 1975, 64th Leg., p. 670, ch. 283, § 1, eff. May 20, 1975.]

BRAZORIA COUNTY

Art. 1970-357. County Courts at Law Nos. 1 and 2 of Brazoria County

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3.

[See Compact Edition, Volume 3 for text of 3(a) to (d)]

(e) The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall each receive compensation prescribed by the Commissioners Court of Brazoria County in an amount not less than \$26,500 per year. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judges.

[See Compact Edition, Volume 3 for text of 3(f) to 6]

Sec. 7. The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall

be members of the Juvenile Board of Brazoria County.

[Amended by Acts 1975, 64th Leg., p. 812, ch. 316, §§ 1 and 2, eff. Sept. 1, 1975.]

BRAZOS COUNTY

Art. 1970-359. County Court at Law of Brazos County

[Text of article effective Jan. 1, 1977]

Sec. 1. On January 1, 1977, the County Court at Law of Brazos County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, original and appellate, civil, criminal, juvenile, and probate, prescribed by law for county courts.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Brazos County, and its jurisdiction is concurrent with that of the County Court of Brazos County in probate, administrations, guardianship, and mental illness proceedings. The County Court of Brazos County shall have no other jurisdiction, civil or criminal, original or appellate. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Brazos County as the presiding officer of the commissioners court.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases, in juvenile proceedings if designated to serve as juvenile court, and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(e) The County Judge of Brazos County is the judge of the County Court of Brazos County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Brazos County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Brazos County are the same as those for the County Court of Brazos County.

Sec. 4. (a) The judge of the County Court at Law of Brazos County must be a duly licensed and

practicing member of the State Bar of Texas who has been a bona fide resident of Brazos County, and actively engaged in the practice of law in Brazos County for a period of not less than two years prior to his appointment or election.

(b) At the general election in 1976, there shall be elected by the qualified voters of Brazos County a judge of the court created by this Act for a two-year term beginning on January 1, 1977. Every four years thereafter, this officer shall be elected by the qualified voters of Brazos County for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Brazos County, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Brazos County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Brazos County shall receive a salary to be determined by the Commissioners Court of Brazos County in an amount not less than the salary of the county judge of Brazos County and to be paid from the same fund and in the same manner as other county officials. He shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The commissioners court shall provide adequate courtroom and office space for the judge of the County Court at Law of Brazos County.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff in Brazos County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Brazos County. They shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter, who must meet

the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Brazos County.

(c) The seal of the court shall contain the words "County Court at Law of Brazos County," but in other respects is identical with the seal of the County Court of Brazos County.

Sec. 6. (a) Practice in the County Court at Law of Brazos County shall conform to that prescribed by law for county courts.

(b) After the effective date of this Act, all cases of concurrent jurisdiction provided for in this Act may be instituted in or transferred between the courts having concurrent jurisdiction.

(c) The Judge of the County Court at Law of Brazos County or the Judge of the County Court of Brazos County may, in his discretion, either in term-time or in vacation, on motion of any party or on agreement of the parties, or on his own motion, transfer any probate matter on his docket to the docket of the other court. The judges of the courts may, in their discretion, in any probate matter exchange benches from time to time. Whenever a judge in one of the courts is disqualified in a probate matter, he shall transfer the matter from his court to the other court. Either judge may, in his own courtroom, try and determine any probate matter pending in either court, without having the case transferred, or may sit in the other court and there hear and determine any probate matter there pending. Each judgment and order shall be entered in the minutes of the court in which the matter is pending. The judges may try different probate matters in the same court at the same time and each may occupy his own courtroom or the courtroom of the other. In case of absence, sickness, or disqualification of either judge, the other judge may hold court for him in any probate matter. Either of the judges may hear any part of or question in any probate matter pending in either of the courts and determine the matter or question. Either judge may complete the hearing and render judgment in the case. In any matter transferred by order of the judge of one of the courts, all process, writs, bonds, recognizances, or other obligations issued or made in the matter shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in the matter shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the matter is transferred to as are fixed by law and by this Act. All processes issued or returned before transfer of the matter as well as all bonds and recognizances before taken shall be valid and binding as though originally issued out of the court to which the transfer may be made.

Sec. 7. (a) The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(b) Jurors regularly impaneled for a week by the district court may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law. [Acts 1975, 64th Leg., p. 110, ch. 50, eff. Jan. 1, 1977.]

Section 8 of the 1975 Act amended Acts 1959, 56th Leg., p. 4, ch. 2 (art. 1970-310 note) and § 9 thereof provided: "With the exception of Section 4, Subsections (a) and (b), this Act becomes effective on January 1, 1977."

WEBB COUNTY

Art. 1970-360. County Court at Law of Webb County

Sec. 1. The County Court at Law of Webb County is created. It shall sit in Laredo.

Sec. 2. The County Court at Law of Webb County has the same jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Webb County. The county court at law also has concurrent jurisdiction with the County Court of Webb County in all matters of probate, and shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and shall 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 settlement, partition, and distribution of the estates of deceased persons, and apprentice minors as provided by law.

Sec. 3. (a) The County Court at Law of Webb County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$10,000, exclusive of interest.

(b) In addition to the jurisdiction conferred on the County Court at Law of Webb County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district courts of Webb County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglected, or dependent child proceedings, Uniform Reciprocal Enforcement of Support Act, and all jurisdiction, powers, and authority now or hereafter placed in the district or county courts under the juvenile and child welfare laws of this state; and of all divorce, marriage, and annulment cases, including

the adjustment of property rights and custody and support of minor children involved therein, alimony pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minors, change of name of persons, and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons; corporations, trustees, or other legal entities, which are now or may hereafter be within the jurisdiction of the district or county courts; all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law, and the county court at law and its judge have power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction. The provisions in this subsection do not diminish the jurisdiction of the several district courts in Webb County, and the district courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this subsection is concurrent with the jurisdiction of the district courts.

Sec. 4. The County Court of Webb County shall have and retain concurrently with the court created by this Act the general jurisdiction of a probate court. The county court shall have no other jurisdiction, civil or criminal, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Webb County, except as provided by this Act or otherwise provided by law.

Sec. 5. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Webb County which is now performed by the County Judge of Webb County.

Sec. 6. The County Court at Law of Webb County shall hold six terms of court each year, commencing on the first Monday in January, March, May, July, September, and November of each year and each term shall continue until the business of the

court has been disposed of. However, no term of the court shall continue beyond the date fixed for the commencement of its new term, except on an order entered on its minutes during the term extending the term for any particular cause therein specified.

Sec. 7. (a) The judge of the county court at law shall have been a bona fide resident of Webb County for two years prior to his appointment or election and shall be a qualified voter in Webb County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to this appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this Act becomes effective, the Commissioners Court of Webb County shall appoint a judge to the County Court at Law of Webb County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until the general election in 1976 and until his successor has been duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every fourth year thereafter there shall be elected by the qualified voters of Webb County a judge of the County Court at Law of Webb County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Webb County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law shall receive a salary of not less than \$20,000 per annum and no more than \$30,000 per annum, to be paid out by the county treasury by order of the commissioners court, and the salary shall be paid monthly in equal installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the County Court at Law of Webb 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 judge, but he shall draw the salary as specified in this section.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 8. (a) The District Attorney of the 49th Judicial District and the Sheriff of Webb County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Webb County. The District Clerk of Webb County shall serve as clerk of the county court at law in the cases enumerated in Section 3 of this Act, and the County Clerk of Webb County shall serve as clerk of the county court at law in cases enumerated in Section 2 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Webb County.

Sec. 9. (a) As soon as practicable following the effective date of this Act, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Webb County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Webb County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Webb County by order of the judge of another court,

all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated or included in Section 3 of this Act may be instituted in or transferred between the district courts of Webb County and the County Court at Law of Webb County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judge of the county court at law is cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 10. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (b), Section 3 of this Act shall be governed by the provisions of this Act and the laws

and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Subsection (b), Section 3 of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 11. The Commissioners Court of Webb County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 12. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Webb County."

[Acts 1975, 64th Leg., p. 152, ch. 65, eff. Sept. 1, 1975.]

NACOGDOCHES COUNTY

Art. 1970-361. County Court at Law of Nacogdoches County

Sec. 1. On the effective date of this Act, the County Court at Law of Nacogdoches County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts. The County Court of Nacogdoches County shall have no jurisdiction over the matters of which jurisdiction is given to the county court at law by this Act. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Nacogdoches County as the presiding officer of the Commissioners Court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Nacogdoches County is the judge of the County Court of Nacogdoches County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Nacogdoches County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Nacogdoches County shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 4. (a) The judge of the County Court at Law of Nacogdoches County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Nacogdoches County for two years prior to his appointment or election and actively engaged in the practice of law in the State of Texas for a period of not less than five years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Nacogdoches County shall appoint a judge to the County Court at Law of Nacogdoches County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Nacogdoches County a judge of the County Court at Law of Nacogdoches County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Nacogdoches County, and the appointee holds office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Nacogdoches County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Nacogdoches County shall receive an annual salary to be fixed by the Commissioners Court of Nacogdoches County at an amount not less than \$15,000 or more than 80 percent of the total annual salary paid to the judge of the 145th Judicial District of Texas. This sum shall be paid in equal monthly installments out of the county treasury of Nacogdoches County on orders from the commissioners court. Additional-

ly, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Nacogdoches County shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury. During his term of office, the judge of the County Court at Law of Nacogdoches County shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try or recuses himself from trying a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The County Attorney, County Clerk, and Sheriff of Nacogdoches County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Nacogdoches County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law of Nacogdoches County may appoint an official shorthand reporter for the court who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the County Court at Law of Nacogdoches County. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary, not to exceed the compensation paid to the official shorthand reporter of the district court of Nacogdoches County, to be determined by the judge of the county court at law and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Nacogdoches County," but in other respects is identical with the seal of the County Court of Nacogdoches County.

Sec. 6. (a) Practice in the County Court at Law of Nacogdoches County shall conform to that prescribed by general law for county courts.

(b) All cases and matters, civil, criminal, and probate, original and appellate, pending before the

County Court of Nacogdoches County on the effective date of this Act are transferred to the County Court at Law of Nacogdoches County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law.

Sec. 7. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

[Acts 1975, 64th Leg., p. 248, ch. 99, eff. April 30, 1975.]

COLLIN COUNTY

Art. 1970-362. County Court at Law of Collin County

Sec. 1. The County Court at Law of Collin County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Collin County, and its jurisdiction is concurrent with that of the County Court of Collin County in probate, administrations, guardianship, and mental-illness proceedings. The County Court of Collin County has the general jurisdiction of a probate court but does not have jurisdiction over matters of eminent domain or other original civil or criminal jurisdiction or appellate civil or criminal jurisdiction. All future statutes pertaining to probate matters enacted by the legislature shall be operative in Collin County as fully as though this statute had not been enacted. The County Judge of Collin County is the judge of the County Court of Collin County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Collin County unless by this Act committed to the judge of the county court at law.

(c) The county court at law has jurisdiction concurrent with the district court in eminent-domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, se-

questration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 3. The terms of the county court at law shall commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Sec. 4. (a) The judge of the County Court at Law of Collin County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Collin County and actively engaged in the practice of law in Collin County for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Collin County shall appoint a judge to the County Court at Law of Collin County. The judge appointed serves until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the county court at law shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the county court at law shall be filled by the Commissioners Court of Collin County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the County Court at Law of Collin County shall receive an annual salary to be fixed by the Commissioners Court of Collin County at an amount not less than \$18,000 nor more than 80 percent of the total annual salary paid to the judge of a district court having jurisdiction in Collin County. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for

county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

(e) The judge of the County Court at Law of Collin County is a member of the Juvenile Board of Collin County.

(f) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) During his term of office, the judge of the county court at law shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

Sec. 5. (a) The Criminal District Attorney, County Clerk, and Sheriff of Collin County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Collin County. They shall perform the duties and are entitled to the compensation, fees, and allowance prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Collin County.

(c) The seal of the court shall contain the words "County Court at Law of Collin County," but in other respects is identical with the seal of the County Court of Collin County.

Sec. 6. (a) Practice in the County Court at Law of Collin County shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for the county courts apply to the county court at law.

Sec. 7. All cases and matters within the jurisdiction of the County Court at Law of Collin County pending before the 199th District Court on the effective date of this Act are transferred to the County Court at Law of Collin County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the

county court at law. If, in a civil or criminal case within the jurisdiction of the County Court at Law of Collin County on appeal from the 199th District Court, the court of civil appeals, the supreme court, or the court of criminal appeals enters judgment remanding the case for a new trial or for further proceedings, the case shall be remanded to the County Court at Law of Collin County, and all jurisdiction in respect to that particular case shall thereafter vest in the county court at law. The county clerk and district clerk shall promptly take all necessary steps to effect the transfer of a certified bill of cost and any unused cost deposit or jury fee, all original papers, and certified copies of interlocutory judgments or orders in the cases transferred and shall docket the cases on the docket of the county court at law in the same manner and place as each stands on the docket of the 199th District Court. This Act does not affect final judgments heretofore rendered by the 199th District Court pertaining to matters and causes transferred to the county court at law by this Act, and the district court retains jurisdiction to enforce those final judgments.

[Acts 1975, 64th Leg., p. 375, ch. 166, eff. Jan. 1, 1976.]
 Section 8 of the 1975 Act amended §§ 1 to 3 of art. 5139HHH; § 9 repealed subsecs. (b) to (e) of art. 199a, § 3.028; and § 10 provided: "The effective date of this Act is January 1, 1976."

MONTGOMERY COUNTY

Art. 1970-363. County Court at Law No. 1 of Montgomery County

Sec. 1. On the effective date of this Act, the County Court at Law No. 1 of Montgomery County is created.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for the County Court of Montgomery County, and its jurisdiction is concurrent with that of the County Court of Montgomery County.

(b) The county court at law shall have and exercise original concurrent jurisdiction with the justice courts in all criminal matters which by the general laws of this state are conferred on justice courts. This Act does not deprive the justice courts of the jurisdiction now conferred on him by law, but grants concurrent original jurisdiction to the County Court at Law No. 1 of Montgomery County over the matters specified in this Act. This Act does not deny the right of appeal to the County Court at Law No. 1 of Montgomery County from the justice court where the right of appeal to the county court now exists by law.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

Sec. 3. (a) The county court at law or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(b) The County Judge of Montgomery County is the judge of the County Court of Montgomery County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Montgomery County unless by this Act committed to the judge of the county court at law.

(c) The judge of the County Court at Law No. 1 of Montgomery County is a member of the Montgomery County Juvenile Board.

Sec. 4. The terms of the County Court at Law No. 1 of Montgomery County are the same as those for the County Court of Montgomery County.

Sec. 5. (a) The judge of the County Court at Law No. 1 of Montgomery County must be a duly licensed and practicing member of the State Bar of Texas for not less than five years who has resided in and been actively engaged in the practice of law in Montgomery County for a period of not less than two years prior to his appointment or election, and shall be well informed in the laws of the state.

(b) When this Act becomes effective, the Commissioners Court of Montgomery County shall appoint a judge to the County Court at Law No. 1 of Montgomery County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the next general election after the effective date of this Act, a judge shall be elected to serve until January 1, 1979. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Montgomery County a judge of the County Court at Law No. 1 of Montgomery County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Montgomery County, and the appointee holds office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified.

(c) During his term of office, the judge shall not engage in the private practice of law while serving as the county court at law judge.

(d) The judge of the County Court at Law No. 1 of Montgomery County shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(e) The judge of the County Court at Law No. 1 of Montgomery County shall receive a salary to be determined by the Commissioners Court of Montgomery County in an amount not less than the salary of the County Judge of Montgomery County. He shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge.

(f) A special judge of the county court at law may be appointed in the manner provided by law for the appointment of a special county judge when the judge of the county court at law is disqualified. A special judge must have the same qualifications as the judge of the county court at law and is entitled to the same rate of compensation as the regular judge.

Sec. 6. (a) The County Attorney of Montgomery County shall represent the state in all prosecutions in the County Court at Law No. 1 of Montgomery County, as provided by law for prosecutions in the county court.

(b) The County Clerk and Sheriff of Montgomery County shall serve as clerk and sheriff, respectively, of the County Court at Law No. 1 of Montgomery County. The Commissioners Court of Montgomery County may employ as many additional deputy sheriffs and clerks as are necessary to serve the court created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Montgomery County.

(c) The judge of the county court at law shall appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Montgomery County, and shall serve at the pleasure of the judge of the county court at law.

Sec. 7. (a) Practice in the County Court at Law No. 1 of Montgomery County shall conform to that prescribed by law for the County Court of Montgomery County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them.

However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and court-rooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to either of the courts by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The jurisdiction and authority now vested by law in the County Court of Montgomery County and the judge thereof for the drawing, selection, and service of jurors shall also be exercised by the County Court at Law No. 1 of Montgomery County and the judge of the county court at law. Jurors summoned for either of the courts may by order of the judge of the court in which they are summoned be transferred to the other court for service and may be used as if summoned for the court to which they may be transferred. On concurrence of the Judge of the County Court at Law No. 1 of Montgomery County and the Judge of the County Court of Montgomery County, jurors may be summoned for service in both courts and shall be used interchangeably in both 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 the 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. 9. (a) The Commissioners Court of Montgomery County shall furnish and equip a suitable courtroom and office space for the county court at law.

(b) The county court at law shall have a seal identical with the seal of the County Court of Montgomery County, except that it shall contain the words "County Court at Law No. 1 of Montgomery County."

Sec. 10. This Act becomes effective on July 1, 1975.

[Acts 1975, 64th Leg., p. 439, ch. 186, eff. Sept. 1, 1975.]

FORT BEND COUNTY

Art. 1970-364. County Court at Law of Fort Bend County

Sec. 1. (a) The County Court at Law of Fort Bend County is created.

(b) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts and its jurisdiction is concurrent with that of the County Court of Fort Bend County.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided by general law.

(d) The county court at law, or its judge, may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court; and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court of inferior jurisdiction in the county. The court and judge also have the power to punish for contempt as prescribed by law for county courts.

(e) The County Judge of Fort Bend County is the judge of the County Court of Fort Bend County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Fort Bend County unless by this Act committed to the judge of the county court at law.

Sec. 2. The terms of the County Court at Law of Fort Bend County are the same as those for the County Court of Fort Bend County.

Sec. 3. (a) The judge of the County Court at Law of Fort Bend County shall be a qualified voter of Fort Bend County. He shall be a regularly

licensed attorney at law in this state, and shall have resided in this state and have been actively engaged in the practice of law or as the judge of a court for a period of not less than three years next preceding his appointment of election.

(b) On the effective date of this Act the Commissioners Court of Fort Bend County shall make the initial appointment of the judge, who shall serve until the general election in 1976 and until his successor shall be duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the county court at law shall be elected for a regular four year term as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitution. Any vacancy occurring in the office of the judge of the County Court at Law of Fort Bend County shall be filled by the Commissioners Court of Fort Bend County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the county court at law shall receive a salary in an amount not less than \$18,000, and other compensation for office expense, travel expense, service on the juvenile board, and other allowances paid by the county. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may be paid to the judge.

(e) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications and is entitled to the same rate of compensation, as the regular judge.

Sec. 4 (a) The Criminal District Attorney, County Clerk, and Sheriff of Fort Bend County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Fort Bend County. The Commissioners Court of Fort Bend County may employ as many additional assistant criminal district attorneys, deputy sheriffs, and clerks as are necessary to serve the court created by this Act. Those serving shall perform the duties and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices in Fort Bend County.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Fort Bend County.

Sec. 5. (a) Practice in the County Court at Law of Fort Bend County shall conform to that prescribed by law for the County Court of Fort Bend County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts so that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred to the county court at law unless it is within the jurisdiction of that court.

(c) Jurors regularly impaneled for the week by the district courts of Fort Bend County, may, at the request of either the judge of the county court or of the county court at law, be made available by the district judges in the numbers requested and shall serve for the week in either or both the county court or the county court at law.

Sec. 6. The judge of the County Court at Law of Fort Bend County shall be a member of the Juvenile Board of Fort Bend County and receive the same additional compensation for service on the juvenile board as paid by Fort Bend County to the County Judge of Fort Bend County for acting as a member of the juvenile board.

Sec. 7. The effective date of this Act is November 1, 1975.

[Acts 1975, 64th Leg., p. 797, ch. 308, eff. Nov. 1, 1975.]

HOUSTON COUNTY

Art. 1970-365. County Court at Law of Houston County

Sec. 1. On the effective date of this Act, the County Court at Law of Houston County is created.

Sec. 2 (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts. The County Court of Houston County shall have no jurisdiction over the matters of which jurisdiction is given to the county court at law by this Act. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Houston County as the presiding officer of the commissioners court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in contro-

versy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Houston County is the judge of the County Court of Houston County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Houston County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Houston County shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 4. (a) The judge of the County Court at Law of Houston County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Houston County for two years prior to his appointment or election and actively engaged in the practice of law in the State of Texas for a period of not less than five years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Houston County shall appoint a judge to the County Court at Law of Houston County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Houston County a judge of the County Court at Law of Houston County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Houston County, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Houston County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Houston County shall receive an annual salary to be fixed by the Commissioners Court of Houston County. This sum shall be paid in equal monthly installments out of the county treasury of Houston County on orders from the commissioners court. Additionally, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Houston County shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury. During his term of office, the judge of the County Court at Law of Houston County shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try or excuses himself from trying a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Houston County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Houston County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law of Houston County may appoint an official shorthand reporter for the court, who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the County Court at Law of Houston County. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary not to exceed the compensation paid to the official shorthand reporter of the district court of Houston County, to be determined by the judge of the county court at law and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Houston County," but in other respects is identical with the seal of the County Court of Houston County.

Sec. 6. (a) Practice in the County Court at Law of Houston County shall conform to that prescribed by general law for county courts.

(b) All cases and matters, civil, criminal, and probate, original and appellate, pending before the County Court of Houston County on the effective date of this Act are transferred to the County Court at Law of Houston County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law.

Sec. 7. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

[Acts 1975, 64th Leg., p. 1953, ch. 644, eff. Sept. 1, 1975.]

HENDERSON COUNTY

Art. 1970-366. County Court at Law of Henderson County

Sec. 1. On the date determined by the provisions of Section 8 of this Act, the County Court at Law of Henderson County is created.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as prescribed by law for county courts, and its jurisdiction in those matters is concurrent with that of the County Court of Henderson County. This provision does not affect the jurisdiction of the Commissioners Court or of the County Judge of Henderson County as the presiding officer of the commissioners court as to roads, bridges, public highways, and all other matters which are now within the jurisdiction of the commissioners court or the county judge as presiding officer. The County Court of Henderson County shall retain the general jurisdiction of a probate court and the county court at law does not have probate jurisdiction.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, su-

perseades, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Henderson County is the judge of the County Court of Henderson County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Henderson County.

Sec. 3. The terms of the County Court at Law of Henderson County are the same as those for the County Court of Henderson County.

Sec. 4. (a) The judge of the County Court at Law of Henderson County must be a duly licensed and practicing member of the State Bar of Texas. He may not actively engage in the private practice of law while serving as judge of the county court at law.

(b) The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Henderson County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Henderson County shall receive a salary to be determined by the Commissioners Court of Henderson County in an amount not less than \$20,000 per year nor more than \$25,000 per year and to be paid from the same fund and in the same manner as other county officials. In addition to a salary, the commissioners court may provide office and traveling expenses which it deems necessary. The judge of the county court at law shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Henderson County shall serve as

county attorney, clerk, and sheriff, respectively, of the County Court at Law of Henderson County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Henderson County.

(c) The seal of the court shall contain the words "County Court at Law of Henderson County," but in other respects is identical with the seal of the County Court of Henderson County.

Sec. 6. (a) Practice in the County Court at Law of Henderson County shall conform to that prescribed by law for the County Court of Henderson County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to either of the courts by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds, or

recognizances at the terms of the court to which the cases are transferred to as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 7. (a) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(b) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 8. (a) It is expressly provided that the provisions of this Act shall not become effective until the Commissioners Court of Henderson County enters an order adopting the same.

(b) When this Act becomes effective, the Commissioners Court of Henderson County shall have the option of either appointing a judge to the County Court at Law of Henderson County or allowing said judge to be elected at the next general election. If a judge is appointed, said judge serves until the next general election and until his successor has been duly elected and has qualified. If a judge is appointed or elected as provided herein and completes an unexpired term, then said judge shall stand for election at the next general election and every fourth year thereafter for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. If this Act is made effective and a judge of the County Court at Law is elected for the first time to a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution, said judge shall stand for election every fourth year thereafter as provided in said sections of the Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Henderson County until the next general election. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for the removal of county judges.

Sec. 9. The Henderson County Commissioners Court is hereby empowered to submit the question of creating a county court at law for Henderson County to a vote of the people of Henderson County at any countywide general or special election.

[Acts 1975, 64th Leg., p. 1971, ch. 654, eff. June 19, 1975.]

TITLE 42

COURTS—PRACTICE IN DISTRICT AND COUNTY

CHAPTER THREE. CITATION

Article

2039b. Citation of Nonresidents for Tax Purposes [NEW].

Art. 2039b. Citation of Nonresidents for Tax Purposes

Acceptance of Benefits Relating to Taxation Deemed Equivalent to Appointment of Agent

Sec. 1. In addition to any procedures for citation provided under Rule 117a, Texas Rules of Civil Procedure, the acceptance by a nonresident of this state, or by a person who was a resident of this state at the time of the accrual of a cause of action but who subsequently removes therefrom, of the rights, privileges, and benefits extended by law to such person(s) of owning, having, or claiming an interest in property, real or personal, subject to taxation by the State of Texas and its legal subdivisions, or any of them, shall be deemed equivalent to appointment by such nonresident of the comptroller of public accounts of this state or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against such nonresident(s) growing out of taxation by the state and its legal subdivisions, or any of them, of property in which such nonresident(s) owned, had, or claimed a taxable interest on the first day of any tax year(s) for which taxes on such property have not been paid. Such service of process, as herein provided, shall have the same effect as if made personally on the defendant within the State of Texas.

Manner and Method of Service

Sec. 2. Service of process under this Act shall be in the same manner and method as that prescribed in Chapter 125, Acts of the 41st Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the 56th Legislature, Regular Session, 1959 (compiled as Article 2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the chairman of the state highway commission; provided, however, in the service of such process certified mail shall be used rather than registered mail.

"Nonresidents" Defined

Sec. 3. "Nonresidents" as used in this Act includes corporations, partnerships and all other legal

entities or representatives owning, having, or claiming a taxable interest in such property at the time(s) specified in Section 1 hereof.

Severability Clause

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 1900, ch. 607, eff. Sept. 1, 1975.]

CHAPTER SIX. CERTAIN DISTRICT COURTS

Art. 2093e. Assignment Clerk of Districts Courts of Bexar County

A majority of the Judges of the 37th, 45th, 57th, 150th, 131st, 166th, 144th, 175th, 186th, 187th, and 73rd District Courts may appoint an Assignment Clerk to serve said Courts in Bexar County under the presiding Judge of said District Courts in the setting and disposing of cases on the general docket. Such Assignment Clerk shall perform such duties as are assigned to him by said Judges in connection with the setting and disposing of cases. The salary of such Clerk shall be set by the Commissioners Court of Bexar county and paid in monthly installments out of the General Fund or the Jury Fund of such County, as the Commissioners Court may provide, on voucher approved by the Presiding Judge of said Courts; such salary shall be not less than \$17,000 per annum. The appointment shall be for a term of two (2) years, but he shall be subject to dismissal by a majority of said Judges for inefficiency or misconduct.

[Amended by Acts 1975, 64th Leg., p. 1936, ch. 633, § 1, eff. Sept. 1, 1975.]

CHAPTER SEVEN. THE JURY

1. JURIES IN CERTAIN COUNTIES

Art. 2101. Interchangeable Juries

The provisions of this article shall be applicable only to such counties of this State as may now maintain three or more district courts, or in which three or more district courts may be hereafter established. A criminal court in any county with jurisdiction in felony cases shall be considered a district court within the meaning of this article. The "In-

terchangeable Jury Law" shall not apply to a selection of jurors in lunacy cases or in capital cases.

[See Compact Edition, Volume 3 for text of 1 to 5]

6. A. Notwithstanding any other provision of this article, in a county in which two district courts have jurisdiction, both district judges may meet together at such times as they may agree upon and determine approximately the number of jurors that are reasonably necessary for jury service in the district courts of the county for each week for as many weeks in advance as they deem proper, and may order the drawing of such number of jurors for each of said weeks, which jury is known as the general panel of jurors for service in both district courts for the respective weeks for which they are designated to serve. Both judges shall act together in carrying out the provisions of this section. They may increase or diminish the number of jurors to be selected for any week and may order the jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the judge to whom the general panel shall report for duty, and the designated judge, for the time he is chosen to act, shall organize the juries and have immediate supervision and control of them. The jurors, after being regularly drawn from the wheel, shall be served by the sheriff to appear and report for jury service before the judge so designated, who shall hear the excuses of the jury and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in either of the district courts. The jurors, when impaneled, constitute a general jury panel for service as jurors in both district courts in the county and shall be used interchangeably. In the event of a deficiency of jurors at any given time to meet the requirement of either court, the judge having control of the general panel shall order such additional jurors to be drawn from the wheel as may be sufficient to meet the emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no longer needed. Resort to the wheel shall be had in all cases to fill out the general panel.

B. With the approval of both district judges, jurors impaneled under the provisions of Subdivision A of this subsection may constitute a general jury panel for service as jurors in all county courts and statutory county courts in the county, in addition to service as jurors in both district courts, and in such event, shall be used interchangeably in all district and county courts.

C. The provisions of this subsection are cumulative of and in addition to the methods now authorized by law for the selection of a jury panel in the counties herein named, and the adoption of the method provided in this subsection is entirely option-

al with and in the discretion of the district judges of any such county coming under the terms of this law. [Amended by Acts 1975, 64th Leg., p. 330, ch. 137, § 1, eff. May 8, 1975.]

3. JURY FOR THE WEEK

Art. 2122. Pay of Jurors

(a) Each grand juror and each petit juror in a civil or criminal case in a district or criminal district court, county court, county court at law, or justice court is entitled to receive not less than \$5 nor more than \$30 for each day or fraction of a day that he serves as a juror. The commissioners court of each county shall determine annually, within the minimum and maximum prescribed in this subsection, the amount of per diem for jurors, which shall be paid out of the jury fund of the county. A person who responds to the process of a court, but who is excused from petit jury service by the court for any cause after being tested on voir dire, is entitled to receive not less than \$5 nor more than \$30 for each day or fraction of a day that he attends court in response to such process.

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

[Amended by Acts 1975, 64th Leg., p. 1353, ch. 510, § 1, eff. Sept. 1, 1975.]

4. THE JURY IN COURT

Art. 2133. Qualifications

All persons both male and female eighteen years of age or older 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.
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 a felony.
6. He must not be under indictment or other legal accusation of theft or of any felony.

A person who is legally blind is not disqualified to serve as a juror in a civil case solely by reason of his legal blindness, but is subject to a challenge for cause in a civil case unless, in the opinion of the court and all parties to the suit and the prospective

juror, his legal blindness does not render him unfit to act as a juror in that particular case. If a party to the suit challenges a prospective juror by reason of his legal blindness, it shall not count as one of that party's peremptory challenges.

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.

In this Article, "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. [Amended by Acts 1975, 64th Leg., p. 474, ch. 202, § 1, eff. Sept. 1, 1975.]

CHAPTER THIRTEEN. GENERAL PROVISIONS

3. OFFICIAL COURT REPORTER

Art. 2324. Duty of Reporter

Each Official Court Reporter shall upon request:

Attend all sessions of the court; take full shorthand notes of all oral testimony offered in cases tried in said court, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon, and all exceptions thereto; take full shorthand notes of closing arguments when requested to do so 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 three full years, and furnish to any person a transcript of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to the official shorthand reporter of the fees provided by the judge.

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 by written demand, and the reporter shall make up such transcript and shall receive as compensation therefor a reasonable amount, subject to the approval of the judge of the court if objection is made thereto,

taking into consideration the difficulty and technicality of the material to be transcribed and the time within which the transcript is requested to be prepared. The original transcript fee charged shall pay for the original plus one copy of the transcript, and additional copies may be purchased for a fee per page not in excess of one-third ($\frac{1}{3}$) of the original cost per page. In addition such reporter may make a reasonable charge, subject to the approval of the trial court if objection shall be made thereto, for postage and/or express charges paid; photostating, blue-printing or other reproduction of exhibits; indexing; and preparation for filing and special binding of original exhibits. Provided further, that in case any such reporter shall charge in excess of the fees herein allowed by the judge, whether by accident or design, he shall, on demand filed with the court, make refund of the excess to the party to which it is due. Provided, however, that the Supreme Court of Texas under its rulemaking authority shall provide for the duties and fees of court reporters in all civil judicial proceedings, except as provided by law.

[Amended by Acts 1975, 64th Leg., p. 826, ch. 319, § 1, eff. May 27, 1975.]

Art. 2326j-29. Appointment and Compensation of Reporter for 31st Judicial District

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3. Said reporter shall, in addition, receive allowances for his actual and necessary meals, traveling and hotel expenses while actually engaged in the discharge of his duties. These allowances may be in the same amounts as are allowed for employees of the State of Texas. Such expenses shall be paid by the respective counties of the Judicial District for which they are incurred, each county paying the expense incidental to its own regular or special term of court, and said expenses shall be paid to the official shorthand reporter by the Commissioners Court of the county, out of the General Fund of the county upon the sworn statement of the reporter approved by the judge.

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

[Amended by Acts 1975, 64th Leg., p. 794, ch. 306, § 1, eff. May 27, 1975.]

4. MANDAMUS

Art. 2328a. Judicial Council

Creation; Purposes

Sec. 1. There is hereby created the Texas Judicial Council for the continuous study of and report upon the organization, rules, procedure and practice of the judicial system of the State of Texas, the

work accomplished and the results produced by that system and its various parts, and methods for its improvement.

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

Duties of Council

Sec. 5. It shall be the duty of the Council:

1. To make a continuous study of the organization of the courts; the rules and methods of procedure and the practice of the judicial system of the State; of the work accomplished, the results attained and the uniformity of the discretionary powers of the courts, to the end that procedure may be simplified, business expedited, and justice better administered.

2. To receive and consider suggestions from judges, public officers, members of the bar, and citizens, touching remedies for faults in the administration of justice.

3. To formulate methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in the administration of justice.

4. To gather judicial statistics and other pertinent data from the several judges and other court officials of the State.

5. To make a complete detailed report, on or before December 1st of each year, to the Governor and to the Supreme Court, of all its proceedings, suggestions and recommendations, and such supplemental reports from time to time as the Council may deem advisable. All such reports shall be considered public reports and may be given to the press as soon as filed.

6. To make investigations and reports upon such matters, touching the administration of justice as may be referred to the Council by the Supreme Court or the Legislature.

7. To hold one meeting in each calendar year, and such other meetings as may be ordered by the Council or under its authority, and at such time and place as may be designated by it or under its authority.

[See Compact Edition, Volume 3 for text of 6 to 8]

[Amended by Acts 1975, 64th Leg., p. 150, ch. 64, §§ 1 & 2, eff. April 24, 1975.]

TITLE 43

COURTS—JUVENILE

Article

2338-1c. Appointment of Retired Special Juvenile or Domestic Relations County Judge to Sit for Regular Domestic Relations or Special Juvenile Court Judge [NEW].

2338-9b.2. Masters in Dallas County Domestic Relations Courts [NEW].

Art. 2338-1c. Appointment of Retired Special Juvenile or Domestic Relations County Judge to Sit for Regular Domestic Relations or Special Juvenile Court Judge

Absent, Disabled or Disqualified Regular Judge; Crowded Docket

Sec. 1. (a) When the regular judge of a special juvenile court of Harris or Dallas County or any domestic relations court in this state is absent or is from any cause disabled or disqualified from presiding, a retired judge of a special juvenile court or a domestic relations court may be appointed by the presiding judge of the administrative judicial district in which the appointed judge resides to sit for the regular judge of a special juvenile court or a domestic relations court within the geographic limits of the respective administrative judicial district, provided the retired judge voluntarily retired from office and certifies his willingness to serve.

(b) When the docket of a special juvenile court of Harris or Dallas County or any domestic relations court in this state becomes so excessive that the presiding judge of the administrative judicial district in which that court is located deems it an emergency, a retired judge of a special juvenile court or a domestic relations court residing within the geographic limits of the respective administrative judicial district, who meets the qualifications set out in Subsection (a) of this section, may be appointed by the presiding judge to sit for the regular judge for as long as the emergency exists.

Bond and Oath of Retired Judge

Sec. 2. A retired judge appointed to sit for a regular judge under the provisions of this Act shall execute the bond and take the oath of office which is required by law for the regular judge for whom he is sitting.

Power and Jurisdiction

Sec. 3. A retired judge appointed under the provisions of this Act has all the power and jurisdiction

of the court and the regular judge for whom he is sitting and may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

Compensation

Sec. 4. A retired judge appointed to sit for the regular judge under the provisions of this Act shall receive for the services actually performed the same amount of compensation which the regular judge is entitled to receive for such services. The amount to be paid for such services shall be paid out of the county funds on certification by the presiding judge of the administrative judicial district that the retired judge has rendered the services and is entitled to receive the compensation. No part of the amount paid to a retired judge sitting for the regular judge shall be deducted or paid out of the salary of the regular judge.

Cumulative Effect

Sec. 5. The provisions of the Act are cumulative of all laws pertaining to the election or appointment of a special judge, and if, in addition to a retired judge appointed to sit temporarily for a regular judge, a special judge is needed, he shall be appointed or elected as now authorized by law.

[Acts 1975, 64th Leg., p. 1816, ch. 552, eff. Sept. 1, 1975.]

Art. 2338-9b.2 Masters in Dallas County Domestic Relations Courts

Appointment; Termination; Qualifications; Compensation; Costs

Sec. 1. (a) Each judge of a court of domestic relations in Dallas County or any successor court thereto may appoint a full-time master as provided in this Act. The appointment shall be made subject to the approval of the commissioners court. The services of the master may be terminated if the performance of his duties is unsatisfactory to the judge of the court.

(b) A master shall be an attorney licensed to practice law in the State of Texas and shall be a citizen of this state. The compensation for a master shall be fixed by the commissioners court and shall be paid out of the jury fund of Dallas County. If the judge of the court determines that the parties litigant are able to defray the costs of the master's compensation, such costs may be taxed as costs against either or both of the parties.

Referral of Certain Civil Cases to Master

Sec. 2. If the judge of a court of domestic relations in Dallas County or any successor court thereto deems it advisable, he may appoint a master and refer to the master any civil case involving motions of contempt for failure or refusal to pay child support, temporary support, or separate maintenance; motions for failure or refusal to comply with court orders concerning visitation with children growing out of separate maintenance and divorce actions; motions for changes of conservatorships; motions for revision of child-support payments; and motions for revision of visitation privileges.

Powers

Sec. 3. (a) In all cases designated in Section 2 of this Act, the judge of a court of domestic relations in Dallas County or any successor court thereto may authorize the master to hear evidence, to make findings of fact thereon, to formulate conclusions of law, and to recommend judgment to be entered in such cases. In all cases referred to the master, the order of reference may specify or limit the powers of the master and may direct him to report only on particular issues, or to do or perform particular acts, or to receive and report on evidence only, and may fix the time and place for beginning and closing hearings and for filing reports.

(b) Subject to the limitations and specifications stated in the order, the master shall have the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary and proper for the efficient performance of his duties under the order. He may require the production of evidence before him on all matters embraced in the reference, and he may rule on the admissibility of evidence, unless otherwise directed by the order of reference. He has the authority to issue summons for the appearance of witnesses and to swear the witnesses for the hearing and may examine them himself. A witness appearing before him that is duly sworn is subject to the penalties of perjury. If a witness after being duly summoned fails to appear or having appeared refuses to answer questions, on certification of such refusal to the referring court, the court may issue attachment against the witness and may fine or imprison the witness.

Findings; Notice

Sec. 4. On the conclusion of the hearing in each case, the master shall transmit to the referring judge all papers relating to the case, together with his findings and a statement that notice of his findings and of the right to a hearing before the judge has been given to all adult principals, minors, or parents, guardians, or custodians of any minor whose case has been heard by the master. This

notice may be given at the hearing or otherwise as the referring court directs.

Action on Master's Report

Sec. 5. After it is filed, the referring court may adopt, modify, correct, reject, or reverse the master's report or recommit it for further information, as the court may deem proper and necessary in the particular circumstances of the case. Where judgment has been recommended, the court in its discretion may approve the recommendation and hear further evidence before rendition of judgment.

Hearing

Sec. 6. Adult principals or a minor child or his parents, guardians, or custodians are entitled to a hearing by the judge of the referring court if within three days after receiving notice of the findings of the master they file a request with the court for a hearing. The referring court may allow the hearing at any time.

Decree Upon Adoption by Court

Sec. 7. If no hearing before the judge of the referring court is requested or the right to such hearing is waived, the findings and recommendations of the master become the decree of the court when adopted by an order of the judge.

Notice of Time and Place of Hearing

Sec. 8. Prior to the hearing by the master, the parties litigant shall be given due notice as provided by law of the time and place of the hearing.

Jury Trial

Sec. 9. In any proceeding where a jury trial has been demanded, the master shall refer the case back to the referring court for a full hearing before the court and jury, subject to the usual rules of the court in such cases.

[Acts 1975, 64th Leg., p. 1943, ch. 638, eff. June 19, 1975.]

Art. 2338-10. Court of Domestic Relationships for Nueces County

[See Compact Edition, Volume 3 for text of 1]

Judge; Election; Qualifications and Term; Salary

Sec. 2. There shall be elected in Nueces County by the qualified voters thereof a Judge of the Court of Domestic Relations of Nueces County, who shall be a qualified voter in said county, a resident of said county, and a regularly licensed attorney at law in this State, and who shall have been actively engaged in the practice of law for a period of not less than five (5) years next preceding the election to select such Judge. The Judge of the Court of Domestic Relations of Nueces County shall hold office for a term of four years, and until his successor shall have been elected and qualified. The Judge of the Court of Domestic Relations shall receive a salary of Twen-

ty-Five Thousand Dollars per annum, to be paid out of the County Treasury by order of the commissioners court, and said salary shall be paid monthly in equal installments. The Judge of the Court of Domestic Relations shall be a member of the Juvenile Board of Nueces County, and for this additional work as member of the Juvenile Board he shall be allowed compensation in like manner as other members of said Juvenile Board, such compensation to be in addition to the salary herein provided.

[See Compact Edition, Volume 3 for text of 3 to 19]

[Amended by Acts 1975, 64th Leg., p. 1941, ch. 636, § 4, eff. Sept. 1, 1975.]

Art. 2338-16. Court of Domestic Relations for Galveston County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The judge of the Court of Domestic Relations shall be at least twenty-five (25) years of age and licensed to practice law in this state, who has been a practicing attorney for four (4) years and a resident of Galveston County for two (2) years next before his election or appointment. He shall reside in Galveston County during his term of office. The Commissioners Court of Galveston County shall fix the yearly salary of the judge of the Court of Domestic Relations at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge in and for Galveston County. His salary shall be paid out of the General Fund of Galveston County in twelve (12) equal Monthly installments.

[See Compact Edition, Volume 3 for text of 3 to 9]

Transfer of Cases to District Court, County Court No. 1 or Probate Court; Special Judge

Sec. 10. All cases, applications, complaints, and all other matters over which the Court of Domestic Relations is herein given jurisdiction may be instituted in said Court, or assigned or transferred to said Court with the consent of the Judge of said

Court; the Court of Domestic Relations and the Judge thereof may assign or transfer any such cases, complaints, or other matters to any District Court in and for Galveston County, Texas, having jurisdiction, or the County Court No. 1, or the Probate Court, where they have jurisdiction; and the Judge of such District Court or the Judge of the County Court No. 1 or the Judge of the Probate Court shall try all cases, complaints, or other matters which may be so assigned or transferred, unless the Judge of such District or County Court assigns or transfers said case or cases, complaints or other matters, by written order to another Court of competent jurisdiction; provided, however, that where the Court has jurisdiction of the case the Judge of the District or County Court to which that case, complaint, or other matter was transferred may not transfer that case, complaint, or other matter back to the Court of Domestic Relations without the consent of the Judge of that Court. In the event of disqualification of the Judge of the Court of Domestic Relations to try a particular case or because of illness, inability, failure, or refusal of said Judge to hold court at any time, the Juvenile Board may select a Special Judge who shall hold the court and proceed with the business thereof, or said Juvenile Board may request the Presiding Judge of their Administrative Judicial District of Texas to assign a Judge to handle the business of said court pursuant to the provisions of Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes), and said Judge so selected by the Board or assigned by the Presiding Judge shall be paid for his services in the same manner as provided by the Constitution and Laws of this state for the payment of District Judges assigned to sit for other District Judges.

[See Compact Edition, Volume 3 for text of 11 to 19]

[Amended by Acts 1975, 64th Leg., p. 1188, ch. 446, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1332, ch. 496, § 3, eff. Sept. 1, 1975.]

TITLE 44

COURTS—COMMISSIONERS

2. POWERS AND DUTIES

Article

- 2370c-2. Criminal Justice Facilities in Certain Counties and Cities [NEW].
- 2372q-1. Regulation of Private Water Companies in Counties Over 1,500,000 [NEW].
- 2372r. [Repealed].
- 2372s-3. Parking on County Property [NEW].
- 2372s-4. Parking Regulations and Purchase of Equipment by Counties of 235,000 or More [NEW].
- 2372u. Regulation of Outdoor Lighting and Subdivisions Near Major Astronomical Observations [NEW].

1. COMMISSIONER COURTS

Art. 2344. Seal

Each commissioners court shall have a seal, whereon shall be engraved either a star with five points or a design selected by the court and approved by the secretary of state, and the words, "Commissioners Court, _____ County, Texas," (the blank to be filled with the name of the County) which seal shall be kept by the clerk of said court and used in authentication of all official acts of the court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts.

[Amended by Acts 1975, 64th Leg., p. 42, ch. 21, § 1, eff. March 20, 1975.]

2. POWERS AND DUTIES

Art. 2370c-2. Criminal Justice Facilities in Certain Counties and Cities

Eligible Counties and Cities

Sec. 1. This Act shall apply to any county in this state and to any city in such county which city is not the county seat of such county but has a population of more than 20,000 according to the last preceding federal census.

Authorization

Sec. 2. Counties and cities to which this Act is applicable are hereby authorized jointly or severally to own, construct, equip, enlarge, and maintain a building or buildings in such city to constitute a criminal justice center providing facilities of a public nature with relation to or incidental in the administration of criminal justice, including, without limitation, accommodations for the handling, processing,

and detention of prisoners, and offices for state, county, and city administrative and judicial officials, courtrooms, garages, and parking areas.

Contracts

Sec. 3. Such county and city shall have authority to specify by contract the purpose, terms, rights, objectives, duties, and responsibilities of each of the contracting parties, including the amount, or proportionate amount, of money to be contributed by each for land acquisition, building acquisition, construction, and equipment; the method or methods by which such moneys are to be provided; the account or accounts in which such money is to be deposited; the party which shall award construction or other contracts or that such contracts shall be awarded by action of both parties; and the manner in which disbursements shall be authorized. Such contract may further provide for the creation of an administrative agency or may designate one of the parties to supervise the accomplishment of the purposes of the contract and to operate and maintain the joint facilities, and any administrative agency so created or party so designated shall have authority to employ personnel and engage in other administrative activities as necessary in accomplishing the purposes of the contract and in operating and maintaining the joint facilities.

Methods of Meeting Costs

Sec. 4. The county and city contract may specify that moneys required of them in meeting the cost of providing the criminal justice center shall be derived from current income and funds on hand budgeted by them for such purpose, or through the authorization and issuance of bonds by either or both the county and city under the procedures prescribed for the issuance of general obligation bonds for other public buildings and purposes, or by the issuance by either or both the county and the city of certificates of obligation under the provisions of Article 2368a-1,¹ Vernon's Texas Civil Statutes, or by a combination of those methods. In lieu of or in combination with the employment of taxing power in the payment of such bonds or certificates of obligation, same may be payable from and secured by income derived from the criminal justice center facilities, including that from leases and from the proceeds of parking or other fees. In the financing of the facilities herein authorized eligible counties and cities jointly or sev-

erally may accept grants, gratuities, advances, and loans from the United States, the State of Texas, or any of their agencies, any private or public corporation, or any other person.

Office Facilities

Sec. 5. As applicable to counties eligible to employ the provisions of this Act, any county officer, in addition to the office he maintains at the county seat, may maintain office facilities in the herein authorized criminal justice center notwithstanding provisions of Article 1605, Revised Civil Statutes of Texas, 1925, as amended, or any other law limiting the location of county offices to the county seat of their respective counties.

[Acts 1975, 64th Leg., p. 1966, ch. 650, eff. Sept. 1, 1975.]

¹ So in enrolled bill; probably should read "2368a.1".

Art. 2372h-4. Payroll Deductions; Authorized Purposes

Sec. 1. (a) The commissioners court of any county of 20,000 or more population may authorize payroll deductions to be made from the wages and salaries of county employees, on each employee's written request, to a credit union, to pay membership dues in a labor union or a bona fide employees association, and to pay fees for parking in county owned facilities.

(b) Each employee requesting a deduction under this Act shall submit to the county auditor a written request indicating the amount to be deducted from the employee's wages or salary and to transfer the withheld funds to the credit union, proper labor union or employees association, or county funds. The request shall remain in effect until the county auditor receives written notice of revocation signed by the employee.

(c) The amount deducted from an employee's wages or salary for the purpose stated in this Act shall not be more than the amount stipulated in the written request.

(d) Participation in the program authorized by this Act is voluntary on the part of any county employee and the county.

Sec. 2. The provisions of this Act shall not alter, amend, modify, or repeal any of the provisions of Chapter 135, Acts of the 50th Legislature, 1947 (Article 5154c, Vernon's Texas Civil Statutes).

Sec. 3. Public funds shall not be used to defray the administrative cost of making the deductions authorized under this Act, except those deductions relating to payment for parking. The credit union, labor union or employees association shall pay the full and complete administrative cost, if any, as determined and approved by the commissioners

court of the deductions made for their benefit under this Act.

[Amended by Acts 1975, 64th Leg., p. 2355, ch. 724, § 1, eff. Sept. 1, 1975.]

Art. 2372p-3. Licensing and Regulation of Bail Bondsmen

[See Compact Edition, Volume 3 for text of 1 and 2]

Requirements of License

Sec. 3.

[See Compact Edition, Volume 3 for text of 3(a) and (b)]

(c) The provisions of this Act do not apply to the execution of bail bonds in counties having a population of less than 124,000 according to the last preceding federal census.

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

County Bail Bond Board

Sec. 5. (a) There is hereby created in all counties having a population of 124,000 or more, according to the last preceding federal census, a County Bail Bond Board.

[See Compact Edition, Volume 3 for text of 5(b) to 11]

Other Procedural Provisions

Sec. 12.

[See Compact Edition, Volume 3 for text of 12(a)]

(b) Any licensee under this Act may execute bail bonds in the county in which his license is issued and, after being certified by the sheriff in his county, may present a bail bond to any sheriff in the state having custody of the accused person named therein, except that a sheriff of a county having a population in excess of 124,000 according to the last preceding federal census may require that all bail bonds be executed by persons licensed in that county.

[See Compact Edition, Volume 3 for text of 12(c) to 16]

[Amended by Acts 1975, 64th Leg., p. 1194, ch. 451, §§ 1 to 3, eff. June 19, 1975.]

Art. 2372q-1. Regulation of Private Water Companies in Counties Over 1,500,000

Definitions

Sec. 1. In this Act:

(1) "Commissioners court" means the commissioners court of any county with a population of more than 1,500,000, according to the last preceding federal census.

(2) "Private water company" means a privately owned entity organized under the laws of this state for the purpose of furnishing a water supply or sewer services or both to the public, to cities and towns including home-rule cities, or to special districts, counties, or other political subdivisions of the state.

Assumption of Regulatory Authority Over Rates and Services;
Rates Schedule

Sec. 2. (a) The rates and services of a private water company in a county with a population of more than 1,500,000, according to the last preceding federal census, shall be regulated by the commissioners court as provided in this Act, if:

(1) the private water company is charging or proposes to charge residential rates in any service area which exceed by 30 percent or more the highest residential rates charged by the water department of the largest city in the county; or

(2) a petition is submitted to the commissioners court signed by at least 30 percent of the persons residing, according to the last preceding federal census, in one or more of the service areas served by a private water company requesting that the commissioners court exercise regulatory authority over the company serving them.

(b) To determine whether or not the commissioners court should assume regulatory authority over a private water company under Subdivision (1), Subsection (a) of this section, each private water company operating inside the boundaries of a county with a population of more than 1,500,000, according to the last preceding federal census, on the effective date of this Act shall submit to the commissioners court copies of all rate schedules in effect on the effective date of this Act. After examining these rate schedules, the commissioners court shall determine and issue an order designating which private water companies within the county will be under its regulatory authority as a result of the provisions of Subdivision (1), Subsection (a) of this section.

(c) After the initial determination under Subsection (b) of this section, each private water company that is not operating under the regulatory authority of the commissioners court shall submit copies of each new or changed rate schedule that it plans to adopt at least 30 days before the rates are to take effect so that the commissioners court may make a determination whether or not the private water company will come under the regulatory authority of the commissioners court under Subdivision (1), Subsection (a) of this section. The commissioners court shall issue an order within 10 days after the schedules are filed stating whether or not the com-

pany will be brought under regulatory authority of the commissioners court.

(d) If the commissioners court finds that a private water company qualifies for regulation by it under Subsection (a) of this section, it shall issue its order assuming regulatory authority over the company, and the regulatory authority of the commissioners court shall take effect 15 days after the order is issued.

Filing of Rate Schedules; Proposed Changes

Sec. 3. (a) Each private water company over which the commissioners court assumes regulatory authority shall file with the commissioners court copies of all of its schedules of rates and charges and proposed schedules of rates and charges within 15 days after the commissioners court assumes regulatory authority unless this information has already been filed under some other section of this Act.

(b) A private water company regulated under this Act which proposes to change any of its rates, charges, or both shall file with the commission copies of the proposed schedules of rates, charges, or both at least 40 days before they are to take effect.

Hearing

Sec. 4. On receiving schedules of existing or proposed rates, charges, or both from a private water company under the regulatory authority of the commissioners court, the commissioners court shall set a time, place, and date for a public hearing to consider approval of the rates, charges, or both and shall issue notice as provided in this Act. The hearing shall be held not earlier than 25 nor later than 30 days after the date the schedules are filed.

Notice of Hearing

Sec. 5. (a) Notice of a hearing shall be posted in at least one public place in each service area affected by or to be affected by the proposed rates, charges, or both and at the courthouse in the place for posting notice of meetings of the commissioners court.

(b) Notice of the hearing shall be published at least one time in a newspaper of general circulation in each service area affected by or to be affected by the rates, charges, or both.

(c) The private water company whose rates, charges, or both are being considered at the hearing shall be given notice by certified mail return receipt requested.

(d) Notice required by this section shall be given at least 10 days before the day of the hearing.

Access to Books, Records and Information of Water Company

Sec. 6. The commissioners court and its employees and agents are entitled to access to all books, records, and other information of a private water company which may be necessary for the commissioners court to determine if it may exercise regulatory authority under Section 2(a)(1) of this Act and to carry out its regulatory authority under this Act.

Inspection of Files and Information Gathered

Sec. 7. At least 10 days before the date set for the hearing, the commissioners court shall make all files and information gathered by it and its employees and agents relating to the matter to be heard available for inspection during regular office hours.

Personal Appearance at Hearing; Recess

Sec. 8. (a) Any person who desires to appear at the hearing and present testimony, evidence, exhibits, or other information may do so in person, by counsel, or both.

(b) The commissioners court may recess the hearing from day to day.

Compelling Testimony; Oaths; Subpoenas

Sec. 9. The commissioners court may compel the testimony of any person necessary to carry out the provisions of this Act, and may administer oaths to persons who appear to testify before the commissioners court. Also, the commissioners court may issue subpoenas to compel the testimony of any persons and the production of any documents or information necessary to carry out the provisions of this Act.

Determination; Written Order

Sec. 10. (a) Within 30 days after the conclusion of the hearing, the commissioners court shall determine whether or not to approve the schedules of rates, charges, or both that were considered at the hearing and if the schedules are to be adopted, shall decide on any modifications in the schedules that the commissioners court considers necessary based on its own investigation and evidence and information gathered at the hearing.

(b) On making a determination, the commissioners court shall issue a written order stating its determination and the reasons for its determination.

Fair Return on Value of Property; Public Relations Expenses

Sec. 11. (a) No rate or charge determined by the commissioners court may yield more than a fair return on the fair value of property used and useful in rendering service to the public and no return on a rate or charge may exceed eight percent a year.

(b) In making a determination on a rate, charge, or both, the commissioners court shall not include in the basis for establishment of the rate, charge, or both any amounts spent by the private water company for advertising or other public relations expenses.

Appeal

Sec. 12. Orders of the commissioners court issued under this Act may be appealed to a district court in the county in which the commissioners court has jurisdiction.

Rules and Regulations

Sec. 13. (a) The commissioners court, after notice and hearing, may adopt by order any rules and regulations that it considers necessary to carry out the provisions of this Act.

(b) The commissioners court by rules and regulations may adopt reasonable standards to be followed by private water companies operating under its regulatory authority in delivering their services to the public.

Annual Report of Water Company

Sec. 14. (a) Each private water company under the regulatory authority of the commissioners court shall file with the commissioners court before January 1 of each year a report which shall include:

- (1) the amount of a lien or mortgage on any property of the company;
- (2) other indebtedness of the company and the consideration for it;
- (3) the actual cost of the visible physical property of the company and the date it was installed and the present value of it with land, machinery, buildings, pipes, mains, and other items of property being listed separately; and
- (4) the annual cost of operating the facilities of the company including amounts paid for actual salaries; labor; fixed charges including interest, taxes, and insurance; fuel; extension and repairs; maintenance; damages, claims, or suits for damages; and miscellaneous expenses.

(b) If machinery or equipment of the company is abandoned, worn out, or its use discontinued within the preceding year, this shall be stated in the report together with the original cost and the present value.

(c) The report shall state the gross earnings of the company including revenues from every source and shall state each item separately and the amount received by the company.

Civil Penalty

Sec. 15. A private water company that violates any provision of this Act or any rule, regulation, or order of the commissioners court is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation to be recovered as provided in this Act.

Injunctive Relief or Civil Penalty

Sec. 16. (a) Whenever it appears that a private water company has violated or is violating, or is threatening to violate, any provision of this Act, or any rule, regulation, or order of the commissioners court, the commissioners court may have a civil suit instituted in a district court in the county in which the commissioners court has jurisdiction for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate any provisions of this Act or any rule, regulation, or order of the commissioners court, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the commissioners court, the county attorney shall institute and conduct a suit in the name of the county for injunctive relief or to recover the civil penalty, or both, as authorized in Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 1946, ch. 640, eff. Sept. 1, 1975.]

Art. 2372r. Repealed by Acts 1975, 64th Leg., p. 114, ch. 52, § 1, eff. April 18, 1975

See, now, art. 6145.1.

Art. 2372s-1. Regulation of Parking in Certain Courthouse Parking Lots

Sec. 1. This Act shall apply in every county having a population of not less than 12,500 nor more than 13,000, and in every county having a population of not less than 14,000 nor more than 14,100, and in every county having a population of not less than 15,000 nor more than 15,340, and in every county having a population of not less than 18,093 nor more than 18,099, and in every county having a population of not less than 27,800 nor more than 28,000, and in every county having a population of not less than 140,000 nor more than 180,000, according to the last preceding federal census.

Sec. 2. The commissioners court is authorized to purchase such equipment as is necessary and make

and enforce regulations for parking in county-owned or county-leased parking lots in, under, adjacent to, or near the county courthouse. The commissioners court may in its discretion contract with the city for enforcement of the regulations and likewise the city in its discretion may contract with the county. The Sheriff's Department of such counties is hereby authorized to enforce any and all regulations passed by the Commissioners Court.

Sec. 3. A person who violates a regulation authorized by this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$1 nor more than \$20.

[Acts 1965, 59th Leg., p. 802, ch. 387, eff. June 9, 1965; Acts 1969, 61st Leg., p. 2453, ch. 820, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1844, ch. 542, § 108, eff. Sept. 1, 1971.]

Art. 2372s-3. Parking on County Property

Adoption of Regulations

Sec. 1. The commissioners court of a county by order may adopt regulations as to the parking of vehicles on property owned or leased by the county.

Regulations

Sec. 2. Regulations adopted under this Act may:

- (1) limit the use of parking spaces to certain vehicles or types of vehicles;
- (2) limit the time a vehicle may remain parked in a specific space or area; and
- (3) prohibit the parking of vehicles in certain areas.

Signs

Sec. 3. If parking is restricted or prohibited in a place, the county shall erect at the place one or more appropriately worded signs reasonably calculated to inform the drivers of the restriction or prohibition. No sign is required to indicate that parking is prohibited on a lawn or other area that does not appear to be a place intended for use as a parking area.

Violations; Defenses

Sec. 4. An individual who parks a vehicle in violation of a regulation adopted under this Act commits a Class C misdemeanor. It is a defense to prosecution under this section that:

- (1) the place where the actor parked is one where a sign or signs are required by Section 3 of this Act; and

(2) a sign or signs meeting the requirements of Section 3 of this Act were not in place at the time the actor parked.

Towing and Storing of Vehicles

Sec. 5. A county may provide for the towing away and storing at the owner's expense of any vehicle parked in violation of regulations adopted under this Act. This section does not authorize the towing away of a vehicle that is parked under circumstances where the person parking it would have a defense to prosecution under Section 4 of this Act. [Acts 1975, 64th Leg., p. 569, ch. 228, eff. May 20, 1975.]

Art. 2372s-4. Parking Regulations and Purchase of Equipment by Counties of 235,000 or More

Sec. 1. The commissioners court of a county having a population of 235,000 or more inhabitants, according to the last preceding federal census, may purchase necessary equipment and make and enforce parking regulations for parking in a county-owned or county-leased parking lot in, under, adjacent to, or near the county courthouse.

Sec. 2. (a) The commissioners court may contract with the governing body of the city in which the county seat is located for enforcement of the parking regulations promulgated under the provisions of Section 1 of this Act.

(b) The sheriff's department of the county may enforce parking regulations promulgated under the provisions of Section 1 of this Act.

Sec. 3. A person who violates a parking regulation promulgated under the provisions of Section 1 of this Act commits a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$20.

[Acts 1975, 64th Leg., p. 2198, ch. 702, eff. Sept. 1, 1975.]

Art. 2372u. Regulation of Outdoor Lighting and Subdivisions Near Major Astronomical Observatories

Definitions

Sec. 1. In this Act:

(1) "Major astronomical observatory" means a facility established for making scientific observation of astronomical phenomena and equipped with a telescope having an aperture at least 75 inches in diameter.

(2) "Outdoor lighting" means any type of lighting equipment, fixed or movable, designed or used for illumination outside of buildings or homes, including lighting for billboards, street lights, searchlights used for advertising purposes, externally or internally illuminated on- or off-site advertising signs, and area-type lighting. It does not include lighting equipment required by law to be installed on motor vehicles, or lighting required for the safe take-off and landing of aircraft.

County Regulatory Authority

Sec. 2. (a) To protect against the use of outdoor lighting in a way that interferes with scientific astronomical research, the commissioners court of a county may adopt orders regulating the installation and use of outdoor lighting within the unincorporated territory located within the same county and within 75 miles of a major astronomical observatory, regardless of whether the observatory is in the county.

(b) Orders adopted under this section may:

(1) require that a permit be obtained from the county for the installation or use of certain types of outdoor lighting, and establish fees for the issuance of permits;

(2) prohibit the use of those types of outdoor lighting found to be incompatible with the effective use of the observatory;

(3) establish requirements for the shielding of outdoor lighting; and

(4) regulate the times during which various types of outdoor lighting may be used.

Regulation of Subdivisions

Sec. 3. (a) This section applies only to real estate subdivisions subject to the plat-approval authority of a commissioners court and located within 75 miles of a major astronomical observatory.

(b) A commissioners court may adopt orders establishing standards applicable to proposed subdivisions designed to minimize the interference with observatory activities from outdoor lighting. The commissioners court may not approve a plat of a proposed subdivision that does not meet those requirements.

Standards May Vary

Sec. 4. Orders adopted under this Act may apply more stringent standards in areas where the impact

of outdoor lighting on activities of the observatory is greater.

Adoption of Orders

Sec. 5. No orders may be adopted by a commissioners court under this Act, unless:

(a) a request for such orders be made by the Director of McDonald Observatory; then

(b) such requested orders may be adopted by a commissioners court after a public hearing has been held on the proposed order; of which

(c) at least two weeks public notice has been given of such hearing.

Exemption

Sec. 6. No outdoor lighting in existence or under construction on the effective date of this Act shall be subject to the provisions of this Act.

Enforcement; Penalty

Sec. 7. (a) An individual, corporation, or association that violates an order adopted under this Act commits a Class C misdemeanor.¹

(b) A county or district attorney may sue in the district court to enjoin violation of this Act.

(c) Both civil and criminal enforcement may be used against the same conduct.

[Acts 1975, 64th Leg., p. 102, ch. 44, eff. Sept. 1, 1975.]

¹ Penal Code, § 12.23.

TITLE 45

COURTS—JUSTICE

CHAPTER THREE. APPEARANCE AND TRIAL

Art. 2428. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2 eff. Sept. 1, 1975

See, now, art. 2122

CHAPTER SEVEN. SMALL CLAIMS COURT

Art. 2460a. Creation; Jurisdiction; Procedure

[See Compact Edition, Volume 3 for text of 1 to 10]

Judgments Not Claimed by Plaintiff

Sec. 10a. (a) If a judgment against a defendant has not been paid and the whereabouts of the plaintiff who was awarded the judgment are unknown, the defendant shall use due diligence to locate the plaintiff, which includes sending a letter by registered or certified mail, return receipt requested, to the plaintiff at his last known address and the address appearing in the plaintiff's statement of his claim and any other records of the court.

(b) If, after the use of due diligence, the plaintiff is not located, the defendant may deposit payment of the judgment into the court in trust for the plaintiff and obtain a release of the judgment, which release shall be executed without delay by the judge of said court on behalf of the plaintiff.

(c) All trust funds paid into the court, as provided in this section, shall be paid over by the judge at least once a month to the county clerk to be deposited in and withdrawn from the clerk's trust fund account in the county depository for trust funds in the possession of the county clerk, in the same manner as trust funds deposited in county and district courts to abide the result of a legal proceeding are deposited and withdrawn.

(d) If the plaintiff does not claim the payment of his judgment within two (2) years from the date of its deposit in the county clerk's trust fund account, the money shall escheat to the state.

[See Compact Edition, Volume 3 for text of 11 to 14]

[Amended by Acts 1975, 64th Leg., p. 1826, ch. 563, § 1, eff. Sept. 1, 1975.]

TITLE 46

CREDIT ORGANIZATIONS

1. CREDIT UNIONS

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Article

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- 2461-1.02. Definition and Purposes.
- 2461-1.03. Effect of Headings.

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- 2461-2.02. Articles of Incorporation.
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1. CREDIT UNIONS

The Credit Union Act, formerly set out in this Title as Articles 2461-1 to 2461-49, was enacted by Acts 1969, 61st Leg., p. 540, ch. 186, §§ 1 to 49. Former Articles 2461 to 2484d, regulating Rural Credit Unions, were repealed by § 50 of the 1969 Act.

Acts 1975, 64th Leg., p. 2240, ch. 707, § 1, revised and amended the 1969 Act, as herein set out, to consist of Articles 2461-1.01 to 2461-11.17.

For disposition of subject matter of repealed Articles 2461-1 to 2461-49, see Table, post.

DISPOSITION TABLE

Showing where subject matter of former Articles 2461-1 to 2461-49 is now covered by Articles 2461-1.01 to 2461-11.17, as revised and amended by Acts 1975, 64th Leg., p. 2240, ch. 707, § 1.

1969 Articles	1975 Articles	1969 Articles	1975 Articles
2461-1	2461-1.02	2461-21	2461-6.05
2461-2(a)	2461-2.01	2461-22	2461-6.06
2461-2(a)(1)	2461-2.02	2461-23	2461-6.07
2461-2(a)(2), (3)	2461-2.03	2461-24	2461-8.01
2461-2(b)	2461-2.05	2461-25	2461-9.01
2461-3	2461-2.06	2461-26	2461-9.02
2461-4	2461-2.07	2461-27	2461-9.03
2461-5	2461-4.01	2461-28	2461-10.03
	2461-4.02	2461-29	2461-2.09
2461-6	2461-3.01	2461-30	—
2461-7	—	2461-31	—
2461-8	2461-2.02(4)	2461-32	2461-11.12
2461-9	2461-3.02	2461-33	—
2461-10(a)	2461-5.01	2461-34	2461-10.04
2461-10(b)	2461-5.03(c)	2461-35	2461-5.09
2461-11(a)	2461-5.03	2461-35A	2461-10.01
	2461-5.04	2461-36	2461-10.02
2461-11(b)	—	2461-37	2461-2.08
2461-11(c)	2461-5.02	2461-38	2461-11.01
2461-11(d)	2461-5.02	2461-39	2461-11.02
2461-11(e)	2461-5.04(d)	2461-40	2461-11.02
2461-12	2461-5.03	2461-41	2461-11.03
	2461-5.06	2461-42	2461-11.04
2461-13	2461-5.08	2461-43	—
2461-14	2461-5.05	2461-44	2461-11.05
2461-15(a)	2461-7.01	2461-45	—
2461-15(b)	—	2461-46	2461-11.06
2461-15(c)	2461-7.01	2461-47(a)	2461-11.08
2461-15(d)	2461-7.02		2461-11.15
2461-15(e)	2461-7.01	2461-47(b)	2461-11.09
2461-15(f)	—		2461-11.11
2461-15(g)	2461-7.01		2461-11.15
2461-15(h)	2461-7.05	2461-47(c)	2461-11.13
2461-15(i)	—	2461-47(d)	2461-11.07
2461-15(j)	2461-7.06		2461-11.10
2461-16	2461-5.07	2461-47(e)	2461-11.07
2461-17	2461-5.06(a)	2461-47(f)	2461-11.10
2461-18	2461-6.02	2461-48	2461-11.16
2461-19	2461-6.04	2461-49	—
2461-20	2461-6.03		

CHAPTER 1. SHORT TITLE, DEFINITION AND PURPOSES

Art. 2461-1.01. Short Title

This Act may be cited as the Texas Credit Union Act.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-1.02. Definition and Purposes

In this Act:

(1) "Credit union" means a voluntary, cooperative, nonprofit savings institution, incorporated

under this Act for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

(2) "Commission" means the Credit Union Commission.

(3) "Commissioner" means the Credit Union Commissioner.

(4) "Department" means the Credit Union Department.

(5) "Deputy commissioner" means the Deputy Credit Union Commissioner.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-1.03. Effect of Headings

The division of this Act into chapters and sections and the use of section and chapter headings are solely for convenience and have no legal effect in construing this Act.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 2. ORGANIZATION PROCEDURE

Art. 2461-2.01. Incorporators

Any seven or more adult persons, a majority of whom are residents of this state, and all of whom share a definable community of interest, may act as incorporators of a credit union by signing, verifying, and delivering in duplicate to the commissioner articles of incorporation for the credit union.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.02. Articles of Incorporation

The articles of incorporation shall set forth:

(1) the name, which contains the words "credit union" and is different from that of any other existing credit union;

(2) the name of the town or city and county where the proposed credit union will have its principal place of business;

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

(4) the fiscal year of the credit union, which ends on December 31 of each calendar year;

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

(6) the name and address of each incorporator and the number of shares subscribed by each; and

(7) the number of directors constituting the initial board of directors and the names and addresses of the persons who will serve as directors until the first annual meeting or until their duly elected successors are elected and qualify.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.03. Filing of Articles of Incorporation

(a) The incorporators shall file with the commissioner:

(1) a duplicate of the original articles of incorporation;

(2) a duplicate of the original bylaws for the general operation of the credit union; and

(3) biographical information concerning each member of the original board of directors, entered on forms prescribed by the commissioner and signed by each member.

(b) With the approval of the commission, the commissioner shall set a uniform charter fee and uniform investigation and report charges for all credit unions. The department shall publish the fees and rates for charges set by the commissioner.

(c) The commissioner may investigate the charter application, bylaws, and the biographical information concerning each director named in the application to determine whether the proposed credit union and its initial board of directors meet the requirements of this Act and of the regulations promulgated under this Act.

(d) If the proposed credit union or its initial board of directors does not meet the requirements of this Act and of the regulations promulgated under this Act, the commissioner shall deny the application in writing. If the incorporators file a written notice of appeal with the commission within 30 days after denial of the application, the commission shall set a date for a hearing on the application. On that date, the commission shall hold a hearing in accordance with the regulations promulgated under this Act.

(e) If the commissioner determines that all statutory requirements and regulations have been satisfied, or if on a hearing the commission determines that they have been satisfied, the commissioner shall issue a certificate of incorporation and shall return copies of the articles of incorporation and bylaws to the incorporators.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.04. Effect of Issuance of Certificate of Incorporation

The corporate existence of a credit union begins at the time the commissioner issues a certificate of incorporation. The certificate of incorporation is conclusive evidence of the incorporators' compliance with the requirements of this Act and of the credit union's incorporation under this Act.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.05. Requirement Before Commencing Business

A credit union may not transact any business or incur any indebtedness, except such as is incidental to its organization or to obtaining subscriptions to or payment for its shares, until:

(1) it has received minimum paid-in capital of at least \$1,000;

(2) it has a membership of at least 100 persons; and

(3) it has so notified the department.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.06. Right to Amend Articles of Incorporation and Bylaws

A credit union may amend its articles of incorporation or its bylaws in the manner provided in its bylaws. A credit union shall submit amendments to its articles of incorporation or bylaws to the commissioner in duplicate. Amendments to articles of incorporation or bylaws become effective at the time the commissioner issues a certificate of approval. [Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.07. Restrictions on Use of Name

No person, corporation, partnership, or association, other than a credit union or association of credit unions organized under this Act or the Federal Credit Union Act, may use a name or title containing the words "credit union" or any derivation thereof, represent itself as a credit union, or conduct business as a credit union. Violation of this section constitutes a misdemeanor punishable by a fine of not more than \$5,000, by confinement in jail for not more than two years, or both. The commissioner may petition a court of competent jurisdiction to enjoin a violation of this section.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.08. Place of Business

A credit union shall maintain a principal place of business and shall file with the commissioner a statement specifying the post office address of its principal place of business. If a credit union gives the commissioner prior written notification, a credit union may establish at locations other than its principal place of business additional offices that are reasonably necessary to furnish services to its members. [Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.09. Reports

On or before February 1 of each year, each credit union organized under this Act shall report to the department on a form supplied by the department for this purpose. On filing the report, a credit union shall pay to the commissioner a filing fee of \$10, except no credit union chartered within the preceding six-month period is required to pay a filing fee. The department may, in its discretion, require a credit union to file additional reports. If a credit union does not file a report within 15 days after February 1 of any year, the commissioner shall charge the credit union a late fee of \$5 for each day

that the report is in arrears, except the commissioner may waive payment of the late fee for good cause shown.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.10. Exemption from Certain Taxes

Each credit union organized under this Act is exempt from all franchise and other license taxes. The intangible property of a credit union organized under this Act is not taxable by the state or any of its political subdivisions.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 3. MEMBERSHIP

Art. 2461-3.01. Membership Defined

Membership in a credit union is limited to the incorporators and other persons who:

(1) share a definable community of interest, in accordance with the bylaws of the credit union, including a community of interest based on occupation, association, or residence;

(2) have paid an entrance fee if one is required by the bylaws;

(3) have subscribed to and paid for one or more shares; and

(4) have complied with any other requirements contained in the articles of incorporation and bylaws.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-3.02. Meetings of Members

Members of a credit union shall hold annual and special meetings at the time, place, and in the manner provided in the bylaws. At all meetings, each member has only one vote, regardless of his shareholdings. No member may vote by proxy, except a member that is an organization may be represented and vote by one of its members or shareholders who is authorized, in writing, by the organization's governing body to represent the organization.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 4. POWERS OF CREDIT UNION

Art. 2461-4.01. General Powers

Subject to the provisions of this Act, the articles of incorporation, and the bylaws of the credit union, each credit union organized under this Act may:

(1) make contracts;

(2) sue and be sued in the name of the credit union;

(3) adopt and use a common seal and alter its seal at pleasure;

(4) purchase, hold, lease, or dispose of property necessary or incidental to its operations, subject to regulations issued by the commissioner;

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

(6) receive from its members payments on shares or deposits and to conduct Christmas clubs, vacation clubs, and other thrift programs for the membership;

(7) act as fiscal agent of the United States, under such regulations as the secretary may promulgate, as agent for any instrumentality of the United States, and as agent of this state or any governmental division or instrumentality of this state;

(8) lend its funds to its members in the manner provided in this Act;

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

(10) borrow money from any source, but if, after incurring a debt, the total debt of the credit union will exceed an amount equal to 25 percent of its shares, deposits, and surplus, the debt may not be incurred without the prior approval of the commissioner, and the commissioner shall grant or deny a request for approval under this subsection within 10 days after it is made;

(11) act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into court for members; act as depository for any money constituting the estates of deceased members; accept funds or money for deposit by fiduciaries, trustees, or receivers, if managing or holding funds in behalf of a credit union or one or more members of the credit union; accept funds or money for deposit by building and loan associations, savings departments of banks, commercial banks, savings banks and trust companies, or insurance companies if the membership or the primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of credit unions and their members or organizations of credit unions, or if the institutions, associations, or companies are designed to serve or otherwise assist credit union operations; and act as custodian of individual retirement accounts, custodian of pension funds of self-employed individuals or of the sponsor of a credit union, or as trustee under pension and profit-sharing plans; and all powers granted under the provisions of this subsection are subject to standards prescribed by regulations promulgated under this Act;

(12) invest funds in the manner provided in this Act;

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

(14) hold membership in other credit unions organized under this Act or other laws, subject to rules and regulations promulgated by the commissioner, and hold membership in other organizations as may be approved by the board of directors;

(15) declare dividends, pay interest on deposits, and pay interest refunds to borrowers in the manner provided in this Act;

(16) impress a lien on the shares and accumulation of dividends and interest of any member to the extent of any loans made to the member directly or indirectly, or on which the member is surety, and for any other obligations due by the member;

(17) change its principal place of business to another place in the state, or change the location in the state of any subsidiary places of business, on giving written notice to the commissioner;

(18) collect, receive, and disburse money in connection with the sale of travelers checks, money orders, and similar instruments, and for other purposes that may provide benefit or convenience for its members, and for those purposes, levy incident charges;

(19) levy a charge not to exceed reasonable administrative costs for each check negotiated to the credit union by a member or other person if the check is returned by the drawee bank because it is drawn against insufficient funds, there is a stop payment order, the account on which it is drawn is closed, or it is drawn against uncollected funds, or if it is returned for a similar reason; this charge is in addition to interest authorized by law and is not a part of the interest collected or agreed to be paid on a subject loan under any state law that limits the rate of interest that may be charged in any transaction, but the charge is an expense of administration;

(20) make donations or contributions to any nonprofit, civic, charitable, or community organization as authorized by the board of directors subject to rules and regulations promulgated by the commissioner and subject to federal or state laws regulating these contributions;

(21) operate as a central credit union, with the approval of the commissioner; and

(22) cause any or all records kept by the credit union to be copied or reproduced by any photostatic, photographic, electronic, or micro-filming process that correctly and permanently

copies, reproduces, or forms a medium for copying or reproducing the original record on a file or other durable material, subject to any regulations promulgated by the commissioner, and dispose of the original record. Any copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-4.02. Incidental Powers

A credit union may exercise all powers necessary or appropriate to accomplish the purposes for which the credit union is organized. A credit union may exercise the powers granted corporations organized under the laws of this state, including those powers necessary or requisite to enable the credit union to promote and carry on most effectively its purposes. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-4.03. Conformity to Federally Chartered Credit Unions

The commissioner by rule or regulation may authorize credit unions organized under this Act to engage in any activity in which the credit unions could engage if they were operating as federally chartered credit unions at the time authority is granted, if on investigation or hearing, the commissioner finds it necessary to preserve and protect the welfare of the credit unions and to promote the general economy of this state.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 5. DIRECTION OF AFFAIRS

Art. 2461-5.01. Management

The business and affairs of a credit union are managed by a board of directors of not less than five members, by a credit committee of not less than three members, and by those officers prescribed in the bylaws of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.02. Certificate of Election

The chairman of the board and the secretary shall execute a certificate of election that sets forth the names and addresses of the officers, directors, and committee members elected or appointed, and shall file a copy of the certificate of election with the department within 30 days after the election or appointment.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.03. Board of Directors

(a) Directors of the credit union are elected at an annual membership meeting, by and from the membership, and in the manner provided in the bylaws.

(b) The duties of the board of directors are prescribed by the bylaws.

(c) The terms of the members of the board of directors are prescribed in the bylaws.

(d) The board of directors shall elect from its own number a chairman, who shall preside at all meetings of the board. The board shall elect from its own members a treasurer and secretary of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.04. Officers

(a) The officers of a credit union consist of:

(1) a chairman of the board;

(2) a chief executive officer in charge of operations whose title is president, who may or may not be a member of the board of directors;

(3) a treasurer;

(4) a secretary; and

(5) such other officers as may be prescribed in the bylaws.

(b) The board of directors may employ or shall designate the president, who may or may not be, in the discretion of the board, the same person as the treasurer or credit manager. The treasurer and the secretary may be the same person, but the president and secretary may not be the same person.

(c) The board of directors shall elect the officers of the credit union at the time and in the manner prescribed by the bylaws.

(d) Each officer shall serve for one year or until his successor is elected and qualifies.

(e) The duties of the officers are prescribed in the bylaws.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.05. Credit Committee; Credit Manager; Loan Officers

(a) The board of directors shall appoint a credit committee in the manner prescribed by the bylaws.

(b) The terms of the members of the credit committee are prescribed in the bylaws.

(c) The credit committee shall supervise the making of loans to members.

(d) The credit committee shall meet at least once a month or more frequently if the business of the credit union requires.

(e) A credit union may not make a loan unless it has been considered by the credit committee and

approved by a majority of the credit committee present at the meeting at which the loan is considered.

(f) The credit committee may appoint one or more loan officers and delegate to each loan officer the power to approve loans. At least once a month, each loan officer shall furnish to the credit committee a record of each loan approved or not approved by the loan officer during the month preceding the date of the meeting of the credit committee. The loan officer may make loans without the necessity for any meetings other than those prescribed in this subsection and without the necessity of the prior approval by any members of the credit committee, if the bylaws permit. The credit committee shall consider and act on all applications for loans not approved by the loan officer within 30 days after the date the application or request for loan is forwarded to the credit committee.

(g) With the approval of the board of directors, the president may appoint a credit manager to serve in lieu of the credit committee. The credit manager, if so appointed, shall supervise the making of loans to members and shall have the same powers, duties, rights, and prerogatives extended the credit committee under the provisions of this section. A credit union may have only one credit manager, who may be the same person as the president.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.06. Compensation and Bond

(a) No director may receive compensation, directly or indirectly, for serving as a director or committee member. Directors may receive reimbursement for actual expenses incurred in carrying out their duties.

(b) The board of directors shall purchase from a surety company authorized to do business in this state a blanket security bond covering all officers, employees, members of official committees, attorneys at law, and other agents of the credit union to protect the credit union against loss caused by the failure of a person to faithfully perform his duties.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.07. Audits

(a) The board of directors shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union, in accordance with established principles and regulations promulgated by the commissioner, and shall submit a summary of the audit to the members of the credit union at the next annual membership meeting. The board shall report the results of the audit to the department. The board of directors shall make or cause to be made any supplementary audits or examinations that it deems necessary. The board of directors

shall make or cause to be made verifications of the accounts of the members with the records of the credit union if required by regulations promulgated by the commissioner.

(b) If the representative examiners from the department find that the board of directors is not acting in accordance with this Act and the regulations issued under it, the commissioner may appoint an independent committee from outside the credit union and its membership to perform an audit, the costs and expenses of which are borne by the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.08. Misconduct and Penalties for Misconduct

(a) No person may demand or receive, directly or indirectly, any bonus, commission, or other consideration on account of the making of a loan or investment or the purchase of any asset by a credit union.

(b) Any officer, director, committee member, loan officer, or employee of a credit union who knowingly permits a loan to be made to a nonmember or participates in a loan to a nonmember commits a Class B misdemeanor. Additionally, the offender is primarily liable to the credit union for the amount illegally loaned. The illegality of the loan is no defense in any action of the credit union to recover on the loan. Extension of credit to a nonmember for the sale of real or personal property owned by the credit union or for the sale of assets acquired in liquidation or repossession shall not be construed as a loan to a nonmember.

(c) Any officer, director, committee member, loan officer, or employee of a credit union, or any person who knowingly permits or participates in a loan in violation of this Act, the bylaws of the credit union, or rules and regulations of the commissioner, other than a loan in violation of Subsection (b) of this section, commits a felony of the third degree.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.09. Officers, Directors, and Employees; Cease and Desist; Removal; Appeal

(a) The commissioner may find that an officer, director, or employee of a credit union, or the credit union itself, acting through any authorized person, has:

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

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

(3) willfully neglected to perform duties, or committed a breach of trust or fiduciary duty;

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

(5) refused to submit to examination under oath;

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

(7) violated any conditions of its charter or of any agreement entered with the commissioner or the department.

(b) If the commissioner makes any of these findings, he shall give notice in writing to the credit union and the offending officer, director, or employee, stating the particular violations or practices found. The commissioner shall call a meeting of the directors of the credit union and lay before them the findings and demand a discontinuance of the violations and practices found.

(c) If the commissioner finds that an order to cease and desist is necessary and in the best interest of the credit union involved and its depositors, creditors, and members, then at the directors' meeting above provided or within 30 days thereafter the commissioner may serve on the credit union, its board of directors, and any offending officers, directors, or employees, a written order to cease and desist from the violations and practices enumerated in the order and to take such affirmative action as may be necessary to correct the conditions resulting from the violations or practices. The cease and desist order is effective immediately if the commissioner finds that immediate and irreparable harm is threatened to the credit union, its depositors, or members; otherwise, the order shall state the effective date, not less than 10 days after delivery or mailing of the notice. Unless the credit union or directors file a notice of appeal with the commissioner within 10 days after the delivery or mailing of notice, whichever is the case, the order is final. A copy of the order shall be entered in the minutes of the directors, who shall certify to the commissioner in writing that each has read and understood the order.

(d) If the commissioner subsequently finds by examination or other credible evidence that the offending officer, director, or employee has continued violations or practices previously charged and found by the commissioner, after notice and demand made under Subsection (b) of this section, and further finds that removal from office or employment is necessary and in the best interest of the credit union and its depositors, creditors, and members, then the commissioner may serve the officer, director, or employee with an order of removal. The order shall state the grounds for removal with reasonable cer-

tainty and shall effect immediate suspension from office or employment. Unless the credit union, the director, or the person removed files a notice of appeal with the commissioner within 10 days after the delivery or mailing of notice, whichever is the case, the order of removal is effective and final as of the date of suspension, and the person removed may not hold office, be employed by, or participate in the affairs of the credit union. A copy of the order shall be entered in the minutes of the directors, and an officer shall acknowledge receipt of the order and certify to the commissioner that the person has been removed from office.

(e) If the person removed files a timely appeal, the commissioner shall set a time and place for hearing the appeal, giving reasonable notice to the person removed. The commission may adopt any rules or procedures necessary to govern the fair hearing and adjudication of the questions appealed.

(f) If, after a cease and desist order or an order of removal becomes effective and final, a credit union or its board of directors or any duly authorized officer of the credit union fails or refuses to comply with an order, then the commissioner may, after giving notice, assess a civil penalty against the credit union in an amount not to exceed \$100 for each day the credit union is in violation of the order. If a credit union fails to pay the penalty assessed, the commissioner may institute a suit for collection of the civil penalty in a district court of Travis County. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 6. CAPITAL ACCOUNTS

Art. 2461-6.01. Capital

The capital of a credit union consists of the aggregate amount of the share and deposit accounts of its members plus all reserves and undivided earnings of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.02. Share Accounts

(a) Share accounts consist of payments made by members on shares, all of which are common shares of one class, subscribed, paid for, and transferred in the manner prescribed by the bylaws.

(b) Without qualifying any other statutory right to a setoff or lien, and subject to any contractual provisions accepted by the credit union, a credit union has a lien on the shares or deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member.

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

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.03. Deposit Accounts

Deposit accounts, if any, are operated in accordance with the policies and conditions prescribed by the board of directors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.04. Thrift Club Accounts

Christmas clubs, vacation clubs, and other thrift programs, if provided for the use of members, are operated in accordance with the policies and conditions prescribed by the board of directors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.05. Multiple-party Accounts

(a) A member may designate any person, organization, association, corporation, or partnership to hold shares, deposits, and thrift club accounts with the member in joint tenancy. One or more or all of the joint tenants may make deposits and withdrawals subject to the terms of a multiple-party account agreement accepted by the credit union. A credit union shall maintain all multiple-party account agreements as a permanent part of the records pertaining to multiple-party accounts. At least one party to a multiple-party account must be a member of the credit union in which the account is established. No joint tenant, unless also a member, may vote, obtain loans, or hold office in the credit union. Payment of part or all of a multiple-party account to any one or more of the joint tenants discharges, to the extent of the payment, the liability of the credit union to all.

(b) The net contribution of a party to a multiple-party account as of any given time is the sum of all deposits or shares made by or for the party, less all withdrawals made by or for the party which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The net contribution includes, in addition, any share or deposit of life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question. During the lifetime of all parties to a multiple-party account, unless the multiple-party account agreement with the credit union provides otherwise, sums on deposit or in share accounts may be paid on the demand of one or more parties even though it is presumed that sums on deposit or in share accounts belong to the parties in proportion to the net contributions by each to the sums on deposit or in share accounts. Unless the multiple-party account agreement with the credit union provides otherwise, and in the absence of satisfactory proof of the net contributions, those who are parties from time to time shall be presumed to own the joint account in equal undivided interests.

(c) The death of any party to a multiple-party account has no effect on the beneficial ownership of the account, other than to transfer the decedent's right in the account to the estate of the decedent, unless the account is a survivorship account or trust account established in accordance with the laws and with the constitution of this state and the bylaws of the credit union. Nothing in this Act otherwise prevents a credit union from operating the account in accordance with the terms of the multiple-party account agreement.

(d) A multiple-party account payable to two or more persons, jointly or severally, that does not expressly provide that there is a right of survivorship, is presumed to be a nonsurvivorship account.

(e) Without qualifying any other statutory right to a setoff or lien, and subject to any contractual provisions accepted by the credit union, when a party to a multiple-party account is indebted to a credit union, the credit union has a right to set off against the entire amount of the account.

(f) Nothing in this Act shall be construed as in conflict with the laws of the United States or of the State of Texas as those laws govern the taxation of multiple-party accounts.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.06. Minor Accounts

A credit union may issue shares or deposits in the name of a minor, and a minor may withdraw the shares or deposits. Payments made on withdrawals by a minor are valid. A minor may vote in the meetings of the members if permitted by the bylaws, except no minor may vote through his parent or guardian. No minor is eligible for any office or committee membership within the credit union unless the bylaws specify otherwise.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.07. Trust Accounts

A credit union may issue shares or deposits in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless the beneficiary is also a member, may vote, obtain loans, hold office, or be required to pay an entrance fee. Payment of part or all of the shares or deposits to a member shall, to the extent of the payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of the payment. If a member to whom shares or deposits are issued or held in trust dies, and the credit union has no other written evidence of the existence or terms of any trust, the credit union shall pay the shares or deposits and any dividends or interest to the beneficiary or to the legal representative of the

beneficiary; otherwise, the credit union shall administer and distribute the shares or deposits so issued or held under the provisions of the trust agreement, a copy of which must remain on file with the credit union until termination of the trust.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.08. Third Party Claims

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

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 7. LOANS

Art. 2461-7.01. Purpose, Terms, and Interest Rate

If made in accordance with rules and regulations promulgated by the commissioner, a credit union may make loans to members for such purposes and on such security and terms as the credit committee, credit manager, or loan officer approves, at rates of interest not exceeding one percent per month on the unpaid monthly balance. Every loan must be evidenced by a written instrument.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.02. Loan Limit

No credit union may make a loan or aggregate of loans to any one member in an amount greater than 10 percent of the unimpaired capital and surplus of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.03. Line of Credit

The credit committee, an authorized loan officer, or the credit manager may approve in advance a line of credit, and may grant advances to a member within the limit of the extension of credit. If a line of credit has been approved, no additional loan applications are required if the aggregate obligation does not exceed the limit of the extension of credit.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.04. Participation Loans and Other Loan Programs

(a) A credit union may participate in loans to members jointly with other credit unions, corporations, or financial organizations.

(b) A credit union may participate in guaranteed loan programs of the federal and state governments.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.05. Loans to Officials

(a) A credit union may make loans and extend lines of credit to its directors, employees, loan officers, credit manager, and to members of its credit committee, if:

(1) the loan complies with the requirements of this Act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(2) the board of directors approves the loan, if the loan or aggregate of outstanding loans to any one person is greater than \$2,500, plus pledged shares and deposits.

(b) A credit union may permit a director, employee, loan officer, credit manager, and member of its credit committee to act as comaker, guarantor, or endorser of a loan to another member, unless the loan standing alone or added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds \$2,500, plus pledged shares and deposits, in which case approval of the board of directors is required.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-7.06. Prepayment Privilege

Any loan may be paid or prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 8. INVESTMENTS

Art. 2461-8.01. Investment of Funds

A credit union may invest funds not used in loans to members:

(1) in capital shares, obligations, participation certificates, or preferred stock issues of any agency, association, or company organized either as a stock company, mutual association, membership corporation, or trust company, if the membership or ownership of the agency, association, or company is confined or restricted to credit unions and their members or organizations of credit unions, and if the agency, association, or company is designed to serve or otherwise assist credit union operations; in loans to any credit union association or corporation, national or state, of which the credit union is a member; and investments in any one agency, association, or company of the type described in this subsection may not exceed an aggregate

amount of five percent of the credit union's total assets or the amount of its reserve fund, whichever is less;

(2) in obligations of the State of Texas or any of its political subdivisions;

(3) in certificates of deposit or passbook accounts issued by a state or national bank, or issued by a building and loan association or a savings and loan association, subject to regulations promulgated by the commissioner;

(4) in securities, obligations, participations, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the federal government or any of its agencies, or in any trust or trusts established for investing directly or collectively in the same;

(5) in loans to other credit unions in an amount not to exceed 25 percent of the total dollar amount of the capital of the lending credit union, or to any trust or trusts established for lending directly or collectively to credit unions;

(6) in purchases from any liquidating credit union, in accordance with rules and regulations promulgated by the commissioner, of notes made by individual members of the liquidating credit union at such prices as may be agreed to by the commissioner, or by the liquidating agent or board of directors of the liquidating credit union and the board of directors of the purchasing credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 9. RESERVE ALLOCATIONS; DIVIDENDS; SHARE REDUCTION

Art. 2461-9.01. Reserve Allocations

(a) The commissioner shall, with the approval of the commission, promulgate rules and regulations prescribing reserve allocations and requiring credit unions to maintain any reserves necessary to protect the interests of their members.

(b) The reserve fund belongs to the credit union. The credit union shall use its reserve fund to meet all losses except those resulting from an excess of expenses over income. The credit union may not distribute its reserve fund except on liquidation of the credit union or in accordance with a plan approved by the department. The board of directors may increase, or if the fund equals or exceeds the percentage established by regulations promulgated under this Act, may decrease the proportion of the gross income to be placed in the reserve fund, and may transfer part or all of the undivided earnings to the reserve fund.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-9.02. Dividends

The board of directors of a credit union may declare a dividend from undivided earnings in accordance with rules and regulations promulgated by the commissioner.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-9.03. Share Reduction

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

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 10. CHANGE IN CORPORATE STATUS

Art. 2461-10.01. Suspension

(a) If the commissioner finds that the capital of a credit union is seriously impaired, or that it is conducting its affairs in an unsafe, unauthorized, or unlawful manner, or that it refuses to submit to examination, the commissioner may take possession of the property and business of the credit union and retain possession until the commissioner permits it to resume business or orders its liquidation. Simultaneously, the commissioner shall cause notice of suspension to be given to the board of directors and shall call for a hearing within 10 days, at which hearing the board of directors may show cause why the suspension should not be continued or the credit union should not be liquidated. The board of directors may waive this hearing.

(b) If the commissioner, after issuing notice of suspension and providing opportunity for a hearing, rejects the credit union's plan to continue operations, the commissioner may issue a notice of involuntary liquidation and appoint a liquidating agent who shall proceed as provided in Section 10.02 of this Act. [Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.02. Liquidation

(a) When the commissioner finds that the interests of depositors and creditors of a credit union are seriously jeopardized through insolvency or imminent insolvency and that it is to the best interest of the depositors and creditors that the credit union be closed and its assets liquidated, the commissioner may close and liquidate the credit union.

(b) Unless involuntary liquidation has already been initiated by the commissioner, a majority of the credit union members present at a meeting specially called to consider the matter, but not less than a quorum, may vote to dissolve and liquidate the credit union if a notice of the special meeting was mailed to the members of the credit union at least 10 days prior to the meeting. Immediately after the mailing of a notice of a special meeting called to consider the matter of liquidation, the credit union shall cease to operate except for the purposes of accepting payments on loans or other obligations due the credit union. If the vote to dissolve and liquidate the credit union passes, the credit union may do no further business except that incidental to liquidation. The chairman of the board or the president and the secretary shall, within five days following the meeting and the affirmative vote to dissolve and liquidate, notify the department of intention to liquidate and shall include a list of the names of the directors and officers of the credit union together with their addresses. Notwithstanding the provisions of this subsection, the commissioner may appoint a liquidating agent to act for the board of directors of the credit union in liquidation if it is found that it is to the best interests of the depositors and creditors to do so.

(c) At any time within five days after the commissioner has closed any credit union under the provisions of Subsection (a) of this section or has appointed a liquidating agent to act for the board of directors under the provisions of Subsection (b) of this section, the credit union acting through its directors may sue in the district court of the county in which the credit union is located to enjoin the commissioner from liquidating the credit union. The court may, without notice or hearing, restrain the commissioner from liquidating the assets of such credit union pending hearing of the suit on the merits, and shall, in that event, instruct the commissioner to hold the assets of the credit union in the commissioner's possession pending final disposition of the suit. The commissioner may, with approval of the court, take such actions as may be necessary or proper to prevent loss or depreciation in the value of the assets. The court shall, as soon as possible, hear the suit on the merits and shall enter a judgment either enjoining the commissioner from liquidating the assets of the credit union or refusing to issue an injunction. Appeal shall lie from the judgment as in other civil cases, but the commissioner, irrespective of the character of judgment entered by the trial court or of any supersedeas bond filed, shall retain possession of the assets of such credit union pending final disposition on appeal.

(d) The credit union in liquidation shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and

may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. The board of directors or the liquidating agent shall use the assets of the credit union to pay, in the following order:

- (1) expenses incidental to liquidation including any surety bond that may be required;
- (2) any liability due nonmembers;
- (3) depositors;
- (4) thrift club accounts as provided in this Act; and
- (5) distributions to members proportionate to the shares held by each member as of the date liquidation was voted.

(e) A liquidating agent may, subject to the control and supervision of the commissioner and under the rules and regulations promulgated by the commissioner:

- (1) receive and take possession of the books, records, assets, and property of the credit union in liquidation; sell, enforce collection of, and liquidate all assets and property; compound all bad or doubtful debts; sue in the name of the liquidating agent or in the name of the credit union in liquidation; and defend actions brought against the liquidating agent or against the credit union;
- (2) receive, examine, and pass on all claims against the credit union in liquidation, including claims of members on shares;
- (3) make distribution and payment to creditors and members as their interests may appear; and
- (4) execute such documents and papers and do such other acts and things that the liquidating agent may deem necessary or desirable to discharge his duties.

(f) Subject to the control and supervision of the commissioner and under the rules and regulations promulgated by the commissioner, the board of directors or liquidating agent of a credit union in liquidation shall:

- (1) cause notice to be given to creditors and members to present and make legal proof of their claims, which notice must be published once a week in each of three successive weeks in a newspaper of general circulation in each county where the credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that when the aggregate book value of the assets and property of the credit union in liquidation is less than \$10,000, the commissioner shall declare the credit union in liquidation to be a "no publication" liquidation, and publication notice to creditors and members is not required in such case;

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

(3) in a "no publication" liquidation, determine from all sources available, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after 60 days have elapsed from the date of notification to the department of a voluntary liquidation or from the date of appointment of the liquidating agent distribute the funds of the credit union to creditors and members ratably and as their interests may appear.

(g) The commissioner shall prescribe the certificate to be completed by the liquidating agent or by the board of directors attesting to liquidation, that distribution has been made and that liquidation has been completed. The commissioner, on receipt and approval of the certificate, shall cancel the charter of the credit union. The corporate existence of the credit union shall continue for a period of three years from the date of cancellation of its charter, during which period the liquidating agent, or any duly appointed successor, or such persons as the commissioner may designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(h) No liquidating agent, officer, director, or employee of a credit union in liquidation may acquire any of the assets of the credit union or purchase any loans of the credit union. None of these persons may obtain from the liquidation any compensation or profit for personal benefit, whether directly, indirectly, for the benefit of any member of the person's family or any person associated with the person, or for the benefit of any business enterprise with which the person is associated, except for the credit union in liquidation. The liquidating agent may receive such reasonable compensation as may be set forth in

the contract of employment, and nothing in this Act shall prevent compensation of the liquidating agent or those salaried employees and salaried officers of the credit union during the pendency of the liquidation, which payments shall be considered expenses incidental to liquidation. Any person who participates in a violation of this subsection commits a misdemeanor punishable by a fine of not more than \$1,000 and not less than \$100, or by confinement in jail for not more than six months, or both.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.03. Merger

(a) A credit union may, with the approval of the department, merge with any other credit union under the existing charter of the other credit union, pursuant to a plan agreed to by the majority of the board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of each credit union present at the meetings of members called for that purpose. The commissioner may waive the requirement that the plan be approved by a majority of the members of the credit unions.

(b) After agreement by the directors and approval by the members of each credit union, the president and secretary of each credit union shall execute a certificate of merger containing the following information:

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

(2) the vote of the board of directors in favor of and against the adoption of the plan;

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

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

(5) the vote of the membership in favor of and against approval of the plan; and

(6) the name of the surviving credit union.

(c) The merging credit union shall submit the certificates and a copy of the plan of merger to the department. On approving the merger, the department shall return the certificates and plan to the merging credit unions.

(d) After a merger is effected, all property, property rights, and interests of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger is effected.

(e) This section shall be construed, whenever possible, to permit a credit union organized under any

other act to merge with one organized under this Act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.04. Conversion

The commissioner shall promulgate regulations to permit the conversion of a credit union organized under this Act to a federal credit union, and the conversion of a federal credit union to a credit union organized under this Act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 11. REGULATORY BODY

Art. 2461-11.01. Credit Union Commission

(a) The Credit Union Commission consists of six members, all of whom are from state-chartered credit unions. The commission shall consult with, advise, and make recommendations to the commissioner. The jurisdiction, authority, powers, and duties previously conferred and imposed by law on the Banking Commissioner in relation to the management, control, regulation, and general supervision of credit unions are conferred and imposed on the commission and commissioner.

(b) The Credit Union Department is composed of the Credit Union Commission and a Credit Union Commissioner, together with other officers and employees within the department. The department shall supervise and shall regulate, as provided in this Act, all credit unions organized under the laws of the State of Texas. The department shall periodically make comprehensive studies of the statutes of this state as they pertain to credit union operations. The commissioner shall report the recommendations of the department when and as necessary to the legislature for consideration. As of December 31 of each year the department shall report annually to the governor the receipts and disbursements of the department for each calendar year, and shall report to the appropriate committees of the house of representatives and of the senate within the first 60 days of each regular session of the legislature.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.02. Qualifications of Members

All members of the commission must have a minimum of five years' active experience in the operation of a credit union. No two members of the commission may be residents of the same state senatorial district.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.03. Appointment and Terms of Members

The members of the commission are appointed by the governor, with the advice and consent of the

senate, for terms of six years, with the terms of two members expiring every two years. As of the effective date of this Act, the terms of the respective members of the Credit Union Commission then serving shall continue until their normal expiration dates.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.04. Vacancies

In the event of the death, resignation, or removal of a member of the commission, or if a member ceases to have the qualifications necessary to original appointment, the governor, with the advice and consent of the senate, shall appoint a qualified person to fill the unexpired term.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.05. Expenses of Members

Each member of the commission is entitled to reimbursement of the reasonable expenses incurred in the performance of his official duties.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.06. Meetings

(a) The commission shall hold regular meetings at least two times each year. The chairman of the commission, the commissioner, or any three members of the commission may call special meetings. The commission may adopt rules and regulations governing the time and place of meetings, the character of notice of special meetings, and the conduct of all meetings, including the form in which minutes of the meetings are maintained.

(b) A majority of the membership of the commission constitutes a quorum for the purpose of transacting any business.

(c) The commission shall annually elect one of its members to serve as chairman. The chairman shall preside at all meetings of the commission.

(d) The commissioner shall attend meetings of the commission and shall preside in the absence of the chairman. The commissioner may not vote at any meeting.

(e) No commission member may act on matters under consideration which specifically relate to any credit union incorporated under Chapter 2 of this Act in which the member of the commission is an officer, director, or shareholder.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.07. Rulemaking Power

(a) The commissioner, with the approval of the commission, shall promulgate general rules and regulations pursuant to this Act and from time to time

may amend the same. The rules and regulations shall apply to all credit unions organized under this Act.

(b) The commissioner and the commission may not promulgate rules and regulations in contradiction of existing rules and regulations until notice of the terms or substance of the proposed rule or regulation or amendment is submitted, in writing, to all credit unions subject to regulation. Each credit union may, within 60 days after the date of issuance of the notice, submit, in writing, comments or questions relevant to the proposed rule or regulation to the commissioner. The commission shall consider the written comments or questions submitted by the credit union, together with relevant materials available from the files and records of the department. The commission may hold a public hearing if necessary. The commission shall promulgate rules and regulations in writing. The commissioner, with the approval of the commission, shall promulgate rules and regulations governing the conduct of any public hearings.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.08. Credit Union Commissioner

The commission shall appoint, by at least four affirmative votes, a Credit Union Commissioner who shall serve as an employee and at the pleasure of the commission. The commissioner must have at least 5 years' practical experience within the 10 years immediately prior to his appointment. The experience may consist of experience in the executive management of a credit union or in the employment of a credit union regulatory agency.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.09. Deputy Credit Union Commissioner

Subject to the approval of the commission, the commissioner may appoint a Deputy Credit Union Commissioner. The deputy commissioner must meet the same qualifications as does the commissioner. The deputy commissioner, if any, shall serve at the pleasure of the commissioner. He may exercise all the powers and prerogatives of the commissioner and shall perform all the duties of the commissioner during the commissioner's absence or inability to act or otherwise at the direction of the commissioner.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.10. Powers of Credit Union Commissioner

(a) On the appointment and qualification of a commissioner, the commissioner shall supervise and regulate all credit unions doing business in this state, except federal credit unions organized and

existing under federal law, in accordance with this Act and the rules and regulations promulgated under this Act.

(b) The commissioner shall enforce the provisions of this Act and the rules and regulations promulgated from time to time.

(c) With the approval of the commission, the commissioner shall levy and collect all supervision fees, penalties, charges, and revenues required to be paid by credit unions.

(d) The commissioner shall submit to the commission at least once a year a full and complete report of the receipts and expenditures of the department. The commission may require more frequent reports. The commission shall adopt and from time to time amend, budgets that direct the purposes and prescribe the amounts for which the fees, penalties, charges, and revenues may be expended or levied.

(e) The commissioner, with the approval of the commission, shall promulgate rules and regulations requiring credit unions doing business within the state to provide or cause to be provided share and deposit insurance for members and depositors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.11. Credit Union Examiners

Subject to recruitment and qualifications approved by the commission, the commissioner shall appoint credit union examiners in sufficient number to perform fully the duties and responsibilities under this Act and the laws of this state.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.12. Annual Examination

The department, by and through its duly appointed examiners, shall perform an examination of the books and records of each credit union subject to this Act at least once each year. Each credit union shall furnish the examiner full access to all books, papers, securities, records, and other sources of information under the control of the credit union. The examiner may administer oaths. The examiner shall report the results of each examination on a form prescribed by the commissioner and approved by the commission. The examiner shall include in the report a general statement of the affairs and condition of the credit union. The department shall send a copy of the report to the board of directors of the credit union examined within 30 days after the examination. Each credit union shall pay an examination fee based on the costs of performing the examination.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.13. Oaths of Office; Bond

The commissioner, the deputy commissioner, if any, each credit union examiner, and every other officer and employee of the commission, shall, before assuming the duties of office, take an oath and make fidelity bond in the sum of \$10,000 payable to the governor and all successors in the office of governor, in individual, schedule, or blanket form, executed by a surety appearing on the list of approved sureties acceptable to the United States government. Each oath and bond required under this Act must be in a form approved by the commission. The premiums for the bond are paid out of the funds of the department.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.14. Defense by Attorney General

The attorney general shall defend any action brought against any member of the commission or against any of its officers or employees by reason of the official act or omission of the person, whether or not the person is a member, officer, or employee of the commission at the time of the initiation of the action. Venue for any actions taken against the commission, its officers, or employees lies in Travis County.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.15. Compensation of Employees

The commissioner, the deputy commissioner, if any, each examiner, and every other officer of the commission, except commission members, are employees of the commission, subject to its orders and directions, and are entitled to receive compensation

fixed by the commission, but in no event may any employee receive compensation exceeding that paid to the governor. The compensation is paid from funds of the department.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.16. Transfers to General Revenue Fund

The department shall transfer \$1,000 each year to the general revenue fund to cover the costs of governmental service rendered by other departments.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-11.17. Exemption from Securities Laws

Credit unions, their officers, employees, and agents in the sale, issuance, or offering of savings and share accounts of any credit union and their deposit and share accounts, whether state or federally chartered, are exempt from the registration provisions of the laws of this state, other than this Act, which provide for the supervision, registration, or regulation in connection with the sale, issuance, or offering of securities as the term is defined in Section 4, Securities Act, as amended (Article 581-4, Vernon's Texas Civil Statutes). The sale, issuance, or offering of any such accounts or shares is legal without any action or approval on the part of any official, other than the credit union commissioner, authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

TITLE 47

DEPOSITORIES

CHAPTER ONE. STATE DEPOSITORIES

Art. 2530. Deposit of Securities

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

A State Depository bank shall also have the option of depositing said pledged securities with the Federal Reserve Bank of Dallas; such securities to be held by said Bank to secure funds deposited by the State Treasurer in the State Depository bank. When such pledged securities are so deposited and subject to the approval of the Board, the Federal Reserve Bank of Dallas may apply book entry procedures to the pledged securities so held. The records of the Federal Reserve Bank of Dallas shall at all times reflect the name of the State Depository bank for whose account the pledged securities are so deposited, and an Advice of Transaction shall be issued by the Federal Reserve Bank of Dallas to the State Treasurer and the State Depository bank.

Subject to the approval of the Board, a State Depository may have the right to substitute one group of securities for another group of securities pledged with the State Treasurer, when and as such

State Depository may desire to make such substitution, so long as the securities desired to be substituted by such bank shall come within the classification of securities acceptable under the terms of this Act.

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

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

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

[Amended by Acts 1975, 64th Leg., p. 1021, ch. 390, § 1, eff. June 19, 1975.]

TITLE 51

ELEEMOSYNARY INSTITUTIONS

CHAPTER TWO. STATE HOSPITALS

Art. 3201a-3. Pilot Program for Treatment of Respiratory Diseases; Harlingen State Chest Hospital and San Antonio State Chest Hospital

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

Number of Patients; Persons Treated; Payment of Charges

Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) and (b)]

(c) Repealed by Acts 1975, 64th Leg., p. 2194, ch. 700, § 3, eff. June 21, 1975.

[See Compact Edition, Volume 4 for text of 3 to 6]

Disposition of Fees and Charges

Sec. 6A. Fees and charges collected by each hospital for physicians' services shall be retained locally and shall be used only for the purpose of recruiting, retaining, and supplementing the salaries of the hospital's medical staff. Distribution of fees and charges for physicians' services shall be subject to rules and regulations adopted by the medical staff, not inconsistent with the laws of this state regulating the practice of medicine.

[See Compact Edition, Volume 4 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 2194, ch. 700, §§ 2 and 3, eff. June 21, 1975.]

CHAPTER THREE. OTHER INSTITUTIONS

TEXAS SCHOOL FOR THE BLIND

Article

3207d. Early Identification and Registry of Blind and Visually Handicapped [NEW].

SAN ANTONIO STATE SCHOOL [NEW]

3263g. San Antonio State School [NEW].

TEXAS SCHOOL FOR THE BLIND

Art. 3207a. State Commission for the Blind

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

Bureau of Information; Powers and Duties of Commission; Definitions

Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) to (d)]

(e) The Commission shall cooperate with the Governor's Coordinating Office for the Visually Handicapped¹ in maintaining a current and comprehensive register of blind and visually handicapped persons within the State of Texas, including the maintenance of appropriate information regarding individuals whose medical history or medical prognosis is such that there is a reasonable likelihood that the individuals may experience a substantial visual handicap in the future.

[See Compact Edition, Volume 4 for text of 2(f) to (j)]

Responsibility for Rendering Services to the Visually Handicapped; Inter-agency Agreements; Cooperation with Federal Government

Sec. 2a.

[See Compact Edition, Volume 4 for text of 2a(a) to (d)]

(e) The State Commission for the Blind and other concerned state agencies or instrumentalities may not refuse to enter into any interagency agreement developed for the purpose of advancing the declared policies of the State of Texas regarding the rehabilitation or education of the blind and visually handicapped. Such agreements shall be negotiated and undertaken with a view toward extending and improving the types of services regularly, routinely, currently and effectively being carried out by state-supported agencies and instrumentalities directly at the time of the effective date of this subsection. The programs or services so developed through interagency agreements or contracts shall be implemented with due consideration to making efficient use of all available specialty and fiscal resources, and with careful attention being first given to avoiding unnecessary duplication, overlap, or redundancy

in the respective efforts of state-supported organizations or instrumentalities.

Executive Director; Other Workers

Sec. 3. The Board of the State Commission for the Blind may appoint and fix the compensation of an executive director, assistant executive director, and such other workers as may be necessary to make effective the purposes of the State Commission for the Blind within the appropriations available. Upon undertaking specific activities supportive of programs of special education and vocational education for the blind and visually handicapped, the Board of the State Commission for the Blind is authorized to employ a total of five individuals in exempt positions, to consist of the executive director and assistant executive director, a deputy director for cooperative programs with other agencies and departments of the state or of its political subdivisions, a deputy director for technical and consultative services to private organizations and special resource facilities within the field, and a deputy director for the regular programs of the agency. The salaries and related costs of these positions may be paid out of the general funds of the agency, out of special grants received by the agency, or through funds becoming available under interagency agreements. The Board of the State Commission for the Blind may establish the salaries of these exempt positions in amounts not to exceed the average amounts paid for equivalent positions in any other five state agencies engaged in the direct extension of state-supported services to eligible individuals.

[See Compact Edition, Volume 4 for text of 4]

[Amended by Acts 1975, 64th Leg., p. 2383, ch. 734, §§ 12, 26 and 27, eff. June 21, 1975.]

¹ See art. 4413(202).

Art. 3207d. Early Identification and Registry of Blind and Visually Handicapped

Sec. 1. Under the general supervision of the Governor's Coordinating Office for the Visually Handicapped,¹ there shall be maintained a current and comprehensive register of the blind and of persons within the State of Texas handicapped by a visual condition that is likely to deteriorate either to blindness or to a substantial visual handicap.

Sec. 2. An individual employed by an organization directly or indirectly supported by the State of Texas or deriving income from the vending of goods or services to the State of Texas or any political subdivision of the state or engaged in a business or profession requiring a license issued under the laws of the State of Texas on encountering in a business or professional capacity an individual who is handicapped by a serious visual impairment shall, if a

professional or commercial relationship is established with the visually handicapped individual:

(1) determine through inquiry if the visually handicapped individual is known to the Governor's Coordinating Office for the Visually Handicapped; and

(2) if the visually handicapped individual is not known to the Governor's Coordinating Office, forward to the Governor's Coordinating Office the name, mailing address, telephone number if available, age, sex, race, and federal Social Security number of the visually handicapped individual if a Social Security number is available.

Sec. 3. On receipt of information forwarded pursuant to Section 2 of this article, staff designated by the Governor's Coordinating Office for the Visually Handicapped to maintain the register of blind and visually handicapped individuals shall contact the visually handicapped person about whom information has been forwarded to ascertain if the individual should appropriately be included on the register. If it appears that the individual's visual condition is not of a nature such that special governmental services are or potentially might be required because of the visual condition, the individual need not be included on the Register of Blind and Visually Handicapped, but if the individual's visual condition is such that governmental services are presently needed or might with reasonable likelihood be needed at a future date, appropriate information concerning the individual shall be included in the register.

Sec. 4. Appropriate systems, standards, and procedures shall be developed for the Register of the Blind and Visually Handicapped to assure:

(1) that information contained in the register is effectively shared with all state programs offering services that are beneficial to the blind and visually handicapped;

(2) that state programs providing services to blind and visually handicapped persons supply for inclusion in the register information pertinent to the services provided and the outcome of the services;

(3) the effective long-range planning of state services for the blind and visually handicapped;

(4) the meaningful evaluation of the effectiveness and impact of special services provided to the blind and visually handicapped; and

(5) the maintenance of a service monitoring and review process to minimize unreasonable delays in the initiation of appropriate services, duplication of services, or inadequate coordination of the respective educational, rehabilitative, or other special effort which various organiza-

tions might from time to time exert in behalf of blind or visually handicapped individuals.

Sec. 5. The Governor's Coordinating Office for the Visually Handicapped is authorized to enter into such arrangements as might be determined necessary, appropriate, and consistent with objectives of cost-effectiveness in developing the electronic data processing capabilities required for efficiently discharging the responsibilities enumerated in this article.

[Added by Acts 1975, 64th Leg., p. 2382, ch. 734, § 11, eff. June 21, 1975.]

¹ See art. 4413(202).

SAN ANTONIO STATE SCHOOL

Art. 3263g. San Antonio State School

Sec. 1. There is hereby established the San Antonio State School for the education, care, and treat-

ment of mentally retarded persons. The Texas Department of Mental Health and Mental Retardation may enter into agreements with the State Department of Health for use of the excess facilities of the San Antonio Chest Hospital in the operation of the school.

Sec. 2. The Texas Department of Mental Health and Mental Retardation shall appoint personnel necessary to operate and maintain the school and to adequately treat the persons admitted within the limits of legislative appropriations. The Texas Department of Mental Health and Mental Retardation shall admit persons and shall provide for their care and maintenance under the state laws, rules, and regulations governing the admission and care of mentally retarded persons.

[Acts 1975, 64th Leg., p. 2163, ch. 695, §§ 1 and 2, eff. June 21, 1975.]

TITLE 52A

ENGINEERS

Art. 3271a. Texas Engineering Practice Act
[See Compact Edition, Volume 4 for text of 1 to 10]
Roster of Registered Engineers

Sec. 11. A roster showing the names and places of business of all registered professional engineers shall be prepared and published by the Board each biennium at a time determined by the Board. Copies of this roster shall be furnished without charge to any engineer licensed by the Board on the written request of the engineer, placed on file with the Secretary of State, and furnished to any person upon written request who tenders a reproduction fee set by the Board in an amount not to exceed Five Dollars (\$5.00).

[See Compact Edition, Volume 4 for text of 12 and 12a]
Applications and Registration Fees

Sec. 13. 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 actual engineering work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be Fifty Dollars (\$50.00).

[See Compact Edition, Volume 4 for text of 14 and 15]
Expirations and Renewals

Sec. 16. It shall be the duty 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 year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected by the payment of a renewal fee set by the Board not to exceed Forty-five Dollars (\$45.00). The Board is hereby given authority and duty to determine the amount of such renewal fee required to effectively carry out the administration and enforcement of all the provisions of this Act. Failure on the part of any registered engineer to renew his certificate annually shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate when the renewal is past due shall be increased ten per cent (10%) for each month or fraction of a month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

[See Compact Edition, Volume 4 for text of 16.1 to 25]

[Amended by Acts 1975, 64th Leg., p. 299, ch. 129, § 1, eff. Sept. 1, 1975.]

TITLE 53

ESCHEAT

Art. 3272b. Duties of Depositories of Dormant or Inactive Accounts

[See Compact Edition, Volume 4 for text of 1 to 3]

Report to State Treasurer

Sec. 4. On or before May 1st of the year following the first publication required by this Article, the depository shall submit in duplicate copies a report to the State Treasurer listing the names of all such depositors or creditors whose names were published, whose whereabouts and the whereabouts of any owner of such deposit or credit still remain unknown, and each of whose deposits or accounts still remain in a dormant or inactive status. Such report shall set forth in alphabetical order the name and last known address of the depositor or creditor, the date and amount appearing to be due each depositor or creditor when the account first became dormant or inactive, or on January 1, 1959, whichever date is later, the amount credited to such account at the time of the report, the date of the last transaction with the depositor or creditor, and its identification number, if any. If the amount then credited to an account is less than the amount of the initial dormant deposit or inactive account, except for its share of publication costs, the reason for such reduction shall be stated.

The subscribing officer shall certify under oath that the report is a complete and correct statement of all dormant deposits and inactive accounts held by the depository subject to the reporting provisions of Section 4 of Article 3272b; that the existence and whereabouts of the listed depositors or creditors are unknown to the depository; and that the listed depositors or creditors have not asserted any claim or exercised any act of ownership with respect to the reported accounts during the past seven (7) years.

Together with the foregoing report, the depository shall deliver to the State Treasurer a sum equal to the total amount of the accounts listed in the report, and the State Treasurer shall sign a receipt therefor and shall assume custody thereof. The State shall be responsible for the safekeeping thereof, and any depository delivering such deposits or accounts to the State Treasurer under this Act is relieved of all liability for any claim which then exists or which

may thereafter arise or be made in respect to the property.

State Conservator Fund

Sec. 5. All funds received by the State Treasurer under the provisions of this Article or from the escheat of any deposit, credit, account or other property held by any bank or other institution covered by Section 1(a) hereof shall be deposited into a separate fund to be known as the "State Conservator Fund," from which there shall be set aside and maintained a revolving expense fund of Twenty-five Thousand Dollars (\$25,000) for the purpose of paying expenses incurred by the State Treasurer in the enforcement of the provisions of this Article, including the expense of publications, forms, notices, examinations, travel, and employment of necessary personnel; and thereafter any amounts remaining unpaid to owners shall be transferred to the Available School Fund; provided that the State Conservator Fund shall never be reduced below Two Hundred and Fifty Thousand Dollars (\$250,000). This sum shall remain available for payments to those who may at any time in the future establish their ownership or right as herein provided to any deposit or account delivered to the State Treasurer under this Act. The moneys in such fund over Fifty Thousand Dollars (\$50,000) shall be invested from time to time by the State Treasurer in investments which are approved by law for the investment of any State funds, and the income thereof shall be and become a part of the said State Conservator Fund. The expense fund of Twenty-five Thousand Dollars (\$25,000) is hereby appropriated to the State Treasurer for the purposes above stated for the biennium ending August 31, 1963.

The State Banking Commissioner shall transfer to the State Treasurer for deposit in the State Conservator Fund all dormant deposits and other funds formerly owned by or deposited in liquidated depositories which have been held by the Commissioner for more than twenty (20) years and of which the whereabouts of the depositors, creditors or owners have been unknown to him for more than twenty (20) years. Upon delivery, together with a certificate of such facts under oath of the State Banking Commissioner, the funds shall be subject to conservation and disposition under the terms of this Arti-

cle. The State Banking Commissioner shall deliver to the State Treasurer a record of the names of the liquidated depositories, and the names and last known addresses of the depositors and creditors and the amounts of the deposits, credits, or other funds.

The State Treasurer shall compile an alphabetical list containing the name and last known address of each depositor or creditor listed on the depository

reports and the amount of each depositor account. The State Treasurer shall revise the list not later than June 1 of each year. The list shall be available for public inspection at all reasonable business hours.

[See Compact Edition, Volume 4 for text of 6 to 10]

[Amended by Acts 1975, 64th Leg., p. 638, ch. 263, §§ 1, 2, eff. Sept. 1, 1975.]

TITLE 55

EVIDENCE

1. WITNESSES AND EVIDENCE

Article

3737g. Advance Payment to Tort Claimants; Introduction of Evidence [NEW].

1. WITNESSES AND EVIDENCE

Art. 3731a. Official Written Instruments, Certificates, Records, Returns and Reports; Proceedings of the State Legislature; Foreign Laws

[See Compact Edition, Volume 4 for text of 1]
Proceedings of the State Legislature

Sec. 1a. All available written or electronic records of the proceedings of the state legislature which are required by the rules of the respective houses to be preserved may be attested by the presiding officer of each house or by a deputy designated by him for such purpose. The attested records or copies or duplications thereof shall be, so far as relevant, admitted in the courts of this state as evidence of the matters stated therein, subject to the provisions of Section 3 of this Act, without the necessity of the presence in the court of the presiding officer or deputy designated to attest, preserve, or display the records, copies, or duplications.

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

Authentication of Copy

Sec. 4. Such writings or electronic records may be evidenced by an official publication thereof or by a copy or electronic duplication attested by the officer having the legal custody of the record, or by his deputy. Except in the case of a copy of an official writing or official electronic recording from a public office of this State or a subdivision thereof, the attestation shall be accompanied with a certificate that the attesting officer has the legal custody of such writing. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or

consular agent or by any officer in the foreign service of the United States, or by any officer of a United States military government, stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. In the case of the matters in Section 2a, the substance, contents, and/or wording of any of such matters may also be evidenced by certification, as to existence on a particular date or dates by the governmental head of such country or his secretary, or such country's attorney (such as attorney general) or assistant attorney or chief legal head, or the president, leader or head of its or one of its law-making bodies or the secretary thereof; or judge or any justice of any appellate court of such country and if none, judge or any justice of one or any one of its highest judicial tribunals. All such attested and certified instruments and the contents of the certificate and the title of the person making same, shall be evidence of the matters, statements, representations and title contained therein.

[See Compact Edition, Volume 4 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 666, ch. 280, § 1, eff. Sept. 1, 1975.]

Art. 3737g. Advance Payment to Tort Claimants; Introduction of Evidence

Purpose of Act

Sec. 1. The purpose of this Act is to promote the making of advance payments for economic loss to claimants without permitting the introduction of evidence of advance payments on the issue of liability or damages during subsequent litigation, but permitting the allowance of advance payments as a credit against any sum judicially established as a claimant's total damages. The making of periodic payments to claimants for medical expenses, wages lost, and property damaged, often without taking any form of release, will avoid delays in and promote payments for economic loss to persons in need.

"Advance Payment" Defined

Sec. 2. In this Act, "advance payment" includes but is not limited to, any partial payment or payments made by any person, corporation, or insurer to another which is predicated on possible tort liability for medical, surgical, hospital, or rehabilitation serv-

ices, facilities, or equipment; loss of earnings; out-of-pocket expenses; bodily injury; death; or property damage, loss, or destruction.

Inadmissibility of Evidence of Advance Payment at Trial

Sec. 3. In any civil action in which a party or someone on his behalf, such as his insurer, has made an advance payment prior to trial, any evidence of or concerning the advance payment shall be inadmissible at the trial on liability or damages in any action brought by the claimant, his survivor, or his personal representative to recover damages for personal injuries or related damages, for wrongful death of another, or for property damage or destruction.

Admissibility of Evidence of Advance Payment after Verdict or Decision; Right to Jury Trial Undenied

Sec. 4. If an action results in a jury verdict or decision of the court for damages in favor of a party, the party against whom the verdict or decision is entered may introduce evidence of advance payments after the verdict or decision and before final judgment, and the court shall then reduce the amount awarded to the claimant by the amount of the advance payment proved to have been made prior to trial. Such advance payments shall not be

permitted as a reduction of the amount awarded unless there is evidence at the trial on liability that the party to whom the advance payments were made suffered loss as described in Section 2 herein, equal to or exceeding the amount of such advance payments. Nothing in this Act shall be construed to deny to any party his constitutional right to trial by jury on the amount of the credit at a time subsequent to the trial on liability and damages.

Application of Act

Sec. 5. This Act applies to any action filed after the effective date of this Act, regardless of the site of the accident, location of property, or residence of the parties.

Statute of Limitations Tolloed

Sec. 6. The making of an advance payment tolls the running of the statute of limitations until the last payment is made unless the person making the advance payment notifies the recipient in writing at the time of each payment that the applicable statute of limitations is not tolled.

[Acts 1975, 64th Leg., p. 962, ch. 364, §§ 1 to 6, eff. June 19, 1975.]

TITLE 56

EXECUTION

Art. 3810. Sales Under Deed of Trust

All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice thereof at least 21 days preceding the date of the sale at the courthouse door of the county in which the sale is to be made, and if the real estate is in more than one county, one notice shall be posted at the courthouse door of each county in which the real estate is situated.

In addition, the holder of the debt to which the power is related shall at least 21 days preceding the

date of sale serve written notice of the proposed sale by certified mail on each debtor obligated to pay such debt according to the records of such holder. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of the holder of the debt, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Such sale shall be made at public vendue between the hours of 10:00 a. m. and 4:00 p. m. of the first Tuesday in any month.

[Amended by Acts 1975, 64th Leg., p. 2354, ch. 723, § 1, eff. Jan. 1, 1976.]

Section 2 of the 1975 amendatory act provided: "This Act shall become effective on January 1, 1976, and it shall apply only to sales made after that date."

TITLE 61

FEES OF OFFICE

CHAPTER ONE. GENERAL PROVISIONS

Article

3912L. Secretarial Personnel of District, County or Precinct Offices [NEW].

Art. 3883i. Maximum and Minimum Salaries; Certain Precinct, County and District Officials in Certain Counties

[See Compact Edition, Volume 4 for text of 1 to 3B]

Sec. 4.

[See Compact Edition, Volume 4 for text of 4 and 4(a)]

Counties of 150,000 to 170,000

(b) In each county of the State of Texas governed by Section 4 and Subsection 4(a) hereof and having a population of at least one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000) according to the last preceding federal census where the County Judge is compensated on a salary basis, the Commissioners Court shall fix the yearly salary of the County Judge at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge sitting in Galveston County; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this Act and further providing that this subsection shall be cumulative of all other laws pertaining to the compensation of County Judges.

[See Compact Edition, Volume 4 for text of 5 to 7a]

Counties of 1,200,000 to 1,500,000

Sec. 8(a). In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants and not more than one million, five hundred thousand (1,500,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of county officials as follows:

The Commissioners Court of each county to which this Subsection (a) applies may fix the salary of each of the Judges of the Probate Courts, Judges of the County Courts at Law, and Judges of the County Criminal Courts at Law at an amount not to exceed One Thousand Dollars (\$1,000) less per annum than the total

annual salary received by Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.

[See Compact Edition, Volume 4 for text of 8(b) to 18]

[Amended by Acts 1975, 64th Leg., p. 1333, ch. 496, § 4, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2353, ch. 722, § 1, eff. June 21, 1975.]

Art. 3886h. Compensation of District Attorneys, Assistants, Investigators, Secretaries and Office Personnel in 34th District

Sec. 1. The District Attorney of the Thirty-fourth Judicial District may be paid a salary in an amount not to exceed the total salary and supplemental compensation paid from the state and county funds to the Judge of the Thirty-fourth Judicial District of Texas. The amount of county contributions to the salary paid by the State of Texas to the District Attorney of the Thirty-fourth Judicial District shall be fixed by the Commissioners Court of El Paso County. The salaries of Assistant District Attorneys, Investigators, secretaries, and other office personnel shall be fixed by the District Attorney, subject to approval of the Commissioners Court of El Paso County.

Sec. 2. The Commissioners Court of El Paso County, Texas, in said Thirty-fourth Judicial District, is hereby authorized to pay the salaries of the Assistant District Attorneys, Investigators, secretaries, and other office personnel as provided in Section 1 of this Act, and to supplement the salary of the District Attorney paid by the State of Texas in such an amount that the total salary paid shall not exceed the maximum provided for in Section 1 hereof. Nothing shall affect the present existing law relating to the manner of selecting and determining the number of Assistant District Attorneys and Investigators except as herein provided.

[Amended by Acts 1975, 64th Leg., p. 276, ch. 118, § 1, eff. Sept. 1, 1975.]

Art. 3912L. Secretarial Personnel of District, County or Precinct Offices

The commissioners court of any county is hereby authorized, when in their judgment the financial condition of the county and the staff needs of a

district, county, or precinct officer justify doing so, to enter an order to hire and provide compensation for adequate secretarial personnel of any district, county, or precinct officer.

[Acts 1975, 64th Leg., p. 381, ch. 170, § 1, eff. May 8, 1975.]

CHAPTER TWO. ENUMERATION

Art. 3918. 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 (1) tract of land or a decree of court relating to one (1) tract of land—for each file affected	\$3.00
Affidavit of Ownership	3.00
Original Field Notes	5.00
Relinquishment Act Oil and Gas Lease	5.00
Transfer or Release of each Mineral Award, Mineral Prospect Permit, Grazing Lease, Easement, or Mineral Lease or part thereof—for each file affected	5.00
Servicing and Filing Easement—State-owned Land	5.00
Servicing and Filing Grazing Lease—State-owned Land Prospect Permits	5.00

PREPARATION OF CERTIFICATES OF FACT.

Certificates of Facts involving examination of one (1) file	10.00
Each additional file	3.00
Each other certificate not otherwise provided for	5.00

CERTIFIED COPIES.

Certificate of the class of Toby Scrip	4.00
All other Land Certificates	1.50
Applications for Survey	2.50
Field Notes per page, 2 pages or less	1.00
Certificate of Correction	1.50
Surveyors' Report—per page	1.00
Mineral Application	2.50
Vacancy Application	2.50
Mineral Permit or Mineral Lease	4.00
Purchase Application and Obligation	2.00
Purchase Application, surveyed land	2.00
Obligation for Deferred Payment on Land	2.00
File Wrapper	1.00
Proof of Occupancy	2.00
Deed, Bond for Title, Power of Attorney, Decree of Court or other similar instrument, 4 pages or less	4.00
Each additional page	1.00
Patent	2.00
Deed of Acquittance	2.00
Affidavit of Settlement, Non-settlement and Rebuttal Affidavits, each	2.00
Other Affidavits	2.00
Grazing Lease Application or Contract	2.00
Letters and Impressions of Letters—per page	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	4.00
Copy of any record, document or papers in the English language not otherwise provided for herein, per page	1.00
Plain or certified copy of any other paper, document or record in any other language than the English—per page	1.00
Veterans Purchase Contract	2.00
Veterans Title Policy	4.00
Title Opinions, per page, 2 pages or less	3.00

MAPS.

Blue Print, White Print, or other Cloth Map of any county	\$10.00
Blue or White Print Paper Map of any county	5.00
Blue Print, White Print, or other Cloth Map of an inland bay	10.00
Blue or White Print Paper Map of an inland bay	5.00
Blue Print, White Print, or other Cloth Map of Gulf of Mexico	15.00
Blue or White Print Paper Map of Gulf of Mexico	7.00
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	5.00
When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one (1) person or where search is necessary to compile information, minimum fee to be charged of One Dollar (\$1); and if the information is extended beyond thirty (30) minutes, an additional sum shall be charged at the rate of, per hour (except where examination is made for the purpose of purchasing copies)	2.00

MAPS AND SKETCHES.

18" X 10"	1.50
18" X 12"	1.75
18" X 15"	2.00
18" X 20"	3.00
18" X 24"	3.50

SPANISH TRANSLATIONS.

Translation of any Spanish document such as Titles and field notes, Three Cents (3¢) per word, provided that no charge shall be less than	5.00
Certificate of Fact concerning Spanish Titles	10.00

PATENT AND DEED OF ACQUITTANCE FEES.

Patent Fee	25.00
Deed of Acquittance Fee	25.00

[Amended by Acts 1975, 64th Leg., p. 580, ch. 236, § 1, eff. May 20, 1975.]

Art. 3933a. Sheriffs and Constables

Sheriffs and Constables shall receive the following fees:

For each person, corporation or legal entity, on whom service of citation, subpoena, summons, or process not otherwise provided for, is performed and return made, including mileage, if any, a fee of

- (a) Small Claims Courts \$4.00
- (b) All other Courts \$8.00

For executing each writ of garnishment, injunction writ, distress warrant, writ of attachment, writ of sequestration, writ of execution, order of sale, writ of execution and order of sale, or writ not otherwise provided for, and making return thereon including mileage, if any, a fee of

- (a) Small Claims Courts \$4.00
- (b) All other Courts \$8.00

For posting written notices in public places, as may be required by law, a fee for posting each location including mileage, if any

\$2.00

For the taking and approving of bonds as may be required by law, and returning same to the court as may be required, a fee of

\$4.00

For each case tried in District or County Court, a jury fee of

\$1.00

For executing a deed to each purchaser of real estate under execution or order of sale, a fee of

\$4.00

For executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser a fee of

\$4.00

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first One Hundred Dollars (\$100) or less, ten percent (10%); for the second One Hundred Dollars (\$100), seven percent (7%); for all sums over Two Hundred Dollars (\$200) and not exceeding One Thou-

sand Dollars (\$1,000), four percent (4%); for all sums over One Thousand Dollars (\$1,000) and not exceeding Five Thousand Dollars (\$5,000), two percent (2%); for all sums over Five Thousand Dollars (\$5,000), one percent (1%).

When the money is collected by the Sheriff or Constable without a sale, one-half (1/2) of the above rates shall be allowed him.

[Amended by Acts 1975, 64th Leg., p. 1297, ch. 488, § 1, eff. Sept. 1, 1975.]

Art. 3946a. River Authority Directors

Each Director of Boards of Directors of river authorities of the state created by the Legislature by special law pursuant to the provisions of Section 59 of Article 16 or Section 52 of Article 3 of the Texas Constitution shall receive as fees of office the sum of not more than Fifty Dollars (\$50) for each day of service necessary to discharge his duties, plus actual expenses, provided that such compensation and expenses are approved by vote of the Board of Directors. Each Director shall file with the Secretary or Treasurer a statement showing the amount due him each month or as soon thereafter as practicable before check shall be issued therefor.

[Amended by Acts 1975, 64th Leg., p. 164, ch. 68, § 1, eff. April 24, 1975.]

TITLE 63

FIRE ESCAPES

Article

3972b. Applicability [NEW].
3972c. Compliance [NEW].

Art. 3972b. Applicability

The provisions of Title 63, as amended, shall not be applicable and shall have no force or effect on construction in any city or town which has adopted and has in effect a nationally recognized model building code governing such construction if such building code in effect in any city or town requires at least one or more one-hour fire-resistive means of escape having a total width equivalent to or greater than the total exit width required by the present "Fire Escapes," Title 63, Articles 3955-3972, Revised Civil Statutes of Texas, 1925, as amended, in all structures of three or more stories.

[Added by Acts 1975, 64th Leg., p. 1162, ch. 435, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act added art. 3972c; §§ 3 to 5 thereof provided:

"Sec. 3. Notwithstanding Sections 1 and 2, any city may enact additional standards that are not in conflict with the provisions of this Act.

"Sec. 4. The provisions of this Act shall be severable, and if any section or part hereof shall be declared unconstitutional, void, or inoperative in any way, said declaration shall not affect the remaining sections or parts of this Act.

"Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 3972c. Compliance

Any construction heretofore completed in accordance with the provisions and requirements of a nationally recognized model building code shall be deemed for all purposes to have complied with all of the provisions and requirements contained in Title 63, as amended, if such building code in effect in any city or town requires at least one or more one-hour fire-resistive means of escape having a total width equivalent to or greater than the total exit width required by the present "Fire Escapes," Title 63, Articles 3955-3972, Revised Civil Statutes of Texas, 1925, as amended, in all structures of three or more stories.

[Added by Acts 1975, 64th Leg., p. 1163, ch. 435, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act added art. 3972b; see notes under art. 3972b for text of §§ 3 to 5.

TITLE 67

FISH, OYSTER, SHELL, ETC.

Arts. 4016 to 4075c. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(2), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, art. 4075b was amended by Acts 1975, 64th Leg., p. 1336, ch. 499, §§ 1 to 7 and Acts 1975, 64th Leg., p. 1855, ch. 580, §§ 1 to 3. Said Acts were incorporated into the Parks and Wildlife Code by Acts 1975, 64th Leg., p. 1212, ch. 456, §§ 13 and 20.

TITLE 70

HEADS OF DEPARTMENTS

CHAPTER TWO. COMPTROLLER OF PUBLIC ACCOUNTS

Article

4351b. Miscellaneous Claims [NEW].

Art. 4351b. Miscellaneous Claims

Comptroller of Public Accounts to Pay Miscellaneous Claims

Sec. 1. The comptroller shall pay, from available funds appropriated for that purpose, miscellaneous claims, including but not limited to state ad valorem tax refund claims, qualified under Section 3 of this Act.

Comptroller of Public Accounts to Maintain Records

Sec. 2. The comptroller shall maintain records of all transactions made under authority of this Act. The records must show

- (1) the amount of each miscellaneous claim paid, the identity of each claimant, and the purpose for which each claim was made; and
- (2) the identity of the fund or account against which the claim is to be charged.

Qualification of Claims

Sec. 3. (a) Under the authority of this Act the comptroller shall pay only those claims for which no appropriation otherwise exists.

(b) No warrant may be prepared for the payment of a miscellaneous claim until the claim has been

- (1) verified and substantiated by the administrator of the special fund or account against which the claim is to be charged;
- (2) audited by the state auditor; and
- (3) verified by the attorney general as a legally enforceable obligation of the State of Texas.

Limitation

Sec. 4. (a) No single claim, nor any aggregate of claims by any single claimant, in an amount in excess of \$10,000 may be paid during any biennium under the authority of this Act.

(b) For purposes of this section, all claims which were originally held by one person shall be con-

sidered as held by a single claimant, without regard to whether those claims were subsequently assigned or otherwise transferred.

[Acts 1975, 64th Leg., p. 443, ch. 187, §§ 1 to 4, eff. May 13, 1975.]

CHAPTER THREE. STATE TREASURER

Art. 4386b to 4386b-3. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(3), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

CHAPTER FOUR. ATTORNEY GENERAL

Article

4412b. Defense of District Judges [NEW].

Art. 4405. Repealed by Acts 1975, 64th Leg., p. 568, ch. 226, § 1, eff. May 20, 1975

Art. 4412b. Defense of District Judges

The Attorney General of Texas is responsible for defending a state district judge in any action or suit in the federal courts in which the judge is a defendant because of his office as district judge if the district judge requests the attorney general's assistance in the defense of the suit.

[Acts 1975, 64th Leg., p. 659, ch. 275, § 1, eff. Sept. 1, 1975.]

CHAPTER FOUR-A. STATE AUDITOR

Art. 4413a-7b. Repealed by Acts 1975, 64th Leg., p. 591, ch. 242, § 7, eff. May 20, 1975

See, now, art. 41b.

CHAPTER FIVE. DEPARTMENT OF PUBLIC SAFETY

Art. 4413(29c). Licensing Commercial Driver-Training Schools and Instructors

[See Compact Edition, Volume 4 for text of 1 to 13]

Driver-Training Instruction for Hire in Licensed School

Sec. 14. No motor vehicle driver-training instruction shall be conducted for hire or tuition unless in a licensed commercial driver-training school or one of its branch offices except as set out in Section 2 and in counties with a population of less than 50,000 where driver-training instruction may be giv-

en by a supervisory instructor or instructor not connected with or in a commercial driver-training school.

[See Compact Edition, Volume 4 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 1839, ch. 569, § 1, eff. June 19, 1975.]

Art. 4413(29aa). Commission on Law Enforcement Officer Standards and Education

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

Powers of Commission

Sec. 2. The Commission shall have the authority and power to:

(a) Promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state, county, or municipal agency within this state which employs peace officers.

(b) Establish minimum educational, training, physical, mental and moral standards for admission to employment as a peace officer:

(1) in permanent positions, and

(2) in temporary or probationary status.

(c) Certify persons as being qualified under the provisions of this Act to be peace officers.

(d) Certify persons as having qualified as law enforcement officer instructors under such conditions as the Commission may prescribe.

(e) Establish minimum curriculum requirements for preparatory, in-service and advanced courses and programs for schools or academies operated by or for the state or any political subdivisions thereof for the specific purpose of training peace officers or recruits for the position of a peace officer.

(f) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of peace officer training schools and programs of courses of instruction.

(g) Approve, or revoke the approval of, institutions and facilities for schools operated by or for the state or any political subdivision thereof for the specific purpose of training peace officers or recruits for the position of peace officer, and issue certificates of approval to such institutions and revoke such certificates of approval.

(h) Operate schools and facilities thereof and conduct courses therein, both preparatory, in-service, basic and advanced courses, for peace officers and recruits for the position of peace officer as the Commission may determine.

(i) Contract with other agencies, public or private, or persons, as the Commission deems necessary for the rendition and affording of such services, facilities, studies and reports as it may require to cooperate with municipal, county, state and federal law enforcement agencies in training programs, and to otherwise perform its functions.

(j) Make or encourage studies of any aspect of law enforcement, including police administration.

(k) Conduct and stimulate research by public and private agencies which shall be designed to improve law enforcement and police administration.

(l) Employ an Executive Director and such other personnel as may be necessary in the performance of its functions.

(m) Visit and inspect all institutions and facilities conducting courses for the training of peace officers and recruits for the position of peace officer and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the Commission's rules and regulations.

(n) Adopt and amend rules and regulations, consistent with law, for its internal management and control.

(o) Accept any donations, contributions, grants or gifts from private individuals or foundations or the federal government.

(p) Report annually to the Governor and to the Legislature at each regular session on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable.

(q) Meet at such times and places in the State of Texas as it deems proper; meetings shall be called by the Chairman upon his own motion, or upon the written request of five members.

(r) Establish procedures for the revocation of certificates issued to a peace officer under the provisions of this Act.

[See Compact Edition, Volume 4 for text of 2A]

Reporting Standards and Procedures

Sec. 2B. (a) The Commission shall establish such reporting standards and procedures for matters of employment and termination of peace officers by law enforcement agencies, for matters concerning the activities of certified training academies, and for other matters it deems necessary for the administration of this Act.

(b) The Commission shall furnish each agency and certified training academy with the required reporting forms.

(c) The chief administrative officer of a law enforcement agency or certified training academy shall be responsible for compliance with the reporting standards and procedures.

[See Compact Edition, Volume 4 for text of 3 to 5]

Peace Officers; Tenure; Probationary Appointments; Training Sec. 6.

[See Compact Edition, Volume 4 for text of 6(a) to (g)]

(h) "Peace officer," for the purposes of this Act, means only a person so designated by Article 2.12, Code of Criminal Procedure, 1965, and by Section 51.212, Texas Education Code.

Revocation of Certificate

Sec. 6A. The Commission may revoke a certificate issued to a peace officer under the provisions of this Act if the Commission determines that the officer has violated a rule, regulation, requirement, specification, or other standard established by the Commission. The Commission shall revoke a certificate issued to a peace officer under the provisions of this Act if the officer is convicted in any state or federal court of a felony.

[See Compact Edition, Volume 4 for text of 7 and 8]

Convicted Felons as Peace Officers

Sec. 8A. (a) No person who has been convicted of a felony under the laws of this state, another state, or the United States may be certified by the Commission as qualified to be a peace officer.

(b) Final conviction of a felony under the laws of this state, another state, or the United States disqualifies a person previously certified by the Commission as qualified to be a peace officer, and the Commission shall immediately revoke the certification of a person so convicted.

[See Compact Edition, Volume 4 for text of 9 and 9A]

[Amended by Acts 1975, 64th Leg., p. 637, ch. 262, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1807, ch. 547, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1808, ch. 547, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1809, ch. 549, § 1, eff. Sept. 1, 1975.]

Art. 4413(29bb). Private Investigators and Private Security Agencies Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1. This Act may be cited as the Private Investigators and Private Security Agencies Act.

Definitions

Sec. 2. In this Act, unless the context requires a different definition:

(1) "Board" means the Texas Board of Private Investigators and Private Security Agencies.

(2) "Person" includes individual, firm, association, company, partnership, corporation, non-profit organization, institution, or similar entity.

(3) "Investigations company" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:

(a) crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to property; or

(e) the securing of evidence to be used before any court, board, officer, or investigating committee.

(4) "Guard company" means any person engaging in the business of or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person and performing any one or more of the following or similar functions:

(a) prevention of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

(b) prevention, observation, or detection of any unauthorized activity on private property;

(c) control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; or

(d) protection of individuals from bodily harm.

(5) "Alarm systems company" means any person that installs, services, or responds to alarm signal devices, burglar alarms, television cameras, still cameras or any other electrical, mechanical, or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage, fire, and other losses.

(6) "Armored car company" means any person that provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, bonds, jewelry, or other valuables.

(7) "Courier company" means any person that transports or offers to transport under armed guard from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or any other item that requires expeditious delivery.

(8) "Guard dog company" means any person that places, leases, rents, or sells an animal for the purpose of protecting property and/or any person or company that is contracted to train an animal for the purpose of protecting property.

(9) "Security services contractor" means any guard company, alarm systems company, armored car company, courier company or guard dog company as defined herein.

(10) "Security department of a private business" means the security department of any person, if the security department has as its general purpose the protection and security of its own property and grounds, and if it does not offer or provide security services to any other person.

(11) "Private investigator" means any person who performs one or more services as described in Section 2(3) of this Act.

(12) "Undercover agent" means an individual hired by another individual, partnership, corporation, or other business entity to perform a job in and/or for that individual, partnership, corporation, or other business entity, and while performing such job, to act as an undercover agent, an employee, or an independent contractor of a licensee, but supervised by a licensee.

(13) "Private security officer" means any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, armored car guard, courier guard, or alarm systems response runner.

(14) "Manager" means in the case of a corporation, an officer or supervisor, or in the case of a partnership, a general or unlimited partner meeting the experience qualifications set forth in Section 14 of this Act for managing a security services contractor or an investigations company.

(15) "License" means a permit granted by the board entitling a person to operate as a security services contractor or investigations company.

(16) "Branch office license" means a permit granted by the board entitling a person to oper-

ate as a security services contractor or investigations company at a location other than the principal place of business as shown in the board records.

(17) "Licensee" means any person to whom a license is granted under this Act.

(18) "Security officer commission" means an authorization granted by the board to an individual employed as a private security officer to carry a handgun.

(19) "Commissioned security officer" means any private security officer to whom a security officer commission has been issued by the board.

(20) "Branch office" means an office established or maintained at some place other than the principal place of business as shown in board records or when business is solicited or advertised from an address or to a telephone number other than those listed for the principal place of business as recorded in board records.

(21) "Registration" means a permit granted by the board to an individual to perform the duties of a private investigator, manager, or branch office manager.

(22) "Registrant" means an individual who has filed an application with the board to perform the duties of a private investigator, manager, or branch office manager.

(23) "Handgun" has the meaning given in Section 46.01(5), Penal Code.

(24) "Director" means the director of the Texas Board of Private Investigators and Private Security Agencies.

Exceptions

Sec. 3. (a) This Act does not apply to:

(1) a person employed exclusively and regularly by one employer in connection with the affairs of an employer only and where there exists an employer-employee relationship; provided, however, any person who shall carry a handgun in the course of his employment shall be required to obtain a private security officer commission under the provisions of this Act;

(2) an officer or employee of the United States of America, or of this State or a political subdivision of either, while the employee or officer is engaged in the performance of official duties;

(3) a person who has full-time employment as a peace officer as defined by Article 2.12, Code of Criminal Procedure, 1965, who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if such person is:

(a) employed in an employee-employer relationship; or

(b) employed on an individual contractual basis; and

(c) not in the employ of another peace officer;

(4) a person engaged exclusively in the business of obtaining and furnishing information for purposes of credit worthiness or collecting debts or ascertaining the financial responsibility of applicants for property insurance and for indemnity or surety bonds, with respect to persons, firms, and corporations;

(5) an attorney-at-law in performing his duties;

(6) admitted insurers, insurance adjusters, agents, and insurance brokers licensed by the State, performing duties in connection with insurance transacted by them;

(7) the legal owner of personal property which has been sold under a conditional sales agreement or chattel mortgage;

Text of § 14(a)(6) as amended by Acts 1975, 64th Leg., p. 788, ch. 303, § 1

(6) the legal owner of

(A) personal property which has been sold under a conditional sales agreement or a mortgage, or

(B) personal property placed on the premises of another under the terms of a lease or the contractual agreement between the legal owner of the personal property and either the owner, lessee, sublessee, or tenant of the premises;

(8) a locksmith who does not install detection devices;

(9) a person who owns and installs detection or alarm devices on his own property or, if he does not charge for the device or its installation and installs it for the protection of his personal property located on another's property, on the property of another;

(10) an employee of a cattle association who is engaged in inspection of brands of livestock under the authority granted to that cattle association by the Packers and Stockyards Division of the United States Department of Agriculture;

(11) registered professional engineers practicing in accordance with the provisions of the Texas Engineering Practice Act.¹

(b) Licensees and employees of licensees under the provisions of this Act shall not be required to obtain any authorization, permit, franchise, or license from or pay any other fee or franchise tax to or post a

bond in any city, county, or other political subdivision of this State to engage in business or perform any service authorized under this Act.

(c) Except as otherwise specifically provided in this subsection, no city, county, or other political subdivision of this State shall impose any charge, service charge, fee, or any other type of payment for the use of city, county, or other public facilities in connection with businesses or services rendered by the licensees under this Act, except that any city or town may levy and collect reasonable charges for the use of central alarm installations located in a police or fire dispatching office, that is owned, operated, or monitored by such city or town. Provided further, that any city or town may require discontinuation of service of any alarm signal device which, because of mechanical malfunction or faulty equipment, causes at least five false alarms in any 12-month period. Such city or town may cause the disconnection of any such device until the same is repaired to the satisfaction of the appropriate municipal official, and the city or town may levy and collect reasonable inspection and reinspection fees in connection therewith. "Mechanical malfunction" and "faulty equipment" shall not relate, for the purposes of this section, to false alarms caused by human error or an act of God.

(d) Although under the provisions of this Act the security department of a private business that hires or employs an individual in the capacity of a private security officer to possess a handgun in the course and scope of his duties is required to make application for a security officer commission for the individual according to the provisions of this Act, the security department of a private business shall not be required to make application to the board for any license under this Act.

¹ Article 3271a.

SUBCHAPTER B. ADMINISTRATION

Creation of Board

Sec. 4. (a) A Texas Board of Private Investigators and Private Security Agencies is created to carry out the functions and duties conferred on it by this Act.

(b) The position of director of the Texas Board of Private Investigators and Private Security Agencies is created. He shall serve as chief administrator of the board. He shall not be a member of the board, but shall be a full-time employee of the board, fully compensable in an amount to be determined by the Legislature. The director shall perform such duties as may be prescribed by the board, and shall have no financial or business interests, contingent or otherwise, in any security services contractor or investigations company.

(c) All legal process and all documents required by law to be served upon or filed with the board shall

be served or filed with the director at the designated office of the board. All official records of the board or affidavits by the director as to the content of such records shall be prima facie evidence of all matters required to be kept by the board.

Board Membership

Sec. 5. The board is composed of the following members:

(1) the director of the Texas Department of Public Safety or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

(2) the Attorney General or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

(3) one city or county law enforcement officer shall be appointed by the Governor, with the advice and consent of the Senate;

(4) two members shall be appointed by the Governor, with the advice and consent of the Senate, who are citizens of the United States and residents of the State of Texas; and

(5) three members shall be appointed by the Governor with the advice and consent of the Senate, who are licensed under this Act, who have been engaged for a period of five consecutive years as a private investigator or security services contractor, and who are not employed by the same person as any other member of the board.

Oath of Office

Sec. 6. (a) The members of the board appointed by the Governor and confirmed by the Senate shall take the constitutional oath of office before an officer authorized to administer an oath within this state.

(b) Upon presentation of the oath, together with the certificate of appointment, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members.

Terms of Office

Sec. 7. (a) The appointed members of the board serve staggered six-year terms, and the terms of two appointed members expire on January 31 of each odd-numbered year. Each appointed member shall hold office until his successor is appointed and has qualified.

(b) The director of the Department of Public Safety and the attorney general, or their representatives, serve on the board during their terms of office and shall perform the duties required of members of the board by this Act in addition to those duties required of them in other official capacities.

Vacancies

Sec. 8. The governor, with the advice and consent of the Senate, shall fill vacancies occurring among appointed members of the board with appointments for the duration of the unexpired term.

Designated Representatives

Sec. 9. (a) The Attorney General and the director of the Department of Public Safety may delegate to a personal representative from their respective offices the authority and duty to represent them on the board.

(b) The designated representative may exercise all of the powers, duties, and responsibilities of the member while engaged in the performance of official board business, but a member is responsible for the acts and decisions of his delegated representative.

Compensation of Board Members

Sec. 10. The members of the board shall serve without pay but shall be reimbursed for their necessary and actual expenses. The number of employees and the salaries of each shall be fixed in the General Appropriations Bill.

Rules of Procedure and Seal

Sec. 11. (a) The board shall have the following powers and duties:

(1) to determine the qualifications of licensees, registrants, and commissioned security officers as provided in this Act;

(2) to investigate alleged violations of the provisions of this Act and of any rules and regulations adopted by the board;

(3) to promulgate all rules and regulations necessary in carrying out the provisions of this Act after giving 30 days' notice to interested parties of proposed rules and regulations and an opportunity for the parties to express their views and be represented by an attorney;

(4) to establish and enforce standards governing the safety and conduct of persons licensed, registered, and commissioned under the provisions of this Act; and

(5) to provide for grievances and appeal procedures for persons whose license, registration, or security officer commission is revoked or suspended, or who is denied an application for a

license, registration, or security officer commission, or who has received any other penalty or sanction by the board.

(b) The board shall have a seal, the form of which it shall prescribe.

Issuance of Subpoenas

Sec. 11A. (a) In the conduct of any investigation conducted under the provisions of this Act, the board may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The officer conducting a hearing may administer oaths and may require testimony or evidence to be given under oath.

(b) No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he is properly examined by the officer conducting the hearing. Any person called upon to testify or to produce papers upon any matter properly under inquiry by the board, who refuses to so testify or produce papers upon the ground that his testimony or the production of papers would incriminate him or tend to incriminate him, shall nevertheless be required to testify or to produce papers, but when so required under these objections he is not subject to indictment or prosecution for any transaction, matter, or thing concerning which he truthfully testifies or produces evidence.

(c) If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the board, then the board may petition a district court of the county in which the hearing is held to compel the witness to obey the subpoena or to give the evidence. The court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness then refuses, without reasonable cause or legal grounds, to be examined or to give any evidence relevant to proper inquiry by the board, the court shall punish the witness for contempt.

Revocation, Suspension, etc.

Sec. 11B. (a) The board may revoke or suspend any registration, license, or security officer commission, reprimand any registrant, licensee, or commissioned security officer, or deny an application for a registration, license, or security officer commission, or renewal thereof on proof:

(1) that the applicant, licensee, commissioned security officer, or registrant has violated any provisions of this Act or of the rules and regulations promulgated under this Act;

(2) that the applicant, licensee, commissioned security officer, or registrant has committed any act resulting in conviction of a felony or a crime involving moral turpitude;

(3) that the applicant, licensee, commissioned security officer, or registrant has practiced fraud, deceit, or misrepresentation;

(4) that the applicant, licensee, commissioned security officer, or registrant has made a material misstatement in the application for or renewal of a license, registration, or security officer commission;

(5) that the applicant, licensee, commissioned security officer, or registrant has demonstrated incompetence or untrustworthiness in his actions.

(b) The board shall, before acting under Subsection (a) of this section provide 30 days' written notice to the applicant, licensee, commissioned security officer, or registrant of the charges and give him an opportunity to request a hearing before the board and be represented by an attorney. A hearing shall be scheduled by the board on such request.

(c) In the event that the board denies the application for, or revokes or suspends any license, security officer commission, or registration, or imposes any reprimand, the board's determination shall be in writing and officially signed. The original copy of the determination when so signed, shall be filed with the board and copies shall be mailed to the applicant, licensee, commissioned security officer, or registrant, and the complainant within two days after the filing.

(d) The board may suspend any registration on conviction in this state or any other state or territory of the United States, or in any foreign country, of a felony for a period not exceeding 30 days pending a hearing and a determination of charges. If the licensee is a corporation, proof of actual participation and knowledge on the part of the registrant is required. If the hearing is adjourned at the request of the registrant, the suspension may be continued for an additional period of the adjournment.

Organization and Meetings of the Board

Sec. 12. (a) The board shall meet within 30 days after the effective date of this Act, and thereafter at regular intervals to be decided by a majority vote of the board.

(b) The board, including the representative of the director of the Department of Public Safety if he so designates one, shall elect from among its members a chairman, vice-chairman, and secretary to serve two-year terms commencing on September 1, of each odd-numbered year. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board and perform the other duties prescribed in this Act.

(c) A majority of the board constitutes a quorum to transact business.

(d) At the first meeting, the board shall specify the date and place of the first examinations for licenses to be held.

SUBCHAPTER C. LICENSES

License Required and False Representation Prohibited

Sec. 13. (a) It shall be unlawful and punishable as provided in Section 44 of this Act for any person to engage in the business of, or perform any service as, a private investigator or security services contractor or to offer his services in such capacities or engage in any business or business activity required to be licensed by this Act unless he has obtained a license under the provisions of this Act.

(b) It is unlawful and punishable as provided in Section 44 of this Act for any person to represent falsely that he is employed by a licensee.

(c) It shall be unlawful and punishable as provided in Section 44 of this Act for any individual to make application to the board as manager or to serve as manager of an investigations company or security services contractor unless the individual intends to maintain a supervisory position on a daily basis for the investigations company or security services contractor.

Qualifications

Sec. 14. (a) An applicant for a license or his manager must:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States;
- (3) not have been convicted in any jurisdiction of any felony or any crime involving moral turpitude for which a full pardon has not been granted;
- (4) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and has not been restored;
- (5) not be suffering from habitual drunkenness or from narcotics addiction or dependence;
- (6) not have been discharged from the armed services of the United States under other than honorable conditions;
- (7) be of good moral character;
- (8) be in compliance with any other reasonable qualifications that the board may fix by rule.

(b) An applicant who applies for a license to engage in the business of an investigations company or his manager shall have three (3) years consecutive experience prior to the date of said application in the investigative field, as an employee, manager, or owner of an investigations company or other requirements as shall be set by the board. The experi-

ence of the applicant must be reviewed by the board or by the director, and determined to be adequate to qualify the applicant to engage in the business of an investigations company.

(c) An applicant who applies for a license to engage in the business of a security services contractor or his manager shall have two (2) consecutive years experience prior to the date of said application in the security services field, as an employee, manager, or owner of a security services contractor or other requirements as shall be set by the board. The experience of the applicant must be reviewed by the board or by the director and determined to be adequate to qualify the applicant to engage in the business of a security services contractor.

Application and Examination

Sec. 15. (a) An application for a license under this Act shall be in the form prescribed by the board. The application shall include:

- (1) the full name and business address of the applicant;
- (2) the name under which the applicant intends to do business;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) a statement as to the classification under which the applicant desires to be qualified;
- (5) the full name and residence address of each of its partners, officers, and directors, and its manager, if the applicant is an entity other than an individual;
- (6) two recent photographs of a type prescribed by the board of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a 25 percent or greater interest in the applicant, if the applicant is an entity;
- (7) two classifiable sets of fingerprints of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a 25 percent or greater interest in the applicant, if the applicant is an entity;
- (8) a verified statement of his experience qualifications;
- (9) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application; and a letter from the Texas Department of Public Safety setting forth the record of any convictions of any applicant for a felony or a crime involving moral turpitude; and

(10) any other information, evidence, statements, or documents as may be required by the board.

(b) An application for a license under this Act shall include the Social Security number of the one making application.

(c) The board may require an applicant or his manager to demonstrate qualifications by an examination to be determined by the board.

(d) Payment of the application fee prescribed by this Act entitles the applicant or his manager to one examination without further charge. If the person fails to pass the examination, he shall not be eligible for any subsequent examination except upon payment of the reexamination fee which shall be set by the board in an amount not in excess of the renewal fee for the license classification for which license application was originally made.

Classification of License

Sec. 16. (a) No person may engage in any operation outside the scope of his license.

(b) For the purpose of defining the scope of licenses, the following license classifications are established:

(1) Class A: investigations company license, covering operations as defined in Subdivision (3), Section 2, of this Act;

(2) Class B: security services contractor license, covering operations as defined in Subdivision (9), Section 2, of this Act;

(3) Class C: covering the operations included within Class A and Class B.

(c) A person licensed only as a security services contractor may not make any investigation except as incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property which he has been hired or engaged to protect.

Fees

Sec. 17. (a) The fee for a Class A original license is \$150; for the renewal of a Class A license, the fee is \$100.

(b) The fee for a Class B original license is \$150; for the renewal of a Class B license, the fee is \$100.

(c) The fee for a Class C original license is \$225; for the renewal of a Class C license, the fee is \$175.

(d) A delinquency fee shall be for not less than \$10, nor more than \$25.

(e) The fee for a license to operate a branch office, as defined in Subdivision (20), Section 2, of this Act shall be \$50; for the renewal of a branch office license, the fee is \$50.

(f) All fees, money, and fines collected under this Act shall be deposited in the Treasury of the State of Texas.

Manager to Control Business

Sec. 18. (a) The business of each licensee shall be operated under the direction and control of one manager, and no licensee shall make application to qualify more than one individual to serve as manager.

(b) No person shall act as a manager of a licensee until he has complied with each of the following:

(1) demonstrated his qualifications by a written examination;

(2) made a satisfactory showing to the board that he has the qualifications prescribed by Section 14 of this Act, and that none of the facts stated in Subsection (a), Section 11B, of this Act exist as to him.

(c) If the manager, who has qualified as provided in this section, ceases to be manager for any reason whatsoever, the licensee shall notify the board in writing within 14 days from such cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the board pending the qualifications as provided in this Act, of another manager. If the licensee fails to notify the board within the 14-day period, his license shall be subject to suspension or revocation.

(d) When the individual on the basis of whose qualifications a license under this Act has been obtained ceases to be connected with the licensee for any reason whatsoever, the business may be carried on for such temporary period and under such terms and conditions as the board shall provide by regulation.

Handgun; Security Officer Commission

Sec. 19. (a) It is unlawful and punishable as provided in Section 44 of this Act:

(1) for a person to employ an individual as a private security officer and knowingly authorize or permit him to carry a handgun during the course of performing his duties as a private security officer if the board has not issued him a security officer commission under this section; or

(2) for an individual employed as a private security officer to knowingly carry a handgun during the course of performing his duties as a private security officer if the board has not issued him a security officer commission under this section.

It shall be unlawful and punishable as provided in Section 44 of this Act for any person to hire or employ an individual or for any individual to accept employment in the capacity of a private security officer to carry a handgun in the course and scope of his duties unless the private security officer is issued a security officer commission by the board.

(b) The board, with the concurrence of the Texas Department of Public Safety, may issue a security officer commission to an individual employed as a uniformed private security officer provided the geographical scope of the security officer commission is restricted to one named county in the State of Texas and all counties contiguous to the named county, except as allowed in Subsection (c) of this section.

(c) The board, with the concurrence of the Texas Department of Public Safety, may issue a security officer commission that is broader in geographical scope within the State of Texas than that specified in Subsection (b) of this section if the broader scope is shown to be in the public interest and necessary to the performance of the duties of the private security officer.

(d) The board, with the concurrence of the Texas Department of Public Safety, shall issue a security officer commission to a qualified employee of an armored car company that is a carrier that has a permit from the proper federal or state regulatory authority to conduct the armored car business in accordance with the permit or certificate. A security officer commission issued to an employee of an armored car company shall be broad enough in its geographical scope to cover the county or counties in this state in which the armored car company has a permit or certificate to conduct its business.

(e) The employer of a private security officer who makes application for a security officer commission shall submit an application to the board on a form provided by the board. A \$10 fee shall accompany each application for a security officer commission.

(f) No security officer commission may be issued to any individual who is under 18 years of age, who is a convicted felon, or who has committed any act which if committed by a licensee would be grounds for suspension or revocation of a license under this Act.

(g) The board shall send a copy of each application for a security officer commission to the Texas Department of Public Safety and to the sheriff of the county and the chief of police of the principal city of the county in which the applicant resides. A sheriff or chief of police who wishes to object to the issuance of a security officer commission to a particular applicant may do so by mailing or otherwise delivering a written statement of his objection and his reasons to the board. If the board decides to issue a security officer commission over the objections of a sheriff or chief of police, it shall mail a

notice of its decision to the objecting officer and give him an opportunity to request a hearing before the board to contest the board's decision. If the objecting officer files a request for a hearing within 30 days after the date the notice was mailed to him, the board shall set the matter for a hearing. The board may not issue a security officer commission over the objection of a sheriff or chief of police unless it finds at the hearing that there is good cause to issue the commission over the objection or, if no hearing is requested, until the time for requesting a hearing has passed.

(h) Each security officer commission issued under this section shall be in the form of a pocket card designed by the board, and shall identify the licensee or the security department of a private business by whom the holder of the security officer commission is employed. A security officer commission expires on the date the license of the licensee who employs the officer expires or, if the officer is employed by the security department of a private business, one year after the date it is issued. No charge may be imposed for the pocket card, but an annual renewal fee for a commission shall be fixed by the board at not less than \$3 or more than \$5.

(i) If the holder of the security officer commission terminates his employment with the licensee or the security department of a private business or transfers his residence to another county, he must return the pocket card to his employer and his employer must return the pocket card to the board within 14 days of the date of termination of the employment or transfer of business.

(j) The board shall provide by rule the procedure by which a licensee or the security department of a private business may issue a temporary security officer commission to a private security officer who has made application to the board for a security officer commission.

(k) Subsection (a) of this section does not apply to the holder of a valid temporary security officer commission issued under this section if the holder is in uniform and in possession of only one handgun and engaged in the performance of his duties.

(l) The board may suspend or deny a security officer commission if the holder or applicant is indicted for a felony or for a misdemeanor involving moral turpitude.

Training Programs

Sec. 20. (a) The board shall establish training programs to be conducted by agencies and institutions approved by the board. The board may approve training programs conducted by licensees if the licensees offer the courses listed in Subsection (b) of this section, and if the instructors of the training program are qualified instructors approved

by the board. The board shall approve a training program conducted by the security department of a private business to train its own personnel, without regard to its curriculum, if it is adequate for the business' security purposes.

(b) The basic training course approved by the board shall consist of a minimum of 16 hours and shall include:

- (1) legal limitations on the use of handguns and on the powers and authority of a private security officer;
- (2) familiarity with this Act;
- (3) field note taking and report writing;
- (4) range firing and procedure, and handgun safety and maintenance; and
- (5) any other topics of security officer training curriculum which the board deems necessary.

(c) The board shall develop a commissioned security officer training manual to be used in the instructing and training of commissioned security officers.

(d) The board shall promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this Act.

(e) The board may not issue a security officer commission to an applicant employed by a licensee unless the applicant submits evidence satisfactory to the board that:

- (1) he has completed the basic training course at a school or under an instructor approved by the board;
- (2) he meets all qualifications established by this Act and by the rules of the board;
- (3) he has satisfied his handgun training instructor that he has attained a minimum average marksmanship competency of 160 out of 300 on an "Army L" target or a minimum of 80 out of 150 on an F.B.I. Silhouette target (N.R.A. B-27), at 50 feet with 10 shots slow fire, 10 shots time fire, and 10 shots double-action.

(f) The board may not issue a security officer commission to an applicant employed by the security department of a private business unless the applicant submits evidence satisfactory to the board that:

- (1) he has completed an approved training course conducted by the security department of the business; and
- (2) he meets all qualifications established by this Act and by the rules of the board.

(g) In addition to the requirements of Subsections (e) and (f) of this section, the board by rules and regulations shall establish other qualifications for persons who are employed by licensees or the security department of a private business in positions requiring the carrying of handguns. These qualifi-

cations may include physical and mental standards, standards of good moral character, and other requirements that relate to the competency and reliability of individuals to carry handguns. The board shall prescribe appropriate forms and rules and regulations by which evidence that the requirements are fulfilled is presented.

(h) The board shall prescribe appropriate rules and regulations for the maintenance of records relating to persons issued security officer commissions by the board.

Form of Licenses

Sec. 21. A license or a branch office license, when issued, shall be in the form prescribed by the board, and shall include:

- (1) the name of the licensee;
- (2) the name under which the licensee is to operate; and
- (3) the number and date of the license.

Posting

Sec. 22. (a) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(b) Each branch office license shall at all times be posted in a conspicuous place in each branch office of the licensee.

Change of Address and New Officers

Sec. 23. Notification to the board shall be made within 14 days after the change of address of the principal place of business of a licensee, the change of address of a branch office, or the change of a business name under which a licensee does business. A licensee shall within 14 days after such change, notify the board of any and all changes of his address, of the name under which he does business and of any changes in its officers or partners.

License Not Assignable

Sec. 24. A license issued under this Act is not assignable.

Termination of License

Sec. 25. The board shall prescribe by rule the procedure under which a license issued under this Act may be terminated. The fee for the termination of a license under this Act shall be established by the board in an amount not to exceed \$5.

Notice to Local Officials

Sec. 26. Notice of the issuance, revocation, reinstatement, or expiration of every license, commission, or registration card issued by the board shall be furnished to the sheriff of the county and the chief

of police of the principal city of the county in which every person regulated under this Act resides.

Licensee Responsible for Conduct of Employees

Sec. 27. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

Divulgence of Information

Sec. 28. (a) Any licensee or officer, director, partner, or manager of a licensee shall divulge to any law enforcement officer or district attorney, or his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person except as he may be required by law so to do, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them, and such person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such a report are true and correct.

(d) No licensee or officer, director, partner, manager, or employee of a licensee shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

Employee Records

Sec. 29. Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the board.

Advertisements

Sec. 30. Every advertisement by a licensee soliciting or advertising business shall contain his company name and address and license number as they appear in the records of the board.

Branch Offices

Sec. 31. (a) Each licensee shall file in writing with the board the address of each branch office, and within 14 days after the establishment, closing, or changing of location of a branch office shall notify the board in writing of such fact.

(b) Upon application of a licensee the board shall issue a branch office license. The fee for a branch

office license shall be \$50; the fee for a renewal for such license shall be \$50.

Registration of Employees or Private Investigators

Sec. 32. (a) Every employee of a licensee who is employed as a private investigator, manager, or branch office manager must be registered with the board within 14 days after the commencement of such employment.

(b) The minimum age of a person registered under this section shall be 18 years of age.

(c) The board may promulgate by rule any additional qualifications of an individual registered under this section as a private investigator, manager, or branch office manager.

Application for Registration

Sec. 33. The application for registration shall be verified and shall include:

(1) the full name, residence address, residence telephone number, date and place of birth, and the Social Security number of the employee;

(2) a statement listing any and all names used by the employee, other than the name by which he is currently known, together with an explanation setting forth the place or places where each name was used, the date or dates of each use, and a full explanation of the reasons why each such name was used. If the employee has never used a name other than that by which he is currently known, this fact shall be set forth in the statement;

(3) the name and address of the employer and the date the employment commenced and a letter from the licensee requesting that the employee be registered under his license;

(4) the title of the position occupied by the employee and a description of his duties;

(5) two recent photographs of the employee, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(6) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application;

(7) such other information, evidence, statements, or documents, as may be required by the board.

Pocket Card

Sec. 34. A pocket card of such size, design, and content as may be determined by the board shall be

issued to each registrant under this Act. The date of issuance shall be noted on such pocket card, and the date of expiration shall also be noted. Such pocket card shall contain a color photograph and signature of the registrant.

Undercover Agents: Exemption

Sec. 35. Notwithstanding any other provision of this Act, employees of a licensee who are employed exclusively as undercover agents shall not be required to register under this Act with the board.

Pocket Card: Annual Renewal

Sec. 36. The pocket card of each registrant expires on the date the license of the licensee who employs the registrant expires. On notification from the board the month before expiration of the registrant's pocket card, each registrant shall file for renewal of registration on a form designed by the board.

Pocket Card: Return

Sec. 37. When an individual to whom a pocket card has been issued under Section 32 of this Act terminates his position, he shall return the pocket card to the licensee within five days after his date of termination.

Cancellation

Sec. 38. Within seven days after the licensee has received the pocket card of a terminated registered employee, the licensee shall mail or deliver the pocket card to the board for cancellation, along with a letter from the licensee stating the date the registered employee terminated, the date the licensee received the pocket card of the terminated registered employee, and the cause for which or the conditions under which the registered employee terminated.

Registration Fee

Sec. 39. The registration fee for private investigators, managers, and branch office managers required by this Act shall be fixed by the board at not more than \$7 nor less than \$4. The annual renewal registration fee for private investigators, managers, and branch office managers required by this Act shall be fixed by the board at not more than \$5 nor less than \$3.

Bonds Filed for License

Sec. 40. No license shall be issued under this Act unless the applicant files with the board a surety bond executed by a surety company authorized to do business in this State in the sum of Ten Thousand Dollars (\$10,000) conditioned to recover against the principal, its servants, officers, agents and employees by reason of its wrongful or illegal acts in conducting such business licensed under this Act; in addition to the surety bond required hereunder, ev-

ery applicant for a license shall, prior to the issuance of the same, file with the board proof of a policy of public liability insurance in the sum of not less than Fifty Thousand Dollars (\$50,000) conditioned to compensate any person for damages, including but not limited to bodily injuries, caused by wrongful acts of the principal, its servants, officers, agents and employees in the conduct of any business licensed by this Act.

Action on Bonds to Recover Damages

Sec. 41. The bond required by this Act shall be made payable to the State of Texas, and anyone so injured by the principal, its servants, officers, agents and employees, shall have the right and be permitted to sue directly upon this obligation in their own names, and this obligation shall be subject to successive suits for recovery until complete exhaustion of the face amount hereof.

Suspension for Failure to file Surety Bond

Sec. 42. (a) Every licensee shall at all times maintain on file with the board the surety bond required by this Act in full force and effect and upon failure to do so, the license of such licensee shall be forthwith suspended and shall not be reinstated until an application therefor, in the form prescribed by the board, is filed together with a proper bond.

(b) The board may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason which would justify refusal to issue or a suspension or revocation of a license; or

(2) for the performance by applicant of any practice while under suspension for failure to keep his bond in force, for which a license under this Act is required.

(c) Bonds executed and filed with the board pursuant to this Act shall remain in force and effect until the surety has terminated future liability by a 30-day notice to the board.

Cash Deposited in Lieu of Surety Bond

Sec. 43. The sum of \$10,000 in cash may be deposited with the State of Texas, in lieu of the surety bond required by this Act.

SUBCHAPTER D. ENFORCEMENT PROVISIONS

Penal Provisions

Sec. 44. Any person who knowingly falsifies the fingerprints or photographs submitted under Subdivisions (6) and (7) of Subsection (a), Section 15, is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more

than five years. Any person who violates any of the other provisions of this Act is guilty of a misdemeanor punishable by fine not to exceed \$500 or by imprisonment in the county jail not to exceed one year, or both.

Expiration and Renewal of License and Registration Card

Sec. 45. (a) Licenses issued under this Act expire at 12 midnight on December 31 of each year if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this Act. On renewal, a renewal license shall be issued to the licensee.

(b) Removal of a license shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

(c) Licensees shall apply for renewal from November 1st to December 1st of each year.

Expiration Dates of Licenses; Proration of Fees

Sec. 46. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, registration fees payable on December 31 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

Activity During Suspension of License

Sec. 47. A suspended license is subject to expiration and shall be renewed as provided in this Act, but such renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

Reinstatement of a Revoked License

Sec. 48. A revoked license is subject to expiration as provided in this Act, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

Notification of Conviction for Felony or Crime Involving Moral Turpitude

Sec. 49. The Texas Department of Public Safety shall notify the board, and the police department and the sheriff's department of the city and county wherein any person licensed, commissioned, or regis-

tered under this Act resides of the conviction of such person for a felony or a crime involving moral turpitude.

Expiration of Licenses and New Licenses

Sec. 50. (a) A license which is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

(b) The holder of the license may obtain a new license only on compliance with all of the provisions of this Act relating to the issuance of an original license.

[Amended by Acts 1975, 64th Leg., p. 788, ch. 303, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1312, ch. 494, §§ 1 to 49, eff. July 19, 1975.]

CHAPTER SEVEN. INTERGOVERNMENTAL COOPERATION

Article

4413(32e). Joint Advisory Committee on Government Operations [NEW].

Art. 4413(32a). Interagency Planning Councils

[See Compact Edition, Volume 4 for text of 1 to 3]

Sec. 4. (a) The Governor shall establish a Division of Planning Coordination within his office.

(b) Responsibilities of the Division of Planning Coordination.

(1) The Division shall coordinate the activities of the Interagency Planning Councils. The several councils may participate jointly in studies providing information common to all planning efforts.

(2) The Division shall serve as the State Clearinghouse on all state agency applications for federal grant or loan assistance, and shall be notified of all applications for federal grant or loan assistance prior to actual submittal of such applications.

(3) The Division may provide for the review and comment of all state plans of state agencies required as a condition for federal assistance and may provide for the review and comment on all state agency applications for grant or loan assistance.

(4) The Division shall establish policies and guidelines for the effective review and comment on such state plans and applications for federal grant or loan assistance.

(5) The Division shall cooperate with the Legislative Budget Board in developing information requirements pertaining to the review and comment process.

[Amended by Acts 1975, 64th Leg., p. 1403, ch. 544, § 1, eff. Sept. 1, 1975.]

Section of the 1975 Act provided: "This Act takes effect September 1, 1975."

Art. 4413(32b). Intergovernmental Cooperation Act

[See Compact Edition, Volume 4 for text of 1 to 4]

Membership; Duties

Sec. 5. The commission shall be composed of twenty-four appointed members and two ex officio members as follows: four county officials, four city officials, two public school officials, two representatives of other political subdivisions, two federal officials residing in Texas and responsible for federal programs operating in the State, and four private citizens all appointed by the Governor; three State Senators appointed by the Lieutenant Governor; three State Representatives appointed by the Speaker of the House; and the Lieutenant Governor (ex officio) and Speaker of the House of Representatives (ex officio). The duties to be performed by each public official or employee appointed to the commission or serving ex officio shall be considered duties in addition to those otherwise required by that person's office.

[See Compact Edition, Volume 4 for text of 6]

Terms of Office; Vacancies; Records

Sec. 7. (a) Appointed members of the commission shall hold office for staggered terms of six years, with the terms of eight appointed members, including one Senator and one Representative, expiring on the first day of September in each odd-numbered year.

[See Compact Edition, Volume 4 for text of 7(b) to 13]

[Amended by Acts 1975, 64th Leg., p. 165, ch. 69, §§ 1, 2, eff. April 24, 1975.]

Art. 4413(32c). Interlocal Cooperation Act

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

Definitions

Sec. 3. As used in this Act:

(1) "local government" means a county; a home rule city or a city, village, or town organized under the general laws of this state; a special district; a school district; a junior college district; any other legally constituted political subdivision of the State of Texas or any adjoining state; or a combination of political subdivisions.

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

Authority to Make Interlocal Contracts and Agreements

Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to (c)]

(d) The contracting parties to any interlocal contract or agreement shall have full authority to cre-

ate an administrative agency or designate an existing political subdivision for the supervision of performance of an interlocal contract or agreement and any administrative agency so created or political subdivision so designated shall have the authority to employ personnel and engage in other administrative activities and provide other administrative services necessary to execute the terms of any interlocal contract or agreement. For purposes of this Act any body politic and corporate organized under the laws of this state shall be considered a political subdivision.

(e) The contracting parties to any interlocal contract or agreement shall have full authority to contract with state departments and agencies as defined in Article 4413(32), Vernon's Texas Civil Statutes, or any similar department or agency of an adjoining state. The contracting parties to interlocal contract or agreement shall have specific authority to contract with the Department of Corrections for the construction, operation and maintenance of a regional correctional facility provided that title to the land on which said facility is to be constructed is deeded to the Department of Corrections and provided further that a contract is executed by and between all the parties as to payment for the housing, maintenance and rehabilitative treatment of persons held in jails who cannot otherwise be transferred under authority of existing statutes to the direct responsibility of the Department of Corrections.

[See Compact Edition, Volume 4 for text of 4(f) to 8]

[Amended by Acts 1975, 64th Leg., p. 1235, ch. 460, §§ 1 to 3, eff. June 19, 1975.]

Section 4 of the 1975 amendatory act provided: "Any law in conflict with this Act is hereby repealed to the extent of the conflict."

Art. 4413(32e). Joint Advisory Committee on Government Operations**Purpose**

Sec. 1. The purpose of this Act is to promote the economical delivery of the services provided by state government by means of a comprehensive review of governmental structure and administration.

Definitions

Sec. 2. In this Act:

(1) "Committee" means the Joint Advisory Committee on Government Operations.

(2) "Departments and Agencies" means all departments, bureaus, agencies, boards, commissions, and other instrumentalities of the executive branch of the state government.

Creation of Committee

Sec. 3. There is created the Joint Advisory Committee on Government Operations.

Membership

Sec. 4. (a) The committee consists of the lieutenant governor, the speaker of the house of representatives, the secretary of state, and other members appointed as provided by this section.

(b) The governor shall appoint nine persons, none of whom may be members of the house or of the senate.

(c) The lieutenant governor shall appoint three members of the senate.

(d) The speaker of the house of representatives shall appoint three members of the house of representatives.

Terms and Vacancies

Sec. 5. (a) The initial members of the committee shall take office within 30 days after the effective date of this Act and shall serve until the expiration of the committee.

(b) Vacancies among the appointed members shall be filled for the unexpired terms in the same manner as the original appointments were made.

Compensation

Sec. 6. (a) Legislative members of the committee shall serve without additional compensation. Each member shall be reimbursed from the appropriate fund of the member's respective house for travel, subsistence, and other necessary expenses incurred in performing the duties of the committee.

(b) Persons appointed pursuant to Section 4(b) of this Act shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses from appropriations made by the legislature to the committee.

(c) The duties to be performed by each public official or employee appointed to the committee shall be considered duties in addition to those otherwise required by that person's office.

Officers

Sec. 7. The lieutenant governor shall serve as chairman of the committee. The speaker of the house of representatives shall serve as vice-chairman of the committee.

Quorum

Sec. 8. Ten members of the committee shall constitute a quorum for the conduct of business.

Duties

Sec. 9. The committee shall:

- (1) examine and evaluate the organization and methods of operation of the departments and agencies of state government;

- (2) develop proposals for improving the structure and administration of state government in order to assure the delivery of governmental services at the lowest possible cost;

- (3) recommend policies and programs to minimize creation of new departments and agencies of state government and to control the growth of existing departments and agencies; and

- (4) recommend suspension of government programs and services that duplicate and exceed in cost those same services offered by private business.

Powers

Sec. 10. The committee or any subcommittee of its membership designated by the chairman may:

- (1) appoint and fix the compensation of necessary staff, including the retention of independent auditors;

- (2) hold open hearings, take testimony, and administer oaths or affirmations to witnesses;

- (3) secure directly from any department or agency of state government any information deemed necessary for the implementation of this Act;

- (4) make findings and issue reports in the execution of the duties imposed by Section 9 of this Act.

Appropriations; Private Funds

Sec. 11. The legislature shall appropriate money necessary to carry out the provisions of this Act in the General Appropriations Act for the biennium ending August 31, 1977, or in special appropriation acts for the purpose. Private funds including public or private foundation funds may be used to defray the cost of conducting any of the affairs of the committee upon authorization by the committee.

Cooperation of Other Departments and Agencies

Sec. 12. (a) The Texas Legislative Council, the Legislative Budget Board, the Legislative Audit Committee, the Advisory Commission on Intergovernmental Relations, and the Division of Planning Coordination shall, through their respective administrative officers, furnish staff assistance to the committee upon request.

(b) Each department and agency of state government is directed to furnish assistance and information to the committee upon request.

Reports; Recommendations; Dissolution

Sec. 13. The committee may make an interim report on its progress, together with any specific recommendations it may deem desirable, to any ses-

sion of the 64th Legislature, and shall make its final report to the 65th Legislature not later than 30 days after that legislature is organized. Unless extended by the 65th Legislature, the committee is dissolved on May 31, 1977.

[Acts 1975, 64th Leg., p. 949, ch. 357, §§ 1 to 13, eff. June 19, 1975.]

CHAPTER NINE. COMMISSIONS AND AGENCIES

Article

4413(47). Energy Policy Planning Act of 1975 [NEW].

Art. 4413(34). Repealed by Acts 1975, 64th Leg., p. 2063, ch. 678, § 5, eff. June 20, 1975

The repealed article, creating the Mass Transportation Commission, was derived from Acts 1969, 61st Leg., p. 1825, ch. 615.
See, now, arts. 6663b, 6663c.

Art. 4413(36). Motor Vehicle Commission Code

SUBCHAPTER A. GENERAL PROVISIONS

[See *Compact Edition, Volume 4 for text of 1.01 and 1.02*]

Definitions

Sec. 1.03. In this Act, unless the context requires a different definition:

(1) "Motor vehicle" means every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels.

[See *Compact Edition, Volume 4 for text of 1.03(2) to 4.06*]

SUBCHAPTER E. PROHIBITIONS

[See *Compact Edition, Volume 4 for text of 5.01*]
Manufacturers; Distributors; Representatives

Sec. 5.02. It shall be unlawful for any manufacturer, distributor or representative to:

(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this

provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

(4) Use any false, deceptive or misleading advertising, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the secur-

ing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall such labor rate be more than the retail rate. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. The dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer.

(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

(11) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest or to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

[See Compact Edition, Volume 4 for text of 6.01 to 7.01]

[Amended by Acts 1975, 64th Leg., p. 297, ch. 128, §§ 1, 2, May 6, 1975.]

Art. 4413(41). Amusement Machine Commission

Creation; Members; Appointment; Terms

Sec. 1. There is hereby created an agency of the State of Texas which shall be designated as the Texas Amusement Machine Commission; said Commission shall consist of three (3) members to be appointed by the Governor with the advice and consent of the Senate and three (3) ex officio members, who shall have the right to vote, to be the Director of the Department of Public Safety, or his nominee; the Commissioner of Consumer Credit, or his nominee; and the Attorney General, or his nominee. None of the three appointed members, shall be or have ever been an "owner" or "operator" of any "coin-operated" machine as those terms are defined in Chapter 13, Title 122A, Taxation—General, Revised Civil Statutes of Texas, as amended.¹ Members of the Commission shall serve for six (6) years. Appointees shall hold office until their successors are appointed and qualified.

[See Compact Edition, Volume 4 for text of 1A to 3]

Compensation of Members

Sec. 4. All members of the Commission shall be compensated in an amount of Thirty-five Dollars (\$35.00) per day for each day they are actually engaged in performing their duties whether or not in attendance at a meeting; provided, however, they shall not draw compensation for more than sixty (60) days in any one fiscal year. In addition to the per diem provided for herein, members of the Commission shall be reimbursed for their actual and necessary traveling expenses in the performance of their duties.

[See Compact Edition, Volume 4 for text of 7]

Advisory Committee

Sec. 8. (a) The Commission may create an advisory committee to assist it in the execution of its duties under this Act.

(b) If the Commission creates an advisory committee, it may appoint no more than six persons to the committee. A person is qualified to be appointed to the advisory committee if he engages in any aspect of the coin-operated machine industry.

(c) A member of the advisory committee receives no salary. Each member is entitled to be reimbursed for his actual and necessary traveling and per diem expenses incurred in serving on the committee. [Amended by Acts 1975, 64th Leg., p. 1045, ch. 407, §§ 1 and 2, eff. Sept. 1, 1975.]

¹ Taxation—General, Art. 13.01 et seq.

Section 3 of the 1975 amendatory act amended Taxation—General, Arts. 13.01 to 13.17; §§ 4 to 6 thereof provided:

"Sec. 4. (a) On the effective date of this Act the terms of all members of the Texas Amusement Machine Commission whose membership is prohibited by Section 1 of this Act shall expire and their positions on the board become vacant. The terms of the remaining members will continue until January 31, 1979; on that date, the governor shall appoint three members for the following terms:

"(1) one member for a term that expires January 31, 1985;

"(2) one member for a term that expires January 31, 1983;

"(3) one member for a term that expires January 31, 1981.

"(b) The governor by appointment shall fill any vacancy for the unexpired term only."

"Sec. 5. This Act takes effect September 1, 1975."

"Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 4413(47). Energy Policy Planning Act of 1975

Short Title

Sec. 1. This Act may be cited as The Energy Policy Planning Act of 1975.

Declaration of Policy

Sec. 2. The legislature declares that:

(1) the future energy prospects portend such grave consequences for the economy and environment of Texas that all state government policies and actions must be taken in accordance with an articulated state energy policy;

(2) for the state to articulate a state energy policy requires energy policy planning coordinated between all relevant state offices on the basis of the best available data analyzed by sophisticated technological, environmental, and sociological methods of policy analysis;

(3) extensive research and development in energy-related matters of particular importance to the Texas energy situation are essential to maintaining a viable economy and high quality of life in this state; and

(4) there must be one state body responsible for this energy policy planning of such stature to provide the adequate degree of public visibility and awareness of energy matters such as research and development and conservation and to speak authoritatively when dealing with other state and federal agencies and officials.

Creation of the Governor's Energy Advisory Council

Sec. 3. The Governor's Energy Advisory Council is created. Voting members are the governor, lieutenant governor, speaker of the house of representatives, attorney general, chairman of the Railroad Commission, commissioner of the General Land Office, agriculture commissioner, comptroller, one senator appointed by the lieutenant governor, and one member of the house of representatives appointed by the speaker of the house of representatives. Nonvoting members are the chairman and vice-

chairman of the advisory committee. Ex officio members of the Governor's Energy Advisory Council serve in addition to their other duties. The governor is chairman, and the lieutenant governor is vice-chairman. The governor may designate a representative to vote for him in his absence. The Governor's Energy Advisory Council shall meet at least once every three months and at the call of the chairman.

Duties of the Council

Sec. 4. (a) The Governor's Energy Advisory Council shall promote the policy declared in Section 2 of this Act by formulating, continually reassessing, and modifying a state energy policy for recommendation to the legislature and executive officers. The functions in this formulation process for which the Governor's Energy Advisory Council has primary responsibility include:

(1) developing and maintaining an energy data base system and econometric modeling of the state;

(2) analyzing manpower needs for anticipated and desired developments in the structure of the Texas economy due to energy developments;

(3) analyzing technological developments of particular importance to the state's development under the anticipated and desired energy prospects for possible promotion and encouragement;

(4) maintaining an awareness of all energy related research inside and outside of this state of importance to this state in order to promote information exchange and coordination;

(5) monitoring and reviewing existing and proposed actions and policies of all state and federal agencies to determine the energy impact and to recommend possible alternatives more consistent with the state energy policy; and

(6) recommending legislation and executive action to foster the development of increased energy supplies, more efficient energy systems, and increased conservation of energy.

(b) The Governor's Energy Advisory Council shall administer a public awareness program to inform the public of:

(1) the energy prospects for the state;

(2) the alternative futures in economic and environmental terms under different energy policies;

(3) the manpower needs of alternative energy policies;

(4) the potential importance of research and development in certain areas;

(5) the importance and methods of energy conservation; and

(6) the probable impact of existing and proposed action by state or federal governmental bodies.

(c) The Governor's Energy Advisory Council shall review and comment on existing and proposed action by the federal government.

(d) The Governor's Energy Advisory Council shall administer the Energy Development Fund and perform other duties imposed by law.

Powers of the Council

Sec. 5. (a) The governor shall hire an executive director and all other necessary staff for the Governor's Energy Advisory Council to perform the duties enumerated in Section 4 of this Act. All staff responsible for technical assessments or for the development of computer or econometric systems, excluding administrative personnel, must be qualified by academic training and actual work experience in the area of their respective responsibilities.

(b) Subject to the approval of the governor, the Governor's Energy Advisory Council may contract with consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform its duties.

(c) After public hearings the Governor's Energy Advisory Council shall formulate guidelines and formulas for assessing the energy impact of all proposed actions by any state agency.

Advisory Committee

Sec. 6. The Advisory Committee to the Governor's Energy Advisory Council is created. The Governor's Energy Advisory Council may appoint members to the advisory committee. Heads of other state agencies who are not members of the Governor's Energy Advisory Council and citizens of the state who if appointed would represent a balanced cross-section of socioeconomic, geographic, and economic sectoral bases are eligible for membership. Members of the advisory committee shall be reimbursed for actual expenses of travel for the business of the advisory committee within statutory guidelines. Each citizen member of the advisory committee shall receive \$25 per diem compensation. The advisory committee shall elect a chairman and a vice-chairman to serve as ex officio nonvoting members of the Governor's Energy Advisory Council.

Cooperation by Other State Agencies

Sec. 7. All other state agencies shall cooperate with, coordinate with, and heed the recommendations of the Governor's Energy Advisory Council to the utmost degree possible within the range of action available to an agency short of conflict with existing statutory duty or discretion imposed on or granted to the agency.

Expiration

Sec. 8. This Act expires on September 1, 1977. [Acts 1975, 64th Leg., p. 971, ch. 370, eff. Sept. 1, 1975.]

CHAPTER ELEVEN. GOVERNOR'S COORDINATING OFFICE FOR THE VISUALLY HANDICAPPED [NEW]

Article

4413(202). Governor's Coordinating Office for the Visually Handicapped [NEW].

Art. 4413(202). Governor's Coordinating Office for the Visually Handicapped

Purpose

Sec. 1. The purpose of this article is to create the Governor's Coordinating Office for the Visually Handicapped to insure more effective coordination and cooperation among all public and private non-profit organizations established and operated to provide services that are pertinent to the special needs of blind and visually handicapped individuals and to carry out the functions hereinafter specified in this article.

Definition

Sec. 2. In this article, the term "visually handicapped" includes the blind, the deaf-blind, and persons with a visual impairment that requires the provision of special services.

Creation of Office

Sec. 3. (a) The Governor's Coordinating Office for the Visually Handicapped is hereby established.

(b) The governor, after receiving recommendations of the Policy Board and Technical Advisory Council for Planning and Operations, shall appoint an administrator and other staff for the office, and they shall serve at his pleasure.

(c) State agencies that provide services to the visually handicapped may loan or detail employees to the office. The administrator may enter into contracts with the state agencies for the reimbursement of costs incidental to the loaning or detailing of employees.

Functions of the Office

Sec. 4. (a) The Governor's Coordinating Office for the Visually Handicapped shall:

(1) provide advocacy and ombudsmanship services for visually handicapped citizens of the state;

(2) hear, consider, and mediate or resolve those differences arising among state-supported organizations responsible for the direct exten-

sion of services to visually handicapped individuals when such organizations are unable to resolve such differences themselves and in a manner consistent with the best interests of visually handicapped individuals;

(3) assure effective interagency coordination of the service efforts of the agencies represented on its technical advisory council, so that the respective efforts of such agencies tend to be adequately coordinated and complementary rather than fragmented and duplicative;

(4) serve as an information center and referral resource for the visually handicapped;

(5) evaluate the impact of agencies, departments, and institutions carrying out programs or services that are relevant to the needs of visually handicapped individuals, including the development of sufficient specialized manpower to meet such needs, and assess the cost-effectiveness of all services authorized and funded by the legislature to assist visually handicapped individuals either directly or indirectly;

(6) develop mechanisms and procedures that tend to assist visually handicapped individuals in bridging gaps between educational, institutional, rehabilitative, vocational, and related types of services operated by public and private nonprofit organizations throughout the state;

(7) receive, review, and investigate reports received of individuals whose educational services have been terminated under individualized written service plans because of a certification that such individuals are incapable of benefiting from services, and assure that the situation and circumstances of such individuals are appropriately reviewed at least once annually according to the requirements of law;

(8) generally supervise, oversee, and assure the effective management and operation of

(A) a centralized state register of the blind and visually handicapped;

(B) a state program of purchasing goods and services manufactured by handicapped individuals according to the requirements of law and in nonprofit sheltered workshop facilities;

(C) a comprehensive diagnostic and evaluation center for multiply handicapped blind children and youth; and

(D) a centralized special media depository consisting of Braille, large print, recorded materials, and related types of communicative media required by individuals unable to read ordinary print;

(9) develop standards and procedures to assure that all state agencies and departments responsible for extending substantial and identi-

ficable services to visually handicapped individuals consider the views of visually handicapped individuals or groups in matters of policy development and implementation arising in the administration of authorized state service programs; and

(10) provide accurate and timely information to the governor and the legislature regarding the practical impact of state services on the lives of visually handicapped citizens of the state, together with appropriate recommendations as to future funding, necessary changes in existing statutes, and related matters that bear on the progressive and efficient improvement of services for the visually handicapped.

(b) The Governor's Coordinating Office for the Visually Handicapped shall not undertake the direct operation of any substantial service activities that any other agency of the state is authorized, capable, and willing to discharge.

(c) Interagency contracts or agreements entered into by state agencies, departments, or institutions to advance the purposes of this article or to facilitate the delivery of services to visually handicapped individuals shall be deemed effective for all pertinent purposes when a copy of such interagency contract or written agreement is placed on file with the Governor's Coordinating Office for the Visually Handicapped, the type of interagency coordination and cooperation which this Article encourages in a complex area of human services being beyond the contractual situations contemplated by the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

Technical Advisory Council for Planning and Operations

Sec. 5. (a) The Technical Advisory Council for Planning and Operations is established. The chief executive officers or their designees of the Central Education Agency, Department of Mental Health and Mental Retardation, State Commission for the Blind, and the Texas School for the Blind serve as ex officio members of the council. In addition, the administrator shall appoint a member of the faculty of a college or university which specializes in the area of training for the blind and two representatives of nonprofit organizations which provide services for the visually handicapped to serve on the council.

(b) Lay members of the council serve for terms of two years, receive no compensation, and are entitled to reimbursement for actual and necessary expenses incurred in performing their duties.

(c) The administrator may appoint representatives of other public or private agencies to serve as advisors to the council and may authorize the reimbursement of their actual and necessary expenses incurred in serving the council.

(d) The council shall serve as an interagency planning council for the coordination of services to the visually handicapped. The council shall assist the administrator in clarifying the statutory responsibilities and expectations of each agency and in determining which agency is primarily responsible for serving a multiply handicapped blind individual.

Policy Board

Sec. 6. (a) The Policy Board for Services to the Visually Handicapped is established.

(b) The board is composed of 10 members appointed by the governor, with the following qualifications:

- (1) the president of a state organization of the blind to alternate every two years;
- (2) the president of the student body of the Texas School for the Blind or a visually handicapped student in a public school to serve as ex officio member;
- (3) the president of the state society of ophthalmology or the state association of optometry to alternate every two years;
- (4) a special education teacher who works with the visually handicapped at the Texas School for the Blind or in a public school to alternate every two years;
- (5) a parent of a multiply handicapped blind child;

- (6) a parent of a visually handicapped child;
- (7) a blind person not employed in rehabilitation or special education; and

- (8) three representatives of the general public.

(c) Members of the board serve for terms of two years. Members do not receive a salary but are entitled to reimbursement for actual and necessary expenses incurred in carrying out their duties.

(d) The board shall advise the administrator of the needs of the visually handicapped in this state, recommended methods of meeting those needs, and assist the administrator in evaluating state programs and services provided for the visually handicapped. The board shall also assist the administrator in establishing the policies, rules, and regulations required to implement the provisions of this Act. [Added by Acts 1975, 64th Leg., p. 2386, ch. 734, § 14, June 21, 1975.]

Section 28 of the 1975 Act provided:

"(a) There is appropriated to the Governor's Coordinating Office for the Visually Handicapped the sum of \$300,000 from the General Revenue Fund, to be used during the biennium ending August 31, 1977, for the purposes of this Act.

(b) There is appropriated to the Governor's Coordinating Office for the Visually Handicapped any federal funds that become available to it to be used during the biennium ending August 31, 1977, for the purposes of this Act, including the construction of facilities to be operated on an interagency basis.

(c) The legislature intends that the Governor's Coordinating Office for the Visually Handicapped and all other state agencies carrying out activities significantly affecting the lives of visually handicapped citizens of this state enter into any cooperative agreements and interagency contracts that are expedient or necessary to assure the most effective use of all available resources."

TITLE 71

HEALTH—PUBLIC

CHAPTER ONE. HEALTH BOARDS AND LAWS

Article

- 4418g. Powers, Duties and Functions Transferred to the Department of Health Resources [NEW].
4418h. Health Planning and Development Act [NEW].
4437e-2. Hospital Project Financing Act [NEW].
4438a. Denial of Emergency Treatment by Hospital Employee for Inability to Pay [NEW].
4447d-2. Immunization Reminder Notices [NEW].
4447r. Cooperative Associations by Eligible Institutions [NEW].

Art. 4414a. Department of Health Resources Created

To better protect and promote the health of the people of Texas, the Texas Department of Health Resources is created. The Texas Department of Health Resources consists of the Texas Board of Health Resources, the Director of Health Resources, and an administrative staff.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Art. 4415a. Appointment, Composition and Terms of the Board of Health Resources

(a) The Texas Board of Health Resources consists of 18 members appointed by the Governor with the advice and consent of the Senate. The Governor shall make appointments so that:

(1) six members are physicians licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years prior to appointment;

(2) two members are hospital administrators with at least five years' experience in hospital administration in this state prior to appointment;

(3) one member is a dentist who is licensed under the laws of this state and who has been engaged in the practice of dentistry for at least five years in this state prior to appointment;

(4) one member is a registered nurse who is licensed to practice professional nursing under the laws of this state and who has been engaged in the practice of nursing in this state for at least five years prior to appointment;

(5) one member is a veterinarian who is licensed under the laws of this state and who has been engaged in the practice of veterinary med-

icine in this state for at least five years prior to appointment;

(6) one member is a pharmacist who is licensed under the laws of this state and who has been engaged in the practice of pharmacy in this state for at least five years prior to appointment;

(7) one member is a nursing home administrator who is licensed under the laws of this state and who has been engaged as a nursing home administrator in this state for at least five years prior to appointment;

(8) one member is an optometrist who is licensed under the laws of this state and who has been engaged in the practice of optometry in this state for at least five years prior to appointment;

(9) one member holds a civil engineering degree from an accredited university or college, is licensed by the State of Texas as a professional engineer, and has specialized in the practice of sanitary engineering in this state for at least five years prior to appointment;

(10) one member is a doctor of chiropractic who is licensed under the laws of this state and who has been engaged in the practice of chiropractic for at least five years in this state prior to appointment; and

(11) two members are citizens who have none of the qualifications required of the other 16 members.

(b) Except for the initial appointees, members of the Texas Board of Health Resources hold office for staggered terms of six years, with the terms of six members expiring on February 1 of each odd-numbered year. In making the initial appointments, the Governor shall designate six members for terms expiring in 1981, six members for terms expiring in 1979, and six members for terms expiring in 1977.

(c) The Governor shall biennially designate one member as Chairman and one member as Vice-chairman.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Art. 4416a. Quorum and Meetings of the Board of Health Resources

A majority of the members of the Texas Board of Health Resources constitute a quorum for the trans-

action of business. The Board shall meet at Austin at least once each month, on dates to be fixed by the Board, and shall hold such special meetings as may be called by the Chairman. Timely notice of such special meetings shall be given to each member. [Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Art. 4417a. Compensation and Oath of Office of the Board of Health Resources

The members of the Texas Board of Health Resources receive no fixed salary, but each member shall be allowed, for each and every day in attending the meetings of the Board, the sum of \$50, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty. The members of the Texas Board of Health Resources shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue Commissions to them, which shall be evidence of their authority to act as such. [Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Art. 4418a. Powers and Duties of the Board of Health Resources

The Texas Board of Health Resources shall:

- (1) employ the Director of Health Resources, who shall be a person licensed to practice medicine in the State of Texas, who shall serve at the will of the Board;
- (2) investigate the conduct of the work of the Texas Department of Health Resources, and for this purpose to have access, at any time, to all books and records thereof, and to require written or oral information from any officer or employee thereof;
- (3) adopt rules, not inconsistent with law, for its own procedure, a copy of which rules shall be filed in the Texas Department of Health Resources.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Arts. 4418b to 4418c. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(1), (2), eff. May 28, 1975

Art. 4418d. Duties of the Director of Health Resources

The Director of Health Resources shall be the executive head of the Texas Department of Health Resources, and he shall, subject to the provisions of this Act, perform the duties assigned to him by the Texas Board of Health Resources. [Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Art. 4418e. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(1), eff. May 28, 1975

Art. 4418f. Appropriations, Grants, Donations and Contributions to the Department of Health Resources

For the purpose of carrying out its duties and functions, the Department may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation. It shall be lawful for the Texas Department of Health Resources to accept donations and contributions, to be expended in the interest of the public health and the enforcement of public health laws. The Commissioners Court of any County shall have the authority to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County. [Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Art. 4418g. Powers, Duties and Functions Transferred to the Department of Health Resources

(a) The Texas Board of Health Resources has all of the powers, duties, and functions granted by law to the State Board of Health, the State Commissioner of Health, and the State Department of Health.

(b) Any reference in the law to the State Board of Health or the State Commissioner of Health means the Texas Board of Health Resources.

(c) Any reference in the law to the State Department of Health means the Texas Department of Health Resources.

(d) Whenever any law grants a power or imposes a duty on the State Commissioner of Health, the power shall be exercised or the duty performed by the Texas Board of Health Resources or a designee of the Board, subject to the direction and control of the Board.

[Added by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975.]

Art. 4418h. Health Planning and Development Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Texas Health Planning and Development Act.

Policy, Purpose

Sec. 1.02. The policy of this state and the purpose of this Act are to insure that health-care services and facilities are made available to all citizens in an orderly and economical manner and to meet the requirements of, and to implement, the National Health Planning and Resources Development Act of

1974 (P.L. 93-641),¹ the federal rules and regulations promulgated under that Act, and other pertinent federal authority. To achieve this public policy and purpose, it is essential that appropriate health planning activities be undertaken and implemented and that health-care services and facilities be provided in a manner that is cost effective and that is compatible with the health-care needs of the various areas and populations of the state.

¹ 42 U.S.C.A. § 300k et seq.

Definitions

Sec. 1.03. In this Act:

(1) "Applicant" means any person who makes application to the commission pursuant to this Act.

(2) "Application" means a written request for consideration by the commission pursuant to this Act.

(3) "Certificate holder" is the person named in the certificate of need or exemption certificate and any person owning title or interest in the person named in the certificate of need or exemption certificate.

(4) "Certificate of need" means a written order of the commission setting forth the commission's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by this Act and by rule of the commission.

(5) "Commission" means the Texas Health Facilities Commission.

(6) "Department" means the Texas Department of Health Resources.

(7) "Development" means those activities, other than planning or predevelopment activities, as determined by rule of the commission, which on their completion result in the consummation of a project or a significant financial commitment toward the consummation of a project, and includes the adoption of ordinances, orders, or resolutions authorizing the issuance of bonds.

(8) "Federal law" includes the National Health Planning and Resources Development Act of 1974 (P.L. 93-641),¹ and Public Laws 79-725,² 88-164,³ 89-749,⁴ 91-515,⁵ and 92-603,⁶ the federal rules and regulations promulgated under those Acts, and other pertinent federal authority.

(9) "Health-care facility," referred to as "facility," includes, regardless of ownership, but is not limited to, a public or private hospital, institution, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, outpatient surgical and single procedure facility, ambulatory

health-care facility, health center, family planning clinic, kidney disease treatment facility, radiation therapy facility, alcoholism and drug treatment facility, health maintenance organization, and other specialized facilities where inpatient or outpatient health-care services for observation, diagnosis, active treatment, or overnight care for patients with obstetrical, medical, mental or psychiatric, surgical, tubercular, alcoholic, chronic, or rehabilitative conditions are provided requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the office of those physicians or practitioners singly or in groups in the conduct of their profession.

(10) "Health maintenance organization," referred to as "HMO," has the meaning given the term in the Texas Health Maintenance Organization Act.⁷

(11) "Health systems agency" means a non-profit private corporation or public regional planning body acting as an instrumentality of the federal government and designated in accordance with federal law and subject to approval of the governor and his periodic review and redesignation.

(12) "Institutional health-care services," referred to as "services," means the health-care services provided in health-care facilities and includes, but is not limited to, inpatient or outpatient services for observation, diagnosis, treatment, or rehabilitation, and all care for patients with obstetrical, medical, surgical, tubercular, mental, alcoholic, chronic, or rehabilitative, or other conditions.

(13) "Party" means any person who by formal intervention or action as determined by rule of the commission participates in the consideration of a specific application by the commission.

(14) "Person" means an individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, the federal government or a political subdivision or instrumentality of the federal government, any receiver, trustee, assignee, or other similar representative or any other legal entity.

(15) "Project" means services, facility, or HMO requiring a certificate of need or an exemption certificate under this Act.

(16) "Statewide Health Coordinating Council" means the council appointed by the governor in accordance with federal law to advise the department generally on the performance of its functions.

- ¹ 42 U.S.C.A. § 300k et seq.
² See 42 U.S.C.A. § 201 et seq.
³ 42 U.S.C.A. § 2661 et seq.
⁴ See 42 U.S.C.A. § 246.
⁵ 42 U.S.C.A. § 299 et seq.
⁶ 42 U.S.C.A. § 401 et seq.
⁷ Insurance Code, art. 20A.01 et seq.

Administrative Procedure

Sec. 1.04. The Administrative Procedure and Texas Register Act¹ applies to all proceedings under this Act except to the extent inconsistent with this Act. However, Section 17 of that Act does not apply to proceedings of the commission under this Act.

¹ Article 6252-13a.

Authority of the Governor

Sec. 1.05. As the chief executive and planning officer of this state, the governor is authorized to perform those duties and functions assigned to him by federal law. The governor is authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of his office to the commission or the department.

Interagency Contracts

Sec. 1.06. Agencies, departments, instrumentalities, grantees, political subdivisions, and institutions of higher education of the state shall cooperate with the commission and the department in the performance of their assigned duties and functions.

Limitations on Powers

Sec. 1.07. Nothing in this Act shall be construed to authorize the commission or the department or any employee or official of the commission or the department to:

(1) exercise any supervision or control over the practice of medicine or the manner in which physician's services in private practice are provided, or over the selection, tenure, compensation, or fees of any physician in the delivery of physician's services;

(2) perform any duty or function under the provisions of Title XI of the Social Security Act¹ (Section 249(f) of P.L. 92-603) or rules or regulations promulgated thereunder; or

(3) apply for grants under the provisions of Section 1526, P.L. 93-641.²

¹ 42 U.S.C.A. § 1301 et seq.
² 42 U.S.C.A. § 300m-5.

Health-Related State Agencies: Regional Administration

Sec. 1.08. The Texas Department of Health Resources, the Texas Department of Mental Health and Mental Retardation, the State Department of Public Welfare, and as directed by the governor, other health-related state agencies shall divide the state into regions for administrative or regulatory purposes that coincide with the health service areas established pursuant to P.L. 93-641.¹

¹ 42 U.S.C.A. § 300k et seq.

SUBCHAPTER B. TEXAS HEALTH FACILITIES COMMISSION

Sec. 2.01. The Texas Health Facilities Commission is established and is administratively attached to the Texas Department of Health Resources. The department, at the request of the commission, shall provide administrative assistance to the commission; and the department and the commission shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The department, at the request of the commission, shall submit the commission's budget requests to the legislature.

Composition

Sec. 2.02. The commission is under the direction of three commissioners appointed by the governor with the advice and consent of the senate. At least one commissioner, at the time of appointment, must be a resident of a county having a population of less than 50,000, according to the last preceding federal decennial census. However, a commissioner by moving to another county does not vacate the office. The governor shall not appoint to the commission any person who is actively engaged as a health care provider or who has any substantial pecuniary interest in a facility.

Terms of Office

Sec. 2.03. Commissioners hold office for staggered terms of six years, with the term of one commissioner expiring on February 1 of each odd-numbered year. In making the initial appointments, the governor shall designate one commissioner for a term expiring February 1, 1977, one for a term expiring February 1, 1979, and one for a term expiring February 1, 1981.

Chairman, Vice-chairman

Sec. 2.04. The governor shall biennially designate one commissioner to serve as chairman and one commissioner to serve as vice-chairman.

Compensation; Expenses

Sec. 2.05. Each commissioner is entitled to a salary within the limits of legislative appropriations and to reimbursement for actual and necessary traveling expenses incurred in performing their official duties.

General Duties of Commission

Sec. 2.06. In addition to the other powers and duties prescribed by this Act, the commission shall:

(1) administer a state certificate of need program as prescribed by this Act and to comply with federal law;

(2) promulgate and adopt rules determined to be necessary for the administration and enforcement of Subchapters B and C of this Act;

(3) issue written orders regarding certificates of need, exemption certificates, declaratory rulings, and other matters which may properly come before it;

(4) make an annual report to the governor and the legislature of the commission's operations and provide other reports that the governor or the legislature may require;

(5) administer all funds entrusted to the commission; and

(6) prescribe the personnel policies for the commission and perform other duties and functions that may be prescribed by law.

Executive Officer

Sec. 2.07. (a) The chairman is the chief executive and administrative officer of the commission.

(b) In addition to the other powers and duties prescribed by this Act, the chairman as chief executive officer of the commission shall:

(1) administer the duties and functions of the commission;

(2) employ and remove personnel and prescribe their duties, responsibilities, and compensation; and

(3) submit through and with the approval of the commission requests for appropriations and other funds to operate the commission.

(c) In the absence of the chairman for any cause, the vice-chairman has the powers and duties assigned to the chairman.

Offices and Divisions

Sec. 2.08. The commission shall establish offices and divisions of the commission that it deems necessary to carry out the functions and duties of the commission. The commission may assign functions and duties to the various offices and divisions, provide for additional offices and divisions, and reorganize the commission if necessary to improve its efficiency or effectiveness.

Funds

Sec. 2.09. For the purpose of carrying out its duties and functions, the commission may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation.

Review of Institutional Health Services

Sec. 2.10. The commission, after consultation with the department, the Texas Department of Mental Health and Mental Retardation, the State Department of Public Welfare, and other appropri-

ate health-related state agencies, shall review and determine the appropriateness of all institutional health services being offered in the state and shall make public its determinations by filing a report with the secretary of state.

Capital Expenditure Review Program

Sec. 2.11. The commission, when authorized by the governor, may negotiate an agreement with the Secretary of Health, Education, and Welfare on behalf of the State of Texas to administer a state capital expenditure review program pursuant to Section 1122 of the Social Security Act,¹ the federal rules and regulations promulgated under that Act, and other pertinent federal authority, if after thorough review and study, the commission determines that such a review program would be in the best interest of the people of Texas.

¹ 42 U.S.C.A. § 1320a-1.

SUBCHAPTER C. STATE CERTIFICATE OF NEED PROGRAM

Services and Facilities Requiring Certificates

Sec. 3.01. (a) Each person must obtain from the commission a certificate of need or an exemption certificate in accordance with this Act for a proposed project to:

(1) substantially expand a service currently offered or provide a service not currently offered by the facility;

(2) construct a new facility or change the bed capacity of an existing facility;

(3) modify an existing facility;

(4) convert a structure into a health-care facility; or

(5) organize an HMO which requires a new or modified facility.

(b) For purposes of Subsection (a) of this section:

(1) the determination of a change in the bed capacity of a facility is based on the bed capacity of the facility, at the time of the application; and

(2) modification includes the acquisition of land and the acquisition, repair, or replacement of facilities or equipment.

(c) The commission by rule shall define and determine the terms and conditions under which a project comes within the meaning of Subdivisions (1)–(5) of Subsection (a) of this section. In addition, the commission shall promulgate rules for determining the costs of acquiring or modifying facilities or equipment if facilities or equipment are leased or donated.

(d) If a project does not come within the meaning of Subdivisions (1)–(5) of Subsection (a) of this section, a certificate of need or an exemption certificate is not required for the project.

Exemption Certificate

Sec. 3.02. (a) The commission shall issue an exemption certificate exempting a proposed project from the certificate of need requirement when, on petition by the applicant, it is determined that:

(1) the proposed project encompasses only the repair or replacement of a facility or equipment damaged or destroyed by fire, flood, or natural disaster and that the repair or replacement will not expand the facility or increase the services provided in or by the facility beyond the level at which they existed prior to the fire, flood, or natural disaster;

(2) in the case of expansion of services, the proposed project would not substantially expand a service currently offered;

(3) in the case of modification of an existing facility, the total cost of the proposed modification will not exceed \$100,000; or

(4) in the case of replacement or modification of a facility existing on the effective date of this Act within five years after the effective date of this Act:

(A) the replacement or modification was necessary on the effective date of this Act to comply with licensing, certification, safety, or health requirements imposed under the authority of federal or state law or valid city ordinance; and

(B) the replacement or modification will not expand the facility or increase the services provided in or by the facility beyond the level existing on the effective date of this Act.

(b) The commission shall promulgate rules of procedure whereby a person may make application for and be granted an exemption certificate.

(c) The commission by rule, not inconsistent with Subsection (a) of this section, may establish criteria for determining the eligibility of a project for an exemption certificate.

(d) The commission may prescribe, as conditions to the issuance and continued validity of an exemption certificate, reasonable time limits for development and completion of the project.

(e) If the application for an exemption certificate is denied, the applicant may apply for a certificate of need, and if the application for a certificate of need is denied, the applicant may raise in proceedings for judicial review as provided by this Act any error of the commission in denying the exemption certificate.

Declaratory Ruling

Sec. 3.03. On the application of a person sufficiently describing a proposed project, the commission may issue a declaratory ruling on whether this Act

requires a certificate of need or an exemption certificate for the project. If the commission rules that a certificate of need or an exemption certificate is required, the applicant may apply for an exemption certificate or a certificate of need and may seek judicial review of the declaratory ruling only in proceedings to review the denial of a certificate of need as provided by this Act.

Application for Certificate of Need

Sec. 3.04. (a) A person may apply for a certificate of need by submitting a written application to the commission. The application must be prepared in the form and contain the information required in rules promulgated by the commission.

(b) Each application for a certificate of need must be accompanied by the required application fee. All application fees shall be deposited in the state treasury and shall be expended by the commission for the administration and enforcement of this Act.

Application Fee

Sec. 3.05. The maximum application fee is \$3,500 or 3.5 percent of the total cost of the proposed project, whichever is less, and the minimum application fee is \$25, and within these limits the commission by rule shall establish a schedule of application fees for the various types and sizes of projects, with fees for the more substantial projects set at nearer the maximum and fees for the smaller projects set at nearer the minimum.

Application Review

Sec. 3.06. (a) Each application for a certificate of need shall be reviewed and a determination made within five working days after the date of its receipt whether the application complies with the rules governing the preparation and submission of applications.

(b) If the application complies with the rules governing the preparation and submission of applications, the chairman shall:

(1) declare the application to be sufficient and shall number and date the application;

(2) schedule a hearing on the application on a date not less than 61 days nor more than 70 days after the application is dated; except that on a showing of good cause by the applicant, the commission may delay the hearing to a date not more than 100 days after the application is dated;

(3) notify the applicant;

(4) transmit a copy of the notice and application to the health systems agency within whose boundary the project is located; and

(5) provide for public notice of the time, place, and matter to be considered at the hearing.

(c) If the application does not comply with the rules governing the preparation and submission of applications, the chairman shall notify the applicant in writing and provide a list of deficiencies.

(d) All applications for certificates of need shall be filed in the commission, indexed, and made available for public inspection.

Publication of Notice by Applicant

Sec. 3.07. (a) The applicant shall provide for public notice of the hearing to be held by the commission on an application for a certificate of need as follows:

(1) by publication in at least one newspaper of general circulation in the largest city in the health systems agency service area which would be served by the proposed service or facility; and

(2) by publication in at least one newspaper of general circulation in the locality within which the proposed service or facility would be developed.

(b) In each case the notice must be published on the day or days and in the form prescribed by rule of the commission.

Review by Health Systems Agencies

Sec. 3.08. (a) A health systems agency may review an application transmitted to it and may provide written comments to the commission and to the applicant not later than the 45th day after the day the application is dated.

(b) The review, if any, of an application by a health systems agency must be conducted according to rules promulgated by the commission.

(c) A health systems agency may hold a hearing on an application referred to it. The hearing must be conducted in accordance with rules promulgated by the commission.

(d) If at the time of the application a health systems agency is not currently designated for the area in which the project is to be located, the commission may perform the functions of the health systems agency.

Commission Hearings

Sec. 3.09. (a) The chairman shall designate a hearing officer to conduct a hearing for each dated application. The hearing officer must be an employee of the commission who is an attorney licensed to practice law in this state.

(b) If a health systems agency has submitted written comments concerning an application to the commission and the applicant as provided in Section 3.08 of this Act, a representative or representatives of that agency may present testimony and evidence for or against that application at the hearing. Any other interested party may present evidence or testimony for or against an application pursuant to rules promulgated by the commission. Testimony may be presented orally or in writing.

(c) The hearing officer shall keep a complete record of each hearing and transmit the record to the commission when completed. Each record must include in addition to any other items required by rules promulgated by the commission:

(1) evidence received or considered;

(2) a statement of matters officially noticed;

(3) objections and rulings thereon;

(4) staff memoranda or data submitted to or considered by the hearing officer or the commission in connection with the hearing; and

(5) the recommendations of the hearing officer concerning the approval or disapproval of the application.

(d) The hearing officer shall forward to the commission the complete record of the hearing on an application for a certificate of need not later than the 75th day following the dating of the application. However, if the date of the hearing was delayed pursuant to Section 3.06(b)(2) of this Act, the deadline for forwarding the record is extended accordingly.

(e) At the request of the applicant and with the concurrence of the commission, an uncontested application may be reviewed by and acted on by the commission without a hearing under rules promulgated by the commission.

Criteria for Review

Sec. 3.10. (a) The commission shall promulgate rules establishing criteria to determine whether an applicant is to be issued a certificate of need for the proposed project.

(b) Criteria established by the commission must include at least the following:

(1) whether a proposed project is necessary to meet the health-care needs of the community or population to be served;

(2) whether a proposed project can be adequately staffed and operated when completed;

(3) whether the cost of a proposed project is economically feasible;

(4) if applicable, whether a proposed project meets the special needs and circumstances for rural or sparsely populated areas; and

(5) if applicable, whether the proposed project meets special needs for special services or special facilities.

(c) If developing criteria the commission shall consider at least the following:

(1) the recommendations, if any, of the Texas Board of Health Resources, the Texas Board of Mental Health and Mental Retardation, the State Board of Public Welfare, and the governing boards of other state agencies;

(2) the relationship of a proposed project to the state health plan, the state medical facilities plan, and the health systems plan and annual implementation plan of the appropriate health systems agency;

(3) the special needs and circumstances of facilities that provide substantial services to indigents;

(4) the special needs and circumstances of facilities that provide a substantial portion of their services to persons residing outside the areas in which the facilities are located;

(5) the possible effects of a project on existing facilities; and

(6) the special needs and circumstances of health maintenance organizations.

Orders of Commission

Sec. 3.11. The commission shall either grant or deny a certificate of need by written order not later than the 90th day following the dating of the application, unless the date of the hearing was delayed pursuant to Section 3.06(b)(2) of this Act, in which case the deadline for the order is extended accordingly, or unless a later date is agreed on in writing by the applicant and the commission. Copies of the order must be forwarded to the applicant, the appropriate health systems agency, and the parties of record. Copies of the order and the record of the hearing shall be filed together in the office of the commission, indexed, and made available for public inspection.

Development May Commence

Sec. 3.12. Development of a project may commence only on the granting of a certificate of need or an exemption certificate.

Forfeiture of Certificate

Sec. 3.13. (a) The order granting a certificate of need constitutes the determination of a need for the health care service or facility and that the certificate holder may begin development and proceed toward completion of the project as expeditiously as possible.

(b) A certificate of need is subject to forfeiture on the following conditions:

(1) automatically, for failure to begin development of an approved project within 180 days after the date of the order. The former certificate holder may petition the commission for the renewal of the certificate forfeited under this subsection not later than 30 days after the date of forfeiture, and the commission may consider the petition without a hearing. The commission must approve or disapprove the petition by written order within 30 days after the date of receipt of the petition. A written order approving the petition constitutes reissuance of the certificate of need;

(2) after notice and hearing, for failure to proceed with reasonable diligence toward development and completion of the project; or

(3) after notice and hearing, on proof that a certificate holder, before completion and operation of the project, has attempted to or has transferred or conveyed more than a two percent interest in the certificate of need or the certificate holder without prior written approval from the commission. Transfers resulting from the death, bankruptcy, insolvency, legal disability, or other good cause as determined by the commission of a certificate holder are exempt from this provision.

(c) The commission shall promulgate rules prescribing procedures and criteria for forfeiture proceedings.

Violations; Enforcement

Sec. 3.14. (a) A person who initiates the development of a project without having a required certificate of need or an exemption certificate is in violation of this Act.

(b) If requested by the commission, the attorney general may institute a legal action to enjoin an alleged violation of this Act.

(c) No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, applicant, facility, or certificate holder who is or whose project is in violation of this Act.

(d) No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of this Act, by the state or a political subdivision or instrumentality of the state.

Judicial Review

Sec. 3.15. An applicant or party who is aggrieved by an order of the commission granting or denying a certificate of need is entitled to judicial review under the substantial evidence rule.

SUBCHAPTER D. FUNCTIONS OF DEPARTMENT

Health Planning and Development Agency

Sec. 4.01. The Texas Department of Health Resources is designated as the state health planning and development agency for the State of Texas.

General Powers and Functions

Sec. 4.02. The department shall perform the duties and functions prescribed by state law and, after consultation with the commission, the Texas Department of Mental Health and Mental Retardation, the State Department of Public Welfare, and other appropriate health-related state agencies, those of the state health planning and development agency.

Assistance to Statewide Health Coordinating Council

Sec. 4.03. The department shall assist the Statewide Health Coordinating Council in the performance of its functions.

Preliminary State Health Plan

Sec. 4.04. The department shall prepare, review, and revise a preliminary state health plan.

State Medical Facilities Plan

Sec. 4.05. The department shall prepare and administer a state medical facilities plan. However, no application for assistance under Title XVI of the Public Health Service Act¹ may be considered by the department until the requirements of Subchapters B and C of this Act have been complied with.

¹ 42 U.S.C.A. § 300o et seq.

Authority to Collect Data

Sec. 4.06. (a) The department, after consultation with the commission, shall adopt rules establishing reasonable procedures for the collection and dissemination of data determined to be necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(c) Persons who fail to comply with the rules promulgated pursuant to this section are in violation of this Act.

Contracts

Sec. 4.07. With the approval of the governor and after a public hearing, the department may contract with an appropriate state agency to perform specific state health planning and development agency functions of the department.

SUBCHAPTER E. AMENDMENTS AND REPEALS

Sec. 5.01 [Adds § 2.24 to art. 5547-202]

Sec. 5.02 [Amends subsecs. (a), (b) of art. 5547-91]

Sec. 5.03 [Amends subsec. (a) of art. 5547-93]

Sec. 5.04 [Adds § 9A to art. 4437f]

Sec. 5.05 [Adds § 6A to art. 4442c]

Sec. 5.06 [Amends §§ 1 to 5, 8 and adds § 6A to art. 4447c]

Sec. 5.07 [Amends arts. 4414a, 4415a, 4416a, 4417a, 4418a, 4418d, 4418f and adds art. 4418g]

Sec. 5.08 [Repeals arts. 4418b, 4418b-1, 4418c, 4418e, 4442c-1, and § 6 of art. 4447c]

SUBCHAPTER F. TRANSITION PROVISIONS AND MISCELLANEOUS

Transition

Sec. 6.01. Until criteria are developed for the evaluation of certificate of need applications, the existing comprehensive health plans developed by the Governor's Office of Comprehensive Health Planning, areawide comprehensive health plans, the medical facilities plan developed by the State Department of Health, and other plans of state health agencies are to be used to assist in the evaluation of the need for a proposed service or facility.

Pending Projects

Sec. 6.02. (a) A person is eligible for an exemption certificate for a project under this Act who (1) within the period of 365 days immediately preceding the effective date of this Act filed an application for a health-care facility license, including submission of preliminary plans, and the agency approved the facility's preliminary plans, and (2) within 120 days after the effective date of this Act, applies for an exemption certificate. However, an exemption certificate issued under this section is void on and after February 1, 1976, if before that date the certificate holder has not begun development of the project, and it is void on and after January 15, 1977, if before that date the certificate holder has not placed on file with the commission an affidavit from the building department having jurisdiction indicating that substantial progress has been made on the project and the certificate holder has not placed on file with the commission a valid notice of construction completion indicating a completion date of not later than January 15, 1978, and certifying that the completed project is within the scope of the previously submitted and approved preliminary plans. An exemption certificate issued under this section shall be applicable only to that portion of the project

actually completed within the time limits prescribed by this section. The commission may extend the foregoing time limits by not more than a total of one year if good cause is shown why an extension should be granted.

(b) For the purposes of this section, "substantial progress" means: (1) For structures of three or fewer stories, completion of the foundations and footings; the structural frame; the mechanical, electrical, and plumbing rough-in; the rough flooring; the exterior walls and windows; and the finished roof. (2) For structures of more than three stories, in addition to (1) above, a contractor's schedule of work shall be filed with the commission by January 15, 1977. Every three months thereafter, until completion, evidence shall be submitted to the commission that construction is progressing on that schedule.

(c) The commission may promulgate rules determined to be necessary for the administration and enforcement of this section.

Administrative Procedure

Sec. 6.03. Until January 1, 1976, except to the extent inconsistent with this Act, Sections 3, 4, 5, 10-16, and 18-20 of the Administrative Procedure and Texas Register Act¹ are incorporated by reference and made applicable to proceedings of the commission under this Act. However, until January 1, 1976, the provision of Section 10 of that Act requiring publication of rules in the Texas Register is not incorporated or applicable, and in lieu of the provisions of Section 5 that require publication of notices in the Texas Register, the commission by rule shall provide and give notice in a manner that is reasonably calculated to give notice to persons likely to be interested in proposed rules.

¹ Article 6252-13a.

Initial Terms of Reconstituted Board; Transition

Sec. 6.04. (a) In making the initial appointments of members of the Texas Board of Health Resources, as renamed and reconstituted by this Act, the governor shall designate members to serve initial terms as follows:

(1) for terms expiring February 1, 1977, two physicians, one citizen, one hospital administrator, the dentist, and the veterinarian;

(2) for terms expiring February 1, 1979, two physicians, one citizen, the civil engineer, the registered nurse, and the optometrist; and

(3) for terms expiring February 1, 1981, two physicians, the chiropractor, the nursing home administrator, the pharmacist, and one hospital administrator.

(b) The State Board of Health shall continue to function until all of the initial appointees of the board as reconstituted have been appointed and have qualified, or until September 1, 1975, whichever is sooner.

[Acts 1975, 64th Leg., p. 832, ch. 323, §§ 1.01 to 6.04, eff. May 28, 1975.]

Art. 4419e. Blind and Otherwise Handicapped Persons; Use of Public Facilities

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

Definitions

Sec. 2. (a) In this Act, unless the context requires a different definition:

[See Compact Edition, Volume 4 for text of 2(a)(1) to (a)(3)]

(4) "Handicapped person" means anyone who has a mental or physical handicap, which would include mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment which requires special ambulatory devices or services.

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

Discrimination Prohibited

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a) to (e)]

(f) An employer who conducts business in this state may not discriminate in his employment practices against a handicapped person on the basis of the handicap if the person's ability to perform the task required by a job is not impaired by the handicap and the person is otherwise qualified for the job.

[See Compact Edition, Volume 4 for text of 4 to 8]

[Amended by Acts 1975, 64th Leg., p. 939, ch. 352, §§ 1, 2, eff. June 19, 1975.]

Section 3 of the 1975 Act provided:

"Sec. 3. (a) Nothing in this Act prohibits an employer from utilizing a test or examination administered to all applicants as a means of determining the ability of job applicants to perform the tasks required by a job, provided that such a test or examination be based on the actual tasks to be performed in the job which the applicant is seeking.

"(b) Nothing in this Act requires the establishment of any form of quota system in employment practices for handicapped persons."

Art. 4437e. Hospital Authority Act

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

Definitions

Sec. 2. As used in this law, "City" means any incorporated city or town in this State;

"Governing Body" means the council, commission or other governing body of a City;

"Authority" means a Hospital Authority created under this Act;

“Board” or “Board of Directors” means the board of directors of the Authority;

“Bond” or “Bonds” means bonds or notes;

“Bond Resolution” means the resolution authorizing the issuance of revenue bonds;

“Trust Indenture” means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority;

“Trustee” means the trustee under the Trust Indenture;

“Hospital” or “Hospitals” means any “Hospital Project” as defined in Section 3(g) of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.¹

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

Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or decreased from time to time by amendment to the ordinance creating the Authority adopted by the Governing Body of the City or ordinances creating the Authority adopted by the Governing Bodies of the Cities, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the City or by the Governing Bodies of the Cities, and they shall serve until their successors are appointed as hereinafter provided. If Authority includes more than one City, each Governing Body shall appoint an equal number of Directors unless otherwise agreed by the Cities. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the City or the Governing Bodies of the Cities for two (2) year terms. The Trust Indenture may also provide that, in event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the City or each of the Cities, as the case may be, for

terms not to exceed two (2) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such City shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

Officers; Quorum; Committees; Manager or Executive Director; Lease; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice-president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional nonvoting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the Hospital and to employ and discharge employees. The Board may lease the Hospital as otherwise provided by law and may employ legal counsel.

Powers as to Construction, Enlargement, etc., of Hospital; Location

Sec. 6. The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, pur-

chase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital need not be located within the City or Cities.

Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all or any designated part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

Procedure for Bond Issue; Requisites; Maturity; Sales; Registration

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice-president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate as defined by law in Article 717k-2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or has to both principal and interest.

[See Compact Edition, Volume 4 for text of 8a and 9]

Junior Lien Bonds; Parity Bonds

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

Money Set Aside Out of Bond Sale Proceeds

Sec. 11. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

Refunding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature² or other applicable law.

[See Compact Edition, Volume 4 for text of 13]
Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions

Sec. 14. The Hospital shall be operated without the intervention of private profit for the use and benefit of the public. But it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is leased, it shall be the duty of the Board of Directors to provide for the payment of lease rentals in the lease which will be sufficient, when taken with other pledged sources of its estimated revenues, and to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines and procedures under or in accordance with which the hospital shall be operated.

[See Compact Edition, Volume 4 for text of 15 to 17]

Investment of Funds and Proceeds of Bonds

Sec. 18. The law as to the security for and the investment of funds, applicable to Cities, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bonds may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

[See Compact Edition, Volume 4 for text of 19]
[Amended by Acts 1975, 64th Leg., p. 1904, ch. 612, § 1, eff. Sept. 1, 1975.]

¹ Classified as art. 4437e-2.

² Article 717k.

Section 2 of the 1975 amendatory act provided:

"Sec. 2. 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, and such remaining portions shall remain in full force and effect."

Art. 4437e-2. Hospital Project Financing Act

Short Title

Sec. 1. This Act may be cited as the "Hospital Project Financing Act."

Purpose

Sec. 2. It is hereby found, determined, and declared that it is the policy of the State of Texas that the present and prospective health, safety, and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded hospital projects, as defined in this Act. It is essential that the people of this state have access to adequate medical care and health facilities and that such facilities be provided with appropriate additional means to assist in the development and maintenance of the public health. It is the purpose of this Act to enable certain issuers, as defined in this Act, to provide the facilities and structures, at a reasonable cost, which are determined to be needed by the various issuers; therefore the issuance of revenue bonds and notes by such issuers as herein provided for the promotion of medical care, public health, and medical research, including training and teaching, is hereby declared to be in the public interest and a public purpose. The necessity in the public interest of the provisions herein-after enacted is hereby declared as a matter of legislative determination.

Definitions

Sec. 3. When used in this Act, unless the context requires a different definition:

(a) "Authority" means a hospital authority created and established in accordance with Chapter 472, Acts of the 55th Legislature, 1957, as amended (Article 4437e, Vernon's Texas Civil Statutes); or Chapter 122, Acts of the 58th Legislature, 1963 (Article 4494r, Vernon's Texas Civil Statutes); or any other public health authority presently existing or created hereafter by law in this state.

(b) "City" means any municipal corporation of this state presently existing or created hereafter, whether existing or created by general law or pursuant to a home-rule charter.

(c) "Cost" as applied to a hospital project, as herein defined, means and includes any and all costs of a hospital project, and, without limiting the generality of the foregoing, "cost" as applied to a hospital project and used in this Act shall include the following:

(1) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, and interests of all kinds in land related to a hospital project;

(2) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as, or in conjunction with, a hospital project;

(3) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing a hospital project;

(4) the cost of architectural, engineering, legal and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project;

(5) the cost of all machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project so that it may be placed in operation;

(6) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the start-up costs of a hospital project during construction and for a maximum of two years after completion of construction;

(7) any and all cost incurred in connection with the financing of a hospital project, including without limitation, the cost of financing, legal, accounting, and appraisal fees, expenses, and disbursements; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(8) all direct and indirect costs of the issuer, as herein defined, incurred in connection with providing a hospital project, including, without limitation, reasonable sums to reimburse the issuer for time spent by its employees with respect to providing a hospital project and the financing thereof; and

(9) the cost of all fees, charges, and expenses incurred in connection with the authorization, preparation, sale, issuance, and delivery of any bonds or notes issued in accordance with the terms of this Act.

(d) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

(e) "District" means a hospital district presently existing or created hereafter under authority of the constitution and laws of Texas.

(f) "Governing body" means, with reference to an issuer, as herein defined, the board of directors, council, commission, commissioners court, trustees, or similar body charged by law with the governance of an issuer.

(g) "Hospital project" means and includes any real, personal, or mixed property, or any interest therein, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be required or necessary for medical care, research, training, and teaching, any one or all, within this state, irrespective of whether such property is in existence or to be provided after the making of such finding. The use of the singular "hospital project" herein shall also include the plural "hospital projects" unless the context clearly requires a different connotation. Without limiting the generality of the foregoing, and when found by the governing body of an issuer to be so required, necessary, or convenient, "hospital project" shall include the following:

(1) any land, buildings, equipment, machinery, furniture, facilities, and improvements;

(2) any structure suitable for use as a hospital, clinic, health facility, extended care facility, out-patient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(3) any structure suitable for use as a multi-unit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(4) any structure suitable for use as a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment;

(5) any structure suitable for use as a medical or dental research facility, medical or dental training facility, or any other facility used in the education or training of health care personnel;

(6) any property or material used in the landscaping, equipping, or furnishing of a

hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(7) any other structure, facility, or equipment related to, or essential to, the operation of any health facility or system except that a hospital project shall not include any nursing home licensed as such, or which would be required to be licensed as such, under the authority of the State of Texas. "Hospital project" may include any combination of one or more of the foregoing.

(h) "Issuer" means any authority, city, county, or district.

(i) "Non-profit corporation" means (1) a non-profit corporation established under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes), or any other similar statute, or (2) an association, foundation, trust, cooperative, or similar person or organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which incurs a contractual obligation with an issuer with respect to a hospital project in accordance with the provisions of this Act. The use of the singular "non-profit corporation" herein shall also include the plural "non-profit corporations" unless the context clearly requires a different connotation.

Payment of Bonds or Notes

Sec. 4. Bonds or notes issued in accordance with the provisions of this Act shall not be deemed to constitute general obligations of the State of Texas, the issuer, or any other political subdivision or agency of this state or a pledge of the faith and credit of any of them but such bonds or notes shall be payable solely from revenues of the hospital project for which they are issued and/or from such other revenues as may be provided by a non-profit corporation. No money of the State of Texas or any political subdivision or agency of this state, whether raised from taxation or any other source, except for revenue of the hospital project being financed with the bonds, shall ever be used to pay the principal of, redemption premium, if any, or interest on any revenue bonds or notes or refunding bonds or notes issued under this Act. All such revenue bonds or notes shall contain on the face thereof statements to the effect (a) that neither the State of Texas, the issuer, nor any political subdivision or agency of the State of Texas shall be obligated to pay the same or the interest thereon except from the revenues pledged thereto and (b) that neither the faith, credit, nor the taxing power of the State of Texas, the issuer, or any political subdivision or agency thereof is pledged to the payment of the principal of, re-

demption premium, if any, or interest on such bonds or notes. The issuer shall not be authorized to incur financial obligations under this Act which cannot be paid from the proceeds of the bonds or notes, revenues derived from operating a hospital project, or any other revenues as may be provided by a non-profit corporation, in accordance with the provisions of this Act. In no event shall any appropriation be made by the Legislature of Texas or any issuer to pay all or any part of any cost of a hospital project or any operating cost of such hospital project in accordance with the provisions of this Act. The issuer shall be paid, out of money from the proceeds of the sale and delivery of its revenue bonds or notes issued in accordance with the provisions of this Act, an amount of money equal to all of the issuer's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds or notes, including, without limitation, all financing, legal, printing, and other expenses and costs incurred in issuing such bonds or notes, plus an amount of money equal to the compensation paid any of such issuer's employees for the time such employees spent on activities related to the issuance, sale, and delivery of such bonds or notes. All such costs and expenses shall be deemed to be a "cost" of a hospital project as defined in Section 3(c) of this Act.

Powers of Issuer

Sec. 5. In addition to all other powers which it may now or hereafter have, each issuer is authorized and empowered as follows:

(a) to provide, or cause to be provided by a non-profit corporation, by acquisition (whether by purchase, devise, gift, lease, or any one or more of such methods), construction, or improvement one or more hospital projects located within this state, and within or partially within the issuer's boundaries; provided that with respect to the acquisition of one or more hospital projects, (a) the issuer shall only acquire such hospital project from a non-profit corporation which has been in existence and has operated such hospital project for a period of at least three years prior to the date of acquisition by the issuer and (b) the issuer affirmatively finds that the cost of such hospital project is not more than (1) the actual audited cost of the hospital project to the date of acquisition or (2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer, the cost of which appraisal shall be a cost of the hospital project; provided that as to a city, a hospital project may be situated outside its territorial limits if it is within its extraterritorial jurisdiction as provided by the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes);

and further provided that as to a city, a hospital project may be situated within the territorial limits of any other city if the governing body of such other city shall consent to the former city providing such hospital project;

(b) to cause title to a hospital project provided in accordance with the provisions of this Act to be vested in a non-profit corporation; provided that if the governing body of the issuer deems it advisable to so vest title in a non-profit corporation, such issuer may retain a mortgage interest in such hospital project, which mortgage interest shall expire if and when all bonds or notes of the issuer sold to provide such hospital project have been paid or provision has been made for their final payment;

(c) to enter into leases or other contracts with a non-profit corporation with respect to any hospital project whereby such non-profit corporation shall use, operate, or acquire such hospital project, and such leases or contracts may be for such payment and upon such terms and conditions as the governing body may deem advisable; and to sell such hospital project to any non-profit corporation, including a non-profit corporation using such hospital project, such sale to be by installment payments or otherwise, and to be fully consummated if and when all bonds or notes of the issuer issued to provide such hospital project have been paid or provision has been made for their final payment; provided that during the time the bonds or notes or interest thereon remains unpaid there is no failure to make any payments owing under any lease or contract at the time and in the manner as the same become due; and

(d) to refund outstanding obligations, mortgages, or advances issued, made, or given by a non-profit corporation for the cost of a hospital project.

Eminent Domain

Sec. 6. No issuer shall have the power under this Act to acquire any hospital project, or any part thereof, to be sold or leased under this Act, by the exercise of the power of eminent domain. Land previously acquired by an issuer in the exercise of the power of eminent domain may be sold or leased, under the provisions of this Act; provided that the governing body of the issuer determines that (a) such use will not interfere with the purpose for which such land was originally acquired or that such land is no longer needed for such purpose, (b) at least seven years have elapsed since such land was so acquired, and (c) such land was not acquired for park purposes unless such sale or lease of park land has been approved at an election held under the authority of Article 1112, Revised Civil Statutes of Texas,

1925, as amended by Chapter 108, Acts of the 63rd Legislature, 1973.

Issuances of Bonds or Notes

Sec. 7. (a) Each issuer is hereby authorized to provide by resolution, from time to time, for the issuance of negotiable revenue bonds or notes or any other evidences of indebtedness for the purpose of paying all or any part of the cost of a hospital project. The bonds or notes of each issue shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times, not exceeding 40 years from their date, as may be determined by the issuer and may be made redeemable before maturity, at the option of the issuer, at such price or prices and under such terms and conditions as may be determined by the issuer.

(b) The principal of, redemption premium, if any, and the interest on such bonds or notes shall be payable from and secured by a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of the hospital project for which such bonds or notes have been issued and/or from such other revenues, if any, as may be provided by a non-profit corporation, all as specified by the resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes.

(c) One or more series of bonds or notes may be issued for each hospital project or any hospital projects may be combined in one or more series of bonds or notes if the governing body, in the exercise of its discretion, deems the same to be in the best interest of the issuer, but each hospital project may be considered separately with respect to the provisions of Sections 8 and 9 of this Act.

(d) The issuer shall determine the form of the bonds or notes, including any interest coupons to be attached thereto, and shall determine the denomination or denominations of the bonds or notes and the place or places of payment of principal, redemption premium, if any, and interest. Provision may be made for execution of the bonds or notes and coupons, if any, under the provisions of Chapter 204, Acts of the 57th Legislature, 1961, as amended (Article 717j-1, Vernon's Texas Civil Statutes). In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds, notes, or coupons shall cease to be such officer before the delivery of such bonds or notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The bonds or notes may be issued in coupon or in registered form, or both, or may be payable to a specific person, as the issuer may determine, and provisions may be made for the registration of any coupon bonds or notes as to the principal alone and also as to both

principal and interest, and provision may be made for the conversion of coupon bonds or notes into registered bonds or notes without coupons and for the reconversion into coupon bonds or notes of any registered bonds or notes without coupons. If the duty of such conversion or reconversion is imposed upon a trustee in a trust agreement, the substituted bonds or notes need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The issuer shall sell the bonds or notes at such price or prices as shall be determined by the governing body of the issuer.

(e) The proceeds of the bonds or notes shall be used solely for the payment of the cost of the hospital project for which the bonds or notes were issued, and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing their issuance or in the trust agreement securing the same. If the proceeds of the bonds or notes shall exceed the cost of the hospital project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or notes.

(f) From the proceeds from the sale of the bonds or notes, the governing body may set aside amounts for payments into reserve funds, and provisions for such funds may be made in the resolution authorizing the bonds or notes or any instruments securing the same. The proceeds from the sale of the bonds or notes may be invested: (1) in direct, indirect, or guaranteed obligations of the United States government or its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or any other instrument securing the bonds or notes; or (2) in certificates of deposit of any bank or trust company which deposits are secured by such obligations. Any bank or trust company with trust powers may be designated by the governing body to act as depository of the proceeds of the bonds or notes or of contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(g) Prior to the preparation or issuance of definitive bonds or notes, the issuer may issue interim receipts or temporary bonds or notes, with or without coupons, exchangeable for definitive bonds or notes when such bonds or notes shall have been executed and are available for delivery. Such interim receipts or temporary bonds or notes shall be for a maximum term of two years. The issuer shall submit such interim receipts or temporary bonds or notes to the Attorney General of Texas in accordance with Subsection (i) of this Section 7.

(h) Bonds or notes may be issued in accordance with the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau, or agency of the State of Texas, and

without any proceedings or the happening of any conditions or things other than those proceedings, conditions, or things which are specifically required by this Act.

(i) After issuance of the bonds or notes is authorized and before the bonds or notes may be delivered to the purchaser thereof, the bonds or notes and the proceedings authorizing their issuance and securing the bonds or notes shall be presented to the Attorney General of Texas for examination. Where such bonds or notes recite that they are secured by a pledge of all or any part of the revenues of the issuer to be derived from any lease or other contract, such contracts shall also be submitted to the Attorney General of Texas. If the attorney general finds that such bonds or notes have been duly authorized in accordance with the constitution and laws of the State of Texas and that such contracts, if any, submitted to him securing and relating to the bonds or notes have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds or notes and such contracts. The bonds or notes when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration, the bonds or notes and any and all contracts submitted therewith shall be valid and binding obligations in accordance with their terms, and shall be incontestable in any court or other forum.

(j) Nothing in this Act shall supercede the provisions of the state certificate of need law.

(k) Before authorizing the issuance of any bonds or notes or calling an election on any matters authorized by this Act, the issuer shall deposit with the chief administrative officer of the issuer a full and complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the names of the owners of the non-profit corporation for whom the hospital project is to be constructed. All of the information deposited or required to be deposited by this section is public information.

Resolution for Issuance of Bonds or Notes; Publication; Protests
of Issuance; Election

Sec. 8. Before issuing any bonds or notes in accordance with the provisions of this Act, the governing body of an issuer shall adopt a resolution declaring its intention to do so and stating the maximum amount of bonds or notes proposed to be issued, the purpose for which the bonds or notes are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of such bonds or notes. A substantial copy of such resolution shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publica-

tion shall be made not more than 45 days prior to the tentative date fixed in such resolution and the third publication shall be made not less than 10 days prior to the tentative date fixed in such resolution for the authorization of the bonds or notes. If at least 5 percent or 20,000 of the qualified electors of the issuer, whichever is less, shall file a written protest against the issuance of such proposed bonds or notes at no later than the close of business the business day before the tentative date specified for the authorization of such bonds or notes, then an election on the question of the issuance of such bonds or notes shall be called and held as herein provided. If no such protest is filed, then such bonds or notes may be issued by the issuer without an election at any time within a period of two years after the tentative date specified in the resolution; provided, however, that the governing body of an issuer, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the notice of its intention to issue bonds or notes as provided herein.

Election on Issuance of Bonds or Notes

Sec. 9. If an election is called, notice thereof shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publication shall be made not more than 45 days prior to the date fixed for such election, and the third publication shall be made not less than 10 days prior to the date fixed for such election. The election shall be conducted in accordance with the general laws of Texas pertaining to bond elections in cities, except as modified by the provisions of this Act. The order calling the election shall specify the date of such election, the place or places of holding the election, and the presiding judge and alternate judge for each voting place, and shall provide for clerks as provided in the Election Code of the State of Texas. The form of ballot shall be in conformity with the applicable provisions of such election code and the ballots shall provide for voting for or against the following proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects." As soon as practicable after such election is held, the governing body of the issuer shall convene and canvass the returns of the election, and in the event a majority of the voters voting in such election approves the proposition, such governing body shall so find and declare and shall be authorized to proceed with the authorization of bonds or notes. No election shall again be called on the proposition of issuing revenue bonds or notes for any hospital project which has been defeated by a majority of the voters voting in an election within six months of the proposed new election, and no bonds or notes shall be issued for any such hospital project until a majority of the voters voting in an

election held for that purpose approve the issuance of such bonds or notes.

Leases and Other Contracts; Terms

Sec. 10. Any lease or other contract entered into pursuant to this Act may be for such term as the parties may agree, and may provide that it shall continue in effect until the bonds or notes specified therein, or refunding or substitution bonds or notes issued in lieu of such bonds or notes, are fully paid or provision has been made for their final payment.

Refunding Bonds or Notes

Sec. 11. An issuer is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds or notes for the purpose of refunding any bonds, notes, or other evidences of indebtedness then outstanding, issued to provide a hospital project, which bonds, notes, or evidences of indebtedness may or may not have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, notes, or evidences of indebtedness. The bonds, notes, or evidences of indebtedness previously issued and to be refunded by the revenue refunding bonds or notes described in this Section 11 need not have been originally issued by the issuer of the revenue refunding bonds or notes. The issuance of such bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the issuer in respect of the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the issuer, the refunding bonds or notes may be issued in exchange or substitution for outstanding bonds, notes, or other evidences of indebtedness or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds, notes, or other evidences of indebtedness.

Securing Bonds or Notes by Trust Agreement

Sec. 12. (a) Any bonds or notes issued under the provisions of this Act may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of Texas. Any such trust agreement may pledge or assign lease income, contract, payments, fees, or any other charges to be received from a non-profit corporation. Such bonds or notes, within the discretion of the governing body of the issuer, may be additionally secured by a mortgage, a deed of trust lien, or other security interest upon a designated hospital project vesting in the trustee power to sell such hospital project for the payment of the indebtedness, power to operate such hospital project, and all other powers and authority for the further security of the bonds or notes.

(b) The trust agreement may evidence a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of any hospital project for the payment of principal of, redemption premium, if any, and interest on such bonds or notes as the same shall become due and payable and may provide for the creation and maintenance of reserves. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the holders thereof as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the issuer and the non-profit corporation in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which such bonds or notes shall have been issued, and the custody, safeguarding, and application of all money. Any such trust agreement may set forth the rights and remedies of the bondholders or noteholders and of the trustee, and may restrict the individual right of action by bondholders or noteholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the issuer may deem reasonable and proper for the security of the bondholders or noteholders and may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes. All expenses incurred by any issuer in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the hospital project with respect to which the bonds or notes have been issued.

Default in Payment of Bonds or Notes; Enforcement by Mandamus or by Appointment of Receiver

Sec. 13. Any agreement or contract made in accordance with the provisions of this Act may contain a provision that, in the event of a default in the payment of the principal of, redemption premium, if any, or the interest on bonds or notes issued in accordance with, or relating to, such agreement, or in the performance of any agreement contained in the proceedings, mortgage, or instruments relating to such bonds or notes, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with such resolution, mortgage, or instruments.

Foreclosure of Mortgage to Secure Bonds or Notes

Sec. 14. Any mortgage to secure bonds or notes issued in accordance with the provisions of this Act

may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the property secured by the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds or notes secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

Members of Governing Body; Method of Selecting and Term of Office

Sec. 15. If an authority issues bonds or notes in accordance with the provisions of this Act, notwithstanding any provision of law, and under no circumstances, shall the method of selecting and the term of office of any of the members of the governing body of such authority be prescribed in the resolution authorizing the issuance of such bonds or notes, the trust agreement securing such bonds or notes, or any other agreement relating to such bonds or notes.

Authority of Governing Body

Sec. 16. Except as limited by the provisions of this Act, each governing body of an issuer shall have full and complete authority with respect to bonds or notes of such issuer, lease agreements in which such issuer is lessor, sales agreements, and all other contracts and the provisions thereof.

Tax Exemption for Bonds or Notes

Sec. 17. In carrying out the purposes of this Act, the issuer will be performing an essential public function and any bonds or notes issued by it and their transfer and the interest therefrom, including any profits made from the sale thereof, shall at all times be free from taxation by the State of Texas or any municipality or political subdivision thereof.

Bonds or Notes or Securities

Sec. 18. Bonds or notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code, as amended (Chapter 8, Title I, Business & Commerce Code),¹ and shall be exempt securities under the Texas Securities Act, as amended (Article 581-1, et seq., Vernon's Texas Civil Statutes). A lease agreement, sales agreement, or other contract under this Act shall not be a security within the meaning of the Texas Securities Act.

¹ Business and Commerce Code, § 8.101 et seq.

Bonds or Notes as Legal and Authorized Investments and Security

Sec. 19. Unless the bonds and notes issued under this Act are ineligible for investments in accordance with the criterion established in other statutes, rulings, or regulations of the State of Texas or the

United States, then the bonds and notes under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds or notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

Expenses of Relocation, Rerouting, Altering Construction, etc.

Sec. 20. In the event any issuer, in the exercise of the power of relocation or any other power, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, cable television transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer or the non-profit corporation. Such expense shall be paid from the proceeds of the sale of the bonds or notes. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

Severability

Sec. 21. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1975, 64th Leg., p. 285, ch. 126, §§ 1 to 21, eff. Sept. 1, 1975.]

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed."

Art. 4437f. Texas Hospital Licensing Law

[See Compact Edition, Volume 4 for text of 1 to 9]

Failure to Comply with Health Planning and Development Act

Sec. 9A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if its finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act¹ requiring a certificate of need or an exemption certificate.

[See Compact Edition, Volume 4 for text of 10 to 17]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.04, eff. May 28, 1975.]

¹ Article 4418h.

Art. 4438a. Denial of Emergency Treatment by Hospital Office on Employee for Inability to Pay

Sec. 1. No officer or employee of a general hospital supported with public funds may deny a person diagnosed by a licensed physician on the staff of that hospital as seriously ill or injured emergency services customarily provided at the hospital because the person is unable to establish his ability to pay for the services.

Sec. 2. An officer or employee of a hospital who violates the provisions of Section 1 of this Act is guilty of a Class C misdemeanor and on conviction is subject to a fine not exceeding \$200.

Sec. 3. Nothing in this Act shall be construed to relieve a person of his obligation to pay for services provided by a hospital.

[Acts 1975, 64th Leg., p. 1331, ch. 495, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 4442c. Convalescent and Nursing Homes and Related Institutions

[See Compact Edition, Volume 4 for text of 1 to 6]

Failure to Comply with Health Planning and Development Act

Sec. 6A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act¹ requiring a certificate of need or an exemption certificate.

[See Compact Edition, Volume 4 for text of 7 to 15]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.05, eff. May 28, 1975.]

¹ Article 4418h.

Art. 4442c-1. Repealed by Acts 1975, 64th Leg., p. 847, ch. 323, § 5.08(3), eff. May 28, 1975

See, now, the Health Planning and Development Act, classified as art. 4418h.

Art. 4442d. Nursing Home Administrators Licensure Act

[See Compact Edition, Volume 4 for text of 1 to 5]

Functions and Duties of the Board

Sec. 6. It shall be the function and duty of the board to:

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator and standards which must be met by licensees, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators and satisfactorily perform the duties of nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;

(7) conduct or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this Act, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are a sufficient number of courses conducted by others within this State to meet the needs of the State. In lieu

thereof the board may approve courses conducted within and without the State as sufficient to meet the education and training requirements of this Act.

[See Compact Edition, Volume 4 for text of 7 to 10A]

Disciplinary Action

Sec. 11. (1) The board shall be authorized to revoke, suspend, or refuse to renew, a nursing home administrator's license after due notice and hearing upon the following grounds or any of them:

(a) upon proof that such licensee has wilfully or repeatedly violated any of the provisions of this Act or the rules adopted in accordance therewith;

(b) upon proof that such licensee has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home of which he is administrator;

(c) upon proof that the licensee was guilty of fraud in securing his license;

(d) upon proof of the intemperate use of alcohol or drugs which in the opinion of the board creates a hazard to patients;

(e) upon proof of a judgment of a court of competent jurisdiction finding the licensee insane;

(f) upon proof that such licensee has been convicted in a court of competent jurisdiction of a misdemeanor or a felony involving moral turpitude; and

(g) upon proof that the licensee has been grossly negligent in his duties as a nursing home administrator.

(2) The board shall have jurisdiction to hear all disciplinary charges brought under the provisions of this Act against persons licensed as nursing home administrators and upon such hearings shall determine such charges upon their merits. Proceedings under this Act shall be begun by filing with the board written charges under oath. Such charges may be preferred by any person and after notice in writing of not less than fifteen (15) full days, stating the place and date of the hearing, accompanied by a copy of the complaint or charges, the board, or a majority thereof, shall hold a hearing on said charges, cause a written record to be made of the evidence given at the hearing, accord the person charged a right to present evidence, be represented by an attorney, and to cross-examine the witnesses. In this connection the board shall be authorized to issue subpoenas for witnesses at the hearing, either at the request of the person cited or on behalf of the board or its representative; to compel the attendance of witnesses, and administer oaths to witnesses. Disobedience of a subpoena duly issued by the

board or by its secretary under its direction, shall constitute a contempt of the board which shall be enforceable by any district court sitting in the county in which the hearing is being held upon petition of the board and the presentation to the court of evidence of wilful disobedience and if the district judge is of the opinion and finds that the subpoena was wilfully disobeyed, such judge shall be authorized to punish a subpoenaed witness in like manner and to the extent provided in like cases in civil actions in the district courts of Texas.

(3) Strict rules of evidence shall not apply in a hearing before the board but all decisions of the board shall be supported by sufficient legal and competent evidence.

(4) The failure of the nursing home to comply with Texas State Department of Health requirements for licensure of nursing homes may be considered by the board in determining whether the licensee meets standards for licensure as a nursing home administrator.

[Amended by Acts 1975, 64th Leg., p. 1116, ch. 420, § 1, eff. June 19, 1975.]

Art. 4445c. Laboratory Tests for Venereal Diseases; Reporting Results

Notification of Findings; Duty

Sec. 1. (a) Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of those venereal diseases significant from a public health standpoint listed in Section 3 of this Act shall notify the Communicable Disease Services Section, Texas State Department of Health, of such findings.

(b) Notification shall be submitted by the person in charge of the laboratory to the Communicable Disease Services Section, Texas State Department of Health, through the local health officer having jurisdiction of the area containing the office address of the physician for whom the examination or test was performed or, if the examination or test was not performed for a physician, the area in which the facility is located. In the absence of a local full-time health officer, said report(s) will be forwarded directly to the Communicable Disease Services Section, Texas State Department of Health.

Notification of Findings; Contents

Sec. 2. (a) Notification shall contain the date and result of the test performed, the name and age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed or, if

the examination or test was not performed for a physician, a notation to that effect and a statement of the reason it was performed. Also, notification shall be submitted in writing and in such form and manner as prescribed by the Communicable Disease Services Section, Texas Department of Public Health.

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

Communications with Patient and Physician

Sec. 5. (a) Except when acting on the basis of information other than the laboratory notification, neither the Communicable Disease Services Section, Texas State Department of Health, nor the local health director will under any circumstances communicate with the patient or the potential contacts until a diagnosis has been reported to the Department of Health by the attending physician, if any, but if there is no attending physician, communications with the person from whom the specimen was derived and other potential contacts may proceed as in cases in which the information is received from other than laboratory notification.

See Compact Edition, Volume 4 for text of 5(b) to 7]

[Amended by Acts 1975, 64th Leg., p. 2211, ch. 704, §§ 1 to 3, eff. June 21, 1975.]

Art. 4447c. Texas Coordinating Commission for State Health and Welfare Services

Creation; Membership; Terms

Sec. 1. There is hereby created a "Texas Coordinating Commission for State Health and Welfare Services," to be composed of the following persons:

(a) The Director of Health Resources, the chairman of the Texas Health Facilities Commission, the Commissioner of Education, the Commissioner of Mental Health and Mental Retardation, the Chairman of the Texas Employment Commission, the Commissioner of Public Welfare, the Executive Secretary-Director of the State Commission for the Blind, the Executive Director of the Texas Youth Council, and the executive heads of other health-related state agencies designated by executive order of the Governor, each of whom, or his designee, is an ex officio, non-voting member of the Commission;

(b) Three members of the Senate appointed by the Lieutenant Governor;

(c) Three members of the House of Representatives appointed by the Speaker of the House;

(d) Three citizen members appointed by the Governor and chosen for their recognized inter-

est in health or welfare activities of the state, local governments, and private agencies.

The terms of members of the Commission first appointed shall be from the date of their appointment to December 31, 1976, and appointments thereafter shall be for two-year periods ending on December 31 of even-numbered years.

Organization; Chairman

Sec. 2. The Texas Coordinating Commission for State Health and Welfare Services shall meet within thirty (30) days after the appointment of all its members. The Governor shall biennially designate one member as chairman and another as vice-chairman.

Staff and Services Assistance

Sec. 3. The Governor shall provide the staff and services necessary to assist the Commission in performing its duties. To the extent practicable, all health-related state agencies with ex officio representatives on the Commission shall provide staff and services assistance.

Meetings

Sec. 4. Regular meetings of the Texas Coordinating Commission for State Health and Welfare Services shall be held in Austin or at other locations within the state as determined by the Commission, and after its initial organization the Commission shall meet at least once every three months. Called meetings of the Commission may be held at such times and at such places as it may determine. A majority of the appointed members shall constitute a quorum.

Compensation; Expenses

Sec. 5. Members of the Commission shall serve without compensation, but appointed members of the Commission shall be reimbursed for their actual and necessary expenses while in attendance upon meetings of the Commission from funds appropriated by the Legislature.

Sec. 6. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(4), eff. May 28, 1975.

Application for Federal Grant; Study and Analysis of Services and Programs

Sec. 6A. (a) Whenever any state agency or institution applies for a federal grant for health purposes, prior to or at the time the application is submitted to the federal government, the agency or institution shall provide the Commission with a copy of the application. The Commission may review and comment on the application. If the agency or institution receives funds pursuant to the application, it shall so report to the Commission and shall advise the Commission of the disposition of the funds.

(b) The Commission shall make a continuing study and analysis of the services and programs of all health-related state agencies and shall include its findings and recommendations in its annual report.

[See Compact Edition, Volume 4 for text of 7]

Reports

Sec. 8. The Commission shall compile annual reports on its activities for submission to the Governor and the Legislature. The reports shall be submitted not later than December 1 of each year and shall include any recommendations which the Commission may have for legislative action.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.06, May 28, 1975.]

Art. 4447d-2. Immunization Reminder Notices

In a program administered by the State Department of Health in which immunization reminder notices for children are sent to persons, the notices must be sent without discrimination on the basis of the legitimacy of the child and must be addressed to an adult or parent without including an indication of the marital status of the addressee and without use of the terms "Mr.," "Mrs.," "Miss," or "Ms."

[Acts 1975, 64th Leg., p. 1020, ch. 389, § 1, eff. June 19, 1975.]

Art. 4447r. Cooperative Associations by Eligible Institutions

Establishment; Names; Purposes

Sec. 1. Associations may hereafter be established for the purpose of enabling "eligible institutions" (as defined in this Act) to cooperate with each other for the purposes named in this Act. Only eligible institutions can become members of associations established under this Act. Each association chartered under this Act shall contain as part of its name the words "Cooperative Association," and its purposes shall be limited to establishing, operating, and maintaining a "system" or "systems" (as defined in this Act) on a cooperative basis solely for the use and benefit of eligible institutions. Eligible institutions are authorized to create and establish each association only under such terms and conditions as may be prescribed by the governing bodies of the respective eligible institutions.

Definitions

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) The term "eligible institutions" shall include only health-related state-supported institutions, including, but not limited to, Texas A & M University System, The University of Texas

System, and Texas Woman's University, and nonprofit health-related institutions, a unit of which is situated in any county of this state having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health-related pursuits to become eligible institutions, and must be exempt from federal income tax. It is not a requirement of this Act that any component institution of any state-supported institution be a member of any association created under this Act, but any one or more of such component institutions may be a member of any one or more associations.

(2) The term "system" shall include all properties and facilities necessary, incidental, and appropriate for the purposes of providing laundering services, central heating and cooling services (including steam and chilled water supply), cable television and other communication services, including transmission of x-rays, records, and other copy, parking facilities and traffic control facilities and devices on private streets, and food processing and dietary food preparation and supply services, together with the buildings and land (whether leasehold or other interests) necessary to provide the foregoing services, properties and facilities, all by and for the benefit of the members of the cooperative associations created under this Act.

Powers, Rights and Functions

Sec. 3. Each association established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a system or systems on a cooperative basis solely for the benefit of the eligible institutions which are members of the association and to engage in such activities for the benefit of such members as are necessarily related to the acquisition, ownership, operation, and maintenance of the system or systems as defined in this Act;

(2) to acquire by purchase, lease, or otherwise, lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the system or systems as defined in this Act; to own, hold, improve, develop, and manage any real estate so acquired; to construct, or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate; and to encumber and dispose of any lands or estates in lands and any such buildings or other structures at any time owned or held by the association;

(3) to acquire by purchase, lease, manufacture, or otherwise, any personal property appropriate or reasonably incidental to the system or systems as defined in this Act; and

(4) to borrow or raise money; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights, and other choses in action; and to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchased, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or personal, of the association, all of the above being authorized to the extent necessary to accomplish the purposes set forth in this Act.

Public Funds

Sec. 4. No public funds appropriated to any department of the state government or to any state institution shall be used in establishing any association authorized by this Act.

Articles of Incorporation

Sec. 5. Eligible institutions desiring to establish associations hereunder may, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file articles under the general corporation laws of the State of Texas, which corporation laws, including the Texas Business Corporations Act, shall upon such filing govern such associations except wherein such laws conflict with the provisions of this Act.

Franchise Tax Exemption; Reports; Surplus Revenue

Sec. 6. The associations established under this Act shall be purely cooperative and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless file a written report to the secretary of state showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from each system to the surplus fund or divide such funds among the members thereof in proportion to their respective contributions to the working capital of the association and patronage of their members.

Loaning Money to Members

Sec. 7. The associations established under this Act shall not have the power to loan money to their members.

Loans From Public or Private Sources; Services and Costs

Sec. 8. The associations established under this Act shall only have the powers enumerated in Section 3 of this Act. The creation, operation, or maintenance of each system may be accomplished in

whole or in part with the proceeds of loans obtained from any public or private source. Such associations are authorized to furnish services from each system to any and all eligible institutions and to determine the amounts to be charged as the cost of furnishing such services.

Bonds, Notes or Other Obligations

Sec. 9. From time to time each association established under this Act shall have authority to borrow money and to deliver evidences of indebtedness to include bonds or notes in such amounts as may be necessary for the purpose of creating, enlarging, operating, or maintaining the system or systems. Such bonds, notes, or other evidences of indebtedness authorized by this Act shall be paid solely from the revenues received from the operation of the system or systems or from funds specifically provided for that purpose from other sources, and said revenues and funds may be pledged to secure the payment of such bonds, notes, or other evidences of indebtedness. Said bonds, notes, or other evidences of indebtedness authorized under this Act shall never constitute indebtedness of the State of Texas or of any of the eligible institutions that are members of any association, and the holders thereof shall never have the right to demand or to enforce payment of principal or interest of the bonds, notes, or other evidences of obligations out of funds, other than those specifically pledged to the payment thereof.

Bonds as Legal and Authorized Investments

Sec. 10. All bonds of the associations established by this Act shall be and are hereby declared to be legal, eligible, and authorized investments for banks, savings and loan associations, insurance companies, fiduciaries, and trustees.

Election to Membership; Voting Rights; Suspension or Expulsion; Transfer of Membership Certificates

Sec. 11. (a) Membership in the associations established under this Act shall be limited to eligible institutions and can be obtained only by election to membership at the time of organization by the organizers thereof, or by the board of directors of the association, when organized under such rules and limitations as may be contained in the bylaws. Members shall have voting rights in the management of the affairs of the association contained in the bylaws of the association.

(b) Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the bylaws. In case of expulsion, the association shall pay to the members such amount and at such time as may be fixed in its bylaws in cancellation of such membership; provided, however, that such member's contractual obligations pledged to the payment of the association's notes, bonds, or other evidences of indebtedness shall have been fully paid or provided for.

(c) Membership certificates shall be transferable only to eligible institutions under and subject to such rules and regulations as may be adopted by any association in its bylaws.

(d) All amounts paid or property conveyed or transferred to any association by expelled members not returned as hereinunder provided shall be retained by the association and any facilities or property theretofore acquired shall remain the property of the association, and the members shall have no lien or other rights with regard thereto.

Liability to Creditors; Financial Commitments

Sec. 12. Unless otherwise herein provided, the members of any association established hereunder shall not be responsible to such association or to its creditors in excess of amounts contracted for by the member, and when the contracts are paid in the amounts and at the times therein specified, the liability of each such member shall cease. Nothing contained in this Act shall be interpreted to authorize any health-related state-supported institution to make a financial commitment extending beyond the then current budget period for such institution.

Cumulative Effect

Sec. 13. This Act shall be cumulative of all laws now in effect relating to eligible institutions.

Tax Exemption

Sec. 14. The accomplishment of the purposes stated in this Act being for the health and benefit of the people of this state, and for the improvement of their properties and industries, the associations in carrying out the purposes of this Act will be performing essential public functions under the constitution, and the associations shall not be required to pay any tax or assessment on its properties or any part thereof or on any purchases made by the associations.

Severability; Liberal Construction

Sec. 15. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the applications thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth.

[Acts 1975, 64th Leg., p. 458, ch. 195, eff. May 13, 1975.]

CHAPTER THREE. FOOD AND DRUGS

Article

4476-6a. Purchase of Imported Beef by State Agencies and Subdivisions [NEW].

4476-6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions [NEW].

Art. 4476-6a. Purchase of Imported Beef by State Agencies and Subdivisions

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board, or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior-college, water, hospital, reclamation, or other special-purpose district.

Sec. 2. No state agency or subdivision may purchase beef, or any product consisting substantially of beef, which has been imported from outside the United States of America.

Sec. 3. The State Department of Health has responsibility for enforcing the provisions of this Act and is the agency for receipt of notifications of violations of this Act.

Sec. 4. The State Department of Health shall promulgate rules and regulations for the reporting of purchases covered by this Act by state agencies and subdivisions and for the reporting of violations of this Act.

[Acts 1975, 64th Leg., p. 368, ch. 159, §§ 1 to 4, eff. May 8, 1975.]

Art. 4476-6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior college, water, hospital, reclamation, or other special purpose district.

(3) "Dairy product" means milk, cream, butter, cheese, or any product consisting largely of one or more of them.

Sec. 2. No state agency or subdivision may purchase a dairy product that has been imported from outside the United States of America. This Act does not apply to the purchase of milk powder when, in the normal course of business, domestic milk powder is not readily available.

[Acts 1975, 64th Leg., p. 1346, ch. 505, §§ 1, 2, eff. Sept. 1, 1975.]

Art. 4476-15. Controlled Substances Act

[See Compact Edition, Volume 4 for text of 1.01 to 3.01]

SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Rules

Sec. 3.02. (a) The director may promulgate reasonable rules.

(b) The director may charge an annual fee of up to \$5 per registrant for the costs necessary to administer this Act. Except as provided by Subsection (c) of this section, the fees shall be paid to the director of the department of public safety.

(c) The director may authorize a contract between the department of public safety and an appropriate state agency for the collection and remittance of fees required under this section.

(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety.

(e) Fees collected by the director of the department of public safety under the terms of this section shall be deposited in the state treasury in the operator's and chauffeur's license fund and said fees deposited may be used only by the department of public safety in the administration of this Act.

[See Compact Edition, Volume 4 for text of 3.03 to 3.07]

Prescriptions

Sec. 3.08.

[See Compact Edition, Volume 4 for text of 3.08(a) to (c)]

(d) A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07 of this Act, may not be dispensed without the prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner other than a pharmacy, and a prescription for the substances may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

[See Compact Edition, Volume 4 for text of 3.08(e) to 5.04]

Notification of Forfeiture Proceedings

Sec. 5.05. (a) When any property, other than a controlled substance or raw material, is seized, proceedings under this section shall be instituted promptly.

[See Compact Edition, Volume 4 for text of 5.05(b) to 5.06]

Forfeiture Hearing

Sec. 5.07. (a) An owner of property, other than a controlled substance or raw material, that has been

seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the Texas Department of Public Safety. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties.

[See Compact Edition, Volume 4 for text of 5.07(b) to (d)]

(e) Upon petition of the seizing officer, filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure of any controlled substance or raw material is made, the district court having jurisdiction may order the controlled substance or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires.

Disposition of Forfeited Property

Sec. 5.08. (a) Regarding all controlled substances and raw materials which have been forfeited, the district court shall by its order direct a law enforcement agency to:

(1) retain the property for its official purposes;

(2) deliver the property to a government agency or department for official purposes;

(3) deliver the property to a person authorized by the court to receive it; or

(4) destroy the property that is not otherwise disposed. A record of the place where the controlled substances and raw materials were seized, of the kind and quantities so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting the destruction, shall be made to the district court by the officer who destroys them.

[See Compact Edition, Volume 4 for text of 5.08(b) to 6.04]

[Amended by Acts 1975, 64th Leg., p. 123, ch. 58, § 1, eff. April 18, 1975; Acts 1975, 64th Leg., p. 749, ch. 295, §§ 1 to 4, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1842, ch. 572, § 1, eff. Sept. 1, 1975.]

Section 2 of Acts 1975, 64th Leg., ch. 58, provided:

"For the fiscal year ending August 31, 1975, all money in the fund, or as much of it as is necessary, is appropriated to the department of public safety to be used for the purpose of performing the department's functions under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)."

CHAPTER FOUR. SANITARY CODE

Art. 4477. Sanitary Code

The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promo-

tion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

QUARANTINE AND DISINFECTION

[See *Compact Edition, Volume 4 for text of Rules 1 to 47*]

Rule 47a. Form and Contents of Birth Certificates; Supplementary Certificate; Certificates of Adoption, Annulment and Revocation.—The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. Provided that the name of the father, or any information by which he might be identified, shall not be written into the birth or death certificate of any illegitimate child; and provided further, that any statement that the father of an illegitimate child wishes to make as to its parentage may, when placed in the form of an affidavit, be attached to the original birth record. The state registrar, county clerk, or local registrar shall not issue a certified copy disclosing illegitimacy or otherwise disclose illegitimacy unless the issuance of the certified copy or the disclosure is authorized by order of the county court of the county in which the birth, death, or fetal death occurred or unless the person applying for the certified copy is the natural mother of the illegitimate child and such child has not been adopted by other parties. The State Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to illegitimate births in connection with programs to notify the mothers of young children about health needs for the children.

Subject to the regulations of the State Department of Health, any person:

- (a) legitimated by the subsequent marriage of its parents;
- (b) whose parentage has been determined by a court of competent jurisdiction; or
- (c) adopted under the law existing at the time of adoption in this state or any other state or territory of the United States of America may request the state registrar to file a supplementary certificate of birth on the basis of the status subsequently acquired or established and of which proof is submitted.

The application to file a supplementary certificate of birth may be filed by the person, if of age, or a legal

representative of the person. The state registrar shall require such proof in these cases as the State Department of Health may by regulation prescribe. The preparation and filing of supplementary certificates of birth based on legitimation, paternity determination, and adoption shall be in accordance with the regulations of the State Department of Health. Provided, however, that when a child is adopted the new birth certificate shall be in the names of the parents by adoption, and the copies of birth certificates or birth records made therefrom shall not disclose the child to be adopted. After the supplementary certificate is filed, any information disclosed from the record shall be made from the supplementary certificate, and access to the original certificate of birth and to the documents filed upon which the supplementary certificate is based shall not be authorized except upon order of a court of competent jurisdiction.

A certificate of each adoption, annulment of adoption, and revocation of adoption ordered or decreed in this state shall be filed with the state registrar as hereinafter provided. The information necessary to prepare the certificates shall be supplied to the clerk of the court by the petitioner for adoption, annulment of adoption, or revocation of adoption at the time the petition is filed. The clerk of the court shall thereupon prepare the certificate on a form furnished by and containing such items of information as may be determined by the State Department of Health and shall, immediately after the decree becomes final, complete the certificate. On or before the 10th of each month, the clerk shall forward to the state registrar the certificates completed by him for decrees which have become final during the preceding calendar month.

Provided, that the above provisions shall not, in any way, be construed as affecting the property rights of natural or adoptive parents or of natural or adopted children, or as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property.

Subject to the regulations of the State Department of Health, any person whose name has been changed by court order may request the state registrar to attach to the original birth record an amendment reflecting the change of name. The request to attach such amendment may be made by the person, if of age, or a legal representative of the person. The state registrar shall require such proof of change of name as the State Department of Health may by regulation prescribe.

[See *Compact Edition, Volume 4 for text of Rules 47b to 76*]

[Amended by Acts 1975, 64th Leg., p. 117, ch. 54, § 1, eff. Sept. 1, 1975.]

CHAPTER FOUR A. SANITATION AND HEALTH PROTECTION

Article

4477-10. Treating and Conveying Waste in Cities of 1,200,000 or More [NEW].

Art. 4477-1. Minimum Standards of Sanitation and Health Protection Measures

[See Compact Edition, Volume 4 for text of 1 to 23]

Home-Rule Cities of 800,000 or More; Appointment of Environmental Health Officer

Sec. 23a. In a home-rule city in cities of a population of 800,000 or more according to the last federal census, an environmental health officer may be appointed to enforce the provisions of this article. An environmental health officer must be a registered professional engineer, subscribe to the official oath, and file a copy of his oath and appointment with the State Board of Health. He shall assist the State Board of Health in the enforcement of this article and is subject to the authority of the State Board of Health and to removal from office in the same manner as a city health officer.

[See Compact Edition, Volume 4 for text of 24]

[Amended by Acts 1975, 64th Leg., p. 227, ch. 86, § 1, eff. Sept. 1, 1975.]

Art. 4477-10. Treating and Conveying Waste in Cities of 1,200,000 or More

Application

Sec. 1. This Act shall be applicable to all incorporated cities, including home-rule cities, having a population of 1,200,000 or more according to the last preceding federal census (hereinafter called "eligible city").

Acquisition of Property; Construction of Improvements; "Waste" Defined

Sec. 2. An eligible city is authorized to acquire, by purchase, lease or otherwise, any or all property (real, personal or mixed) and to construct or otherwise acquire, improve and equip any property for the purposes of treating and conveying waste, including, but not limited to waste treatment facilities including plants, disposal fields, lagoons and areas devoted to sanitary landfills for the purposes of treating, neutralizing, stabilizing or disposal of waste, and sewer systems including pipelines, conduits, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste (such waste treatment facilities and sewer systems are hereinafter called "project" or "projects"). An eligible city is also authorized to enter into leases and other contracts, including installment sale agreements, with persons, firms or corporations to use or acquire a project or

projects of such city and to enter into agreements under which the project or projects may be operated on behalf of such city; such leases, contracts and agreements to contain such terms and conditions as the eligible city deems appropriate. Each and all of the foregoing purposes are hereby found and declared to be public purposes and proper municipal functions. The term "waste" as used in this section has the meaning defined in the Texas Water Quality Act, codified as Chapter 21 of the Texas Water Code, as heretofore and hereafter amended.¹

¹ Water Code, § 21.001 et seq., § 21.003(4).

Issuance of Bonds

Sec. 3. For any purpose or purposes authorized under Section 2 of this Act, the governing body of an eligible city may issue its revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenues derived from any project or projects.

Ordinances Authorizing Bonds; Maturity; Registration as "Security"; Disposition of Proceeds from Sale; Property Tax

Sec. 4. (a) Said bonds may be issued when authorized by ordinance duly adopted by an eligible city's governing body and may mature serially or otherwise within not to exceed 40 years from their date or dates, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the ordinance authorizing the issuance of such bonds.

(b) Said bonds, and any interest coupons appertaining thereto, shall be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967).¹ The bonds may be issued registrable as to principal alone or as to principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions and details, and may be sold in such manner, at such price, and under such terms, and such bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in said ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition, construction or improvement of any project or projects, for paying expenses of operation and maintenance of said project or projects, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for establishing any other funds. The proceeds of sale of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

(d) An eligible city is authorized to levy and pledge to the payment of the operation and maintenance of any project or projects, either as a supplement to the pledge of revenues for such purpose or in lieu thereof, a continuing annual ad valorem tax at a rate or rates on each \$100 valuation of taxable property within said city sufficient for such purposes, all as may be provided in said ordinance authorizing the issuance of such bonds; provided, that such taxes shall be within any constitutional or charter limit for eligible cities; and provided further, that no part of any moneys raised by such taxes shall ever be used for the payment of the interest on or principal of any bonds issued hereunder. The proceeds of any such taxes thus pledged shall be utilized annually to the extent required by, or provided in, the ordinance for operation and maintenance of such projects, and such city in its discretion may covenant in such ordinance that certain costs of operating and maintaining such projects, as may be enumerated therein, or all of such costs, will be paid by the eligible city from the proceeds of such tax.

(e) An eligible city shall not acquire or construct any such project or projects with the proceeds of bonds, notes, or other evidences of indebtedness the interest on which is exempt from federal income taxation by virtue of Section 103(c)(4) of the Internal Revenue Code of 1954, as heretofore or hereafter amended,² unless (1) such project is operated by an eligible city or a political subdivision of the State of Texas on behalf of such eligible city or, (2) such project provides pretreatment for waste which is then discharged into a project operated by an eligible city or a political subdivision on behalf of such city.

¹ Business and Commerce Code, § 8.101 et seq.

² 26 U.S.C.A. § 103(c)(4).

Fees, Purchase Prices, Rentals, Rates and Charges

Sec. 5. An eligible city is authorized to fix and collect fees, purchase prices, rentals, rates and charges for the sale, occupancy, use or availability of all or any of the projects in such amounts and in such manner as may be determined by the governing body of the eligible city.

Pledges for Payment of Bonds

Sec. 6. (a) An eligible city may pledge all or any part of the revenues, income or receipts from such fees, purchase prices, rentals, rates and charges to the payment of the bonds, including the payment of principal, interest and any other amounts required or permitted in connection with the bonds. The pledged fees, purchase prices, rentals, rates and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest and any other amounts required in

connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance and other expenses in connection with the projects.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the projects owned or to be acquired by the eligible city and by chattel mortgages, liens or security interests on any personal property appurtenant to that real property. The governing body of the eligible city may authorize the execution of trust indentures, mortgages, deeds of trust or other forms of encumbrances to evidence the indebtedness.

(c) An eligible city may also pledge to the payment of the bonds all or any part of any grant, donation, revenues or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 7. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose under any terms or conditions as are determined by ordinance of the governing body of the eligible city. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a city under this Act also may be refunded in the manner provided by any other applicable law.

Examination of Bonds by Attorney General; Approval and Registration

Sec. 8. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the pro-

ceedings relating to it shall also be submitted to the attorney general. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable for any reason, and are valid and binding obligations for all purposes in accordance with their terms.

Bonds as Legal and Authorized Investments and Security

Sec. 9. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds are also eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect; Conflicting Laws

Sec. 10. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any law or home-rule-charter provision, the provisions of this Act shall prevail and control. An eligible city shall have the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any

other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1975, 64th Leg., p. 257, ch. 106, §§ 1 to 11, eff. Sept. 1, 1975.]

CHAPTER FOUR B. TUBERCULOSIS

Art. 4477-13. Treatment of Respiratory Diseases at East Texas Chest Hospital; Designation as State Agency for Research and Training

[See Compact Edition, Volume 4 for text of 1 to 5]

Sec. 6. A schedule of minimum fees and charges shall be established hereunder by the superintendent, which shall conform to the fees and charges customarily made for similar services in the community in which such services are rendered. Fees and charges collected for physicians' services shall be retained locally and shall be used only for the purpose of recruiting, retaining, and supplementing the salaries of the hospital's medical staff. Distribution of fees and charges for physicians' services shall be subject to rules and regulations adopted by the medical staff, not inconsistent with the laws of this state regulating the practice of medicine.

[See Compact Edition, Volume 4 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 2193, ch. 700, § 1, eff. June 21, 1975.]

CHAPTER FOUR C. KIDNEY DISEASE

Art. 4477-20. Kidney Health Care Act

[See Compact Edition, Volume 4 for text of 1 to 8]

Reimbursement of Health Department for Cost of Treatment

Sec. 9. (a) Subject to the limitations set forth in Subsections (b)(1) and (2) below, any person certified by the board as eligible for treatment under the provisions of this Act for whose treatment the board has paid or the person or persons liable for the debts of such patient shall reimburse the Texas State Department of Health for the cost of such treatment and the proceeds resulting from such reimbursement shall be reappropriated to the Division of Kidney Health Care of the Texas State Department of Health for carrying out the purposes of this Act.

(b) No person or persons liable for repayment under Subsection (a) of this section shall be liable for more than the sum of:

(1) any proceeds of insurance, group health plan, or prepaid medical care, provided that such proceeds are paid to the insured and are paid by

the insurer by reason of liability for the payment of the cost of medical treatment, and

(2) five percent of the adjusted gross income, as defined in the United States Internal Revenue Code for purposes of federal income tax and as amended from time to time, of such person or persons, less a yearly sum of not more than \$500 and the yearly premiums such person or persons have paid on insurance which resulted in proceeds under Subsection (b)(1) hereof.

Nothing in this section shall be construed to affect any arrangement for payment of costs directly to a medical provider by an insurance company, group health plan, or prepaid medical care plan.

Coordination of Benefits

Sec. 9.1. The board shall require the coordination of benefits provided under this Act with all other benefits to which any person certified as eligible under this Act may be entitled. To effect this coordination the board shall:

(1) Require full disclosure of all other benefits to which such person may be entitled.

(2) Require the full utilization of all other benefits to which such person may be entitled before benefits may be received under this Act.

(3) For the purposes of this Act, the term "other benefits" is defined as those benefits which are or upon proper claim could be provided such persons certified as eligible under this Act to cover the expense of medical care, treatment, services, pharmaceuticals, transportation, and supplies by but not limited to the following:

(a) Any policy of insurance, group health plan, or prepaid medical care plan which provides benefits for the care and treatment of kidney disease;

(b) Title XVIII of the Social Security Act, as amended (Medicare);¹

(c) Title XIX of the Social Security Act, as amended (Medicaid);²

(d) Veterans Administration;

(e) Civilian Health and Medical Program of the Armed Forces (Champus);

(f) Workmen's Compensation or any other compulsory employer's insurance program;

(g) Any other public program created by laws enacted by the Congress of the United States, or the Legislature of this State, or

the laws, regulations, or established regulations of any county or municipality.

(4) Nothing in this section shall be construed to abridge the freedom of a person certified as eligible under this Act in exercising his or her choice of treatment modality, treatment facility, or treating physician; provided, however, that such modality, facility, or physician is accredited by the board as provided in Section 3 of this Act.

[See Compact Edition, Volume 4 for text of 10 to 12]

[Amended by Acts 1975, 64th Leg., p. 1884, ch. 597, § 1, eff. Sept. 1, 1975.]

¹ 42 U.S.C.A. § 1395 et seq.

² 42 U.S.C.A. § 1396 et seq.

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. 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 provisions or applications, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict with or inconsistent with this Act are hereby repealed."

CHAPTER FIVE. COUNTY HOSPITAL

Article

4494r-2.1. Advisory Elections in Issuance of Revenue Bonds [NEW].

4494r-5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More [NEW].

Art. 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County

[See Compact Edition, Volume 4 for text of 1 to 5]

Board of Hospital Managers in Counties of 650,000 to 750,000

Sec. 5(a). Notwithstanding the provision of the preceding section, in counties containing a population of more than 650,000, but less than 750,000 according to the last preceding Federal Census, the Commissioners Court shall appoint a Board of Hospital Managers consisting of not less than five (5) nor more than fifteen (15) members who shall serve for a term of two years with overlapping terms if desired, and upon such conditions, and bearing such responsibilities and duties as otherwise set out within this section.

[See Compact Edition, Volume 4 for text of 5a to 15]

[Amended by Acts 1975, 64th Leg., p. 1854, ch. 579, § 1, eff. Sept. 1, 1975.]

Art. 4494q. Particular Hospital Districts

[The hospital districts listed below have been created by special acts.]

HOSPITAL DISTRICTS

Name	Creation
Amarillo, City of	Acts 1957, 55th Leg., p. 298, ch. 136, amended by Acts 1971, 62nd Leg., p. 1172, ch. 275; Acts 1975, 64th Leg., p. 1178, ch. 439.
Farwell	Acts 1975, 64th Leg., p. 169, ch. 73.
Fisher County	Acts 1973, 63rd Leg., p. 1236, ch. 448, amended by Acts 1975, 64th Leg., p. 807, ch. 313.
Follett	Acts 1975, 64th Leg., p. 2020, ch. 668.
Gainesville	Acts 1975, 64th Leg., p. 489, ch. 211.
Gonzales County	Acts 1975, 64th Leg., p. 446, ch. 191.
Higgins	Acts 1975, 64th Leg., p. 2008, ch. 666.
Lavaca	Acts 1975, 64th Leg., p. 23, ch. 16.
Lipscomb	Acts 1975, 64th Leg., p. 2014, ch. 667.
Menard County	Acts 1975, 64th Leg., p. 2001, ch. 665.
Moulton	Acts 1975, 64th Leg., p. 1988, ch. 662.
Muenster	Acts 1965, 59th Leg., p. 984, ch. 477, amended by Acts 1967, 60th Leg., p. 1206, ch. 541; Acts 1975, 64th Leg., p. 498, ch. 212.
Nixon	Acts 1965, 59th Leg., p. 1461, ch. 644, amended by Acts 1975, 64th Leg., p. 830, ch. 321.
Parker County	Acts 1965, 59th Leg., p. 93, ch. 35, amended by Acts 1975, 64th Leg., p. 1186, ch. 444.
Sabine County	Acts 1975, 64th Leg., p. 1829, ch. 565.
Teague	Acts 1969, 61st Leg., 2nd C.S., p. 143, ch. 39; Acts 1975, 64th Leg., p. 1224, ch. 457.
Val Verde County	Acts 1975, 64th Leg., p. 1977, ch. 658.

Art. 4494r. County Hospital Authority Act

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

Definitions

Sec. 2. As used in this law, "County" means any county in the State of Texas; "Governing Body" means the Commissioners Court of a county; "Authority" means a County Hospital Authority created under this Act; "Board" or "Board of Directors" means the board of directors of the Authority; "bond" or "bonds" means bonds or notes; "Bond Resolution" means the resolution authorizing the issuance of revenue bonds; "Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority; "Trustee" means the trustee under the Trust Indenture; "Hospital" or "Hospitals" means any "Hospital Project" as defined in Section 3(g) of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.¹

¹ Classified as art. 4437e-2.

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

Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or

decreased from time to time by amendment to the order creating the Authority adopted by the Governing Body of the County, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the County, and they shall serve until their successors are appointed as hereinafter provided. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the County. The Trust Indenture may also provide that, in the event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the County for terms not to exceed three (3) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of

any such County shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

Officers; Quorum; Committees; Manager or Executive Director;
Lease; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional non-voting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the Hospital and to employ and discharge employees. The Board may lease the Hospital as otherwise provided by law and may employ legal counsel.

Construction, Operation and Equipment of Hospitals

Sec. 6. The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, purchase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital must be located within the County creating the Authority.

Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all

or any part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

Content of Bonds; Maturity

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate as defined by law in Article 717k-2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

[See Compact Edition, Volume 4 for text of 9]

Junior Lien Bonds; Parity Bonds

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

Money Set Aside Out of Bond Sale Proceeds

Sec. 11. Money for the payment of not more than two (2) years' interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

Refunding Outstanding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature¹ or other applicable law.

¹ Article 717k.

[See Compact Edition, Volume 4 for text of 13]

Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions

Sec. 14. The Hospital shall be operated without the intervention of private profit for the use and

benefit of the public. But it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is leased, it shall be the duty of the Board of Directors to require the payment of lease rentals in the lease which will be sufficient, when taken with other pledged sources of its revenues, and to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines and procedures under or in accordance with which the Hospital shall be operated.

[See Compact Edition, Volume 4 for text of 15 to 17]

Investment of Funds and Proceeds of Bonds

Sec. 18. The law as to the security for and the investment of funds, applicable to Counties, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bond may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

[See Compact Edition, Volume 4 for text of 19 and 20]

[Amended by Acts 1975, 64th Leg., p. 1907, ch. 613, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"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, and such remaining portions shall remain in full force and effect."

Art. 4494r-2.1. Advisory Elections in Issuance of Revenue Bonds

The commissioners court of each county which is authorized by law to issue revenue bonds for and on behalf of a hospital district in the county shall have the option, within its discretion and on its own motion, of calling an advisory election for the purpose of ascertaining whether or not a majority of

the resident, qualified electors of the hospital district voting at an election held for such purpose favor the issuance of any such revenue bonds. In the event a commissioners court determines to exercise such option, it is authorized to call an election for such purpose, to be held in accordance with the Texas Election Code, except as hereinafter provided. The order of election shall set forth the date of the election, the proposition to be submitted and voted on, the polling places, the hours during which the polls will be open, and any other matters deemed necessary or advisable by the commissioners court. The expenses of holding the election shall be paid from hospital district funds. Notice of the election shall be given by publishing a substantial copy of the election order one time, at least 10 days prior to the date set for the election, in a newspaper of general circulation in the hospital district. The commissioners court shall canvass the returns and declare the results of the election; but the election shall be advisory only and shall not affect the authority of the commissioners court to issue revenue bonds for and on behalf of the hospital district under any applicable law if no election is required thereby. [Added by Acts 1975, 64th Leg., p. 952, ch. 359, § 1, eff. June 19, 1975.]

Art. 4494r-5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More

Applicability of Act

Sec. 1. This Act shall be applicable to counties now or hereafter containing a population of 1,000,000 or more according to the last preceding federal census, wherein there exists a county-wide hospital district whose taxes are levied and collected by the commissioners court and which has teaching hospital facilities that are affiliated with a state-owned medical school, such counties hereinafter referred to as "authorized counties."

Revenue Anticipation Agreements Authorized

Sec. 2. The commissioners court of any authorized county is hereby authorized to enter into and execute with any bank or banks or other corporations, partnerships, persons, financial institutions, or lending institutions revenue anticipation agreements in accordance with this Act.

Advances and Repayments: Revenue Anticipation Agreements

Sec. 3. Upon a finding and determination by the commissioners court of an authorized county that the projected revenues and tax collections of and for the hospital district will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses, the commissioners court may execute a revenue anticipation agreement by which the other contracting

party (or parties) agrees to advance to the district, and the authorized county and the district agree to repay (from the sources hereinbelow specified), funds necessary for the operation and maintenance of the district's hospital facilities during the term of the revenue anticipation agreement. The revenue anticipation agreement may be upon such terms as the parties may agree, subject to the following limitations:

(a) The term of the revenue anticipation agreement shall not exceed two years.

(b) Advances made to the district during the term of the agreement shall not be made more frequently than once each month and each shall not be greater in amount than the difference between (i) the accumulated and unpaid operating and maintenance expenses of the district, and (ii) the revenues and income of the district, including tax revenues, actually received by the district to the date of the advance and lawfully available for the purpose of paying such expenses. The party or parties making the advances may conclusively rely on certifications made by authorized officers of the district as to the facts specified in this subsection.

(c) The advances under the revenue anticipation agreement may bear interest at a rate or rates not exceeding the rate permitted by law for revenue bonds of the district, shall mature and become due and payable on a date not later than the last day of the term of the revenue anticipation agreement, shall be subject to prepayment without penalty at any time before their maturity date, and they shall not be refunded or in any manner refinanced or extended. The agreement may provide that the rates or rate of interest on the advances may be determined at the time made by reference to such determinative factors and formulae as the parties may agree.

(d) If, in any month during the term of the agreement while advances are outstanding, revenues, including tax revenues, are received and are not required to pay and are not lawfully committed to the payment of other obligations and expenses of the district, the commissioners court shall apply the same upon receipt to the payment or prepayment of any advances at the time outstanding and unpaid under the revenue anticipation agreement, and no advances shall be made under a subsequent revenue anticipation agreement until all advances made under the prior agreement have been paid in full, retired, and canceled.

(e) Advances made under the revenue anticipation agreement shall be and are hereby directed to be secured by and payable, either or both, (1) from a pledge of and lien upon reve-

nues of the district derived from the operation and maintenance of its hospital facilities, and/or (2) from tax revenues when collected, levied for the purpose of operating and maintaining the district's facilities for the year during which the advances are made. Upon default in the payment or repayment of any advances made under the terms of the revenue anticipation agreement when due or when required to be prepaid under the terms of this Act, any district court may be petitioned by mandamus or otherwise to enforce the agreement and prepayment as required by this Act.

Use of Advances

Sec. 4. Funds received from advances made pursuant to revenue anticipation agreements authorized by this Act shall be used solely for the purposes authorized by this Act. However, it shall not be a defense to repayment of advances that the funds have been used for a purpose not authorized hereby. The auditor of the affairs of the hospital district shall concurrently with the regular audit thereof audit the use of said funds and shall certify to the commissioners court whether or not the funds have been used for proper operating and maintenance purposes as authorized hereby.

Bonds or Notes; Ad Valorem Taxes

Sec. 5. (a) The commissioners court of an authorized county is authorized to include in any revenue anticipation agreement provisions pursuant to which the authorized county will agree to execute and deliver, concurrently with the making of advances under the agreement, interest-bearing bonds (which also may be designated as notes) evidencing the obligation of the authorized county and the hospital district to repay the advances made pursuant to the agreement and in accordance therewith and with this Act. Such bonds or notes may be delivered upon such terms and may contain such provisions not inconsistent with Section 3 of this Act as may be prescribed in the revenue anticipation agreement.

(b) The provisions hereof relating to advances shall apply to bonds or notes evidencing the obligation to repay the same issued under this section. It is provided, however, that if such hospital district was created pursuant to the authority granted to the legislature by Article IX, Section 4, of the Texas Constitution and the creation of such hospital district was approved at an election held in such hospital district as required by Article IX, Section 4, of the Texas Constitution or if such hospital district was created pursuant to any other constitutional provision which would permit the levy and pledge of taxes as hereinafter authorized, then regardless of any restrictions in any other law of this state the commissioners court also is authorized in addition to

the mandatory security required in Section 3(e) hereof to pay and secure the bonds or notes issued under this section from and by annual ad valorem taxes levied and to be levied on all taxable property in such hospital district, and such annual ad valorem taxes may be pledged to the payment of the principal of and interest on the bonds or notes to the extent required therein and in the agreement. If such annual ad valorem taxes are thus pledged it shall be the duty of the commissioners court annually to levy a tax on all taxable property in the hospital district sufficient or to the extent necessary to pay the principal of and the interest on the bonds or notes when due, but the rate of the tax, if any, for each year may be fixed after giving consideration to the amount of money estimated to be received from revenues pledged under Section 3 hereof which may be available for the payment of such principal and interest, all to the extent and in the manner provided in the revenue anticipation agreement, but provided further that such annual ad valorem tax together with all other annual ad valorem taxes levied in the hospital district shall never exceed a maximum annual rate of 75 cents on the \$100 valuation of all taxable property within such hospital district. Further, if such annual ad valorem taxes are thus pledged, it shall be the duty of the commissioners court during each year while any of the bonds or notes or interest thereon is outstanding and unpaid to compute and ascertain a rate and amount of ad valorem tax, if any, which will be sufficient to raise and produce the money required to make the aforesaid payment to the extent required; and said tax shall be based on the latest approved tax rolls of such hospital district, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax shall be levied and ordered to be levied subject to the maximum limitation prescribed above against all taxable property in such hospital district for each year while any of the bonds or notes or interest thereon are outstanding and unpaid; and said tax shall be assessed and collected each such year and used for such purpose to the extent so required.

(c) Upon the issuance, sale, and delivery of bonds or notes under the authority of this section, such bonds or notes shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms and conditions for all purposes. Such bonds or notes shall constitute "investment securities" under the Uniform Commercial Code of Texas. Any such bonds or notes shall be legal and authorized security for public funds of this state and its political subdivisions and shall be legal and authorized investments by all banks, savings banks, savings and loan associations, and insurance companies of all types.

Cumulative Effect; Conflicting Provisions

Sec. 6. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the execution of revenue anticipation agreements and the issuance of bonds or notes to evidence obligations to repay advances made thereunder and the performance of the other acts and procedures authorized hereby without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued pursuant to the authority of this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control.

[Acts 1975, 64th Leg., p. 653, ch. 272, eff. May 20, 1975.]

CHAPTER SIX. MEDICINE

Article

- 4501b. Foreign Medical School Students [NEW].
- 4511a. Authorized Supplementary Fees that may be Charged by the Texas State Board of Medical Examiners [NEW].
- 4511b. Authority to Receive Criminal Records and Fingerprint Reports [NEW].
- 4511c. Authority to Extend Temporary License [NEW].

Art. 4501b. Foreign Medical School Students

Eligibility for License

Sec. 1. Notwithstanding any other provision of law, an individual who has been a student of a foreign medical school is eligible for licensure to practice medicine in this state if he has satisfied the following requirements:

(1) has studied medicine in a medical school located outside the United States which is listed by the World Health Organization;

(2) has completed all of the didactic work of the foreign medical school;

(3) has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education under the direction of the medical school in the United States;

(4) has attained a passing score on the Educational Council for Foreign Medical Graduates examination, or other examination, if required by the State Board of Medical Examiners; and

(5) has passed the examination required by the State Board of Medical Examiners of all applicants for licensure.

Additional Requirements for License

Sec. 2. Satisfaction of the requirements of Section 1 of this Act shall be in lieu of the completion of any requirements of the foreign medical school beyond completion of the didactic work, and no other requirements shall be a condition of licensure to practice medicine in this state.

Certification by Educational Council for Foreign Medical Graduates Unnecessary

Sec. 3. Satisfaction of the requirements specified in Section 1 of this Act shall be in lieu of certification by the Educational Council for Foreign Medical Graduates, and such certification shall not be a condition of licensure to practice medicine in this state for candidates who have completed the requirements of Section 1 of this Act.

Hospitals; Additional Requirements

Sec. 4. No hospital licensed by this state, or operated by the state or a political subdivision of the state, or which receives state financial assistance, directly or indirectly, shall require an individual who has been a student of a foreign medical school to satisfy any requirements other than those contained in Subdivisions (1), (2), (3), and (4) of Section 1 of this Act prior to commencing an internship or residency.

Documents or Degrees From Foreign Medical Schools

Sec. 5. A document granted by a medical school located outside the United States which is listed by the World Health Organization issued after the completion of all the didactic work of the foreign medical school shall, on certification by the medical school in the United States in which such training was received of satisfactory completion by the person to whom the document was issued of the requirements listed in Subdivision (3) of Section 1 of this Act, be deemed the equivalent of a degree of doctor of medicine for purposes of licensure and practice of medicine in this state and shall possess all the rights and privileges thereof, including the use of the title "Doctor of Medicine" and the suffix "M.D."

[Acts 1975, 64th Leg., p. 462, ch. 197, eff. April 29, 1975.]

Art. 4502. Disposition of Fees; Compensation of Members of Board

The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate members of the Board, said compensation to each member of the Board to be One Hundred Dollars (\$100) per day for any number of days which any such member may be active on business of the Board, whether such business consists of regular meetings, committee work for the Board, grading papers, or any other function which is a legitimate and proper function held to be necessary by the Texas State Board of Medical Examiners; provided,

however, that no member of said Board shall be paid a per diem in excess of sixty (60) days of any calendar year. Said daily compensation shall be exclusive of the necessary costs of travel of any Board member, or any other expenses necessary to the performance of his duty. Provided also, that the premium on any bond required by the Board of any officer or employee of the Board shall be paid out of said fund, as well as the necessary expenses of any employee incurred in the performance of his duties. [Amended by Acts 1975, 64th Leg., p. 296, ch. 127, § 1, eff. Sept. 1, 1975.]

Art. 4511a. Authorized Supplementary Fees that may be Charged by the Texas State Board of Medical Examiners

The Texas State Board of Medical Examiners, in addition to fees authorized heretofore, may charge, collect, receive, and deposit for the use of the board in the manner and for the purposes heretofore provided a reasonable supplementary fee of not more than the following fees for performance of the following duties and functions:

For processing and granting license by reciprocity to license of another state	\$100
For processing application and administration of complete examination for licensure	\$100
For processing application and administration of partial examination for licensure on preclinical subjects	\$ 85
For processing application and administration of partial examination for licensure on clinical subjects	\$ 25
For processing application and issuance of a temporary license	\$ 15
For processing application and issuance of a duplicate license	\$ 25
For processing application and issuance of license of reinstatement after lapse or cancellation of license	\$100
For processing application and issuance of annual registration of licensee	\$ 15
For processing and issuance of institutional permit for interns, residents, and others in approved medical training programs	\$ 25
For processing application and issuance of endorsement to other state medical boards	\$ 15
For processing application and certification to other state boards of applicants' grades in basic science examination ..	\$ 25

The board of medical examiners shall set and collect a sales charge for making copies of any paper of record in the office of the board, and for any printed material published by the board, such charges to be in an amount deemed sufficient to reimburse the board for the actual expense.

[Added by Acts 1975, 64th Leg., p. 333, ch. 140, § 1, eff. May 8, 1975.]

Section 2 of the 1975 Act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision."

Art. 4511b. Authority to Receive Criminal Records and Fingerprint Reports

The Texas State Board of Medical Examiners shall have the authority to receive criminal records

or reports from any law enforcement agency or source pertaining to its licensees or any applicant for license and, provided further, the Texas State Board of Medical Examiners shall submit to the Texas Department of Public Safety a complete set of fingerprints of every applicant for license and the Department of Public Safety shall cause same to be classified and checked against those in their fingerprint files and shall forthwith certify their findings concerning the criminal record of the applicant or shall report the lack of same, as the case may be, to the Texas State Board of Medical Examiners.

All criminal records and reports received from the Department of Public Safety shall be for the exclusive use of the Texas State Board of Medical Examiners and shall be privileged and shall not be released or otherwise disclosed to any person or agency by the board except upon court order. Any applicant for licensure or any licensee whose license is subject to revocation, cancellation, or suspension because of adverse information contained in such criminal records or reports shall be afforded the opportunity for a hearing before the board prior to any action on the application for license or revocation, cancellation, or suspension of license.

[Added by Acts 1975, 64th Leg., p. 948, ch. 356, § 1, eff. June 19, 1975.]

Section 2 of the 1975 Act provided:
 "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision."

Art. 4511c. Authority to Extend Temporary License

Notwithstanding other provisions of law, the Texas State Board of Medical Examiners shall, at its discretion, have the authority to extend the expiration date of a temporary license for a period not to exceed one year if such extension of expiration date is, in the opinion of the board, in the best interest of the public.

[Added by Acts 1975, 64th Leg., p. 332, ch. 139, § 1, eff. May 8, 1975.]

CHAPTER SIX A. CHIROPRACTORS

Article
 4512b(1). Peer Review [NEW].

Art. 4512b. Practice of Chiropractic
 [See Compact Edition, Volume 4 for text of 1 to 7]
 Annual Registration Renewal

Sec. 8. It shall be unlawful for any person who shall be licensed for the practice of chiropractic by the Texas Board of Chiropractic Examiners as created by this Act, unless such person be registered as such practitioner with the Texas Board of Chiropractic Examiners on or before the first day of January A.D. 1950, or thereafter registered in like manner

annually as provided by this Act on or before the first day of January each year to practice chiropractic in this State. Each person so licensed and registered shall be deemed to have complied with the requirements and prerequisites of the laws governing the practice of chiropractic in this State. Each person so registered with the Texas Board of Chiropractic Examiners shall pay in connection with each annual registration and for the receipt hereafter provided for, a fee fixed by the Texas Board of Chiropractic Examiners not to exceed Fifty Dollars (\$50), which fee shall accompany the application of every such person for registration. Such payment shall be made to the Texas Board of Chiropractic Examiners. Every person so registered shall file with said Board a written application for annual registration, setting forth his full name, his age, post office address, his place of residence, the county or counties in which his certificate entitling him to practice chiropractic has been registered, and the place or places where he is engaged in the practice of chiropractic, as well as the college of chiropractic from which he graduated, and the number and date of his license certificate. Upon receipt of such application, accompanied by the registration fee, the Texas Board of Chiropractic Examiners, after ascertaining either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of chiropractic in this State, shall issue to the applicant an annual registration receipt certifying that the applicant has filed such application and has paid the registration fee mentioned for the year in question; provided, that the filing of such application, the payment of the registration fee and the issuance of such receipt shall not entitle the holder thereof to lawfully practice chiropractic within the State of Texas unless he has in fact been previously licensed as such chiropractor by the Texas Board of Chiropractic Examiners, as prescribed by law, and has recorded his license certificate entitling him to practice, as issued by said Board, in the district clerk's office of the several counties in which the same may be required by law to be recorded, and unless his license to practice chiropractic is in full force and effect; and provided further that, in any prosecution for the unlawful practice of chiropractic as denounced in Section 6 hereof, such receipt showing payment of the annual registration fee required by this Section shall not be treated as evidence that the holder thereof is lawfully entitled to practice chiropractic.

[See Compact Edition, Volume 4 for text of 8a to 9]

Examination of Applicants for License; Persons Practicing or Beginning Study Before Date of Act

Sec. 10. All applicants for license to practice chiropractic in this State, not otherwise licensed under the provisions of this law, must successfully pass an

examination by the Texas Board of Chiropractic Examiners established by this law. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. All applicants shall be eligible for examination who are citizens of the United States and present satisfactory evidence to the Board that they are more than twenty-one (21) years of age, of good moral character, have completed sixty (60) semester hours of college courses, other than a chiropractic school, and are graduates of bona fide reputable chiropractic schools (whose entrance requirements and course of instruction are as high as those of the better class of chiropractic schools in the United States); a reputable chiropractic school shall maintain a resident course of instruction equivalent to not less than four (4) terms of eight (8) months each, or a resident course of not less than the number of semester hours required by The University of Texas for the granting of a Bachelor of Arts degree; shall give a course of instruction in the fundamental subjects named in Section 12 of this Act; and shall have the necessary teaching force and facilities for proper instruction in all of said subjects. Applications for examination must be made in writing, verified by affidavit, and filed with the secretary of the Board, on forms prescribed by the Board, accompanied by a fee of Fifty Dollars (\$50). All applicants shall be given due notice of the date and place of such examination.

The Board may grant a license without a written examination to an applicant that holds a National Board of Chiropractic Examiners certificate who meets the requirements of this chapter and who has satisfactorily passed a personal interview and a practical examination and has paid an additional fee of Fifty Dollars (\$50).

If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Texas Board of Chiropractic Examiners may fix, not exceeding one (1) year, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe except that the applicant shall not be required to take a re-examination on subjects in which he has made a grade of seventy-five per cent (75%) or more, provided the applicant shall apply for re-examination within one (1) year upon the payment of such part of Fifty Dollars (\$50) as the Board may determine and state. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board shall grant to the applicant a license to practice chiropractic. The Board shall determine the grade to be given the examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereupon shall be final.

Provided, however, that those who are regularly engaged in the practice of chiropractic in this State on April 18, 1949, and who have completed a resident course and hold diplomas from schools recognized by the Board as being regularly organized and conducted as chiropractic schools at the time of the issuance of such diplomas, shall be licensed under this Act, provided they apply therefor within six (6) months after the effective date of this Act, and provided further that they shall meet the provisions of this Act with reference to citizenship, age, and good moral character; and

Provided that those who have begun the study of chiropractic prior to the effective date of this Act in institutions regularly organized and conducted as chiropractic schools shall be licensed under this Act, provided they complete a standard chiropractic resident course of one hundred and twenty (120) semester hours in such school or schools and receive diplomas therefrom; and provided further that they shall meet the provisions of this Act with reference to citizenship, age, and good moral character.

[See Compact Edition, Volume 4 for text of 11]

Conduct of Examinations; Subjects

Sec. 12. All examinations for license to practice chiropractic shall be conducted in writing in the English language and in such manner as to be entirely fair and impartial to all applicants. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the Board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health. Upon satisfactory examination, conducted as aforesaid under the rules of the Board, which shall consist of an average grade of not less than seventy-five per cent (75%) with not less than sixty per cent (60%) in any one subject, applicants shall be granted license to practice chiropractic. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one (1) year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board, and signed by all members of the Board, or a quorum thereof.

[See Compact Edition, Volume 4 for text of 13 to 24]

[Amended by Acts 1975, 64th Leg., p. 19, ch. 14, § 1, eff. March 13, 1975; Acts 1975, 64th Leg., p. 21, ch. 15, §§ 1, 2, eff. March 13, 1975.]

Section 3 of Acts 1975, 64th Leg., p. 22, ch. 15, read: "If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares it would have passed such remaining portions despite such invalidity."

Art. 4512b(1). Peer Review

Definition

Sec. 1. In this article "chiropractor" means a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

Peer Review Committee

Sec. 2. The chiropractors practicing in this state may elect from their membership a committee which may be denominated a chiropractic peer review committee. The committee shall be elected or appointed by the organization forming such peer review committee.

Duties

Sec. 3. The chiropractic peer review committee shall:

(1) review and evaluate chiropractic treatment and services in disputes involving a chiropractor and a patient or a person obligated to pay a fee for chiropractic services or treatment rendered; and

(2) act as arbitrator in a dispute involving a chiropractor and a patient or person obligated to pay a fee for chiropractic services or treatment.

Liability of Committee Member in Civil Action

Sec. 4. Unless fraud, conspiracy, or malice can be shown, a member of a chiropractic peer review committee is not liable in a civil action for a finding, evaluation, recommendation, or other action made or taken by him as a member of the committee, or by the committee.

Conflict of Interest

Sec. 5. A member of a chiropractic peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by him.

Rights or Remedies Not Deprived

Sec. 6. Except for the express immunity provided by Section 4 of this article, this article deprives no person of a right or remedy, legal or equitable. [Added by Acts 1975, 64th Leg., p. 686, ch. 286, § 1, eff. May 22, 1975.]

CHAPTER SIX B. PSYCHOLOGY

Art. 4512c. Psychologists' Certification and Licensing Act

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

Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(a) "Board" means the Texas State Board of Examiners of Psychologists provided for by this Act.

(b) A person represents himself to be a "psychologist" within the meaning of this Act when he holds himself out to the public by any title or description of services incorporating the words "psychological," "psychologists," or "psychology," or offers to render or renders psychological services to individuals, corporations, or the public for compensation.

(c) The term "psychological services," means acts or behaviors coming within the purview of the practice of psychology, including, but not limited to, the application of psychological principles to the evaluation and remediation of learning, emotional, interpersonal, and behavioral disorders.

[See Compact Edition, Volume 4 for text of 3 to 7]
Powers of the Board

Sec. 8. (a) In addition to the powers and duties granted the Board by other provisions of this Act, the Board may make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it. The Board shall adopt and publish a Code of Ethics.

(b) The Board may certify specialties within the field of psychological services and may employ consultants when necessary for the implementation of this Act. The Board shall adopt rules applicable to the certification of specialties and to the employment of consultants. Specialty certifications by the Board may include certifications for clinical psychologists, counseling psychologists, industrial psychologists, and school psychologists.

[See Compact Edition, Volume 4 for text of 9 and 10]

Qualification of Applicant for Examination for Certification

Sec. 11. An applicant is qualified to take the examination for certification as a psychologist:

(a) if he has received the doctoral degree based upon a program of studies whose content was primarily psychological from an accredited educational institution or its substantial equivalent in both subject matter and extent of training,

(b) if he is at least twenty-one years of age,

(c) if he is a resident of this state,

(d) if he is of good moral character,

(e) if he is a citizen of the United States or has legally declared his intention of becoming a citizen,

(f) if, in the judgment of the Board, he is physically and mentally competent to render

psychological services with reasonable skill and safety to his patients and is afflicted with no disease or condition, either mental or physical, which would impair his competency to render psychological services, and

(g) if he has not been convicted of a felony or a crime involving moral turpitude, is not intemperate in the use of or addicted to any drug, has not been guilty of fraud or deceit in making his application, and has not aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist in this state.

[See Compact Edition, Volume 4 for text of 12 to 15]

Fees

Sec. 16. The certification fee, the licensing fee, the specialty certification fee, and the renewal fees shall be an amount fixed by the Board. The Board shall fix the amount of the fees so that the total fees collected will be sufficient to meet the expenses of administering this Act and so that unnecessary surpluses in the Psychologist Licensing Fund are avoided.

Certification—Expiration—Renewal

Sec. 17.

[See Compact Edition, Volume 4 for text of 17(a) to (c)]

(d) The Board may refuse to renew the certification of any person who is not qualified to take the examination for certification under Section 11 of this Act.

[See Compact Edition, Volume 4 for text of 17A to 20]

Licensing

Sec. 21. Any person who offers psychological services as defined herein for compensation, must apply to the Board and upon payment of a fee shall be granted a license by the Board. No person may be licensed unless:

(1) he is certified as a psychologist under the authority of this Act; and

(2) he has had at least two years' experience in the field of psychological services, at least one year of which was at the post-doctoral level of the education process, and one year of which was under the supervision of a psychologist licensed under the provisions of this Act.

Exemptions

Sec. 22. Nothing in this Act shall be construed to apply to:

(a) the activities, services and use of official title on the part of a person employed as a psychologist by any: (1) governmental agency, (2) public school district, (3) institution of higher education approved by the Board or any hospital licensed by the Texas State Department of Health, including medical clinics associated with

such hospitals and are organized as an unincorporated association, provided such employee is performing those duties for which he is employed by such agency, district, institution, or clinic and within the confines of such agency, district, institution, or clinic insofar as such activities and services are a part of the duties of his office or position as a psychologist with such agency, district, or institution, or clinic; except that persons employed as psychologists who offer or provide psychological services to the public (other than lecture services) for a fee, monetary or otherwise, over and above the salary that they receive for the performance of their regular duties, and/or persons employed as psychologists by organizations that sell psychological services to the public (other than lecture services) for a fee, monetary or otherwise must be licensed under the provisions of this Act;

(b) the activities and services of a student, intern or resident in psychology, pursuing a course of study in preparation for the profession of psychology under qualified supervision in recognized training institutions or facilities, if these activities and services constitute a part of his supervised course of study, provided that such an individual is designated by a title such as "psychological intern," "psychological trainee," or others clearly indicating such training status;

(c) the activities and services of a person who is not a resident of this state and who has no established offices in this state in rendering consulting or other psychological service when these activities and services are rendered for a period which does not exceed in the aggregate more than thirty days during any year if the person is authorized under the laws of the state or country of his residence to perform these activities and services;

(d) a sociologist who holds a doctoral degree in sociology or social psychology awarded by a recognized institution of higher learning and who elects to represent himself to the public by the title "social psychologist," provided that he has notified the Board of his intention to represent himself as such;

(e) registered nurses, licensed by the laws of this state and practicing in accordance with the standards of professional conduct and ethics promulgated by rules and regulations of the Board of Nurse Examiners;

(f) the activities and services of qualified members of other professional groups such as physicians, attorneys, school counselors, marriage or family counselors, social workers, Christian Scientist practitioners who are duly recognized by the Church of Christ Scientist as registered and published in the Christian Science

Journal, or duly ordained religions from doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions, provided that they do not represent themselves by any title or in any manner prohibited by this Act;

(g) the services of a licensed optometrist in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision.

Revocation, Cancellation or Suspension of License or Certification

Sec. 23. The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke, suspend, or refuse to renew the license or certification of any psychologist upon proof that the psychologist:

(a) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state; or

(b) is or has had the habit of intemperance or drug addiction such as the use of morphine, opium, cocaine, or other drugs having similar effect; or

(c) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; or

(d) has aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist within this state; or

(e) has been guilty of unprofessional conduct as defined by the rules established by the Board; or

(f) for any cause for which the Board shall be authorized to refuse to admit persons to its examination.

Proceedings under this section shall be begun by filing charges with the Texas State Board of Examiners of Psychologists in writing and under oath. Said charges may be made by any person or persons. The Chairman of the Board shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to live, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said

hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged.

Any person whose license or certification has been cancelled, revoked or suspended by the Board, or whose license or certification the Board has refused to renew for any reason, including the person's refusal to submit to a physical or mental examination requested by the Board, may, within twenty (20) days after the making and entering of such order, take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notice to the Board. The proceeding on appeal shall be under the substantial evidence rule, and which appeal shall be taken in any District Court of the county in which the person whose certificate of registration or license is involved resides. Upon application, the Board may recertify the applicant or reissue a license to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation and shall be made in such manner and form as the Board may require.

Provided, however, that the Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the psychologists' license or certification be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the psychologists' license or certification, the said hearing to rescind the probation shall be called by the Chairman of the Texas State Board of Examiners of Psychologists who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply. At said hearing the respondent shall have the right to appear either personally or by counsel or both, to

produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal.

[See Compact Edition, Volume 4 for text of 24]

Enforcement of Competency Requirements

Sec. 24A. (a) If the Board reasonably believes that a person applying to take the certification examination, or applying for renewal of certification, is not physically and mentally competent to render psychological services with reasonable skill and safety to his patients, or is afflicted with a disease or condition, either physical or mental, which would impair his competency to render psychological services, the Board may request that that person submit to a physical examination by a medical doctor approved by the Board or submit to a mental examination by a medical doctor or licensed psychologist approved by the Board.

(b) If the applicant or person seeking renewal of certification refuses to submit to the examination, the Board shall issue an order requiring that person to show cause for his refusal and shall schedule a hearing on the order within thirty (30) days after notice is served on the person who has refused to submit to the examination. Notice shall be given either by personal service or by registered mail return receipt requested. At the hearing the person may appear personally and by counsel and present evidence in justification of his refusal to submit to the examination. After a complete hearing the Board shall issue an order either requiring the person to submit to the examination or withdrawing the request for the examination. Unless the request is withdrawn the person who has refused to take the examination may not take the certification examination, and is not entitled to renewal of his certification. An appeal from the order of the Board may be made under Section 23 of this Act.

[See Compact Edition, Volume 4 for text of 25 to 27]

[Amended by Acts 1975, 64th Leg., p. 956, ch. 362, §§ 1 to 9, eff. Sept. 1, 1975.]

CHAPTER SIX C. ATHLETIC TRAINERS

Art. 4512d. Advisory Board of Athletic Trainers

Definitions

Sec. 1. In this Act:

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

(2) "Board" means the Advisory Board of Athletic Trainers.

[See Compact Edition, Volume 4 for text of 1(3) and (4)]

Advisory Board of Athletic Trainers

Sec. 2. (a) The Advisory Board of Athletic Trainers, composed of six members, is created. The board is created as a part of the State Department of Health and shall perform its duties as a board within the State Department of Health. To qualify as a member, a person must be a citizen of the United States and a resident of Texas for five years immediately preceding appointment. Members must be licensed athletic trainers.

(b) The members of the board shall be appointed by the governor with the advice and consent of the Senate. Except for the initial appointees, members hold office for terms of six years. The terms expire on January 31 of odd-numbered years.

(c) Each appointee to the board shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

Appropriations to Department of Health

Sec. 2A. The State Department of Health¹ may expend funds appropriated to it for the purpose of implementing the provisions of this Act.

Board Organization and Meetings

Sec. 3.

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

(b) The board shall meet at least twice a year. Additional meetings may be held on the call of the chairman or at the written request of any three members of the board.

(c) The quorum required for any meeting of the board is four members. No action by the board or its members has any effect unless a quorum of the board is present.

[See Compact Edition, Volume 4 for text of 4 to 17]

[Amended by Acts 1975, 64th Leg., p. 859, ch. 328, §§ 1 to 4, eff. Sept. 1, 1975.]

¹ Name changed to Department of Health Resources; see art. 4414a. Sections 5 and 6 of the 1975 amendatory act provided:

"Sec. 5. Members serving on the Texas Board of Athletic Trainers on the effective date of this Act shall serve on the Advisory Board of Athletic Trainers for the terms for which they were appointed. The governor shall appoint three additional members to the Advisory Board of Athletic Trainers. Of the three additional members the governor shall designate one for a term expiring in 1981, one for a term expiring in 1979, and one for a term expiring in 1977.

"Sec. 6. This Act takes effect September 1, 1975, on which date all property, files, and records in the custody of the Texas Board of Athletic Trainers are transferred to the State Department of Health to be used by the Advisory Board of Athletic Trainers in the performance of its duties."

CHAPTER SIX D. PHYSICAL THERAPY

Art. 4512e. Board of Physical Therapy Examiners; Licensing; Procedures

[See Compact Edition, Volume 4 for text of 1 to 7]

Physical Therapist License

Sec. 8. (a) An applicant for a license as a physical therapist shall file a written application on forms provided by the board together with an examination fee of \$50 which is refundable if the applicant does not take the examination; and an application fee of \$25 which is not refundable. The applicant shall present evidence satisfactory to the board that he is of good moral character and that he has completed an accredited curriculum in physical therapy education which has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures as determined by the board and:

(1) has completed a minimum of 60 academic semester credits or its equivalent from a recognized college which semester hour credits are acceptable for transfer to The University of Texas, including courses in the biological, social, and physical sciences; or

(2) has received a diploma from an accredited school of professional nursing.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications set out in Subsection (a) of this section, and has not committed an act which constitutes grounds for denial of a license under Section 19 of this Act.

Physical Therapist Assistant License

Sec. 9. (a) An applicant for a physical therapist assistant license shall file a written application with the board on forms provided by the board together with an examination fee of \$45 which is refundable if the applicant does not take the examination; and an application fee of \$25 which is not refundable. The applicant shall present evidence that he is of good moral character and has completed a program of at least two years duration offered by a college accredited by a recognized accrediting agency including elementary or intermediate courses in the anatomical, biological, physical sciences, and clinical procedures as prescribed and approved by the board.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications set out in Subsection (a) of this section, and has not committed an act which constitutes grounds for denial of a license under Section 19 of this Act.

[See Compact Edition, Volume 4 for text of 10 to 15A]

Renewal of Expired License

Sec. 16. (a) A license which has expired for less than five years from the date of application for renewal may be renewed by submission of an application form prescribed by the board, payment of a \$2 fee for each year the license was expired without renewal, and payment of a \$50 restoration fee.

(b) A license which has expired for more than five years may be reinstated only by complying with the requirements and procedures for issuing the original license.

[See Compact Edition, Volume 4 for text of 17]

Penalties; Enforcement

Sec. 18.

[See Compact Edition, Volume 4 for text of 18(a) to 18(c)]

(d) The Attorney General or any District or County Attorney may institute any injunction proceedings or such other proceedings as to enforce the provisions of the Act, and to enjoin any physical therapist, physical therapist assistant, or any other person from the practice of physical therapy without having complied with the provisions hereof, and shall forfeit to the State of Texas the sum of \$50 per day as a penalty for each day's violation, to be recovered in a suit by the District or County Attorney, and/or the Attorney General.

[See Compact Edition, Volume 4 for text of 19 to 25]

[Amended by Acts 1975, 64th Leg., p. 795, ch. 307, §§ 1 to 4, eff. May 27, 1975.]

CHAPTER SIX E. SOCIAL PSYCHOTHERAPY [NEW]

Art. 4512f. Social Psychotherapist Regulation Act

Short Title

Sec. 1. This Act may be cited as the Social Psychotherapist Regulation Act.

Definitions

Sec. 2. In this Act:

(1) A person represents himself to be a "social psychotherapist" within the meaning of this Act if he states or implies he is a "social psychotherapist," or uses the letters "S.P." as part of his professional identification in conjunction with his name.

(2) The term "social psychotherapy" includes acts or behaviors coming within the purview of the practice of social psychotherapy as defined in this Act.

(3) The practice of social psychotherapy means a service in which a special knowledge of social resources, human capabilities, and the part conscious and unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive emotional adjustments. The application of social psychotherapy includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, and groups, and doing related research.

(4) Psychotherapy, within the meaning of this Act, is the use of psychotherapeutic methods within a professional relationship to assist the person or persons to achieve a better emotional adaptation, to acquire greater realization of human potential and adaptation, to modify internal and external conditions that affect individuals or groups with respect to behavior, emotions, and thinking with respect to intrapersonal and interpersonal process.

(5) "Board" means the Texas State Board of Examiners in Social Psychotherapy.

(6) "Department" means the State Department of Health.

Practice of Medicine Not Authorized

Sec. 3. Nothing in this Act permits the practice of medicine as defined by the laws of this state.

State Board

Sec. 4. The Texas State Board of Examiners in Social Psychotherapy is created. The board consists of six qualified persons appointed by the governor with the advice and consent of the senate. Except for those members first appointed to the board, a member is appointed for a term of six years, expiring January 31 of odd-numbered years. The members of the first board shall be appointed within 90 days after this Act takes effect to serve the following terms: two for terms which expire on January 31, 1981, two for terms which expire January 31, 1979, and two for terms which expire January 31, 1977. Thereafter, at the expiration of the term of each member, the governor shall appoint a successor for each. Before entering on the duties of his office, each member of the board shall take the constitutional oath of office which shall be filed with the secretary of state.

Qualifications of Members of the Board

Sec. 5. Each member of the board shall be a citizen of the United States, a resident of this state, licensed under this Act, and have been actively engaged in the practice of social psychotherapy for five years preceding his appointment, provided, however, that the members comprising the board as first

appointed shall meet these requirements with the exception of being licensed under this Act. To assure adequate representation of the diverse field of social psychotherapy, the governor shall appoint six members primarily engaged in rendering social psychotherapeutic services, three who provide such services as a social psychotherapist in private practice; one social psychotherapist who is engaged primarily in the administration of social psychotherapeutic services; one social psychotherapist who is a member of the faculty of an accredited university training program whose graduates may be eligible for certification under the provisions of this Act; and one social psychotherapist who is employed in a private or public agency. A member of the board who has served a six-year term may not succeed himself. Any vacancy in the membership of the board occurring otherwise than by expiration of term shall be filled for the unexpired term by appointment of the governor.

Per Diem; Expenses

Sec. 6. A member of the board is not entitled to a salary for duties performed as a member of the board. A member is entitled to \$25 for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business, and is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive secretary.

Executive Secretary

Sec. 7. (a) The executive secretary shall be an employee of the State Department of Health; the state commissioner of health, after consulting with the board, shall designate the employee to serve as executive secretary.

(b) The executive secretary shall be the administrator of social psychotherapy activities for the board. In addition to his other duties prescribed in this Act and by the State Department of Health, the executive secretary shall

(1) keep full and accurate minutes of all transactions and proceedings of the board;

(2) be the custodian of all of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to effectuate the purposes and objectives of this Act, including but not limited to rules and regulations, and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over all persons employed by the State Department of Health in the administration of this Act; and

(5) be responsible for the investigation of complaints and for the presentation of formal complaints.

(c) The executive secretary, or his authorized representative, shall

(1) attend all meetings of the board but is not entitled to vote; and

(2) handle or arrange for the handling of the correspondence, make or arrange for the inspections and investigations, and obtain, assemble, or prepare the reports and data that the board may direct or authorize.

Staff Services

Sec. 8. The basic personnel and necessary facilities as may be required to carry out the provisions of this Act shall be the personnel and facilities of the State Department of Health acting as the agents of the board. The department may by agreement secure such services as it may deem necessary from any other departments and agencies of this state, may arrange for compensation for these services, and may employ and compensate, within appropriations available, the professional consultants, technical assistants, and employees on a full- or part-time basis necessary to carry out the provisions of this Act. The board may request, and on request is entitled to receive, the assistance of state educational institutions or other state agencies.

Organization and Meetings of the Board

Sec. 9. The board shall hold a regular annual meeting at which time a chairman and a vice-chairman shall be elected. Other regular meetings shall be held at the times that the rules of the board may provide but not less than two times a year. Special meetings may be held at the times that may be deemed necessary or advisable by the board or a majority of its members. Reasonable notice of all meetings shall be given in the manner prescribed by the rules of the board. The board may employ other persons it deems necessary or desirable to carry out the provisions of this Act. The board shall adopt and have an official seal.

Enforcement Proceedings

Sec. 10. The board, or the executive secretary when duly authorized, generally or specifically, by the department, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, regulations, orders, variances, or other decisions of the board.

Rulemaking

Sec. 11. (a) The board may, in accordance with the procedures in this section and subject to the approval of the State Board of Health, make rules

and regulations consistent with the general intent and purposes of this Act and amend any rule or regulation it makes.

(b) Before adopting, amending, or repealing rules or regulations, the board shall hold a public hearing. If the rule or regulation, or amendment or repeal, will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days prior to the scheduled date of the hearing in at least three newspapers whose combined circulation will, in the judgment of the board, give reasonable circulation throughout the state. If the rule or regulation, or amendment or repeal, will have effect in only a part of the state, the notice shall be published one time at least 10 days prior to the scheduled date of the hearing in a newspaper or newspapers having general circulation in the area or areas to be affected. The board shall also comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

(c) Any person may appear and be heard at the hearing on any rules or regulations. The executive secretary shall record the names and addresses of the persons appearing. The executive secretary shall send written notice to any person heard or represented at the hearing or requesting notice of the action taken by the board.

(d) Before it becomes effective, a rule or regulation, or amendment or repeal, shall be approved in writing by at least four members of the board and approved by the State Department of Health and a certified copy filed with the secretary of state for the time specified in Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

Contents of the Rules

Sec. 12. The board is authorized to adopt rules and regulations, subject to the approval of the State Board of Health, relating to the professional behavior and ethics of the social psychotherapy profession and the qualifications and licensing of social psychotherapists, consistent with the protection of the health and general welfare of the people.

Qualification of Applicant for Examination for Licensing

Sec. 13. An applicant is qualified to take the examination for licensing as a social psychotherapist if

(1) he presents evidence of having received a master's degree based on a program of studies whose content was designed to develop skill and competence in the use of psychotherapeutic treatment methods with the degree being from a graduate school accredited by the Council on

Social Work Education or from a graduate school equivalent in both subject matter and extent of training for social psychotherapists which meets accreditation requirements of the board;

(2) he has at least two years of full-time experience acceptable to the board subsequent to the granting of the master's degree in the use of psychotherapeutic methods under the supervision of a licensed social psychotherapist or a person qualified to become licensed under this Act, except that if the applicant works in a geographical area where no licensed social psychotherapist is available to provide the supervision, he shall have two years of full-time experience subsequent to the granting of the master's degree acceptable to the board in the use of psychotherapeutic methods under the supervision of a licensed psychologist or a board certified psychiatrist;

(3) he is at least 21 years of age;

(4) he is a resident of this state; and

(5) he is of good moral character.

Applications

Sec. 14. Application for examination for the social psychotherapy licensure shall be on the forms prescribed by the board. The board may require that the application be verified. The licensing fee shall accompany the application.

Evaluation of Experience

Sec. 15. In determining the acceptability of the applicant's professional experience, the board may require documentary evidence of the quality, scope, and nature of the applicant's experience the board deems necessary.

Examinations

Sec. 16. The department shall administer examinations to qualified applicants for licensure at least once a year. The board, with the approval of the State Board of Health, shall determine the subject matter, scope, and necessary scores for successful completion of the examinations. Written examinations may be supplemented by oral examinations. An applicant who fails his examination may be reexamined at a subsequent examination on payment of another examination fee. An applicant who fails his written examination has the right to review this examination and to have a full hearing.

Licensing

Sec. 17. (a) A qualified applicant for licensing who has successfully passed the examination prescribed by the board and has paid the licensing fee may be issued a license to hold himself forth as a social psychotherapist by the board.

(b) Until August 31, 1976, a person meeting the requirements of Section 13 of this Act and possessing the equivalent of the education and training requirements of that section as determined by the board, shall be issued a license on application.

(c) The board may, on application and payment of the licensing fee, license as a social psychotherapist a person who is licensed to practice social psychotherapy by another state, territory, or possession of the United States if the requirements of that state, territory, or possession for the license are the substantial equivalent of the requirements of this Act as determined by the board.

Licenses

Sec. 18. (a) The board shall issue a license to each person whom it licenses as a social psychotherapist. The license shall show the full name of the social psychotherapist and his address and shall bear a serial number. The license shall be signed by the chairman and the secretary of the board under the seal of the board.

(b) Licenses must be renewed at least once every two years. Licenses expire on August 31 and are invalid thereafter unless renewed.

(c) Social psychotherapists desiring to renew a license and who have maintained the status required by the board to qualify for licenses shall

(1) pay the renewal fee for the license; and

(2) if the board requires, give evidence that the social psychotherapist has participated in continuing education courses acceptable to the board toward the furthering of his professional development as a social psychotherapist.

(d) The board shall notify every person licensed under this Act of the amount of the renewal fee. This notice shall be mailed at least 60 days before the expiration of the license. Renewal may be made at any time during the months of July or August on application therefor by meeting the renewal requirements provided for in this Act. Failure to pay the renewal fee prior to September 1 shall not deprive a social psychotherapist of his right to renew his license, but the fee to be paid for renewal after August 31 shall be increased by 50 percent of the regular renewal fee.

Exemptions

Sec. 19. Nothing in this Act restricts the activities of the following; provided, however, no person shall state or imply that he is a "social psychotherapist" or use the letters "S.P." as part of his professional identification in conjunction with his name unless he is licensed under the provisions of this Act:

(1) a licensed physician, licensed psychologist, licensed attorney, social worker, lecturer, duly ordained priest, rabbi, minister of the gospel, Christian Science practitioner, or other licensed professional or ordained religious practitioner;

(2) a person who is performing activities of a psychotherapeutic nature, provided that he is performing those activities as part of the duties for which he is employed or under contract, and the activities are performed solely within the confines or under the control and supervision of one exempt under Section 19(1) of this Act or the jurisdiction of the organization in which he is employed or under contract, and provided that he does not state or imply that he is licensed to practice social psychotherapy, and provided that he may not offer to engage in the practice of social psychotherapy to the public for a fee, monetary or otherwise, over and above the salary or fee he receives for the performance of his official duties with the organization in which he is employed, or under contract, unless he is licensed under this Act;

(3) a person engaging in activities of a psychotherapeutic nature who is employed by accredited academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or interns pursuing the course of study leading to a master's degree from a school accredited by the Council on Social Work Education, or working in a recognized training program, provided that these activities constitute a part of a supervised course of study and that the student is designated by a title such as social psychotherapy intern, social psychotherapy trainee, or other title clearly indicating the training status appropriate to his level of training; or

(4) a person from another state offering social psychotherapeutic services in this state; provided the services are performed for no more than five days in a calendar month, except that if the person meets the qualifications and requirements provided in this Act and resides in a state or territory of the United States, or foreign country, or province that does not grant a certification or license to practice social psychotherapy, he may offer social psychotherapeutic services in this state for a total of not more than 30 days in any calendar year without being licensed under this Act.

Revocation, Cancellation, or Suspension of License

Sec. 20. (a) The Texas State Board of Examiners of Social Psychotherapy may cancel, revoke, or suspend the license of any social psychotherapist on proof that the social psychotherapist:

(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; or

(2) has the habit of intemperance or drug addiction such as the use of morphine, opium, cocaine, or other drugs having similar effects; or

(3) has been guilty of fraud or deceit in connection with his services rendered as a social psychotherapist or in connection with application for license renewal; or

(4) has aided or abetted a person, not a licensed social psychotherapist, in representing himself as a social psychotherapist within this state; or

(5) has been guilty of unprofessional conduct as defined by the rules established by the board; or

(6) for any cause for which the board shall be authorized to refuse to admit persons to its examination.

(b) Proceedings under this section shall be begun by filing charges with the Texas State Board of Examiners in Social Psychotherapy in writing and under oath. The charges may be made by any person. The chairman of the board shall set a time and place for hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least 30 days prior to the hearing date. When personal service is impossible, the board shall cause to be published, once a week for two successive weeks, a notice of the hearing in a newspaper published in the county wherein the respondent was last known to live and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of the hearing shall not be less than 30 days after the date of the last publication of the notice. At the hearing the respondent has the right to appear either personally, by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board. The board shall thereupon determine the charges on their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act are privileged.

(c) A person whose license has been cancelled, revoked, or suspended by the board may, within 30 days after the making and entering of the order, appeal to a district court in the county of his residence, but the decision of the board may be enjoined or stayed only on application to the district court after notice to the board. The proceeding on appeal is tried according to the substantial evidence rule, and the appeal shall be taken in a district court of the county in which the person whose license is

involved resides. On application, the board may reissue a license to a person whose license has been cancelled or suspended, but the application may not be made until one year after the cancellation or revocation and shall be made in the manner and form as the board requires.

(d) The board may, by a majority vote, rule that the order revoking, cancelling, or suspending the social psychotherapist's license be probated so long as the probationer conforms to the orders and rules the board may set out as the terms of probation. The board, at the time of probation, shall set out the period of time that shall constitute the probationary period.

(e) The board may at any time, while the probationer remains on probation, hold a hearing and by majority vote rescind the probation and enforce the board's original action in revoking, cancelling, or suspending the social psychotherapist's license. The hearing to rescind the probation shall be called by the chairman of the board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least 30 days prior to the time set for the hearing. When personal service is impossible, the same provisions for service of process by publication in lieu of personal service as set out in Subsection (b) of this section apply. At the hearing the probationer has the right to appear either personally, by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board. The board shall determine the charges on the merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act are privileged. The order revoking or rescinding the probation is not subject to review or appeal.

Injunctions

Sec. 21. The department may institute an action to enjoin the violation of any provisions of this Act. The action is in addition to any other action, proceeding, or remedy provided by law. The board shall be represented by the attorney general or a county or district attorney of this state.

Violations and Prohibitions Under this Act

Sec. 22. (a) No person, after one calendar year from the effective date of this Act, may represent himself to be a social psychotherapist within this state without being licensed in accordance with the provisions of this Act.

(b) No social psychotherapist may continue to practice as a social psychotherapist without renewing his license six months after expiration of his license.

(c) No person may represent himself as a social psychotherapist, or use the letters "S.P." as part of his professional identification in conjunction with his name, unless he is licensed under the provisions of this Act.

(d) No person licensed under the provisions of this Act may violate a rule or regulation promulgated by the Texas State Board of Examiners in Social Psychotherapy.

Penalties

Sec. 23. A person who violates a provision of this Act, or a rule or regulation or other order of the board, is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation.

Enforcement

Sec. 24. (a) When it appears that a person has violated or is violating or is threatening to violate any provision of this Act or any rule, regulation, or order of the board, then the board, or the executive secretary when duly authorized by the department, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, regulation, variance, or order of the board, the district court may grant the injunctive relief the facts warrant.

(b) At the request of the board, or the executive secretary when authorized by the department, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Revenue, Receipts, and Disbursements

Sec. 25. The State Department of Health shall receive and account for all money derived under this Act and shall pay the money weekly to the state treasurer who shall keep it in a separate fund to be known as the "Social Psychotherapist's Licensure Fund." The State Department of Health may make expenditures from this fund for any purpose which is reasonably necessary to carry out the provisions of this Act. The State Department of Health may impose examination, license, and renewal fees, in an amount fixed by the State Department of Health. The State Department of Health shall fix the amount of the fees sufficient to meet the expenses of administering this Act without unnecessary sur-

pluses. Surpluses, if any, are reserved for the use of the State Department of Health in this program.

Annual Report of the Board

Sec. 26. Within 90 days after the close of each fiscal year, the board shall submit a report to the governor and the presiding officer of each house of the legislature concerning the work of the board during the preceding fiscal year.

Appropriation

Sec. 27. For the biennium ending August 31, 1977, the funds received in the Social Psychotherapist's Licensure Fund are appropriated to the State Department of Health to be expended by it in the administration of this Act. The salaries paid to persons employed by the State Department of Health shall be comparable to those prescribed in the general appropriations act for persons holding comparable positions. To the extent applicable, the general rules of the general appropriations act apply to the expenditure of funds under this appropriation. [Acts 1975, 64th Leg., p. 2286, ch. 714, §§ 1 to 27, eff. Sept. 1, 1975.]

CHAPTER SEVEN. NURSES

Art. 4527-1. Authorized Fees that may be Charged by Board of Nurse Examiners

The board of nurse examiners, in addition to other fees authorized heretofore, may charge and receive for the use of the board a reasonable fee not more than the following fees:

For accreditation of new schools and programs	\$ 100.00
For admission fee to examinations, to be applied to all examinees in each examination	\$ 20.00
For approval of Exchange Visitor Programs	\$ 50.00
For duplicate or substitute of current certificate	\$ 5.00
For duplicate or substitute of permanent certificate . .	\$ 10.00
For duplicate permits	\$ 3.00
For endorsement with or without examination	\$ 20.00
For filing affidavits in re change of name	\$ 5.00
For proctoring examinations of examinees from another State	\$ 50.00
For re-registration under Article 4526, Revised Civil Statutes of Texas, 1925, as amended	\$ 10.00
For verification of records	\$ 5.00
For issuance of a temporary permit under Article 4523(a), Revised Civil Statutes of Texas, 1925, as amended	\$ 10.00

The board of nurse examiners shall set and collect a sales charge for making copies of any paper of record in the office of the board, and for any printed material published by the board, such charges to be in an amount deemed sufficient to reimburse the board for the actual expense.

[Amended by Acts 1975, 64th Leg., p. 301, ch. 130, § 1, eff. Sept. 1, 1975.]

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed."

CHAPTER EIGHT. PHARMACY

Article

4542c. Labeling Requirements for Prescriptions Drugs [NEW].

Art. 4542a. State Board of Pharmacy to Regulate Practice of Pharmacy

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

Funds Received, Use Of

Sec. 3. The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate members of said Board; said compensation to each member of the Board not to exceed Fifty Dollars (\$50) per day, exclusive of necessary expenses in performance of his duties. Provided, however, that the premium on any bond required of the Secretary, or any other employee of the Board, shall be paid out of said fund, as well as the expenses of any employee incurred in the performance of his duties. The State Board of Pharmacy shall defray all expenses under this law from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the Board, or its officers or employees, or any other expenses thereof.

[See Compact Edition, Volume 4 for text of 4 to 10]

Fees, Examination of Books and Records

Sec. 11. The State Board of Pharmacy shall charge a fee not to exceed Fifty Dollars (\$50) for examining an applicant for license, which fee must accompany the application. If an applicant who, because of failure to pass the examination, is refused a license, he shall be permitted to take a second examination without additional fee, provided the second examination is taken within a period of one (1) year. The State Auditor of the State of Texas shall, not less than once each year, examine and audit the books and records of the State Board of Pharmacy, and report his findings to the Governor of the State of Texas.

[See Compact Edition, Volume 4 for text of 12 and 13]

Annual Renewal Fee; Practicing Without Renewal Certificate; Duplicates

Sec. 14. (a) On or before the first day of each year every licensed pharmacist in this state shall pay to the Secretary of the State Board of Pharmacy an annual renewal fee not to exceed Thirty-five Dollars (\$35) for the renewal of his license to practice pharmacy for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information for

the records of the Board which said Board may deem necessary. When a pharmacist shall have failed to pay his annual renewal fee before March 1st of each year, said license shall be suspended, and such person in order to be reinstated shall be required to pay one (1) annual renewal fee as a penalty, in addition to the sum of all fees such person may be in arrears. Said renewal fee shall be due on January 1st of each year, and shall become delinquent on March 1st of each year.

[See Compact Edition, Volume 4 for text of 14(b) to 16]

Permits for Stores or Factories

Sec. 17.

[See Compact Edition, Volume 4 for text of 17(a) to 17(e)]

(f) The permit provided for in Subsection (a) of this Section shall be issued annually by the Board upon receipt of the proper application accompanied by a fee not to exceed Fifty Dollars (\$50).

[See Compact Edition, Volume 4 for text of 17(g) to 21a]

[Amended by Acts 1975, 64th Leg., p. 1384, ch. 532, §§ 1 to 3, June 19, 1975.]

Art. 4542c. Labeling Requirements for Prescription Drugs

(a) All prescription drugs manufactured and sold or distributed to a pharmacist in this state after the effective date of this Act to be subsequently dispensed to the consumer of the drug or drug product shall have affixed to the labeling the name and business address of the original manufacturer of the finished dosage form, and the names and business address of all repackagers or distributors of the prescription drug or drug product prior to its delivery to the pharmacist. This information does not need to be affixed to the container delivered to the patient.

(b) An individual, corporation, or association who violates any provision of this Act commits a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 1360, ch. 517, § 1, eff. Jan. 1, 1976.]

CHAPTER NINE. DENTISTRY

Article

4551c-1. Peer Review or Grievance Committees [NEW].

Art. 4551a. Persons Regarded as Practicing Dentistry

Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be

used for himself or for any other person, the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or any other letters, titles, terms or descriptive matter which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, provide surgical and adjunctive treatment for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws or directly related and adjacent masticatory structures.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to remove stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws, for the purpose of diagnosing, prescribing, treating, or aiding in the diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any other substitute for human teeth.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture.

(6) Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any

fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who offers, undertakes, solicits, or advertises in any manner for himself or for another except in person or by agent to a dentist, or through the United States Mail to a dentist, or in regularly published dental publications mailed or delivered to dentists in this state or in other jurisdictions to do or perform any of the acts or services listed in any of the subsections of this Article and except to and for such dentist.

[Amended by Acts 1975, 64th Leg., p. 1836, ch. 566, § 1, eff. June 19, 1975.]

Art. 4551a-1. Repealed by Acts 1975, 64th Leg., p. 1837, ch. 566, § 2, eff. June 19, 1975

See, now, art. 4551a.

Art. 4551c-1. Peer Review or Grievance Committees

(a) As used in this Act, the term "dental peer review committee" or "dental grievance committee" shall mean members of a committee composed of practicing dentists duly licensed by the State Board of Dental Examiners, and which committee shall act for the purpose of reviewing and evaluating dental treatment and dental services in disputes involving licensed dentists, dental patients and/or third party payors financially obligated to pay in whole or in part for dental treatment or dental services rendered; and such committee, when requested by all parties concerned, shall act as arbitrator between said parties. A dental peer review or grievance committee shall be composed of and elected by a majority of the licensed dentists in the area served by such committee.

(b) In the absence of fraud, conspiracy, or malice, neither a dental peer review or grievance committee formed hereunder nor a member thereof, nor any witness or consultant called by such committee, shall be liable for any finding, evaluation, or recommendation of such committee or the testimony or statements made by a member of the committee, or as a witness or consultant thereto. Any member of a dental peer review or grievance committee shall be disqualified from acting as a member thereof where

the dental treatment or dental services rendered or performed by him are being reviewed by such committee.

(c) Nothing in this Act shall prevent any party or person from availing himself of any legal remedy except for the specific immunity granted herein. [Added by Acts 1975, 64th Leg., p. 974, ch. 371, § 1, eff. June 19, 1975.]

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. Peer review or grievance committees formed hereunder shall each elect from their membership one member to serve on and be a member of the state appeals committee of the area committees which state appeals committee shall hear and decide all appeals from area committees. The state appeals committee shall prepare and adopt rules and regulations governing the procedure and operation of the area committees and of the state appeals committee to insure fair and impartial hearings and appeals.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER TEN. OPTOMETRY

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

Article

4552-4.01B. Educational Requirement for Renewal [NEW].

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

Art. 4552-4.01B. Educational Requirement for Renewal

(a) Each optometrist licensed in this state shall take annual courses of study in subjects relating to the utilization and application of scientific, technical, and clinical advances in vision care, vision therapy, visual training, and other subjects relating to the practice of optometry regularly taught by recognized optometric universities and schools.

(b) The length of study required is 12 hours per calendar year.

(c) The continuing education requirements established by this section shall be fulfilled by attendance in continuing education courses sponsored by an accredited college of optometry or in a course approved by the board. Attendance at a course of study shall be certified to the board on a form provided by the board and shall be submitted by each licensed optometrist in conjunction with his application for renewal of his license and submission of renewal fee.

(d) The board may take action necessary in order to qualify for funds or grants made available by the United States or an agency of the United States for the establishment and maintenance of programs of continuing education.

(e) Licensees who have not complied with the requirement of this section may not be issued a renewal license, except for the following persons who are exempt:

(1) a person who holds a Texas license but who does not practice optometry in Texas;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof that he suffered a serious or disabling illness or physical

disability which prevented him from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee first licensed within the 12 months immediately preceding the annual renewal date.

[Added by Acts 1975, 64th Leg., p. 1875, ch. 591, § 1, eff. Sept. 1, 1975.]

TITLE 72

HOLIDAYS—LEGAL

Art. 4591. Enumeration

The first day of January, the 19th day of January, the third Monday in February, the second day of March, the 21st day of April, the last Monday in May, the fourth day of July, the 27th day of August, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and the 25th day of December, of each year, and every day on which an election is held throughout the state, are declared legal holidays, on which all the public offices of the state may

be closed and shall be considered and treated as Sunday for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. The nineteenth day of January shall be known as "Confederate Heroes Day" in honor of Jefferson Davis, Robert E. Lee and other Confederate heroes.
[Amended by Acts 1975, 64th Leg., p. 14, ch. 11, § 1, eff. Sept. 1, 1975.]

TITLE 75

HUSBAND AND WIFE

CHAPTER FOUR. DIVORCE

Art. 4639b. Repealed by Acts 1975, 64th Leg., p.
1273, ch. 476, § 57 eff. Sept. 1, 1975

TITLE 76

INJUNCTIONS

2. IN PARTICULAR CASES

Art. 4667. Injunctions to Abate Public Nuisances
[See Compact Edition, Volume 4 for text of (a)]

(b) Any person who may use or be about to use, or who may be a party to the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney

General or any District or County Attorney or City Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

[Amended by Acts 1975, 64th Leg., p. 1962, ch. 647, § 1, eff. June 19, 1975.]

TITLE 77

INJURIES RESULTING IN DEATH

Art. 4671. Cause of Action

No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskillfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness or default of the re-

ceiver, trustee or other person in charge of or in control of any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskillfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing such death, and the liability here fixed against such receiver, trustee, or other person shall extend to all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof.

[Amended by Acts 1975, 64th Leg., p. 1381, ch. 530, § 1, eff. Sept. 1, 1975.]

Art. 4678. Death in Foreign State

Whenever the death or personal injury of a citizen of this State or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country or of this State, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. All matters pertaining to procedure in the prosecution or maintenance of such action in the courts of this State shall be governed by the law of this State, and the court shall apply such rules of substantive law as are appropriate under the facts of the case. [Amended by Acts 1975, 64th Leg., p. 1382, ch. 530, § 2, eff. Sept. 1, 1975.]

TITLE 79

INTEREST—CONSUMER CREDIT—CONSUMER PROTECTION

SUBTITLE ONE—INTEREST

CHAPTER ONE. INTEREST

Article

5069-1.07. Determination of the Rate of Interest on Loans Secured by a Lien on any Interest in Real Property [NEW].

Art. 5069-1.05. Rate of Judgments

All judgments of the courts of this State shall bear interest at the rate of nine percent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than nine percent per annum, in which case the judgment shall bear the same rate of interest specified in such contract, but shall not exceed ten percent per annum, from and after the date of such judgment. [Amended by Acts 1975, 64th Leg., p. 730, ch. 288, § 1, eff. Sept. 1, 1975.]

Art. 5069-1.07. Determination of the Rate of Interest on Loans Secured by a Lien on Any Interest in Real Property

(a) On any loan or agreement to loan secured or to be secured, in whole or in part, by a lien, mortgage, security interest, or other interest in or with respect to any interest in real property, determination of the rate of interest for the purpose of determining whether the loan is usurious under all applicable Texas laws shall be made by amortizing, prorating, allocating, and spreading, in equal parts during the period of the full stated term of the loan, all interest at any time contracted for, charged, or received from the borrower in connection with the loan. However, in the event the loan is paid in full by the borrower prior to the end of the full stated term of the loan and the interest received for the actual period of the existence of the loan exceeds the maximum lawful rate, the lender contracting for, charging, or receiving all such interest shall refund to the borrower the amount of the excess or shall credit the amount of the excess against amounts owing under the loan and shall not be subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum lawful rate.

(b) Notwithstanding any contrary provisions of the law, any person may agree to pay, and may pay pursuant to such an agreement, the same rate of

interest as corporations (other than non-profit corporations) on any loan in the principal amount of \$500,000 or more, which is made for the purpose of interim financing for construction on real property or financing or refinancing of improved real property, and such a loan shall not be subject to the defense of usury unless it exceeds the maximum lawful interest rate for corporations (other than non-profit corporations).

[Added by Acts 1975, 64th Leg., p. 47, ch. 26, § 1, eff. Sept. 1, 1975.]

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid.

"Sec. 3. This Act applies from and after its effective date prospectively and does not have any application to any right or duty, contract, obligation, cause of action, or claim of defense arising prior to its effective date."

SUBTITLE TWO—CONSUMER CREDIT

Chapter

Article

14. Alternative Disclosure Requirements
in Coordination with Federal Law
[NEW]

5069-14.01

15 to 49. [Reserved for expansion]

CHAPTER TWO. GENERAL PROVISIONS

Art. 5069-2.05. Repealed by Acts 1975, 64th Leg., p. 2239, ch. 707 § 2, eff. Sept. 1, 1975

Section 1 of the 1975 Act revised and amended the Credit Union Act, art. 2461-1.01 et seq.

CHAPTER TWELVE. FINANCING OF INSURANCE PREMIUMS

Article

5069-12.20. Authority of Licensed Local Recording Agents to Loan Money to Certain Purchasers of Insurance [NEW].

Art. 5069-12.20. Authority of Licensed Local Recording Agents to Loan Money to Certain Purchasers of Insurance

Notwithstanding any other provision of law, any person, partnership, or corporation duly licensed as a local recording agent under the provisions of Article 21.14, Insurance Code, as amended, shall be authorized to enter into or establish a retail charge agreement with any purchaser of insurance from such

local recording agent in accordance with and subject to the time price differential charges and other provisions of Article 6.03, Title 79, Revised Civil Statutes of Texas, 1925, as amended;¹ provided, however, that the time price differential charged, collected, and received in such instances on any unpaid balance shall not exceed 10 cents per \$10 per month; and in such instances the claim or defense of usury shall be prohibited.

[Added by Acts 1975, 64th Leg., p. 947, ch. 355, § 1, eff. Sept. 1, 1975.]

¹ Article 5069-6.03.

CHAPTER THIRTEEN. HOME SOLICITATION TRANSACTIONS

Art. 5069-13.01. Definitions

As used in this Act:

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Consumer" means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(4) "Merchant" means a party to a consumer transaction other than a consumer.

(5) "Home solicitation transaction" means a consumer transaction:

(A) for the purchase of goods, other than farm equipment, and insurance sales regulated by the State Board of Insurance, or services, payable in installments or in cash where the consideration exceeds \$25, in which the merchant or person acting for him engages in a personal solicitation of the sale to the consumer at a residence and the consumer's agreement or offer to purchase is given at the residence to the merchant or person acting for him, but it does not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or

(B) for the purchase of realty, payable in installments or in cash where the consideration exceeds \$100 in which the merchant or person acting for him engages in a solicitation of the sale to the consumer at the residence of the consumer and the consumer's agreement or offer to purchase is given at the residence of the consumer; but it

does not include a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker or in which the transaction is being negotiated by the person who owns the realty not at the residence of the consumer.

[Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 1, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 5069-13.02. Consumer's Right to Cancel

[See Compact Edition, Volume 4 for text of (a) to (c)]

(d) Use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with this section.

(e) A home solicitation sale in which the contract price does not exceed \$200 complies with the notice requirements of this Act if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for them, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously set forth on the face or reverse side of the sales ticket.

[Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

CHAPTER 14. ALTERNATIVE DISCLOSURE REQUIREMENTS IN COORDINATION WITH FEDERAL LAW [NEW]

Article

- 5069-14.01. Definitions and Rules of Construction.
- 5069-14.02. Exempted Transactions.
- 5069-14.03. Regulations.
- 5069-14.04. Determination of Finance Charge.
- 5069-14.05. Determination of Annual Percentage Rate.
- 5069-14.06. Administrative Enforcement.
- 5069-14.07. Views of Other Agencies.
- 5069-14.08. Criminal Liability for Willful and Knowing Violation.
- 5069-14.09. Penalties Inapplicable to Governmental Agencies.
- 5069-14.10. Liability of Assignees.
- 5069-14.11. General Requirement of Disclosure.
- 5069-14.12. Form of Disclosure; Additional Information.
- 5069-14.13. Effect of Subsequent Occurrence.
- 5069-14.14. Right of Rescission as to Certain Transactions.
- 5069-14.15. Content of Periodic Statements.
- 5069-14.16. Open-End Consumer-Credit Plans.
- 5069-14.17. Sales not Under Open-End Credit Plans.

- 5069-14.18. Consumer Loans not Under Open-End Plans.
 5069-14.19. Civil Liability.
 5069-14.20. Written Acknowledgment as Proof of Receipt.
 5069-14.21. Catalogs and Multiple-Page Advertisements.
 5069-14.22. Advertising of Down Payments and Installments.
 5069-14.23. Advertising of Open-End Credit Plans.
 5069-14.24. Advertising of Credit other than Open-End Plans.
 5069-14.25. Nonliability of Media.
 5069-14.26. More-than-Four-Installment Rule.
 5069-14.27. Conflict with Other Provisions.
 5069-14.28. Use of Cash Discounts.

Chapter 14 was added by Acts 1975, 64th Leg., p. 421, ch. 184, § 1, effective Jan. 1, 1976.

Art. 5069-14.01. Definitions and Rules of Construction

(a) For the purposes of this Chapter:

(1) "Commission" refers to the Finance Commission of Texas as defined in Article 2.01(k) of this Title.¹

(2) "Commissioner" refers to the Consumer Credit Commissioner, as defined in Article 2.01(l) of this Title.²

(3) "Organization" means a corporation, government, or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(4) "Person" means a natural person or an organization.

(5) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(6) "Creditor" refers only to creditors who regularly extend or arrange for the extension of credit for which the payment of a finance charge is required whether in connection with loans, sales of property or services, or otherwise. The provisions of this Chapter apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

(7) "Credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved, and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(8) The adjective "consumer" used with reference to a credit transaction characterizes the transaction as one in which the party to whom the credit is offered or extended is a person as defined by Article 1.01(e) of Title 79, Revised Civil Statutes of Texas, 1925,³ and the money,

property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes or are business or commercial transactions subject to the provisions of Chapters 3, 4, 5, 7, and 12 of this Title.⁴

(9) "Open-end credit plan" refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(10) "Federal consumer protection law" refers to the Federal Consumer Credit Protection Act.⁵

(11) The term "Title" as used in this Chapter refers to Title 79, Revised Civil Statutes of Texas, 1925, as amended, and the Texas Pawnshop Act.⁶

(b) A consumer-credit transaction, for the purposes of this Chapter, shall be considered consummated at the time a contractual relationship is created between a creditor and a consumer irrespective of the time of performance of either party.

(c) Any reference to any requirement imposed under this Chapter or any provision thereof includes reference to the regulations of the Commission under this Chapter or the provision thereof in question. [Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

¹ Article 5069-2.01(k).

² Article 5069-2.01(l).

³ Article 5069-1.01(e).

⁴ Articles 5069-3.01 et seq., 5069-4.01 et seq., 5069-5.01 et seq., 5069-7-01 et seq., 5069-12.01 et seq.

⁵ 15 U.S.C.A. § 1601 et seq.

⁶ Article 5069-51.01 et seq.

Sections 2 to 5 of the 1975 Act provided:

"Sec. 2. This Act shall become effective at midnight on December 31, 1975. It applies to all transactions covered herein entered into after that date.

"Sec. 3. In case of doubt as to the manner or method of making the proper disclosures under this Chapter, where the Commission has not adopted a regulation, the courts shall look for guidance to the interpretations and regulations made by the Federal Reserve Board and the interpretations made by courts of competent jurisdiction of the federal consumer protection law.

"Sec. 4. No provision of this Act shall in any way increase the allowable interest rate, time-price differential, or cost for the use, forbearance, or detention of any amount of money, which is in effect at this time.

"Sec. 5. 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, and to this end the provisions of this Act are declared to be severable."

Art. 5069-14.02. Exempted Transactions

This Chapter does not apply to the following:

(1) credit transactions involving extensions of credit for business or commercial purposes, except those subject to the provisions of Chapters 3, 4, 5, 7, and 12 of this Title,¹ or to governments or governmental agencies or instrumentalities, or to organizations;

(2) transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission;

(3) credit transactions, other than real property transactions, in which the total amount to be financed exceeds Twenty-five Thousand Dollars;

(4) transactions under public-utility tariffs, if the Commission determines that a State regulatory body regulates the charges for the public-utility services involved, the charges for delayed payment, and any discount allowed for early payment;

(5) credit transactions made by credit unions as defined by Article 2.01(f) of this Title;² or

(6) credit transactions primarily for agricultural purposes in which the total to be financed exceeds Twenty-five Thousand Dollars.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

¹ Articles 5069-3.01 et seq., 5069-4.01 et seq., 5069-5.01 et seq., 5069-7.01 et seq., 5069-12.01 et seq.

² Article 5069-2.01(f).

Art. 5069-14.03. Regulations

(a) The Commissioner shall, as deemed necessary, determine what disclosure requirements are necessary in order to bring the duties and requirements imposed under this Title into conformity with the applicable federal consumer protection law and any lawful regulations promulgated under that law, from time to time, and transmit his findings to the Commission.

(b) The Commission may prescribe from time to time such rules and regulations as may be necessary or proper in carrying out the provisions of this Chapter. Such rules and regulations may contain such classifications, differentiations, or other provisions and may provide for such adjustments and exceptions as in the judgment of the Commission are necessary or proper to carry out the purposes of this Chapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith; provided, however, that no such rule or regulation shall contain any classification, differentiation, or other provision with respect to, or provide for any adjustment or exception for, any class of transaction which would result in less stringent disclosure requirements than afforded that class of transaction under the federal consumer protection law and Regulation Z issued by the Board of Governors of the Federal Reserve System pursuant thereto.

(c) Before the Commission makes such regulations, the Commissioner shall conduct a public hearing on the proposed regulations and make such recommendations to the Commission regarding such regulations as he finds are necessary to effectuate the purposes of this Chapter. Any person who violates any valid regulation or any provision thereof so adopted and promulgated shall be subject to the penalties hereinafter provided.

(d) The disclosure of an amount of percentage which is greater than the amount of percentage required to be disclosed by any regulations promulgated under this Chapter does not in itself constitute a violation of this Title or such regulations.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.04. Determination of Finance Charge

(a) Except as otherwise provided in this Article, the amount of the finance charge in connection with any consumer-credit transaction shall be determined as the sum of all charges payable directly or indirectly by the person to whom the credit is extended and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

(1) interest, time-price differential, and any amount payable under a point, discount, or other system of additional charges;

(2) service or carrying charge;

(3) loan fee, finder's fee, or similar charge;

(4) fee for an investigation or credit report; or

(5) premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(b) Charges or premiums for credit-life, accident, or health insurance written in connection with any consumer-credit transaction shall be included in the finance charge unless:

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Charges or premiums for insurance, written in connection with any consumer-credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) If any of the following items are itemized and disclosed in accordance with the regulations of the Commission in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) fees and charges prescribed by law which actually are or will be paid to public officials for

determining the existence of, or for perfecting or releasing or satisfying any security related to, the credit transaction;

(2) the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in Subsection (1) of this Section which would otherwise be payable;

(3) taxes; or

(4) any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Commission by regulation.

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) fees or premiums for title examination, title insurance, or similar purposes;

(2) fees for preparation of a deed, settlement statement, or other documents;

(3) escrows for future payments of taxes and insurances;

(4) fees for notarizing deeds and other documents;

(5) appraisal fees; or

(6) credit reports.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.05. Determination of Annual Percentage Rate

(a) The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Commission:

(1) in the case of any extension of credit other than under an open-end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Commission as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under Subparagraph (A) of this Subsection;

(2) in the case of any extension of credit under an open-end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Commission determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Commission may by regulation require.

(c) The annual percentage rate may be rounded to the nearest quarter of 1 percent for credit transactions payable in substantially equal installments when a creditor determines the total finance charge on the basis of a single add-on, discount, periodic, or other rate and the rate is converted into an annual percentage rate under procedures prescribed by the Commission.

(d) The Commission may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with Section (a)(1)(A) of this Article by not more than such tolerances as the Commission may allow. The Commission may not allow a tolerance greater than 8 percent of that rate except to simplify compliance where irregular payments are involved.

(e) In the case of creditors determining the annual percentage rate in a manner other than as described in Section (c) or (d) of this Article, the Commission may authorize other reasonable tolerances.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.06. Administrative Enforcement

(a) Compliance with the requirements imposed under this Chapter shall be enforced by the Commissioner, who may exercise for such purpose any authority conferred upon him by law.

(b) The Commissioner shall be responsible for seeking exemption from federal administration of the provisions of any federal consumer protection law to the extent and in the manner prescribed by any such law or any regulation duly issued pursuant thereto.

(c) At such time as the Commissioner shall deem necessary to insure compliance with this Chapter, he or his authorized representative shall examine the records of any creditor doing business in the State. In the course of such examination the Commissioner or his authorized representative shall have free access to the office, place of business, files, safes, and vaults of such creditor and shall have the right to

make copies of any book, account, paper, correspondence, or record. The Commissioner or his representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized by this Chapter to consider, investigate, or secure information. Any creditor refusing to let the Commissioner or his authorized representative examine or make copies of all relevant documents shall be subject to the penalties provided in Article 14.08 of this Chapter. The information obtained in the course of such examination shall be confidential. Each creditor shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examination and a proportionate part of general administrative expenses.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.07. Views of Other Agencies

In exercising the functions under this title, the Commissioner may obtain, upon request, the views of any other agencies which, in the judgment of the Commissioner, exercise regulatory or supervisory functions with respect to any class of creditors subject to this Title.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.08. Criminal Liability for Willful and Knowing Violation

Whoever willfully and knowingly (1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this Chapter or any regulation issued thereunder, (2) uses any chart or table authorized by the Commission under Article 14.05 in such manner as to consistently understate the annual percentage rate determined under Article 14.05(a)(1)(A), or (3) otherwise fails to comply with any requirement imposed under this Chapter, shall be fined not more than Five Thousand Dollars or imprisoned not more than one year, or both.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.09. Penalties Inapplicable to Governmental Agencies

No civil or criminal penalty provided under this Chapter for any violation thereof may be imposed upon the United States or any agency thereof, or upon any state or political subdivision thereof, or any agency of any state or political subdivision.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.10. Liability of Assignees

Except as otherwise specifically provided in this Title, any civil action for a violation of this Title which may be brought against the original creditor in any credit transaction may be maintained against any subsequent assignee of the original creditor

where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.11. General Requirement of Disclosure

(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Commission, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this Chapter.

(b) If there is more than one obligor, a creditor need not furnish a statement of information required under this Chapter to more than one of them.

(c) For the purpose of Section (a), the information required under this Chapter shall include a full statement of closing costs to be incurred by the consumer, which shall be presented, in accordance with the regulations of the Commission:

(1) prior to the time when any down payment is made; or

(2) in the case of a consumer-credit transaction involving real property, at the time the creditor makes a commitment with respect to the transaction.

The Commission may provide by regulation that any portion of the information required to be disclosed by this Article may be given in the form of estimates where the provider of such information is not in a position to know exact information.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.12. Form of Disclosure; Additional Information

(a) Regulations of the Commission need not require that disclosures pursuant to this Chapter be made in the order set forth in this Chapter and may permit the use of terminology different from that employed in this Chapter if it conveys substantially the same meaning.

(b) Any creditor may supply additional information or explanations with any disclosures required under this Chapter.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.13. Effect of Subsequent Occurrence

If information disclosed in accordance with this Chapter is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this Chapter.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.14. Right of Rescission as to Certain Transactions

(a) Except as otherwise provided in this Article, in the case of any consumer-credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this Article and all other material disclosures required under this Chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Commission, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with the regulations of the Commission, to any obligor in a transaction subject to this Article the rights of the obligor under this Article. The creditor shall also provide, in accordance with regulations of the Commission, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this Article.

(b) When an obligor exercises his right to rescind under Section (a) of this Article, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this Article, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within ten days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

(c) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this Chapter by a person to whom a statement is required to be given pursuant to this Article does no more than create a rebuttable presumption of delivery thereof.

(d) The Commission may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, pre-

scribe regulations authorizing the modification or waiver of any rights created under this Article to the extent and under the circumstances set forth in those regulations.

(e) This Article does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling or to a consumer-credit transaction in which an agency of the State is the creditor.

(f) An obligor's rights of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this Article or any other material disclosures required under this Chapter have not been delivered to the obligor.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.15. Content of Periodic Statements

(a) If a creditor transmits periodic statements in connection with any extension of consumer credit other than under an open-end consumer-credit plan, then each of those statements shall set forth each of the following items:

(1) the annual percentage rate of the total finance charge;

(2) the date by which or the period (if any) within which payment must be made in order to avoid additional finance charges or other charges; and

(3) such of the items set forth in Article 14-16(b) as the Commission may by regulation require as appropriate to the terms and conditions under which the extension of credit in question is made.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.16. Open-End Consumer-Credit Plans

(a) Before opening any account under an open-end consumer-credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) the conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period;

(2) the method of determining the balance upon which a finance charge will be imposed;

(3) the method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge;

(4) where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;

(5) if the creditor so elects:

(A) the average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

(B) whenever circumstances are such that the computation of a rate under Subparagraph (A) of this Subsection would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan. The Commission shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this Subsection;

(6) the conditions under which any other charges may be imposed, and the method by which they will be determined; and

(7) the conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.

(b) The creditor of any account under an open-end consumer-credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) the outstanding balance in the account at the beginning of the statement period;

(2) the amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Commission sufficient to enable the obligor to identify the transaction or relate it to copies of sales vouchers or similar instruments previously furnished;

(3) the total amount credited to the account during the period;

(4) the amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge;

(5) where one or more periodic rates may be used to compute the finance charge, each such

rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under Article 14.05(a)(2)) is required to be disclosed pursuant to Subsection (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;

(6) where the total finance charge exceeds fifty cents for a monthly or longer billing cycle, or the pro rata part of fifty cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under Article 14.05(a)(2)), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable;

(7) at the election of the creditor, the average effective annual percentage rate of return (or the projected rate) under the plan as prescribed in Section (a)(5) of this Article;

(8) the balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed;

(9) the outstanding balance in the account at the end of the period; and

(10) the date by which or the period (if any) within which payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(c) In the case of any open-end consumer-credit plan in existence on the effective date of this Act, the items described in Section (a) of this Article, to the extent applicable, shall be disclosed in a notice mailed or delivered to the obligor not later than thirty days after the effective date of this Act; provided, however, this Subsection shall not apply to any creditor who has made such disclosure and notification under the provisions of the Truth in Lending Act.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.17. Sales not Under Open-End Credit Plans

(a) In connection with each consumer-credit sale not under an open-end credit plan, the creditor shall

disclose each of the following items which is applicable:

(1) the cash price of the property or service purchased;

(2) the sum of any amounts credited as down payment (including any trade-in);

(3) the difference between the amount referred to in Subsection (1) and the amount referred to in Subsection (2) of this Section;

(4) all other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge;

(5) the total amount to be financed (the sum of the amount described in Subsection (3) plus the amount described in Subsection (4) of this Section);

(6) except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable;

(7) the finance charge expressed as an annual percentage rate except in the case of a finance charge:

(A) which does not exceed Five Dollars and is applicable to an amount financed not exceeding Seventy-five Dollars, or

(B) which does not exceed Seven Dollars and fifty cents and is applicable to an amount financed exceeding Seventy-five Dollars.

A creditor may not divide a consumer-credit sale into two or more sales to avoid the disclosure of an annual percentage rate pursuant to this Section;

(8) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness;

(9) the default, delinquency, or similar charges payable in the event of late payments; and

(10) a description of any security interest held or to be retained or acquired by the credit or in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this Chapter, the disclosures required under Section (a) of this Article shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser.

(c) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the deferred-payment price and the

terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under Section (a) of this Article may be made at any time not later than the date the first payment is due.

(d) If a consumer-credit sale is one of a series of consumer-credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under Section (a) of this Article for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this Section, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.18. Consumer Loans not Under Open-End Credit Plans

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer-credit sale nor under an open-end consumer-credit plan shall disclose each of the following items, to the extent applicable:

(1) the amount of credit of which the obligor will have the actual use or which is or will be paid to him or for his account or to another person on his behalf;

(2) all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge;

(3) the total amount to be financed (the sum of the amounts referred to in Subsection (1) plus the amounts referred to in Subsection (2) of this Section);

(4) except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge;

(5) the finance charge expressed as an annual percentage rate except in the case of a finance charge:

(A) which does not exceed Five Dollars and is applicable to an extension of consumer credit not exceeding Seventy-five Dollars, or

(B) which does not exceed Seven Dollars and fifty cents and is applicable to an extension of consumer credit exceeding Seventy-five Dollars.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this Section;

(6) the number, amount, and the due dates or periods of payments scheduled to repay the indebtedness;

(7) the default, delinquency, or similar charges payable in the event of late payments; and

(8) a description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this Chapter, the disclosures required by Section (a) of this Article shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor.

(c) If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under Section (a) of this Article may be made at any time not later than the date the first payment is due.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-1419. Civil Liability

(a) Except as otherwise provided in this Article, any creditor who fails in connection with any consumer-credit transaction to disclose to any person any information required under this Chapter to be disclosed to that person is liable to that person in an amount equal to the sum of:

(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this Section shall not be less than One Hundred Dollars nor greater than One Thousand Dollars; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

(b) A creditor has no liability under this Article if within fifteen days after discovering an error and prior to the institution of an action under this Article or the receipt of written notice of the error the

creditor notified the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to ensure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

(c) A creditor may not be held liable in any action brought under this Article for a violation of this Chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Any action which may be brought under this Article against the original creditor in any credit transaction involving a security interest in real property may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Chapter and that it maintained procedures reasonably adapted to apprise it of the existence of any such violation.

(e) Any action under this Article shall be brought in any court of this State having jurisdiction thereof within four years from the date of the loan or retail installment transaction or two years from the last maturity date, whichever is earlier, except, in the case of open-end credit transactions, two years from the date of the occurrence of the violation.

(f) No provision of this Article or Article 14.08, imposing any liability, shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Commission, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) The multiple failure to disclose to any person any information required under this Chapter to be disclosed in connection with a single account under an open-end consumer-credit plan, other single consumer-credit sale, consumer loan, or other extension of consumer credit, shall entitle the person to a single recovery under this Section, but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. [Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.20. Written Acknowledgment as Proof of Receipt

Except as provided in Article 14.14(c) and except in the case of actions brought under Article 14.19(d), in any action or proceeding by or against any subse-

quent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this Title shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this Chapter. This Article does not affect the rights of the obligor in any action against the original creditor.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.21. Catalogs and Multiple-Page Advertisements

For the purposes of this Chapter, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit-terms table on which the information required to be stated under this Chapter is clearly set forth.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.22. Advertising of Down Payments and Installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state:

(1) that a specific periodic consumer-credit amount or installment amount can be arranged unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount;

(2) that a specified down payment is required in connection with any extension of consumer credit unless the creditor usually and customarily arranged down payments in that amount.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.23. Advertising of Open-End Credit Plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open-end credit plan may set forth any of the specific terms of that plan or the appropriate rate determined under Article 14.16(a)(5) unless it also clearly and conspicuously sets forth all of the following items:

(1) the time period, if any, within which any credit extended may be repaid without incurring a finance charge;

(2) the method of determining the balance upon which a finance charge will be imposed;

(3) the method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge;

(4) where periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates; and

(5) such other or additional information for the advertising of open-end credit plans as the Commission may by regulation require to provide for adequate comparison of credit costs as between different types of open-end credit plans.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.24. Advertising of Credit other than Open-End Plans

(a) Except as provided in Section (b), this Article applies to any advertisement to aid, promote, or assist directly or indirectly any consumer-credit sale, loan, or other extension of credit subject to the provisions of this Title other than an open-end credit plan.

(b) The provisions of this Article do not apply to advertisements of residential real estate except to the extent that the Commission may by regulation require.

(c) If any advertisement to which this Article applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) If any advertisement to which this Article applies states the amount of the down payment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) the cash price or the amount of the loan as applicable;

(2) the down payment, if any;

(3) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and

(4) the rate of the finance charge expressed as an annual percentage rate.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.25. Nonliability of Media

There is no liability under this Chapter on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.26. More-than-Four-Installment Rule

Any advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit repayable in more than four installments shall, unless a finance charge is imposed, clearly and conspicuously state, in accordance with the regulations of the Commission: THE COST OF CREDIT IS IN-

CLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.27. Conflict with Other Provisions

The purpose of this Chapter is to make the Texas law relating to disclosure of credit terms and conditions consistent with the federal consumer protection law and to the extent of any conflict or inconsistency relating to such disclosure requirement between this Chapter and any other provisions of this Title, as amended, the disclosure provisions of this Chapter prevail; provided, however, nothing herein shall be construed to eliminate any prohibition, duty, or requirement imposed by other provisions of this Title which are not inconsistent or in conflict with the disclosure requirements imposed by this Chapter; provided further, nothing herein shall be construed to affect the penalties provided for in Chapters 1 and 8 and Section 17 (Article 5069-51.17, Vernon's Texas Civil Statutes) of this Title as they relate to prohibitions, duties, and requirements not covered by this Chapter.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

Art. 5069-14.28. Use of Cash Discounts

(a) With respect to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(b) With respect to any sales transaction, any discount not in excess of 5 percent offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under Article 14.04 if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Commission; provided, however, nothing herein shall be construed to increase any allowable charges authorized elsewhere in this Title.

[Acts 1975, 64th Leg., p. 421, ch. 184, § 1, eff. Dec. 31, 1975.]

[Chapters 15 to 49 reserved for expansion]

TITLE 81

JAILS

Article

5115.1. Commission on Jail Standards [NEW].

Art. 5115. Jails Provided

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound, fire resistant and kept in good repair. Furthermore, they shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health. Such jails shall comply with the provisions of this Act and with the rules and procedures of the Commission on Jail Standards.

SUITABLE SEGREGATION

The term "safe and suitable jails," as used in this Act, shall be construed to mean jails which provide adequate segregation facilities by having separate enclosures, formed by solid masonry or solid metal walls, or solid walls of other comparable material, separating witnesses from all classifications of prisoners; and males from females; and juveniles from adults; and first offenders, awaiting trial, from all classifications of convicted prisoners; and prisoners with communicable or contagious diseases from all other classifications of prisoners. Furthermore, the term "safe and suitable" jails shall be construed to mean jails either now or hereafter constructed, except that, in lieu of maintaining its own jail, any county whose population is not large enough to justify building a new jail or remodeling its old jail shall be exempt from the provisions of this Act by contracting with the nearest available county whose jail meets the requirements set forth in this Act for the incarceration of its prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, or at a daily rate mutually agreed to by the contracting counties.

No person suspected of insanity, or who has been legally adjudged insane, shall be housed or held in a

jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of twenty-four (24) hours, during which period he shall be kept under observation continuously. At the end of the twenty-four (24) hour period, such person shall be released or taken to a hospital or mental hospital. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24) prisoners each. Furthermore, in each such jail there shall be provided individual one-man or one-woman cells to accommodate not less than thirty per cent (30%) of the total designated prisoner capacity of the jail and dormitory-type space may be provided to accommodate not more than forty per cent (40%) of the total designated prisoner capacity of the jail. All cells, compartments and dormitories for sleeping purposes, where each such cell, compartment or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells,

compartments, dormitories and day rooms (including safety vestibule area) shall have a minimum floor area equal to eighteen (18) square feet for each prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight (8) feet for any cell, compartment, dormitory or day room where prisoners are confined.

The term "safe and suitable jails," as used in this Act, is further defined to mean that, for reasons of safety to officers and security, the entrance and/or exit to each group of enclosures forming a cell block or group of cells and/or compartments used for the confinement of three (3) or more prisoners shall be through a safety vestibule having one (1) or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block.

SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less in size than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein. Furthermore, each day room shall be otherwise suitably furnished.

The provision of this Act, as amended, shall become applicable to all jails upon its effective date. The standards prescribed by this Act are minimum standards only. The provisions of this Act are enforceable by the Commission on Jail Standards. [Amended by Acts 1975, 64th Leg., p. 1283, ch. 480, § 15, eff. June 19, 1975.]

Art. 5115.1. Commission on Jail Standards

Policy

Sec. 1. It is the policy of the State of Texas that all county jail facilities in the state conform to certain minimum standards of construction, maintenance, and operation. It is the purpose of the legis-

lature by this Act to implement this policy by establishing a commission on jail standards with the authority and responsibility to administer the provision of this Act and other laws relating to standards for county jails.

Definitions

Sec. 2. In this Act:

- (1) "Commission" means the Commission on Jail Standards.
- (2) "Executive director" means the executive director of the Commission on Jail Standards.
- (3) "County jail" means any jail, lockup, or other facility that is operated by or for a county for the confinement of persons accused or convicted of an offense.
- (4) "Prisoners" means persons confined in a county jail.

Commission Created

Sec. 3. The Commission on Jail Standards is created.

Membership—Appointment, Terms, Vacancies

Sec. 4. (a) The commission consists of nine members appointed by the governor with the advice and consent of the senate. Two members shall be county sheriffs, one from a county with a population of over 200,000 persons and one from a county with a population of 200,000 or less, according to the latest United States census. One member shall be a county judge; one shall be a practitioner of medicine licensed by the State Board of Medical Examiners; the other five positions shall be filled by citizens of the state who hold no public office. The sheriffs and the county judge appointed to the commission shall perform the duties of a member of the commission in addition to their other duties.

(b) Except as provided by Subsection (c) of this section, members are appointed for a term of six years expiring on January 31 of an odd-numbered year.

(c) For terms that begin within 60 days after the effective date of this Act, the governor shall appoint:

- (1) three members for terms that expire on January 31, 1981;
- (2) three members for terms that expire on January 31, 1979; and
- (3) three members for terms that expire on January 31, 1977.

(d) If a sheriff or county judge on the commission ceases to hold office or if a vacancy otherwise occurs in the membership of the commission, the governor shall appoint a replacement who possesses the same qualifications as the member who vacated his posi-

tion, with the advice and consent of the senate, to serve the unexpired portion of the term. If a vacancy occurs at a time when the senate is not in session, the vacancy shall nevertheless be filled on an interim basis, and the interim appointee shall serve as a member of the commission until his nomination has been acted on by the senate.

Chairman; Vice-Chairman

Sec. 5. The commission shall biennially elect one of its members chairman and one vice-chairman for a term of two years beginning on February 1 of each odd-numbered year.

Meetings; Quorum; Rules

Sec. 6. (a) The commission shall hold a regular meeting each calendar quarter and may hold special meetings at the call of the chairman or on the written request of three members. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the commission.

(b) Five members constitute a quorum for the transaction of business.

(c) The commission shall adopt, amend, and rescind rules for the conduct of its proceedings.

Expenses

Sec. 7. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties.

Director; Staff

Sec. 8. (a) The commission shall employ an executive director to serve at the will of the commission. The executive director is subject to the policy direction of the commission and is the chief executive officer of the commission.

(b) The executive director may employ personnel as necessary to enforce and administer this Act.

(c) The executive director and employees are entitled to compensation and expenses as provided by legislative appropriation.

Duties of the Commission

Sec. 9. (a) The commission shall:

(1) promulgate reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) promulgate reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) promulgate reasonable rules establishing minimum standards for the number of jail su-

pervisory personnel and for programs and services to meet the needs of prisoners;

(4) promulgate reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary, in a manner not inconsistent with this Act;

(6) provide consultation and technical assistance to local government officials with respect to county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules promulgated under this Act;

(9) review the reports submitted under Subdivision (8) of this subsection and require its employees to inspect county jails regularly to insure compliance with state law, commission orders, and rules and procedures promulgated under this Act; and

(10) determine annually, or more often, whether each county jail is in compliance with the rules and procedures promulgated under this Act.

(b) The fact that compliance with a commission rule or procedure requires major modification or renovation of an existing jail or construction of a new jail does not render a commission rule or procedure unreasonable.

Annual Report

Sec. 10. The commission shall make a report to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than January 31 of each year, covering its operations, its findings concerning county jails during the preceding year, and whatever recommendations it deems appropriate.

Enforcement of Jail Standards

Sec. 11. (a) The commission shall be granted access at any reasonable time to any county jail facility or part of any county jail facility and shall be granted access to all books, records, and data pertaining to any county jail which the commission or the executive director deems necessary for the administration of the commission's functions, powers, and duties. The commissioners and sheriff of each

county shall furnish the commission or any of its members, or the executive director or any employee designated by the executive director, any information which he states is necessary to enable the commission to discharge its functions, powers, and duties, to determine whether its rules are being observed or whether its orders are being obeyed and otherwise to implement the purposes of this Act. In the exercise of its function, powers, and duties, the commission may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, administer oaths, and take testimony concerning all matters within its jurisdiction. The commission is not bound by strict rules of evidence or procedure in the conduct of its proceedings, but its determinations shall be founded on sufficient legal evidence to sustain them. The commission may delegate to the executive director the authority conferred by this subsection.

(b) When the commission finds that a county jail is not in compliance with state law, or the rules and procedures of the commission, or fails to meet the minimum standards prescribed by the commission or by state law, it shall report the noncompliance to the commissioners and sheriff of the county responsible for the jail that is not in compliance. The commission shall send a copy of the report to the governor.

(c) The commission shall grant the county or sheriff a reasonable time, not to exceed one year after a report of noncompliance, to comply with its rules and procedures and with state law. On application of the sheriff or commissioners of a county, if clearly justified by the facts and circumstances, the commission may grant reasonable variances for operation of county jails not in strict compliance with state law, except that no variance may be granted to permit unhealthy, unsanitary, or unsafe conditions.

(d) If the commissioners or sheriff does not comply within the time granted by the commission, the commission may, by order, prohibit the confinement of prisoners in the noncomplying jail and designate another detention facility for their confinement. If a prohibition and transfer order is issued, the sheriff of the county in which the noncomplying jail is situated shall immediately transfer all prisoners to the detention facility specified by the commission.

(e) The county responsible for a nonconforming jail shall bear the cost of transportation and maintenance of prisoners transferred from a noncomplying jail by order of the commission. The costs of transportation and maintenance shall be determined by the commission and shall be paid into the treasury of the entity operating the detention facility to which the prisoners are transferred.

(f) The commission, in lieu of closing a county jail, may institute an action in its own name to enforce,

or enjoin the violation of, its orders, rules, or procedures, or of Article 5115, Revised Civil Statutes of Texas, 1925, as amended. The commission shall be represented by the attorney general. An action brought pursuant to this subsection is in addition to any other action, proceeding, or remedy provided by law, and may be brought in a district court of Travis County. A suit brought under this subsection shall be given preferential setting and shall be tried by the court, without a jury. The court shall issue an injunction ordering compliance if it finds:

- (1) that the county jail is being operated in such a manner that it does not comply with the rules and procedures promulgated by the commission or with state law; and
- (2) that the commissioners or sheriff has been given a reasonable time to comply with the rules and procedures and has failed to do so.

Judicial Review

Sec. 12. (a) A county may appeal a commission order issued under Subsection (d), Section 11, of this Act by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the commission's order.

(c) Service of citation on the commission must be accomplished within 30 days after the date the petition is filed. Citation may be served on the executive director.

(d) In an action brought under this section, the court is confined to the record developed by the commission, and the only issues before the court are:

- (1) whether the order of the commission is based on substantial evidence; and
- (2) whether the order is arbitrary, capricious, or illegal.

Regulations

Sec. 13. (a) The commission shall promulgate the regulations required by Section 9 of this Act on or before January 1, 1977.

(b) On or before March 1, 1977, the commission shall mail a copy of the regulations promulgated pursuant to Section 9 of this Act to each county sheriff in this state. The chairman shall certify to the governor that the commission has complied with the requirements established by this section.

Qualifications of Jail Personnel

Sec. 14. (a) The Commission on Law Enforcement Officer Standards and Education shall establish minimum physical, mental, educational, and

moral standards for persons employed or utilized in the operation of county jails.

(b) The authority and power of the Commission on Law Enforcement Officer Standards and Education is extended to cover all county jail personnel. The staff of the Commission on Law Enforcement Officer Standards and Education shall be enlarged suffi-

ciently to discharge the additional responsibilities imposed by this section. Counties shall have a period of one year following establishment of standards for county jail personnel within which to have all jail personnel certified by the Commission on Law Enforcement Officers Standards and Education. [Acts 1975, 64th Leg., p. 1278, ch. 480, §§ 1 to 14, eff. June 19, 1975.]

TITLE 82

JUVENILES

Article

- 5139JJJ. Webb County Juvenile Board [NEW].
5139KKK. East Texas Juvenile Board [NEW].
5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties;
Juvenile Boards [NEW].
5139MMM. Rockwall County Juvenile Board [NEW].

Art. 5139E-1. Smith County Juvenile Board

(1) There is established a Juvenile Board in each of the counties of this State coming within the purview of the provisions of paragraph (2) hereof, to be composed of the County Judge of the county and the District Judges of the Judicial Districts therein. The County Judge of said county shall be chairman of such Board and its chief administrative officer. The official title of the Board in said county shall be the name of the county followed by the words: "County Juvenile Board."

(2) The Juvenile Board created in the foregoing Section is established and constituted in each county wherein there are three (3) District Courts, two of which are composed of one (1) county only, the third of which is composed of two (2) counties; and in such one-county Judicial District there is located a city with a population of not less than 57,500 nor more than 59,000 according to the last preceding federal census.

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may be compensated by an annual salary as determined by the Commissioners Court of the county, payable in 12 equal monthly installments; and such compensation shall be in addition to all other compensation now provided for or allowed County and District Judges by law, and shall be paid out of the general fund of the county. [Amended by Acts 1975, 64th Leg., p. 1970, ch. 653, § 1, eff. Sept. 1, 1975.]

Art. 5139F. Juvenile Board in Counties of 110,000 to 125,500; Additional Compensation

Sec. 1. In any county having a population of more than one hundred and ten thousand (110,000) inhabitants and less than one hundred and twenty-

five thousand, five hundred (125,500) inhabitants according to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. Subject to the approval of the Commissioners Court, the members composing such Juvenile Board in such county may each be allowed additional compensation in an amount which shall be designated by the County Commissioners and which shall be paid in twelve (12) equal installments out of the general fund of such county.

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

[Amended by Acts 1975, 64th Leg., p. 331, ch. 138, § 1, eff. May 8, 1975.]

Art. 5139G. Juvenile Board in Counties Comprising Second 9th Judicial District

Sec. 1. In each county comprising the Second 9th Judicial District, the judge of the district courts having jurisdiction in the county, together with the county judge of the county and the judge of the county courts at law, if there are any, shall constitute the juvenile board of such county. The members of each board shall each be allowed additional compensation not more than Three Thousand Dollars (\$3,000) 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.

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

[Amended by Acts 1975, 64th Leg., p. 439, ch. 186, § 11, eff. Sept. 1, 1975.]

Art. 5139H-1. Juvenile Boards in Counties of 38th and 63rd Judicial Districts; Additional Compensation

Sec. 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 One Thousand, Two Hundred Dollars (\$1,200) per annum and not more than Three Thousand, Six Hundred Dollars (\$3,600) 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; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[See Compact Edition, Volume 4 for text of 2]
 [Amended by Acts 1975, 64th Leg., p. 243, ch. 93, § 1, eff. April 30, 1975.]

Art. 5139H-5. Juvenile Boards in 36th and 156th Judicial Districts; Additional Compensation

Sec. 1. In each county comprising the 36th Judicial District and in each county comprising the 156th 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 composing each County Juvenile Board within the Judicial Districts may each be allowed additional compensation of not more than Two Thousand, Four Hundred Dollars (\$2,400) per annum, which shall be paid in twelve (12) equal installments out of the General Fund of each county, such additional compensation to each member of the Board to be fixed by the Commissioners Court of each county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[See Compact Edition, Volume 4 for text of 2]
 [Amended by Acts 1975, 64th Leg., p. 1929, ch. 629, § 1, eff. June 19, 1975.]

Art. 5139W. Lamar County Juvenile Board

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

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 Two Thousand, Four Hundred Dollars (\$2,400) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. The Commissioners Court of Lamar County may allow each other member of the board additional compensation in an amount not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. Such compensation shall be in addition to all other

compensation now provided or allowed by law for county judges and district judges.
 [Amended by Acts 1975, 64th Leg., p. 1933, ch. 631, § 1, eff. June 19, 1975.]

Art. 5139II. Juvenile Boards in Comal, Hays, Caldwell, Austin and Fayette Counties

Sec. 1. There are hereby established juvenile boards in Comal, Hays, Caldwell, Austin and Fayette Counties, each of which shall be composed of the county judge of the county and the district judge of one of the two judicial districts comprised of these five (5) counties, as the commissioners court in each county shall determine, except that in Hays County the juvenile board shall be composed of the county judge of the county, the district judges of the two judicial districts of said county, the Hays County Attorney or his successor and the Hays County Court at Law Judge.

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

[Amended by Acts 1975, 64th Leg., p. 1037, ch. 401, § 1, eff. June 19, 1975.]

Art. 5139PP. Bell County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Bell County, which shall be known as the Bell County Juvenile Board. It shall be composed of the district judges of the several judicial districts of the county, the county judge of Bell County, the judge of the County Court at Law of Bell County, and the judge of the County Court at Law No. 2 of Bell County. The county judge of Bell 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.

[See Compact Edition, Volume 4 for text of 2]
 [Amended by Acts 1975, 64th Leg., p. 79, ch. 37, § 6, eff. April 3, 1975.]

Art. 5139VV. Harris County Juvenile and Child Welfare Boards

[See Compact Edition, Volume 4 for text of Subchapter A]

SUBCHAPTER B. CHIEF JUVENILE PROBATION OFFICER

[See Compact Edition, Volume 4 for text of 6 to 9]
 Support Payments

Sec. 10. (a) If the juvenile board directs the chief juvenile probation officer to receive payments for the support of wives and children made under the order of the district courts, courts of domestic

relations or the juvenile courts of Harris County, he shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(b) If the juvenile board directs the district clerk to receive support payments, the clerk shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(c) In all cases in which the juvenile board directs the chief juvenile probation officer to receive support payments, he shall enter into a surety bond with some solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned upon the chief juvenile probation officer's faithful performance of the duties of his position and upon his properly accounting for any moneys entrusted to him. The Commissioners Court shall fix the amount of the bond and shall approve its terms. The Commissioners Court shall pay the premium for the bond out of the general funds of the county.

(d) The chief juvenile probation officer shall keep an accurate and complete record of all his receipts and disbursements of support payment funds. The record is open to inspection by the public. The County Auditor shall inspect the record and shall audit the accounts quarterly, making a report of his findings and recommendations to the juvenile board.

(e) If the juvenile board directs the chief juvenile probation officer to receive support payments, a fee, not to exceed One Dollar (\$1.00) per month, may be assessed for each individual transaction of receiving and disbursing each individual payment of support moneys. Such fee may be assessed, subject to the approval of the Commissioners Court, upon a determination of the juvenile board that additional funds are necessary to assist in the maintenance of a support office by the chief juvenile probation officer. The fee shall be collected by the chief juvenile probation officer from the payor annually in advance and shall be paid to the County Treasurer to be kept in a separate fund. This fund shall be administered by the juvenile board, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the operating expenses of the support office in the juvenile probation office.

[See Compact Edition, Volume 4 for text of Subchapters C to E]

[Amended by Acts 1975, 64th Leg., p. 1177, ch. 438, § 1, eff. June 19, 1975.]

Art. 5139AAA. Anderson, Henderson and Houston Counties; Juvenile Boards

Sec. 1. (a) The Juvenile Board of Anderson County is created. The board consists of the County

Judge of Anderson County, the judges of the district courts in Anderson County, the District Attorney for the 3rd Judicial District, and the District Attorney for the 173rd Judicial District. 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.

[See Compact Edition, Volume 4 for text of 1(b) and (c)]

Sec. 2. (a) The Juvenile Board of Henderson County is created. The board consists of the County Judge of Henderson County, the judges of the district courts in Henderson County, the District Attorney for the 3rd Judicial District, and the District Attorney for the 173rd Judicial District. 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.

[See Compact Edition, Volume 4 for text of 2(b) to (d)]

(e) The Juvenile Board of Henderson County shall appoint a juvenile officer for Henderson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of the state. The juvenile officer shall be paid a salary and an allowance for expenses as fixed by the juvenile board and approved by the commissioners court, to be paid out of the general fund or any other available fund of Henderson County. The juvenile board by a majority vote shall have the power to discharge any appointee, and such discharge need not be approved by the commissioners court.

Sec. 3. (a) The Juvenile Board of Houston County is created. The board consists of the County Judge of Houston County, the judges of the district courts in Houston County, the District Attorney for the 3rd Judicial District, and the District Attorney for the 173rd Judicial District. 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.

[See Compact Edition, Volume 4 for text of 3(b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 336, ch. 142, §§ 1 to 3, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 1192, ch. 449, § 1, eff. June 19, 1975.]

Section 4, Acts 1975, 64th Leg., ch. 142, provided: "This Act takes effect January 1, 1976."

Art. 5139HHH. Collin County Juvenile Board

Sec. 1. The county judge of Collin County, the judges of the district courts having jurisdiction in Collin County, and the judge of the county court at law shall constitute the juvenile board of that coun-

ty. The judge of the court which is designated as the juvenile court of Collin County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county, county court at law, and district judges who are members of the board may each receive additional compensation of not more than \$6,000.00 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Collin County.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts, county judges, and county court at law judges.

[See Compact Edition, Volume 4 for text of 4]
[Amended by Acts 1975, 64th Leg., p. 375, ch. 166, § 8, eff. Jan. 1, 1975.]

Art. 5139JJJ. Webb County Juvenile Board

Sec. 1. The Webb County Juvenile Board is composed of the County Judge of Webb County and the judge of each judicial district that includes Webb County.

Sec. 2. The Webb County Juvenile Board may:

- (a) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;
- (b) suspend or remove any employee at any time for good cause;
- (c) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;
- (d) authorize the use of foster homes for the temporary care of children charged with engaging in delinquent conduct or children deemed to be in need of supervision; and
- (e) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made, for the use and benefit of the juvenile justice system.

Sec. 3. The Webb County Juvenile Board shall:

- (a) prescribe the duties and conditions of employment of its employees;
- (b) control and supervise all homes, schools, farms, and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;
- (c) appoint superintendents of institutions maintained and used chiefly by the county for

the training, education, detention, support, or correction of juveniles;

(d) designate the juvenile court in Webb County in accordance with Section 51.04, Family Code; and

(e) submit an annual proposed budget to the Webb County Commissioners Court.

Sec. 4. (a) As compensation for the added duties imposed on members of the Webb County Juvenile Board, each member thereof may be allowed additional compensation of not more than \$4,800 per year, to be fixed by the commissioners court of the county and paid monthly in 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.

(b) The Commissioners Court of Webb County may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable under this subsection is limited to a maximum of \$600 per year.

Sec. 5. The juvenile probation officer for Webb County has all the powers of a peace officer for the purpose of performing his duties under this Act.

Sec. 6. The juvenile probation officer for Webb County shall:

- (a) appoint assistant juvenile probation officers with the advice and consent of the juvenile board;
- (b) investigate all cases referred to him by the board;
- (c) investigate all cases brought before the juvenile court;
- (d) take charge of juveniles and perform services for them as directed by the board or the juvenile court;
- (e) in carrying out the duties required in this Act, act in the best interest of the juvenile;
- (f) furnish the board and the juvenile court any information and assistance required by them;
- (g) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information that may assist the court in determining the proper disposition to be made of any juvenile; and
- (h) keep a record that will at all times show the names of all referrals and delinquent juveniles within Webb County and the names and

addresses of the persons having custody of them.

Sec. 7. The Commissioners Court of Webb County shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juvenile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 1, eff. March 13, 1975.]

Art. 5139KKK. East Texas Juvenile Board

Sec. 1. (a) The East Texas Juvenile Board, having jurisdiction in the counties of Jasper, Newton, Sabine, and San Augustine, is created.

(b) The board is composed of the county judges of Jasper, Newton, Sabine, and San Augustine counties and the judge of each district court having jurisdiction in any of those counties.

(c) The District Judge of the First Judicial District is chairman of the board and its chief administrative officer. The board shall elect a vice-chairman from among its members who are county judges.

Sec. 2. Within the area of jurisdiction of the East Texas Juvenile Board, the board may designate the juvenile courts, provide a juvenile probation program, and perform all powers and duties prescribed by law for juvenile boards.

Sec. 3. As compensation for the added duties imposed on the members of the East Texas Juvenile Board, each member who is a district judge may be allowed additional compensation to be fixed by a majority of the county commissioners of the participating counties and paid monthly in 12 equal installments out of the general fund or any available fund of the counties on a pro rata basis according to the population of each county in the last preceding federal census, and each member who is a county judge may be allowed additional compensation to be fixed by the commissioners court of his county and paid monthly in 12 equal installments out of the general fund or any available fund of the county. Such compensation shall be in addition to all other compensation provided or allowed by law for county judges and district judges.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 2, eff. March 13, 1975.]

Art. 5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties; Juvenile Boards

Sec. 1. There is hereby established a county juvenile board in each of the counties of Colorado,

Lavaca, Gonzales, and Guadalupe, which shall be composed of the county judge and the judge of each judicial district that includes the county; provided, however, that the County Judge of Guadalupe County, at his option, from time to time, can substitute the Judge of the County Court at Law of Guadalupe County for himself, or provide that both the County Judge and the Judge of the County Court at Law of Guadalupe County shall serve. 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 that 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 on members of each juvenile board, each member shall be allowed additional compensation of not less than \$100 per month and not more than \$400 per month, to be fixed by the commissioners court of the county and paid 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 Texas, 1925, and any amendments thereto. The board may appoint a juvenile officer, with the concurrence of the commissioners court, whose salary shall be fixed by the commissioners court of the county. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The commissioners court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1975, 64th Leg., p. 850, ch. 324, eff. May 29, 1975.]

Art. 5139MMM. Rockwall County Juvenile Board

Sec. 1. There is established a juvenile board for Rockwall County to be known as the Rockwall County Juvenile Board. It is composed of the judges of the district courts having jurisdiction in Rockwall County and the county judge of Rockwall County. The judge of the court which is designated as the juvenile court of Rockwall County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed on them, the judges who are members of the board may each receive additional compensation, as determined by the commissioners court, payable in 12 equal monthly installments out of the general

fund or any other available fund of Rockwall County. This Act is cumulative of all other laws relating to compensation of judges of the district and county courts.

Sec. 3. The Rockwall County Juvenile Board may appoint a juvenile probation officer for Rockwall County, who shall meet all the qualifications and perform all the duties of a juvenile probation officer as prescribed by the laws of this state. The juvenile probation officer shall be paid a salary as fixed by the commissioners court, to be paid out of the general fund or any other available fund of Rockwall County. The juvenile board may discharge an appointee and the discharge need not be approved by the commissioners court.

[Acts 1975, 64th Leg., p. 1363, ch. 519, eff. Sept. 1, 1975.]

Art. 5142a-2. Wichita County Family Court Services Department

Sec. 1. There is hereby established the Wichita County Family Court Services Department.

Sec. 2. The Wichita County Juvenile Board, as heretofore established and composed of the County Judge of Wichita County and the Judge of each Judicial District which includes Wichita County, shall have all powers conferred upon the Juvenile Board created under Article 5139 of Revised Civil Statutes of 1925 and any amendments thereto. The Wichita County Juvenile Board shall have authority to appoint an Administrator and such assistants as may be necessary, and to determine the duties to be assigned such Administrator and his assistants, and the rate of pay which shall be paid all the personnel comprising the Wichita County Family Court Services.

Sec. 3. The Wichita County Family Court Services Administrator shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. The Administrator shall appoint assistants subject to confirmation by the Juvenile Board. The number of assistants shall be determined by the Juvenile Board. The term of office of the Administrator and assistants shall be for a period of two (2) years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove an Administrator or an assistant.

Sec. 4. All claims for expenses of the Administrator, the assistants, and administrative expenses for operation of the Family Court Services Department, including all necessary equipment and supplies, shall, before payment thereof, be approved by the Juvenile Board.

Sec. 5. Subject to the advice and consent of the Commissioners Court of Wichita County, the Wichita

County Juvenile Board shall determine the funds needed for the operation of the department including payment of salaries and expenses of the Administrator and assistants. Any such funds appropriated shall be in addition to funds received by the Family Court Services Department from any other source.

Sec. 6. The Wichita County Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any assistant or employee of any institution, under the jurisdiction of the Juvenile Board, in such sum as may be determined by said Board, and paid as an expense of the Family Court Services Department.

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, detention and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the superintendent of each such institution shall be appointed by the Wichita County Family Court Services Department Administrator and each such appointment shall be confirmed by the Juvenile Board. The salaries of such superintendents and assistants shall be fixed by the Wichita County Juvenile Board and such superintendent or assistant may at any time, for good cause, be suspended or removed by the appointing authority.

Sec. 8. When, in the opinion of the Wichita County Juvenile Board, the best welfare of any child or children coming within the provisions of Title 2¹ or Title 3² of the Family Code and any amendments thereto will be served by placement of said child or children in a foster home, said Juvenile Board may authorize the use of such foster home or homes for the temporary care of said child or children. The rate of pay for such foster care shall be determined by said Juvenile Board and payment of the cost of such foster care shall, when authorized by said Juvenile Board, be considered to be a necessary operating expense of the Wichita County Family Court Services Department.

Sec. 9. The Wichita County Juvenile Board shall have power and authority to accept and hold in trust for the operation of the Wichita County Family Court Services Department or any duties or functions of the Wichita County Family Court Services Department, any grant or devise of land or any gift or bequest, or any donation to be applied for the benefit of the Family Court Services Department and to apply same in accordance with the terms of such gift.

Sec. 10. (a) Each month for which a person has been ordered by a District Court of Wichita County

to pay child support, alimony, or separate maintenance into the Wichita County Family Court Services Department, the payor of such child support, alimony, or separate maintenance shall also be responsible for payment of a child support service fee in the sum of \$1.00 per month, payable annually in advance. However, in those instances where the payor is a member of the Armed Services and wherein the monthly child support, alimony, or separate maintenance payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Family Court Services Department.

(b) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by the District Court to commence payments of child support, alimony, or separate maintenance and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check so long as the payor is a member of the Armed Services and so long as child support allotment payments exceed the amount of child support ordered by the court.

(c) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the Family Court Services Department authorized by the Wichita County Juvenile Board.

(d) A record shall be kept of all child support service fees collected, and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Wichita County.

(e) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(f) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

Sec. 10a. (a) For purposes of providing legal services, court costs and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there shall be assessed the sum

of Ten Dollars (\$10) in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges in all such contempt action initiated through the Wichita County Family Court Services Department.

(b) Such fee of Ten Dollars (\$10) shall be paid into the Wichita County Family Court Services Department by the person initiating such contempt proceedings but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) In any such actions filed with the Wichita County Family Court Services Department for alleged contempt of court, the \$10 assessment shall be used, as needed, for the payment of services rendered by the office of the District Clerk and/or any peace officer. Provided, however, that the complainant may be required to deposit an additional sum when the cost of service in such action for contempt is expected to exceed the \$10 assessment. In such instance, however, any unused funds over and above the \$10 assessment shall be refunded to the depositor by the Family Court Services Department.

(d) Receipts of all disbursements of moneys paid into the Family Court Services Department for matters involving actions of contempt shall be kept on file and all such funds received by the Family Court Services Department shall be deposited to the Child Support Account. This fund shall be administered by the Wichita County Juvenile Board and shall be subject to regular audit by the county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

(e) The fee prescribed by this Section shall not be collected from any person who has applied for or receives public assistance under the law of this State.

Sec. 11. For the purpose of maintaining adoption investigation services, there shall be taxed, collected and paid as other costs the sum of Ten Dollars (\$10) in each adoption case hereafter filed in any District Court in Wichita County. Such cost shall be collected by the District Clerk, and when collected, shall be paid by said District Clerk to the Wichita County Family Court Services Department to be kept by that Department in a separate fund and such fund to be known as the "Adoption Investigation Fund." This Fund shall be administered by the Juvenile Board of Wichita County for the purpose of assisting in paying the cost of maintaining adoption investiga-

tion services in the Family Court Services Department of Wichita County, including salaries and other expenses of the Adoption Investigator and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the Investigator. This Fund shall be supplemented out of the General Fund or other available funds of the County where necessary.

Sec. 12. In all suits for divorce filed in any District Court in Wichita County, where it appears from the petition or otherwise that the parties to such suit have a child or children under eighteen (18) years of age, it shall be the duty of the Administrator, upon order of the Court, to make a complete and thorough examination into the merits of the claim of the parties for custody of the children involved and to report his findings to the Court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children, and to make a report thereof to the Court prior to the trial of said case, and if desired by the Court, to produce such evidence as may have been developed in connection with such matters.

Sec. 13. It shall be the duty of the Administrator to keep a record which will at all times show the names of all dependent, neglected or delinquent juveniles within Wichita County, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the Juvenile Board, and a written report shall be made to the Judge of the Juvenile Court showing such facts relating to the environment, treatment, education, welfare and other information which may assist the Court in determining the proper disposition to be made of any juvenile.

[Amended by Acts 1975, 64th Leg., p. 573, ch. 232, § 1, eff. May 20, 1975.]

¹ Family Code, § 11.01 et seq.

² Family Code, § 51.01 et seq.

Art. 5143d. Texas Youth Council

[See Compact Edition, Volume 4 for text of 1 to 3]

Texas Youth Council Established

Sec. 4. (a) There is hereby created a Texas Youth Council to consist of six (6) members to be appointed by the Governor with the consent of the Senate. Members of the Texas Youth Council shall be citizens in their respective communities who are recognized for their interest in youth.

(b) The term of office of members of the Texas Youth Council shall be six (6) years. Members shall

be eligible for reappointment. A vacancy for an unexpired term shall be filled by the Governor with the consent of the Senate. Members of the Youth Council shall each receive a per diem of Thirty-five Dollars (\$35.00) for not exceeding ninety (90) days for any fiscal year.

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

(d) The Texas Youth Council shall hold meetings at the call of its Chairman, selected or elected by it, or at the request of four (4) members at such times and places as its Chairman may determine, but it shall not hold less than four (4) meetings annually.

[See Compact Edition, Volume 4 for text of 4(e) to (g)]

Organization, Powers and Responsibilities of the Texas Youth Council

Sec. 5.

[See Compact Edition, Volume 4 for text of 5(a) to (d)]

(e) For the exercise of other functions than those specified in subsection (c), four (4) members of the Texas Youth Council shall constitute a quorum.

Major Duties and Functions of the Texas Youth Council

Sec. 6. The Texas Youth Council shall:

(a) Carry on a continuing study of the problem of juvenile delinquency in this state and seek to focus public attention on special solutions to this problem;

(b) Cooperate with all existing agencies and encourage the establishment of new agencies, both local and statewide, if their object is services to delinquent and pre-delinquent youth of this state;

(c) Assist local authorities of any county or municipality when requested by the governing body thereof in the developing, strengthening and coordination of educational, welfare, health, recreational or law enforcement programs which have as their object the prevention of juvenile delinquency and crime;

(d) Administer the diagnostic treatment and training and supervisory facilities and services of the state for delinquent children committed to the state. Manage and direct state training school facilities and provide for the coordination and combination of such facilities, as deemed advisable by the Texas Youth Council, and for the creation of new facilities within the total appropriation provided by the Legislature; exercise administrative control and supervision

over all other institutions and facilities under its jurisdiction;

(e)(1) Assist local communities by providing services and funding for programs for the pre-delinquent and delinquent through contracts with local public and private nonprofit entities which volunteer for such assistance when funds are available for the purpose. Such assistance shall be granted under the following terms and conditions:

(A) Rules and Regulations of the Texas Youth Council.

(i) The Texas Youth Council shall prescribe such rules, regulations, priorities, and standards, not inconsistent with the Constitution and laws of this state, as it considers necessary and appropriate to insure adequate services by the local entity rendering the service.

(ii) Before any rule, regulation, or standard is adopted the Texas Youth Council shall give notice and opportunity to interested persons to participate in the rule making.

(iii) The rules, regulations, and standards adopted by the Texas Youth Council under this section shall be filed with the Secretary of State and shall be published and available on request from the Secretary of State.

(B) Application by Local Entity for Assistance. Any local entity providing, or planning to provide, services to or programs for the pre-delinquent or delinquent may request assistance under this section by making an application to the Texas Youth Council in accordance with the rules and regulations promulgated by the Texas Youth Council.

(C) Service or Program Must be Part of Plan. Each request for local assistance must be consistent with the statewide plans of the Texas Youth Council. Such plans shall be designed to meet the needs and priorities of the various geographical areas of the state.

(D) Programs and Services to be Audited. All services and programs funded by authority of this subsection shall be monitored and evaluated fiscally and programmatically by the Texas Youth Council to assure cost and program effectiveness.

(E) Local Match. The Texas Youth Council may require that state funding of local services or programs be matched by local support in such proportions and

amounts as may be determined by the Texas Youth Council.

(F) Funding Suspended on Default. The Texas Youth Council shall suspend payment of any contract previously approved if the local entity fails to follow an approved program or diverts the use of any contract funds to a purpose other than that authorized by this subsection.

(2) The Texas Youth Council may provide the services or programs in accordance with the plan referred to in Paragraph (1)(C) above to the extent that local communities fail to provide such services or programs.

(f) Before each convening date of the Regular Session of the Legislature, make a report to the Governor and Legislature of its activities and accomplishments and of its findings as to its major needs relative to the handling of the children committed to it by courts of the state. The report shall include specific recommendations for legislation, planned and drafted as part of an integrated, unified and consistent program to serve the best interest of the state and the youth committed to the Texas Youth Council; and recommendations for the repeal of any conflicting, obsolete or otherwise and undesirable legislation affecting youth.

[See Compact Edition, Volume 4 for text of 7 to 11]

Sec. 12. (a) When a child is found to have engaged in delinquent conduct as provided in Title 3, Family Code, and the juvenile court does not release such child unconditionally, or place him on probation or in a suitable public or private institution or agency other than a state training school, the juvenile court shall commit the child to the Texas Youth Council, but may suspend the execution of the order of such commitment.

(b) A child committed to the Texas Youth Council by a juvenile court pursuant to a finding that the child violated a reasonable and lawful order of a court entered upon a finding that the child engaged in conduct indicating a need for supervision under Subdivision (2) or (3), Subsection (b), Section 51.03, Family Code, shall be placed by the Texas Youth Council in the Corsicana State Home, West Texas Children's Home in Pyote, Waco State Home, or such other home as may be established for the care of children, but such child may not be placed with children found to have engaged in delinquent conduct pursuant to any other provision of Title 3, Family Code.

(c) A child being kept by the Texas Youth Council at a facility in violation of this section shall be released upon habeas corpus.

[See Compact Edition, Volume 4 for text of 13
to 37]

[Amended by Acts 1975, 64th Leg., p. 279, ch. 121, §§ 1, 2, eff. May 1, 1975; Acts 1975, 64th Leg., p. 2164, ch. 696, § 1, eff. June 21, 1975; Acts 1975, 64th Leg., p. 2159, ch. 693, § 25, eff. Sept. 1, 1975.]

Sections 3 and 4 of Acts 1975, 64th Leg., p. 280, ch. 121. provided:
"Sec. 3. This Act takes effect on May 1, 1975.

"Sec. 4. (a) The members of the Texas Youth Council whose terms have not expired on the effective date of this Act shall serve the terms for which they were appointed.

(b) For initial terms beginning on May 1, 1975, the governor shall appoint three additional members to the Texas Youth Council. The persons appointed pursuant to this subsection shall be initially appointed to the following terms:

- (1) one member for a term which expires on August 31, 1979;
- (2) one member for a term which expires on August 31, 1977; and
- (3) one member for a term which expires on August 31, 1975."

TITLE 83

LABOR

CHAPTER ONE. DEPARTMENT

Art. 5144. Appointment of Commissioner

A Commissioner of Labor and Standards, whose office shall be in Austin, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the Governor, conditioned for the faithful discharge of the duties of his office.

[Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 1, eff. June 19, 1975.]

Art. 5151a. Change of Names

(a) The names of the Bureau of Labor Statistics and the Commissioner of Labor Statistics are changed to the "Texas Department of Labor and Standards" and the "Commissioner of Labor and Standards."

(b) Wherever the names Bureau of Labor Statistics and/or Commissioner of Labor Statistics appear in any legislative Act in this state, such names shall hereafter mean and apply to the Texas Department of Labor and Standards and the Commissioner of Labor and Standards.

[Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 2, eff. June 19, 1975.]

CHAPTER TWO. LABOR ORGANIZATIONS

Art. 5154a. Labor Unions, Regulations of

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

Reports

Sec. 3. It shall be the duty of every labor union required to file reports with the Secretary of Labor pursuant to Section 201 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. 431), or any similar statute subsequently enacted, to file a copy of each report with the Secretary of State not later than the 30th day following the date the report was filed with the Secretary of Labor.

[See Compact Edition, Volume 4 for text of 4 to 15]

[Amended by Acts 1975, 64th Leg., p. 355, ch. 150, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:
"The secretary of state is authorized to remove from the files and destroy all reports filed pursuant to Section 3, Chapter 104, Acts of the 48th Legislature, 1943 (Article 5154a, Vernon's Texas Civil Statutes), as that section existed prior to the effective date of this Act."

CHAPTER THREE. PAYMENT OF WAGES

Art. 5159d. Minimum Wage Act of 1970

[See Compact Edition, Volume 4 for text of 1 to 3]

Exemptions

Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to (c)]

(d) Notwithstanding the provisions of any other section of this Act the provisions of this Act shall not apply to any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children:

(1) who are orphans or one of whose natural parents is deceased, or

(2) who are enrolled in such institution and reside in residential facilities of the institution while such children are in residence at such institution, if such employee and his spouse reside in such facilities and received, without cost, board and lodging from such institution.

[See Compact Edition, Volume 4 for text of 5 to 16]

[Amended by Acts 1975, 64th Leg., p. 1237, ch. 462, § 1, eff. June 19, 1975.]

CHAPTER FOUR. CONTRACTORS' PERFORMANCE AND PAYMENT BONDS

Art. 5160. Bond for Labor and Material; Performance Bond

Contractors' Bonds for Performance and Payment for Labor and Material

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," entering into a formal contract in excess of \$15,000 with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority, whether specifically

named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution or completion of any public work, shall be required before commencing such work to execute to the aforementioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed. Each such bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in this State. In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided.

(a) A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

[See Compact Edition, Volume 4 for text of B to G]

[Amended by Acts 1975, 64th Leg., p. 2284, ch. 713, § 1, eff. Sept. 1, 1975.]

CHAPTER TEN. INDUSTRIAL COMMISSION

Article
5190.3. Small Business Assistance Act of 1975 [NEW].

Art. 5190.2. Rural Industrial Development Act
[See Compact Edition, Volume 4 for text of 1]
Definitions

Sec. 2. When used in this Act, unless otherwise apparent from the context:

[See Compact Edition, Volume 4 for text of 2(a) to (c)]

(d) "Industrial Development Agency" means a corporation established under the Texas Non-Profit Corporation Act to promote and encour-

age industrial development within the State or a designated area of the State whose articles of incorporation provide that upon dissolution or winding up of its corporate affairs any property remaining after payment of debts of the corporation shall be conveyed, transferred, or vest in the Rural Industrial Development Fund of the State, a school district, a city, or county or be conveyed to a nonprofit corporation established for similar purposes.

[See Compact Edition, Volume 4 for text of 2(e) to 10]

[Amended by Acts 1975, 64th Leg., p. 626, ch. 257, § 1, eff. Sept. 1, 1975.]

Art. 5190.3. Small Business Assistance Act of 1975

Title of Act

Sec. 1. This Act may be cited as the Small Business Assistance Act of 1975.

Legislative Intent

Sec. 2. The legislature finds that an indispensable element of the American economic system is free and vigorous competition and that the preservation and expansion of economic competition is essential to the economic well-being of this state and of the United States. The legislature further finds that the continuing vitality of small business entities is of utmost importance to economic competition and that it is the policy of this state to insure economic competition by assisting small business entities to the greatest extent possible. It is the intent of the legislature, by this Act, to provide that assistance to small business entities and, by doing so, to promote economic competition to the benefit of all persons in this state. It is the intent of the legislature that each state agency shall attempt to award ten percent of all purchases of articles, supplies, commodities, materials, services, or contracts for services to small business.

Definitions

Sec. 3. In this Act:

(1) "Small business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts, and is designated a small business as provided by this Act.

(2) "Council" means the Advisory Council on Small Business Assistance.

(3) "State agency" means all agencies, departments, councils, commissions, or boards of the State of Texas.

Advisory Council on Small Business Assistance

Sec. 4. (a) The Advisory Council on Small Business Assistance is created.

(b) The council consists of the executive director of the industrial commission as chairman ex officio, and nine members, appointed by the governor with the advice and consent of the senate, at least six of whom are owners or employees of small businesses.

(c) Service as chairman ex officio of the council is an additional duty of the office of the executive director of the industrial commission.

Appointment and Terms

Sec. 5. (a) Except as provided by Subsection (b) of this section, appointive members of the council are appointed for terms of six years that terminate on January 1 of odd-numbered years.

(b) For terms beginning on the effective date of this Act the governor shall appoint:

- (1) three members for terms that expire January 31, 1981;
- (2) three members for terms that expire January 31, 1979; and
- (3) three members for terms that expire January 31, 1977.

Meetings; Quorum

Sec. 6. (a) The council shall meet at least once each quarter at the call of the chairman.

(b) Five members constitute a quorum.

Expenses

Sec. 7. Members of the council receive no salary for service on the council, but each is entitled to reimbursement for his expenses incurred in attending a meeting of the council.

Assistance to Industrial Commission

Sec. 8. The council shall provide assistance, guidance, and expertise to the industrial commission in the administration of this Act.

Administration by Industrial Commission

Sec. 9. (a) The industrial commission has the primary responsibility for the administration of the provisions of this Act. In order to meet this responsibility the industrial commission may:

- (1) provide technical and managerial assistance to small businesses by offering advice and counsel with particular emphasis on how to bid on state supply requirements to which end the board of control may also help;
- (2) provide technical and managerial assistance to small businesses by offering advice and counsel on sound management procedures;

(3) cooperate with business, professional, educational, and other organizations and with agencies of this state, and make available to any of these information concerning the management, financing, and operation of small businesses; and

(4) promulgate rules necessary for the proper administration of this Act.

(b) The industrial commission and the board of control may conduct research necessary to:

- (1) ascertain which business associations qualify as small businesses under the terms of this Act, designate each as a small business, maintain a master list of small businesses, and revoke the designation when an entity ceases to be a small business;
- (2) determine the methods and practices of prime contractors and encourage the letting of subcontracts to small businesses; and
- (3) ascertain the means by which the productive capacity of small businesses can be used most effectively.

Assistance by State Agencies

Sec. 10. (a) The industrial commission shall obtain from the agencies of this state appropriate information needed by the industrial commission to carry out its responsibilities under this Act.

(b) The agencies of this State, including, but not limited to, the State Highway Department, Department of Mental Health and Mental Retardation, Texas Youth Council, Texas Department of Corrections, State Building Commission, and State Board of Control, are charged by this Act with the responsibility to assist the industrial commission in furthering the purposes of this Act; and shall take positive steps to include small businesses on master bid lists, shall take positive steps to inform small businesses of state procurement opportunities, waive bond requirements where feasible, inform small business entrepreneurs as to applicable rules and procedures relating to bidding and the procurement of contracts, and continually monitor the effectiveness of this Act in improving the ability of designated small businesses to do business with the State.

(c) Each state agency shall prepare a written report of its performance each year and shall submit it to the Texas Industrial Commission who will consolidate the reports and, on or before December 1 of each year, shall deliver a copy of the consolidated report to the governor, the lieutenant governor, and the speaker of the house of representatives.

Procurement and Assistance Goals by State Agencies

Sec. 11. Each state agency shall establish annual small business procurement and assistance goals

for which positive action will be taken by the state agency.

Inapplicability of Act

Sec. 12. This Act does not apply to purchases made pursuant to Article XVI, Section 21, of the Texas Constitution.

Effective Date

Sec. 13. This Act takes effect September 1, 1975. [Acts 1975, 64th Leg., p. 2301, ch. 718, §§ 1 to 13, eff. Sept. 1, 1975.]

CHAPTER TWELVE. RESTRICTIONS ON LABOR

Article 5207b. Jury Service; Right to Reemployment [NEW].

Art. 5207b. Jury Service; Right to Reemployment

(a) No private employer may terminate the employment of a permanent employee because such employee serves as a juror. The employee is entitled to return to the same employment that he or she held at the time he or she was summoned for jury service.

(b) To be entitled to take advantage of the right to reemployment granted in Subsection (a) of this section, the employee must, as soon as practical upon his or her release from jury service, give actual notice of his or her intention to return to his or her employment.

(c) A person who is injured because of a violation of this section is entitled to just damages, recoverable at law, in an amount not to exceed six months' compensation at the rate at which he or she was compensated at the time he or she was summoned for jury duty. In addition to damages, the injured person is entitled to recover reasonable attorney's fees, to be approved by the court.

(d) It is a defense in an action brought under this section that the employer's circumstances changed to such an extent during the time that the employee served as a juror that reemployment was impossible or unreasonable.

[Acts 1975, 64th Leg., p. 244, ch. 94, § 1, eff. Sept. 1, 1975.]

CHAPTER THIRTEEN. EMPLOYMENT AGENTS

Art. 5221a-5. Labor Agency Law

Definitions as Used in the Act

Sec. 1.

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

(b) "Fee" means anything of value including money or other valuable consideration or services or the

promise of any of the foregoing received by a Labor Agent or Agency from or on behalf of any person seeking employment, or employers seeking employees, in payment for any service, either directly or indirectly. The term "fee" includes the difference between the amount received by a Labor Agent and the amount paid out by him to persons employed to render personal services to, for, or under the direction of a third person.

[See Compact Edition, Volume 4 for text of 1(c) and (d)]

(e) "Labor Agent" means any person in this State who, for a fee, offers or attempts to procure, or procures employment for employees, or without a fee offers or attempts to procure, or procures employment for common or agricultural workers; or any person who for a fee attempts to procure, or procures employees for an employer, or without a fee offers or attempts to procure common or agricultural workers for employers, or any person, regardless whether a fee is received or due, offers or attempts to supply or supplies the services of common or agricultural workers to any person. The term "Labor Agent" includes any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs, or otherwise directs or measures the work; or disburses wage payments to the workers.

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

Application and Bond

Sec. 3. (a) Application and Bond for a Labor Agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as a Labor Agent may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Such application shall also be accompanied by affidavits of at least five (5) creditable citizens who have resided in the county in which said applicant resides for at least three (3) years prior thereto, to the effect that applicant or applicants are persons of good moral character. The application must state the names and addresses of all partners, associates, and profit sharers of the business and shall list the amount of their respective interests.

(b) The Commissioner shall investigate each applicant.

(c) An applicant must demonstrate in an oral or written examination, or both, a degree of knowledge of the laws and administrative regulations concerning labor agents as the Commissioner deems necessary. The Commissioner may charge a fee of not more than thirty-five dollars (\$35) to cover the cost of administration of the examination. The Commissioner may renew a license without requiring the applicant for the renewal to take an oral or written examination if he finds that the applicant has complied with the requirements of this Act.

(d) The application shall be examined by the Commissioner. If he finds that the same complies with the law and that the applicant is entitled to a license, then he shall issue a license to the applicant for each county for which application is made, and shall deliver such license to the applicant upon the payment of a license fee of One Hundred and Fifty Dollars (\$150) for each county in which the labor agent intends to operate.

(e) Each person making application for a labor agency license, and before such license is issued, shall make and file with the Commissioner good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of Five Thousand Dollars (\$5,000), payable to the State of Texas, for each county in which the agent intends to operate; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions and requirements of this Act, and that the agent will not make any false representation or statement to any person soliciting any assistance from him for employees or employment. Each license issued by the Commissioner shall be good for a period of one (1) year from the date of issuance.

Fees

Sec. 3A. Where a fee is charged for obtaining employment such fee in no event shall exceed the sum of Three Dollars (\$3), which may be collected from the applicant only after employment has been obtained and accepted by the applicant. A labor agent may not charge a registration fee.

Persons Disqualified

Sec. 3B. No license to operate as a labor agent may be granted to:

- (1) a person who sells or proposes to sell alcoholic beverages in a building or on premises where he operates or proposes to operate as a labor agent; or
- (2) a person whose license has been revoked within three (3) years preceding the date of application.

Notice of Cancellation of Bond

Sec. 3C. Where the surety intends to cancel a bond, notice of the cancellation shall be furnished by the surety to the Commissioner prior to the effective date of the cancellation.

[See Compact Edition, Volume 4 for text of 4 and 5]

Failure to File Bond; Suspension of License

Sec. 5A. If a licensee fails to file a bond with the Commissioner within 30 days after notice of cancellation by the surety of the bond, the license issued to the principal under the bond is suspended until such time as a bond is filed. A person whose license is suspended pursuant to this section shall not operate as a labor agent during the period of the suspension.

[See Compact Edition, Volume 4 for text of 6 and 7]

Duties of Licensee

Sec. 7A. (a) In addition to the duties inherent in being a labor agent and the duties required by this Act or any other provision of law, a licensee has the duties set forth in this section if he employs workers to render services for third persons.

(b) A licensee shall promptly pay or distribute to the proper individuals all money or other things of value entrusted to the licensee by a third person for such purpose.

(c) A licensee shall comply with the terms and provisions of legal and valid agreements and contracts entered into between the licensee in his capacity as a labor agent and third persons.

(d) A licensee shall have available for inspection by his employees and by the third persons with whom he has contracted a written statement in English and Spanish showing the rate of compensation he receives from the third persons and the rate of compensation he is paying to his employees for services rendered to, for, or under the control of such third persons.

(e) A licensee shall take out a policy of insurance with an insurance carrier authorized to do business in the State of Texas in an amount satisfactory to the Commissioner, which insures the licensee against liability for damage to persons or property arising out of the licensee's operation of, or ownership of, any vehicle or vehicles for the transportation of individuals in connection with his business, activities, or operations as a labor agent.

(f) A licensee shall have displayed prominently at the site where the work is to be performed and on all vehicles used by the licensee for the transportation of employees the rate of compensation the licensee is paying to his employees for their services, printed in both English and Spanish.

(g) All vehicles used by a licensee for the transportation of individuals in his operations as a labor agent shall have displayed prominently at the entrance of the vehicle the name of the labor agent and the number of his license issued by the Commissioner.

(h) Each licensee shall, semimonthly or at the time of each payment of wages, furnish each worker employed by him either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing in detail each and every deduction made from the wages.

[See Compact Edition, Volume 4 for text of 7C to 9]

To Display License

Sec. 10. (a) A labor agent shall keep conspicuously posted in his office the license issued to him under this law.

(b) A labor agent shall display a duplicate of his license to each person with whom he deals in his capacity as a labor agent.

[See Compact Edition, Volume 4 for text of 11 and 12]

Rules and Regulations

Sec. 12A. The Commissioner shall promulgate rules and regulations to carry out the provisions of this Act.

[See Compact Edition, Volume 4 for text of 13 to 15]

[Amended by Acts 1975, 64th Leg., p. 409, ch. 182, §§ 1 and 2, eff. May 13, 1975.]

CHAPTER FOURTEEN. UNEMPLOYMENT COMPENSATION

Art. 5221b-1. Benefits

[See Compact Edition, Volume 4 for text of (a) to (e)]

(f) Equal Treatment: Benefits based on services for all employers in employment defined in subsection 19(f) shall be payable in the same amount, on the same terms, and subject to the same conditions; provided that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education or in a public school shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher educa-

tion or for any public school for both such academic years or both such terms.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 9, eff. June 6, 1975.]

Art. 5221b-4a. Extended Benefits

[See Compact Edition, Volume 4 for text of (a) to (g)]

(h) With respect to weeks of unemployment beginning before December 31, 1976, and after the date of enactment of this provision:

(1) the determination of whether there has been a national "on" or "off" indicator as provided in Subsection (a) of this Section 6-A beginning or ending any extended benefit period shall be made as if the phrase "four and five-tenths percent (4.5%)" read "four percent (4%)," and

(2) the determination of whether or not there has been a State "on" or "off" indicator as provided in Subsection (a) of this Section 6-A beginning or ending any extended period shall be made without consideration of the one hundred and twenty percent (120%) provision.

[Amended by Acts 1975, 64th Leg., p. 1, ch. 1, § 1, eff. Jan. 20, 1975.]

Sections 2 and 3 of Acts 1975, 64th Leg., p. 1, ch. 1, provided:

"Sec. 2. All laws or parts of laws in conflict herewith, insofar 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."

Sec. 3. "If any word, phrase, sentence, paragraph, subsection, or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other word, phrase, sentence, paragraph, subsection, or section hereof, and the legislature hereby expressly declares that it would have passed such remaining words, phrases, sentences, paragraphs, subsections, and sections despite such invalidity."

CHAPTER SIXTEEN. MISCELLANEOUS PROVISIONS

Art. 5221e-1. Migrant Labor Camps; Licensing

Sec. 1. The following words and phrases shall mean:

(a) Migrant labor camp: One or more buildings, structures, trailers, or vehicles, contiguous or grouped, together with the land appertaining thereto, established, operated, or used as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers and accompanying dependents for more than three days, whether or not rent is paid or reserved in connection with the use or occupancy of such premises.

(b) Person: An individual or group of individuals, association, partnership, corporation, or political subdivision.

(c) Migrant agricultural worker: An individual working or available for work, primarily in

agricultural or related industry on a seasonal or temporary basis, who moves one or more times from one place to another for the purpose of such employment or availability for seasonal or temporary employment.

[See Compact Edition, Volume 4 for text of 2 to 9]

Sec. 10. All decisions of the State Commissioner of Health hereunder may be reviewed in the county, or district court of the county in which such migrant labor camp is located or contemplated.

Sec. 11. (a) Any person, as defined in this Act, establishing, conducting, maintaining, or operating any migrant labor camp, within the meaning of this Act, without first obtaining a license therefor as provided herein or without having secured renewal of license as provided by this Act or who shall violate any of the provisions of this Act, or regulations lawfully promulgated thereunder is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25 or confinement in county jail for not more than 30 days or both. Each day of violation shall be considered a separate offense.

(b) Any individual, employee or occupant who commits an act of vandalism or misuse of the facilities, or who violates applicable regulations lawfully promulgated within the meaning of this Act shall be guilty of a misdemeanor, and upon conviction hereof be subject to a fine of not more than \$25 or confinement in county jail for not more than 10 days or both.

(c) In addition to other remedies, the Commissioner of Health or his designated representative is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for good cause shown to grant, a temporary or permanent injunction restraining and enjoining any person, as defined in this Act, employee, or occupant from violating any of the provisions of this Act. Such person, employee, or occupant, so enjoined, shall have the right to appeal such injunction, temporary or permanent, to the Supreme Court of the State of Texas, as in other cases.

[See Compact Edition, Volume 4 for text of 12 to 14]

[Amended by Acts 1975, 64th Leg., p. 954, ch. 361, § 1, eff. June 19, 1975.]

Art. 5221f. Mobile Homes Standards Act

Short Title

Sec. 1. This Act may be cited as the Texas Mobile Homes Standards Act.

Purpose

Sec. 2. It is the legislature's intent to improve the general welfare and safety of the citizens of this state. The legislature finds that mobile homes have become a primary housing resource of many of the citizens of the state; that a growing awareness exists that many consumers are injured by unprincipled and dishonest members of the mobile home industry, that current warranties are deficient, that existing means of remedying these injustices are inadequate and do not provide a viable means for protecting the consumer, and that it is the responsibility of the state to provide for the protection of its citizens through the imposition of certain regulations on the mobile home industry. In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

Definitions

Sec. 3. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

(a) "Mobile home" means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(b) "Dealer" means any person other than a manufacturer engaged in the business of buying for resale, selling, exchanging, leasing, or renting mobile homes or offering such for sale, lease, rent, or exchange to consumers. No person shall be considered a dealer unless engaged in the sale, exchange, lease, or rental of three or more mobile homes to consumers in any consecutive 12-month period.

(c) "Manufacturer" means any person who manufactures or assembles mobile homes and sells them to dealers or consumers.

(d) "Department" means the Texas Department of Labor and Standards.

(e) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

(f) "Salesperson" means any person who for any form of compensation sells, auctions, leases, or offers to sell or lease mobile homes to con-

sumers as an employee, agent, or servant of a dealer.

(g) "Consumer" means any person who seeks or acquires by purchase or lease a mobile home from a manufacturer, dealer, or salesperson.

(h) "Certificate of acceptability" means a document issued by the department to a manufacturer evidencing compliance with the provisions of this Act.

(i) "Seal" means a device or insignia issued by the department to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

(j) "Set-up," when used in reference to a mobile home, means transporting, positioning, supporting, blocking, leveling, connecting utilities, and proper connection of multiple or expandable units and minor adjustments.

(k) "Tie-down" means the servicing required of an installer in the proper blocking, anchoring, and securing of mobile homes.

(l) "Installer" means any person, including a mobile home dealer, who for any form of compensation installs mobile home tie-down systems.

(m) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(n) "Code" means the Texas Mobile Home Standards Code.

Establishment of Mobile Homes Standards Code

Sec. 4. (a) The department shall adopt such new standards and requirements for the installation of plumbing, heating, and electrical systems and for the construction of mobile homes as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public.

(1) Said standards and requirements shall be reasonably consistent with the fundamental principles adopted or issued as ANSI Standard A119.1 and as amended from time to time by the American National Standards Institute (ANSI) applicable to mobile homes.

(2) It is unlawful for any person to sell or offer for sale within this state any mobile home that does not meet the standards and requirements adopted by the department pursuant to this Act.

(3) The existing standards for the plumbing, heating, and electrical systems and construction of mobile homes shall remain in full force and effect upon the effective date of this Act, and until amended in accordance with the procedure set forth in this section.

(b) The existing standards for blocking, anchoring, and securing of the mobile homes shall remain in full force and effect upon the effective date of this Act. The department shall adopt new minimum standards for the proper blocking, anchoring, and securing of mobile homes except those in the inventories of manufacturers and dealers within this state so that such mobile homes shall withstand winds of minimum hurricane-force velocity within the first two tiers of coastal counties within this state and which shall withstand winds of minimum gale-force velocity in all other counties.

(1) Counties and municipalities may, with the approval of the department, adopt more stringent standards when necessary for the public health and safety.

(2) No mobile home purchased or leased after the effective date of this Act shall be situated or located within 300 feet of any other mobile home, residence, or building, except those in the inventories of manufacturers and dealers within this state, unless such mobile home is blocked, anchored, or secured in accordance with such minimum standards. For good cause shown on application to the department, extensions not to exceed 90 days may be granted by the department to any owner or occupant of a mobile home for the proper blocking, anchoring, or securing of a mobile home.

(3) The department may cooperate with all units of local government within this state and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the proper blocking, anchoring, and securing of mobile homes pursuant to contracts or other official designations.

(c) At least 30 days before the adoption or promulgation of any change in or addition to the standards authorized in this section, the department shall mail to all installers and all bonded manufacturers and dealers a notice including:

(1) a copy of the proposed changes and additions; and

(2) the time and place that the department will consider any objections to the proposed changes and additions.

(d) After giving the notice required by Subsection (c) of this section, the department shall afford interested persons an opportunity to participate in the standards adoption process through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter.

(e) The adoption of requirements and standards or modification, amendment, or repeal of requirements and standards shall require the approval of and certification by the commissioner.

(f) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect.

(g) Immediately after their promulgation, the department shall publish all requirements and standards or amendments thereto.

(h) The standards and requirements adopted or promulgated by the department for the installation of plumbing, heating, and electrical systems in mobile homes, for the body and frame design and construction of mobile homes, and for the proper blocking, anchoring, and securing of mobile homes shall be known as the Texas Mobile Homes Standards Code.

Compliance with Federal Standards

Sec. 5. The Texas Mobile Homes Standards Code shall be in compliance with the federal standards established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.¹ In case of a conflict between such federal standards and the fundamental principles adopted or issued as ANSI Standard A119.1 and as amended from time to time by the American National Standards Institute (ANSI) applicable to mobile homes, the federal standards shall be applicable and given full force and effect.

¹ 42 U.S.C.A. § 5401 et seq.

Regulations

Sec. 6. (a) It is unlawful for any manufacturer to manufacture mobile homes in this state unless such manufacturer has been issued a certificate of acceptability by the department for each manufacturing facility.

(b) The department shall require that the manufacturer establish and submit to the department for approval systems for quality control and transportation prior to the issue of certificates of acceptability.

(1) The department shall issue a certificate of acceptability to any manufacturer within or without this state upon receipt of an application from such manufacturer to which is attached an affidavit certifying that any mobile home manufactured by the applicant will be built in compliance with the provisions of this Act.

(2) Each application by a manufacturer for a certificate of acceptability shall be accompanied by quality control plans which will provide adequate evidence that the mobile homes for which a certificate of acceptability is requested will in fact be manufactured in compliance with the provisions of this Act.

(3) Prior to the issuance of a certificate of acceptability to a manufacturer, the department shall require the submission of a description of a transportation system which will provide adequate evidence that movement of the mobile homes will not result in deviations from requirements set out in the code.

(c) No mobile home to which a seal has been affixed shall be modified in any way prior to installation without prior written approval of the department.

(d) Each manufacturer of mobile homes shall submit the building plans for every model of such mobile homes to the commissioner or his designee for the purpose of inspection under this section. The manufacturer must certify that each building plan meets the code in force at that time.

(e) Each manufacturer and dealer of mobile homes shall establish and maintain such records, make such reports, and provide such information as the commissioner may reasonably require to enable him to determine whether such manufacturer or dealer has acted or is acting in compliance with this Act, and shall, upon request of a person duly designated by the commissioner, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer or dealer has acted or is acting in compliance with this Act.

Dealers

Sec. 7. It is unlawful for any dealer to sell or offer for sale to dealers or to the consumers of this state any mobile home manufactured after the adoption or promulgation of the code unless said mobile home complies with the code, bears a seal of approval issued by the department, and is the manufactured product of a manufacturer possessing a current certificate of acceptability issued by the department.

Seal of Approval

Sec. 8. (a) No manufacturer who has received a certificate of acceptability from the department may sell or offer for sale in this state mobile homes unless such mobile homes bear a seal of approval issued by and purchased from the department.

(b) Any dealer who has acquired a used mobile home without a seal shall apply to the department for a seal. The application for a seal shall include an affidavit stating that the unit has been brought up to or meets code requirements in effect at the time the mobile home was manufactured.

Administration and Enforcement of Act

Sec. 9. (a) The department is hereby charged with the administration and enforcement of this Act.

(b) The department shall make and enforce rules and regulations reasonably required to effectuate all provisions of this Act and the notification and correction procedures provided in Section 615 of the National Mobile Home Construction and Safety Standards Act of 1974.¹

(c) The department shall adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Mobile Home Construction and Safety Standards Act of 1974² and to provide for the effective enforcement of all mobile home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development.

(d) At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsections (b) and (c) of this section, the department shall mail to all installers and all bonded dealers and manufacturers a notice including:

(1) a copy of the proposed changes and additions; and

(2) the time and place that the department will consider any objections to the proposed changes and additions.

(e) After giving the notice required by Subsection (d) of this section, the department shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter.

(f) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the department shall state the date it shall take effect.

(g) Immediately after their promulgation, the department shall publish all rules and regulations or amendments thereto.

(h) The department through its authorized representatives is authorized to enter at reasonable times and without advance notice any factory, warehouse, or establishment in which mobile homes are manufactured, stored, or held for sale.

(i) The department is authorized to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect such books, papers, records, plans, and documents as may reasonably be required. Each such inspection shall be commenced and completed with reasonable promptness.

(j) The department may establish and require such training programs in the concept, techniques, and inspection of mobile homes for the personnel of local governments as the department considers necessary.

(k) The department may, at its discretion, accept in-plant inspection reports by a recognized body or agency having follow up in-plant inspection service certifying that the mobile homes comply with the terms and conditions of the certificate of acceptability.

¹42 U.S.C.A. § 5414.

²42 U.S.C.A. § 5401 et seq.

Employment of State Inspectors

Sec. 10. (a) The department may employ state inspectors as the department deems necessary to carry out the functions of this Act.

(b) To carry out the provisions of this Act, the department may authorize the state inspectors to travel within or without the state for the purpose of inspecting the manufacturing facilities for mobile homes or for any other purpose in connection with this Act.

Fees

Sec. 11. (a) There shall be a fee of \$10 for the inspection of mobile home tie-down systems which shall be paid by the installer of the tie-down system to the state or the local governmental subdivision making or performing such inspection. This fee shall be paid within 30 days of installation of the tie-down system. The installer of the tie-down system must notify the department of the whereabouts of the mobile home upon which the tie-down system was installed. This notification shall accompany the fee payment.

(b) There shall be a fee of \$20 for the registration of each mobile home which shall be paid by the manufacturer.

(c) There shall be a fee of \$100 per year for the issuance and annual renewal of certificates of acceptability.

(d) There shall be a fee of \$3 per seal for the issuance of seals of approval.

(e) The department shall charge a fee to each manufacturer who has been issued a certificate of acceptability equal to the actual cost of travel from the closest office of the department to and from each place of assembly or manufacturing facility which is located within or without this state and which is inspected according to the provisions of this Act.

(f) All fees shall be paid to the State Treasury and placed in the General Revenue Fund except as otherwise provided in Subsection (a) of this section.

Ports of Entry

Sec. 12. The department is empowered to designate ports of entry through which any mobile home transported by a manufacturer or dealer whose final

destination is within the State of Texas must pass. At such ports of entry, the department may inspect to determine if the mobile home meets code requirements. The department may designate up to 10 ports of entry. Any manufacturer or dealer transporting a mobile home within the state must show adequate proof of destination upon the request of an agent of the department.

Bond Required

Sec. 13. (a) As of the effective date of this Act and annually thereafter, subject to such a schedule as the department may provide, all mobile home manufacturers, dealers, and salespersons are required to file a performance bond with the commissioner, along with such information the department may deem necessary to insure compliance with the intent of this Act.

(b) The bond shall be a surety bond issued by a company authorized to do business in the state, and shall be in conformity with the Insurance Code.

(c) The bond shall be to the state for the use by a consumer, the state, or any political subdivision thereof who establishes liability against a manufacturer, dealer, or salesperson for damages, penalties, or expenses, including reasonable attorney's fees, resulting from a cause of action connected with the sale or lease of a mobile home. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, penalties, or expenses. The bond shall be open to successive claims up to the amount of face value.

(d) Any manufacturer or dealer who maintains a place of business at one or more locations shall file with the department a separate bond for each location.

(e) A manufacturer shall be bonded in the amount of \$100,000. A dealer shall be bonded in the amount of \$25,000. A salesperson shall be bonded in the amount of \$2,000.

(f) The bonding company is required to provide written notification to the department at least 30 days prior to the cancellation of any bond required by this Act.

Warranties

Sec. 14. (a) After the effective date of this Act, all new mobile homes sold by a manufacturer or dealer to consumers shall be covered by the mobile home warranty set forth in this Act.

(b) The mobile home warranty provided for in this Act shall apply to the manufacturer of the mobile home as well as to the dealer who sells the mobile home to the buyer, except as otherwise provided.

(c) The mobile home warranty shall be set forth in a separate written document entitled "Mobile Home Warranty"; shall be delivered to the consumer by the dealer at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

(1) that the mobile home complies with the code;

(2) that the warranty shall be in effect for a period of at least one year from date of initial set-up;

(3) that the mobile home and all appliances and other equipment installed and included therein by the manufacturer or dealer are free from defects in materials or workmanship;

(4) that set-up and tie-down operations performed on the mobile home are performed in compliance with this Act, and other applicable state and local requirements, provided that only a dealer, his agent, or a manufacturer selling mobile homes directly to consumers shall be liable for the performance of the requirements in this subsection;

(5) that the manufacturer or dealer or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code.

(6) that the manufacturer and dealer shall be jointly and severally liable to the consumer for the fulfillment of the terms of the mobile home warranty, except as provided in Part (4), Subsection (c) of this section, and that the consumer may notify either one or both of the need for appropriate corrective action in instances of defects of workmanship, or failures to comply with the code;

(7) that the warranty contains the address and telephone number of the dealer and manufacturer where notices of defects may be given.

Administrative Hearings

Sec. 15. (a) Any manufacturer who violates or fails to comply with the requirements for a certificate of acceptability shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation within 30 days. Should the manufacturer fail to make the necessary correction(s) within the specified time, the commissioner may, after notice and hearing, suspend or revoke any certificate of acceptability if he finds that:

(1) the manufacturer has failed to pay the fees authorized by this Act; or

(2) the manufacturer, either knowingly or without the exercise of due care to prevent the

same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act.

(b) In addition to the hearing provided for in Subsection (a) of this section, any other party adversely affected by a ruling, order, decision, or other act of the department made pursuant to this Act may request a public hearing before the commissioner.

(c) Written notice of any hearing held pursuant to this section shall be given to all directly affected parties setting forth the time and place of the hearing.

(d) In holding a hearing, the commissioner may administer oaths, receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing.

(e) Opportunity shall be afforded any interested party to respond and present evidence and argument on all issues involved in any hearing held under any provision of this Act.

(f) Upon the written request of any interested party the commissioner shall keep a formal record of the proceedings of any hearing held under any provision of this Act.

(g) A decision or order adverse to a party who has appeared and participated in a hearing shall be in writing and shall include findings of fact and conclusions of law, separately stated, on all issues material to the decision reached. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. As part of the decision or order, the commissioner may require the requesting party to reimburse the department for the costs of preparing the formal record.

(h) A decision or order entered after hearing shall be final and appealable 15 days after the day the same is entered.

(i) Parties to a hearing shall be promptly notified either personally or by mail of any decision, order, or other action taken in respect to the subject matter of the hearing.

Judicial Review

Sec. 16. (a) Any party to the hearing aggrieved by the decision or order of the commissioner may secure judicial review thereof in the following manner:

(1) The petition must be filed in a district court of Travis County, Texas, within 30 days after the decision or order of the commissioner becomes final.

(2) The filing of a petition for review shall not itself stay the effect of the decision or order

complained of, but the commissioner or the reviewing court may order a stay upon appropriate terms and if a stay is so granted no superseas bond shall be required.

(3) Service of process: the petition for review shall be served on the commissioner and upon all parties of record in any hearing before the commissioner in respect to the matter for which review is sought. After service of such petition upon the commissioner and within the time permitted for filing an answer, or as soon thereafter as the record is made available to the commissioner, the commissioner shall certify to the district court in which such petition is filed the record of the proceedings to which the petition refers. The cost of preparing and certifying such record shall be paid to the commissioner by the petitioner and taxed as part of the cost in the case, to be paid as directed by the court upon final determination of said cause.

(4) The review of any decision or order of the commissioner shall be tried by the court without a jury in the same manner as civil actions generally, but no evidence shall be admissible which was not adduced at the hearing on the matter before the commissioner or officially noticed in the record of such hearing.

(5) The burden of proof shall be on the plaintiff. The reviewing court may affirm the action complained of or remand the matter to the commissioner for further proceedings.

(6) Appeals from any final judgment may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the commissioner.

Penalties

Sec. 17. (a) A person who violates a provision of this Act or any rule or regulation of the department commits a Class A misdemeanor.

(b) Any dealer, manufacturer, salesperson, or installer who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(c) Whenever it appears that any dealer, manufacturer, salesperson, or installer has violated or is threatening to violate any of the provisions of this Act or of the rules and regulations of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain such dealer, manufactur-

er, salesperson, or installer from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

(d) Any contract between a consumer and a mobile home salesperson, dealer, or manufacturer is voidable at the option of the consumer if said manufacturer, dealer, or salesperson was not bonded as per the provisions of this Act at the time the contract was consummated.

(e) Failure to comply with the warranty provisions in Section 14 of this Act is considered a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Texas Business & Commerce Code.¹ As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative with the remedies provided in this Act.

¹ Business and Commerce Code, § 17.41 et seq.

Miscellaneous Provisions

Sec. 18. (a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.

(b) No provision of this Act shall exclude any other remedy available at law or equity to the consumer.

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

[Amended by Acts 1975, 64th Leg., p. 2036, ch. 674, §§ 1 to 18, eff. Sept. 1, 1975.]

TITLE 85

LANDS—ACQUISITION FOR PUBLIC USE

2. FEDERAL USE

Article

5248g-1. Grant of Portions of Bed and Banks of Rio Grande to United States [NEW].

2. FEDERAL USE

Art. 5248g-1. Grant of Portions of Bed and Banks of Rio Grande to United States

Sec. 1. The Governor of the State of Texas is authorized to grant to the United States of America, in accordance with the conditions set out in this Act, those portions of the bed and banks of the Rio Grande or easements thereupon in Hudspeth, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron Counties consisting of the bed and banks as exist on the United States side of the boundary, as may be necessary or expedient to facilitate the accomplishment of projects for the relocation and rectification of the Rio Grande and construction of works for flood control in the Presidio-Ojinaga Valley, the rectification of and channel stabilization on the Rio Grande between Fort Quitman in Hudspeth County and Haciendita in Presidio County, the relocation and rectification of the Rio Grande upstream from Hidalgo-Reynosa in Hidalgo County, the preservation of the Rio Grande as the boundary by prohibiting the construction of works which may cause deflection or obstruction of the normal flow of the Rio Grande or of its floodflows, and other channel relocations and rectifications and boundary adjustments approved by the governments of the United States and Mexico, as provided for in the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary between the United States of America and the United Mexican States, which entered into force April 18, 1972, and the American-Mexican Boundary Treaty Act of 1972, Public Law 92-549 (86 Stat. 1161), approved October 25, 1972.¹

Sec. 2. When the Commissioner of the United States Section of the International Boundary and Water Commission, United States and Mexico, shall make application to the Governor of the State of Texas describing the area and the interest therein which is determined necessary or expedient for use under the treaty and the Act, the governor shall issue a grant of such interest for and on behalf of

the State of Texas to the United States of America, conveying to it the area and the interest described in the application, and the grant, except as provided in Section 3 of this Act, shall reserve to the State of Texas all minerals, except rock, sand, and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described in Section 1 of this Act, subject to the proviso that the minerals so reserved to the state may not be explored for, developed, or produced in a manner which will at any time prevent or interfere with the operation or construction by the United States of America of any of the works described in Section 1 of this Act, and providing further, that prior to exploring for or developing the reserved minerals, the written consent and approval of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, shall be obtained as to the proposed area sought to be explored or developed by the State of Texas, including, but not by way of limitation, the location of and production facilities for oil and/or gas wells and/or other minerals.

Sec. 3. In locations where the United States Commissioner applies for fee title to the bed and banks of the Rio Grande to be granted to the United States for the relocation and rectification of the channel under the treaty causing a portion of the existing channel to be within the territorial limits of Mexico after its relocation and rectification, the grant shall contain the same reservations and provisos as those prescribed in Section 2 of this Act on that portion only of the existing channel which will remain within the territorial limits of the United States on completion of the relocation and rectification project.

Sec. 4. Successive applications may be made by the United States Commissioner, and successive grants may be made to the United States of America by the governor for and on behalf of the State of Texas, embracing various tracts within the limits herein specified, and no time limit shall be imposed upon the grants. However, nothing in this Act shall be construed as divesting, limiting, or otherwise affecting the property rights, including, but not by way of limitation, the riparian rights, under the laws of the State of Texas, of private owners of land abutting the Rio Grande in the counties referred to

in this Act. The authority granted by this Act to the Governor of the State of Texas extends only to the bed and banks of the Rio Grande to the extent that title to the bed and banks is by law vested in the State of Texas, whether under the civil law, or

common law, or court decisions of the State of Texas, or otherwise.

[Acts 1975, 64th Leg., p. 584, ch. 238, §§ 1 to 4, eff. May 20, 1975.]

¹ 22 U.S.C.A. § 277d-34 et seq.

TITLE 86

LANDS—PUBLIC

CHAPTER THREE. SURFACE AND TIMBER RIGHTS

3. LEASES

Art. 5331. Lease of Unsold Tracts

Any unsold land may be leased at any time at not less than five cents per acre, payable in advance each year and for a term not to exceed 10 years, but all land so leased and unsold shall be subject to sale or trade in accordance with laws governing sale or trade of unsold land.

[Amended by Acts 1975, 64th Leg., p. 745, ch. 291, § 1, eff. Sept. 1, 1975.]

Art. 5337. Lessees may remove improvements

All improvements made by a lessee on lands leased by him from the state may be removed by such lessee at expiration of the lease, or, at the discretion of the Commissioner of the General Land Office, may become the property of the state if, in the original lease, the Commissioner of the General Land Office and the lessee agree upon adequate credit applied to the rental to be paid the state by the lessee, thereby allowing the lessee an agreed upon consideration.

[Amended by Acts 1975, 64th Leg., p. 577, ch. 233, § 1, eff. Sept. 1, 1975.]

CHAPTER FOUR. OIL AND GAS

4. GENERAL PROVISIONS

Article

5382f. Sale of Gas for Use Outside State by Certain Persons, Agencies and Entities [NEW].

1. UNIVERSITY AND OTHER LANDS

Art. 5344d. Payment and Disposition of Oil and Gas Lease Royalties

Sec. 1. (a) Each oil and gas lease covering land leased by the School Land Board, or by any board for lease of any state lands (excluding the Board for Lease of University Lands) or by the surface owner of lands under which the state owns the minerals, commonly referred to as Relinquishment Act lands, which Relinquishment Act lease shall be subject to approval by the Commissioner of the General Land Office before it is effective, shall contain a provision granting such board authorized to lease such lands,

or the owner of the soil of Relinquishment Act lands and the Commissioner of the General Land Office the authority to take their royalty in kind. Such option may be exercised at the discretion of the School Land Board, or any board for lease authorized to lease state lands, or the surface owner acting as agent for the state in leasing state-owned minerals under lands in which he owns the surface, and the Commissioner of the General Land Office. Such option to take royalty in kind may be exercised at any time or from time to time on not less than 60 days' notice to the holder of the lease. Such other reasonable provisions not inconsistent with this Act may be included in the lease by the land commissioner or any board for lease of state lands.

(b) Each board for lease (excluding the Board for Lease of University Lands), the School Land Board, or the Commissioner of the General Land Office, or the owner of the soil of Relinquishment Act lands has all the powers necessary to negotiate and execute sales contracts or any other instrument or agreement necessary for the disposition of their portion of the royalty taken in kind.

(c) This section shall not apply in any way to nor have any effect upon the Board for Lease of University Lands nor any lease executed on university lands.

Sec. 2. (a) In this Act, "royalty" or "royalties" refers either:

(1) to royalty payable in a sum of money equal to the market value for the general area where produced and when run; or

(2) to royalty collectible in kind.

(b) This Act shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under existing or future leases to receive royalty from its lessee on the basis of the fair market value produced from state public lands or Relinquishment Act lands.

[Amended by Acts 1975, 64th Leg., p. 590, ch. 241, § 1, eff. May 20, 1975.]

3. SOLD ASYLUM AND SCHOOL LANDS

Art. 5372. Forfeiture of Rights

If any person, firm or corporation operating under this law shall fail or refuse to make the payment of

any sum within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail to file reports in the manner required by law or fail to comply with General Land Office rules and regulations or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the Land Office a correct log of any well, or if any lease is assigned and the assignment is not filed in the General Land Office as required by law, the rights acquired under the permit or lease shall be subject to forfeiture by the Commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this law.

[Amended by Acts 1975, 64th Leg., p. 1938, ch. 635, § 1, eff. Sept. 1, 1975.]

4. GENERAL PROVISIONS

Art. 5380. Payment of Royalty

All royalties due under any lease of state lands or minerals which are required to be paid to the General Land Office shall be due and payable in the following manner:

Royalty on oil shall be due and payable on or before the 5th day of the second month succeeding the month of production, and royalty on gas shall be due and payable on or before the 15th day of the second month succeeding the month of production, accompanied by the affidavit of the owner, manager or other authorized agent, completed in the form and manner prescribed by the General Land Office and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas, together with a copy of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records which the General Land Office may require to verify the gross production, disposition and market value. A copy of all contracts under which gas is sold or processed and all subsequent agreements and

amendments to such contracts shall be filed with the General Land Office within thirty (30) days after entering into or making such contracts, agreements or amendments. Such contracts and agreements when received by the General Land Office shall be held in confidence by the General Land Office unless otherwise authorized by Lessee. The books and accounts, receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at any time be subject to inspection and examination by the Land Commissioner, the Attorney General, the Governor, or the representative of either. Each royalty payment shall be accompanied by a check stub, schedule, summary or other remittance advice showing by the assigned General Land Office lease number the amount of royalty being paid on each lease. Any royalty not paid or affidavits and supporting documents not filed when due shall become delinquent and shall have added to the sum owing a delinquency penalty of one percent (1%) of such sum for each thirty (30) day period of delinquency or a fractional period thereof; provided, however, that each such penalty shall never be less than Five Dollars (\$5). The lessee shall bear all responsibility for paying or causing royalties to be paid as prescribed by the due date provided herein. Payment of the delinquency penalty shall in no way operate to prohibit the State's right of forfeiture as provided by law nor act to postpone the date on which royalties were originally due. The above penalty provisions shall not apply in cases of title dispute as to the State's portion of the royalty or to that portion of the royalty in dispute as to fair market value.

[Amended by Acts 1975, 64th Leg., p. 1939, ch. 635, § 2, eff. Sept. 1, 1975.]

Art. 5382d. Lease of Lands of State Departments, Board and Agencies

[See Compact Edition, Volume 4 for text of 1 to 15]

Deposit and Expenditure of Receipts

Sec. 16. Any amounts received under and by virtue of this Act shall be deposited in the State Treasury to the credit of special funds to be known as the "(appropriate Department, Board or Agency) Special Mineral Fund", which funds are hereby created, and shall be used exclusively for the benefit of the appropriate Department, Board or Agency; provided, however, no money shall ever be expended from these funds except by legislative appropriation and then for the purposes and in the amounts stated in the Act appropriating same. Provided however, that all monies received under the provisions of this

Act enuring to the benefit of the Parks and Wildlife Department from lands held by the department for game and fish, conservation, protection, and management purposes shall be deposited in the State Treasury to the credit of the "Special Game and Fish Fund", and further that all monies received under the provisions of this Act enuring to the benefit of the Parks and Wildlife Department from park, recreation, and historic land shall be deposited in the State Treasury to the credit of the "State Parks Fund".

[See Compact Edition, Volume 4 for text of 17 and 18]

[Amended by Acts 1975, 64th Leg., p. 1824, ch. 560, § 1, eff. Sept. 1, 1975.]

Art. 5382f. Sale of Gas for Use Outside State by Certain Persons, Agencies and Entities

Terms and Conditions Required on Mineral Leases

Sec. 1. From and after the effective date of this Act, it shall be unlawful for any one of the persons, agencies, or entities set forth in Section 2 of this Act to execute an oil, gas, and mineral lease on any lands on which they are otherwise authorized and empowered by law to execute such a lease unless such lease shall include the following terms and conditions:

None of the natural gas or casinghead gas, including both associated and nonassociated gas, produced from the mineral estate subject to this lease shall be sold or contracted for sale to any person, corporation, or other entity for ultimate use outside of the State of Texas unless and until the Railroad Commission of Texas shall find, after notice and hearing pursuant to Title 102 of the Revised Civil Statutes of Texas, 1925, as amended,¹ that:

(a) the person, agency, or entity which executed the lease in question does not require said natural gas or casinghead gas to meet its own existing needs for fuel;

(b) no private or public hospital, nursing home, or other similar health-care facility in this state requires said natural gas or casinghead gas to meet its existing needs for fuel;

(c) no public or private school in this state, of elementary, secondary, or higher education level, requires said natural gas or casinghead gas to meet its existing needs for fuel;

(d) no facility of the State of Texas or of any county, municipality, or other political subdivision in this state requires said natural gas or casinghead gas to meet its existing needs for fuel;

(e) no producer of food and fiber requires said natural gas or casinghead gas necessary to meet the existing needs of irrigation pumps and other machinery directly related to this production; and

(f) no person who resides in the State of Texas and who relies on natural gas or casinghead gas to provide in whole or in part his existing needs for fuel or raw material requires said natural gas or casinghead gas to meet such needs.

¹ Article 6004 et seq.

Persons, Agencies and Entities Defined

Sec. 2. The persons, agencies, and entities subject to the provisions of Section 1 of this Act are as follows:

(a) the Commissioner of the General Land Office;

(b) the School Land Board;

(c) all boards for lease of lands owned by any department, board, or agency of the State of Texas created by Chapter 325, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 5382d, Vernon's Texas Civil Statutes);

(d) the Board for Lease of University Lands;

(e) the Board of Directors of Texas A & M University;

(f) the Board of Regents of Texas Tech University;

(g) the Board of Directors of Texas A & I University;

(h) the Board of Regents, State Senior Colleges;

(i) the Board of Regents of the University of Houston;

(j) any other board of regents or other governing board of a state-supported institution of higher learning having authority to execute oil, gas, and mineral leases on lands owned by said institution;

(k) any owner or owners of land or minerals in this state whose authority to lease said land or minerals as agent for the state arises in whole or in part from what is commonly known as the Relinquishment Act, Chapter 81, Acts of the 36th Legislature, 2nd Called Session, 1919, as amended (Article 5367, Revised Civil Statutes of Texas, 1925);

(l) the Board for Lease of State Park Lands;

(m) the Board for Lease of the Texas Department of Corrections; and

(n) the commissioners court of any county in the State of Texas.

Commissioner of the General Land Office; Receipt and Filing of Lease Without Terms and Conditions

Sec. 3. The Commissioner of the General Land Office shall not from and after the effective date of this Act receive and file an oil, gas, and mineral lease required to be filed with him by any other provision of law unless such lease includes the terms and conditions set forth in Section 1 of this Act.

Lease in Violation of Act Null and Void

Sec. 4. Any oil, gas, and mineral lease executed or received and filed in violation of the provisions of this Act shall be null, void, and of no force and effect.

Exceptions Granted by Railroad Commission

Sec. 5. It is further provided, however, that the Railroad Commission of Texas may, after notice and hearing pursuant to Title 102, Revised Civil Statutes of Texas, 1925 as amended,¹ grant exceptions to the provisions of Sections 1 through 4 of this Act if it finds and determines that enforcement of the provisions of said sections would cause physical waste, as that term is defined in the said Title 102, or would unreasonably deny to the lessee an opportunity economically to produce hydrocarbons from the lands subject to the lease in question.

¹Article 6004 et seq.

Severability

Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared severable.

Repeal of Conflicting Laws

Sec. 7. All laws and parts of laws in conflict herewith, if any, are hereby expressly repealed to the extent of such conflict.

[Acts 1975, 64th Leg., p. 82, ch. 38, eff. April 7, 1975.]

CHAPTER SEVEN. GENERAL PROVISIONS

Article

5415i. Deepwater Port Procedures Act [NEW].

5421s. Geothermal Resources Act of 1975 [NEW].

Art. 5415e-2. Coastal Waterway Act of 1975

Short Title

Sec. 1. This Act may be cited as the "Texas Coastal Waterway Act of 1975."

Policy

Sec. 2. It is the policy of the State of Texas (i) to support the marine commerce and economy of this

state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound fashion, and (ii) to prevent waste of both publicly and privately owned natural resources, to prevent or minimize adverse impacts on the environment, and to maintain, preserve, and enhance wildlife and fisheries; and to accomplish such policy the State of Texas shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel, and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law consistent with the policy of the State of Texas as declared in this section.

Findings

Sec. 3. The legislature finds and declares that:

(a) Marine commerce is a vital element of the state's economy and the benefits derived therefrom are realized directly or indirectly by the entire state.

(b) The coastal public lands and the coastal marshes and similar coastal areas located on both publicly and privately owned lands are similarly vital elements of the state's economy, and to the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries, the benefits of which are similarly realized directly or indirectly by the entire state.

(c) The coastal public lands and related natural resources constitute a vital asset of the state to be managed for the benefit of all citizens of the State of Texas.

(d) The Gulf Intracoastal Waterway traverses coastal public lands and areas in close proximity to the coastal marshes and similar coastal areas located on both publicly and privately owned lands.

(e) The Gulf Intracoastal Waterway can be maintained, operated, and improved in such a way as to prevent waste of both publicly and privately owned natural resources, that adverse environmental impacts are avoided or minimized, and that in some cases beneficial environmental effects can be realized.

(f) It is in the best interest of all citizens to accomplish the policy of the State of Texas as stated in Section 2 of this Act for the State of Texas to meet the responsibilities as required by federal law of the nonfederal sponsor of the Gulf Intracoastal Waterway.

Definitions

Sec. 4. As used in this chapter:

(a) "Coastal public lands" means all or any portion of the state-owned submerged land, the

waters overlying those lands, and all state-owned islands or portions of islands that may be affected by the ebb and flow of the tide.

(b) "Coastal marshes and similar areas" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the state which may or may not be subject to the ebb and flow of the tide but which are of ecological significance to the environment and to the maintenance, preservation, and enhancement of wildlife and fisheries.

(c) "Commission" means the State Highway Commission.

(d) "Gulf Intracoastal Waterway" means the main channel, not including tributaries or branches, of the shallow draft navigation channel running from the Sabine River southward along the Texas coast to the Brownsville Ship Channel near Port Isabel that is generally referred to as the Gulf Intracoastal Canal.

(e) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

Administrative Provisions

Sec. 5. (a) This Act shall be administered by the State Highway Commission.

(b) The provisions of this Act are cumulative of all other Acts relating to the commission.

(c) Nothing in this Act shall diminish the duties, powers, and authorities of the School Land Board to manage the coastal public lands of the state.

Duties and Powers

Sec. 6. (a) The commission shall cooperate and work with the Department of the Army, all other appropriate federal and state agencies, navigation districts and port authorities, counties, and other appropriate persons to determine specifically what must be done by the State of Texas to satisfy federal local sponsorship requirements relating to the Gulf Intracoastal Waterway in a manner consistent with the policy of the State of Texas as stated in Section 2 of this Act.

(b) The commission shall fulfill, in a manner consistent with the policy of the state as stated in Section 2 of this Act, the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state.

(c) Subject to the provisions of Subsection (g) of this section, the commission is authorized to acquire by gift, purchase, or condemnation any property or interest in property of any kind or character deemed necessary by the commission to fulfill its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway, including but not limit-

ed to easements and rights-of-way for dredge material disposal sites and easements and rights-of-way for channel expansion, relocation, or alteration, save and except oil, gas, sulphur, and other minerals of any kind or character which can be recovered without utilizing the surface of any such land for exploration, drilling, or mining purposes. All other provisions relating to the exercise of the power of eminent domain shall be in accord with the commission's existing powers and authority relating to eminent domain. However, the commission does not have the authority to condemn any submerged public lands under the jurisdiction of the School Land Board.

(d) Proposed actions and actions of the commission pursuant to this Act which have potential for significant environmental impact or effect upon coastal public lands, coastal marshes and similar areas, wildlife, and fisheries shall be coordinated with appropriate state and federal agencies having environmental, wildlife, and fisheries responsibilities.

(e) All agencies and political subdivisions of the State of Texas shall, within their legal authority and available resources, assist the commission in carrying out the purposes of this Act. All such agencies and political subdivisions are hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the commission to meet its responsibilities under this Act as the non-federal sponsor of the Gulf Intracoastal Waterway.

(f) The commission, in cooperation with all appropriate persons, shall continually evaluate the Gulf Intracoastal Waterway as it relates to Texas. Such evaluations shall include an assessment of the importance of the Gulf Intracoastal Waterway, including an identification of direct and indirect beneficiaries; identification of principal problems and possible solutions to such problems, including estimated costs, economic benefits, and environmental effects; evaluation of the need for significant modifications to the Gulf Intracoastal Waterway; and specific recommendations for legislative actions that the commission believes to be in the best interest of the state in carrying out the policy of the state as declared in Section 2 of this Act. The results of this evaluation shall be published in a report to be presented to each regular session of the legislature.

(g) Prior to approval or implementation by the commission of any plan or project for acquisition or acquisition of any property or interest in property for any dredge material disposal site, or for the widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway which requires the acquisition of any additional property or interest in property, to satisfy federal local sponsorship requirements, the commission shall hold public hear-

ings for the purpose of receiving evidence and testimony concerning the desirability of such proposed dredge material disposal site and of any such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, prior to which hearing the commission shall publish notice of such plan, project, and hearing, at least once a week for three successive weeks in a newspaper of general circulation published in the county seat of each county in which any such proposed dredge material disposal site or part thereof is located and in which the channel or any portion of the channel of the Gulf Intracoastal Waterway to be widened, relocated, or altered is located, of the date, time, and place of such hearing. If after such public hearing the commission shall determine that such proposed dredge material site plan or project or such proposed plan or project for widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, as the case may be, can be accomplished without unjustifiable waste of publicly or privately owned natural resources and without permanent substantial adverse impact on the environment, wildlife, or fisheries, the commission may then, upon its approval of such plan or project, proceed to implement such plan or project and acquire, in such manner as is provided in Section 6(c) of this Act, such additional property or interest in property necessary to satisfy federal local sponsorship requirements for implementation of such plans for such dredge material site or for such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway.

Funding

Sec. 7. The legislature is hereby authorized to appropriate from the General Revenue Fund funds in the amount necessary to accomplish the purposes of this Act.

[Acts 1975, 64th Leg., p. 405, ch. 181, §§ 1 to 7, eff. Sept. 1, 1975.]

Art. 5415g. Gulf Coast and Public Beach Areas; Excavation of Sand, etc.; Permits

[See Compact Edition, Volume 4 for text of 1 to 12]

Permits from Commissioners Courts

Sec. 12A. Nothing in this Act shall prohibit a Commissioners Court from issuing a permit under this Act to a person, corporate or otherwise, who holds a right-of-way easement granted by the Land Commissioner for a pipeline to cross state lands, if such applicant complies with the provisions of this Act governing the issuance of permits.

[See Compact Edition, Volume 4 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 2218, ch. 705, § 12, eff. June 21, 1975.]

Art. 5415i. Deepwater Port Procedures Act

[GENERAL PROVISIONS]

Short Title

Sec. 1. This Act shall be entitled the Texas Deepwater Port Procedures Act.

Purpose

Sec. 2. The purpose of this Act is to authorize state and local governmental agencies to perform and fulfill the responsibilities of the State of Texas under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and to establish the procedures by which such state and local agencies will determine that applications for deepwater ports off the Texas Gulf Coast are in compliance with applicable state and local laws.

Definitions

Sec. 3. In this Act:

(1) "Adjacent coastal county" means any Texas county, bordering on the Gulf of Mexico, in which are located the onshore storage facilities of a deepwater port, as defined in Subdivision (5) herein.

(2) "Applicant" means a person who has filed an application, as defined in Subdivision (3) below.

(3) "Application" means any application submitted under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license.

(4) "Commissioner" means the commissioner of the general land office, or his designated representative.

(5) "Deepwater port" means (A) the facilities defined in Section 3(10) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also includes (B) the onshore storage tank facilities and the pipelines located within the State of Texas which connect such onshore storage facilities with the offshore facilities of a deepwater port.

(6) "Governor" means the Governor of the State of Texas.

(7) "Person" means any individual, association, organization, trust, partnership, or corporation.

(8) "State" means the State of Texas.

(9) "State or local agency" means any board, commission, department, office, agency, or political subdivision of the state or of any county or city in the state, or any other public body created by or pursuant to state law.

Administration of the Act

Sec. 4. The governor is hereby designated as the officer of the state to approve or disapprove an application to the secretary of transportation to own, construct, or operate a deepwater port off the Texas Gulf Coast. The commissioner of the general land office is hereby designated the officer of the state charged with the administration, implementation, and coordination of the provisions of this Act relating to the determination by state or local agencies that such an application complies with state and local laws relating to environmental protection, land and water use, and coastal zone management.

Determination of Compliance with State and Local Law

Sec. 5. (a) Upon receipt of a copy of an application transmitted from the secretary of transportation pursuant to the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall immediately transmit a copy of the application to the commissioner of the general land office and to the Attorney General of Texas.

(b) Within 15 days after the receipt of an application from the governor, the commissioner shall publish notice of the application in any official register of the State of Texas, in the newspaper of greatest general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest United States census, and in a newspaper in the adjacent coastal county and in any county adjoining the adjacent coastal county in which such notice would not have otherwise been published under this subsection.

(c) Within 30 days after the receipt of an application from the governor, the attorney general shall determine and forward to the governor and to the commissioner a list of the state or local agencies which have jurisdiction to administer laws relating to environmental protection, land and water use, and coastal zone management, and also within whose boundaries are located facilities constituting a deepwater port, as defined by Section 3(5) herein.

(d) Upon receipt of the list of state or local agencies prepared by the attorney general pursuant to Subsection (c) of this section, the commissioner shall immediately transmit a copy of the application to each such state or local agency for review and determination of whether the application complies with the laws or regulations administered by such state or local agency.

(e) The state or local agency shall report such determination to the commissioner in writing within 60 days after its receipt of a copy of the application from the commissioner.

(f) If any state or local agency reports to the commissioner that the application is not in compliance, such agency shall set forth in detail the man-

ner in which the application does not comply with any law or regulation administered by the agency and shall report to the commissioner how the application can be brought into compliance with the law or regulation involved. A copy of such report shall be forwarded by the commissioner to the applicant, and the applicant shall be entitled to respond in writing to the state or local agency which issued such report and to request that a public hearing be held by the commissioner on the provisions of the application determined by the state or local agency not to comply with state or local law.

(g) The failure of a state or local agency to forward a determination report to the commissioner within the time period established in Subsection (e) of this section shall constitute a presumption that the application complies with the law or regulations administered by that agency.

(h) One copy of the application shall be filed in the general land office and in the office of the county judge of the adjacent coastal county for public inspection and shall be available to the public for inspection or duplication during normal business hours. A person requesting a copy of the application may be charged a reasonable fee for duplicating and mailing costs. The applicant may be charged a reasonable fee to cover the costs of reproducing and mailing copies of applications to state and local agencies, unless the applicant provides the number of copies required by such agencies.

Hearings on the Application

Sec. 6. (a) As provided in Section 5(f) of this Act, an applicant shall be entitled to a public hearing on the provisions in his application which have been determined by a state or local agency not to be in compliance with the laws which they have jurisdiction to administer.

(b) Upon receipt of a request from an applicant for such a hearing, the commissioner shall publish notice of such hearing as provided in Section 5(b) of this Act. The notice shall describe the purpose of the hearing and the date, time, and place of the hearing. The date of the publication and of any personal notice of the hearing shall be not less than 10 days before the date set for the hearing.

(c) The commissioner may also hold a public hearing on the determination of compliance reports submitted to him by the state and local agencies. Notice of such hearing shall be given as provided by Subsection (b) of this section.

(d) The commissioner may consolidate any hearing held under this section with the hearing required by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., to be held in Texas by the secretary of transportation.

(e) All hearings on the application shall be concluded not later than 120 days after the date on which the commissioner received the application from the governor; provided, however, that the commissioner shall be entitled to hold a hearing after such 120 day period if the federal hearing required to be held in Texas has not been held and the commissioner has determined and given notice that a hearing provided for in this section will be held in conjunction with the federal hearing.

(f) Notwithstanding Subsection (e) of this section, the commissioner shall be required to comply with the date provided in Section 7(a) for transmitting his report to the governor.

Report to the Governor

Sec. 7. (a) Within 150 days after the receipt of an application from the governor, the land commissioner shall transmit to the governor a report in the form of a written summary of the determination of compliance reports submitted by any state or local agency, together with the transcript and testimony from any public hearing held by the commissioner or any joint hearing held in the state with the secretary of transportation.

(b) If the commissioner's report contains a determination by a state or local agency that the application does not comply with a law relating to environmental protection, land and water use, or coastal zone management, the commissioner shall include in his report the manner in which the application does not comply and how the application can be brought into compliance.

(c) The failure of the commissioner to transmit his summary report to the governor within the time period established in Subsection (a) of this section shall constitute a presumption that the application complies with state and local law.

Action on the Application by the Governor

Sec. 8. (a) Upon receipt of the report from the commissioner, and not later than 45 days after the last public hearing held on the application by the secretary of transportation pursuant to Section 5(g) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall notify the secretary of transportation whether he approves or disapproves the application.

(b) If the governor concludes that the application does not comply with state laws relating to environmental protection, land and water use, and coastal zone management, he may disapprove the application. However, if he concludes that the application can be amended to comply with such laws, he may approve the application and shall notify the secretary of transportation of the manner in which the

application does not comply and how the application can be brought into compliance with such laws.

(c) The governor shall transmit copies of his notification to the secretary, the applicant, the commissioner, and to the state and local agencies to whom were transmitted copies of the application by the commissioner pursuant to Section 5(d) herein.

MISCELLANEOUS PROVISIONS

Secs. 9 to 12. [Amends art. 6020a, §§ 1, 3; adds § 4 of art. 6020b and § 12A of art. 5415g]

Effect on Other Laws

Sec. 13. Nothing herein shall be construed in any way to limit, impair, diminish, change, or curtail the power, authority, and activities of any state or local governmental agency, but all power and authority vested in and exercised by such agencies are hereby specifically reserved as to them; and none of the statutory law pertaining to those existing authorities or districts is amended, changed, or repealed by the provisions hereof.

[Acts 1975, 64th Leg., p. 2213, ch. 705, §§ 1 to 13, eff. June 21, 1975.]

Art. 5421c-1. Excess Acreage Where Tract of Land Titled or Patented

In all cases where the area of a tract of land titled or patented exceeds the quantity called for in the title or patent, and where under the existing law the title to all or any part thereof shall or may be affected by the existence of such excess, then any person owning such survey, or portion of said survey, or having an interest therein may pay for the total excess acreage in the survey, or the total excess in a given tract out of the patented or titled survey, at such price as the School Land Board may fix. Any person owning an interest in a titled or patented survey, or any portion thereof, in which excess acreage exists who desires to pay for such excess acreage, shall file with the Land Commissioner a request for an appraisal of the land with corrected field notes describing the patented tract, and if purchasing excess in a portion of a tract, also field notes describing the portion in which he is making application to purchase the excess in the form now provided by law, together with a statement of the facts pertaining to his right to purchase, which statement shall be sworn to, and such other evidence of his right to purchase as the Commissioner may require. Should it appear that such excess actually exists and that the applicant is entitled to the benefits of the law, then the Commissioner shall execute a deed of acquittance covering such land in the name of the original patentee or his assignees with such reservation of minerals or with no mineral reservation, accordingly as may have been the case when the survey was titled or patented. Such transfer shall inure distributively to the benefit of the

true and lawful owners of such land in proportion to their holdings.

[Amended by Acts 1975, 64th Leg., p. 969, ch. 368, § 1, eff. June 19, 1975.]

Art. 5421c-13. Trades of Interests in Public Free School Fund Lands

Sec. 1. (a) The School Land Board in conjunction with the General Land Office is authorized to trade fee and lesser interests in Public Free School Fund Lands for fee and lesser interests in lands not dedicated to the Public Free School Fund upon a decision by the School Land Board and the Commissioner of the General Land Office that such trade or trades are in the best public interest of the People of Texas. Such trade or trades may be made either for the purpose of aggregating sufficient acreage of contiguous lands to create a manageable unit; for acquiring lands having unique biological, geological, cultural, or recreational value; or to create a buffer zone for the enhancement of already existing public land, facilities, or amenities. Such trades shall be on an appraised value basis (such appraisal to be made by appraisers of the General Land Office and concurred in by the School Land Board, and such appraisal shall be conclusive proof of the value of the land). The trades shall be for land of at least equal value. The State of Texas shall retain the subsurface mineral rights to oil and gas wherever practical and in all events when there is oil and gas production within fifty (50) miles of such State land. Such trades shall be by a deed to be signed jointly by the Commissioner of the General Land Office and the Governor. Failure of the Governor to sign such a deed constitutes his veto of the proposed trade, and the proposed trade shall not be made.

(b) All lands acquired by trade under the authority of this Act shall be dedicated to the Public Free School Fund.

Sec. 2. In the event any such trade or trades be made, the School Land Board shall report each trade to the succeeding legislature, setting out such facts as warranted the trade or trades.

Sec. 3. The authority granted by this Act to trade Public Free School Fund Lands shall expire on December 31, 1978, and no trades shall be made after that date.

[Amended by Acts 1975, 64th Leg., p. 1296, ch. 487, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 5421m. Veterans' Land Board

[See Compact Edition, Volume 4 for text of 1 to 11]

Subdivision of Land; Purchase and Sale; Payment of Costs; Rules and Regulations for Sale of Lands

Sec. 12. Land acquired by the Board may be subdivided for the purpose of sale as provided herein

into tracts of such size as the Board may deem advisable; and, with respect to land acquired with the moneys of the Veterans' Land Fund attributable to any bonds hereafter issued and sold, the Board is hereby authorized to use the moneys of the Veterans' Land Fund attributable to the bonds hereafter issued and sold for the purpose of paying the expenses of surveying and monumenting such land and the tracts thereof; the cost of constructing roads thereon; any legal fees, recordation fees, and advertising costs arising out of the purchase and sale or resale of such land and the tracts thereof; and other like costs necessary or incidental to the purchase and sale of any lands so acquired by the Board; but such expenses shall be added to the price of such lands when sold or resold by the Board. No moneys of any Division of the Veterans' Land Fund created prior to the effective date of this Act may be used for paying the expenses listed herein until there are sufficient moneys of such Division to retire all of the bonds secured by such Division, at which time all such moneys, except such portion thereof as may be needed to retire all of the bonds secured by such Division which portion shall be set aside and remain a part of such Division for the purpose of retiring all such bonds, shall be usable to pay such expenses as fully as the moneys attributable to any bonds hereafter issued and sold by the Board.

Land acquired and subdivided pursuant to this section shall be offered for sale in accordance with such rules and regulations as the Board may adopt and shall be sold by the Board to veterans qualified to participate in the Veterans' Land Program in conformance with the provisions of this Act governing the sale of lands purchased by the Board generally; but no tract may be sold under the provisions of this Section for a price, to include any addition of the expenses above mentioned, in excess of Fifteen Thousand Dollars (\$15,000) unless the purchaser pays in cash as a down payment the amount of the sale price in excess thereof in accordance with the Board's rules and regulations but by not later than the date of sale, in addition to the initial payment required by Section 17 of this Act. In the event that a sale hereunder is not consummated, any down payment received shall be refunded to the veteran.

The foregoing notwithstanding, any land acquired and subdivided pursuant to this Section which has first been offered for sale to veterans and which has not been sold to such purchasers may be sold to any purchaser in the same manner as lands forfeited under the provisions of this Act.

[See Compact Edition, Volume 4 for text of 13 to 15]

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 ten (10) acres, 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 Fifteen Thousand Dollars (\$15,000) therefor unless the veteran pays to the Board in cash that portion of the price in excess of the amount that the Board agrees to pay in accordance with the Board's rules and regulations but by not later than the date on which the Board acquires title thereto. Any such cash payment shall be considered a down payment on the price of the land when sold by the Board to a veteran selecting same and shall be in addition to the initial payment required by Section 17 of this Act. 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 11 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 for the price paid therefor; but if the veteran fails or refuses to exercise such preference right, the land may be sold by the Board in the same manner as provided for the sale of land forfeited under the provisions of this Act. If the title to said land is not approved and accepted by the Board, any amount paid to the Board in excess of the amount which the Board agreed to pay for such selected land shall be refunded to the veteran together with any other down payment remitted to the Board. In so far as practi-

cal, all applications shall be processed in the order in which they are received by the Board.

[See Compact Edition, Volume 4 for text of 16(A)]

*Group Life Insurance Coverage Cancelling
Indebtedness of Purchasers*

Sec. 16(B). The Board may enter into a master contract or agreement with one or more life insurance companies authorized to do business in Texas to provide group life insurance coverage cancelling upon death the indebtedness due the Board of persons purchasing land under the Texas Veterans Land Program. Such contract shall not prohibit cancellation by the insurer of the entire contract upon reasonable notice to the Board but shall prohibit cancellation of individual coverage except as hereinafter expressly authorized. The master contract or agreement shall provide, in addition to those provisions of Article 3.50 of the Insurance Code of the State of Texas, that the life insurance coverage will be offered by the writing insurance company or companies to all such persons without a physical examination and that no such person shall be denied coverage because he is disabled at the time of application for such coverage. The policy contract shall express and control the contractual relationship between all parties thereto and shall be approved by the State Board of Insurance in accordance with the provisions of the Insurance Code of Texas, as amended. It shall not be mandatory that any person purchasing land under the Texas Veterans Land Program accept the offer of such coverage, and refusal by such person to accept the offer of such coverage shall not be a ground for the Board to decline to enter into a contract of sale and purchase with any such person. Such coverage shall be terminated as to any person of the group upon: (1) the satisfaction of the indebtedness due the Board; or (2) upon the Board's approval of a transfer of interest in the land being purchased from the Board; or (3) upon failure to make timely payment of the premium to be paid for such coverage; such master contract may provide that coverage will terminate upon the person purchasing land under the Texas Veterans Land Program attaining the age of sixty-five (65) years. When coverage has been terminated as to any member of the group for failure to make timely payment of the premium, renewal of coverage shall be subject to evidence of insurability as required by and satisfactory to the insurance company and upon payment of the premium due plus any penalty that may be provided. The total insurance coverage as to any person of the group shall not at any time exceed the indebtedness due the Board, but in no event shall such total insurance coverage exceed such amount as may be provided in said master contract. The Board may collect, or provide for the collection of, the premium for such coverage in any

reasonable manner. If the death of a person of the group occurs while the insurance coverage is in force, the benefits of such coverage shall be paid to the Veterans Land Board for credit to the Veterans Land Fund and shall cancel the indebtedness due the Board.

The following words and phrases shall for the purposes of Section 16(B) of this Act have the meaning indicated:

a. "Persons purchasing land under the Texas Veterans Land Program" shall mean any person or persons, and his or their successors or assigns, who are buying land from the Veterans Land Board under contract of sale and purchase, whether such land has been sold by the Board under Section 12, Section 16, or Section 19(A) of this Act.

b. "Person of the group" shall mean any person purchasing land under the Texas Veterans Land Program, as defined above, who has elected to accept the offer of the insurance coverage provided for in Section 16(B) of this Act.

c. "The indebtedness due the Board" shall mean the principal and interest thereon necessary to pay in full the obligation set forth in any contract of sale and purchase under which any person of the group, as defined above, is purchasing land from the Veterans Land Board, exclusive of delinquent principal, interest, and penalties.

Contract of Sale; Payment; 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 percent (5%) of the selling price of the land if sold pursuant to Section 12 of this Act or at least five percent (5%) of the amount that the Board agrees to pay for the land if sold pursuant to Section 16 of this Act, in neither event to exceed five percent (5%) of Fifteen Thousand Dollars (\$15,000) together with any additional down payment as provided in said Sections 12 and 16. 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 a rate to be fixed by the Board; not to exceed one and one-half percent (1½%) per annum more than the accepted bid price for each series within a bond sale division; 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 original veteran 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 financially incapacitated, or in the event of an involuntary transfer by court order or proceedings such as, but not limited to, bankruptcy, sheriff or trustee sale, or divorce, the property may be conveyed before the expiration of said three (3) years by said purchaser or his heirs, administrators, or executors by complying with the rules and regulations promulgated by the Board and by securing the approval of the Board. After said three year period, a purchaser may at any time, transfer, sell or convey land purchased under the provisions of this Act, provided all mature interest, principal and taxes have been paid and the terms and conditions of this Act and the rules and regulations of the Board have been met and the approval of the Board obtained; provided, however, if the sale is to other than a qualified Texas veteran, the assignee and all subsequent assignees shall assume an interest rate on the indebtedness to the Board to be fixed by the Board at not less than one percent (1%) per annum greater than the rate fixed by the Board for sales to veterans under Sections 12 and 16 of this Act as of the date on which such transfer, sale or conveyance is approved, except that when the purchase contract is awarded in a divorce action or incident to a written separation agreement the interest rate shall not change; provided, further, 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. No land purchased under the provisions of this Act may 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 of any character or renewal of such lease or re-lease of such property for any term. The taking of any option of any character, 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 of any character, 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 Board shall execute a deed under seal to the original purchaser of the land or to the last assignee whose assignment has been approved by the Board. Nothing herein, however, shall be construed to prohibit the Board from accepting full payment for a portion of a tract and issuing a deed thereto, in accordance with its rules and regulations; and all deeds issued by the Board and executed by the Chairman thereof under seal, whether conveying all the land contracted to be sold to a veteran or other purchaser or a part of such land, are hereby ratified, confirmed, and validated. If a deed is executed to other than the legal owner or to a deceased grantee, such deed and the rights conveyed therein shall nevertheless inure to the benefit of the lawful owner.

[See Compact Edition, Volume 4 for text of 18 to 20]

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 the law. The Board is hereby made the sole judge of forfeiture of any purchase contract under this Act, and anyone availing himself 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 forty-five (45) days after the date of letter giving notice of such declaration, such letter to be forwarded by registered mail to the last known address of such purchaser.

The Board is hereby authorized and required to collect a fee in the amount they feel necessary from each applicant under Section 16 of this Act and to deposit such fees in a bank and any and all interest received thereon shall be credited to the General Land Office Special Fund and shall be expended for administrative purposes, and to collect a fee of Thirty-five Dollars (\$35) from each successful bidder under Section 19(A) of this Act, which fees shall be held in a trust fund to be used for the purpose of payment for examination of title, recording fees and/or other expenses; and any unused balance remaining after payment for such items shall be

refunded except as provided in Section 19(A) of this Act.

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. Any such fees, or a portion thereof, which in the opinion of the Board are unused shall be refunded.

- | | |
|---|---------|
| 1. Fee for each appraisal for each application under Section 16 of this Act | \$35.00 |
| 2. Contract of Sale and Purchase transfer fee for each transfer | \$35.00 |
| 3. Mineral lease service fee for each lease executed by purchasers | \$10.00 |
| 4. Reappraisal fee when required by the Board | \$35.00 |
| 5. Fee for each loan of abstract | \$10.00 |
| 6. Fee for servicing and filing each easement | \$10.00 |
| 7. Service fee for each Contract of Sale and Purchase | \$35.00 |
| 8. Fee for homesite, severance, or paid-in-full deed | \$20.00 |

All moneys received by payment of the above fees and not refunded shall be deposited in the State Treasury and credited to the General Land Office Special Fund and shall be expended as provided in the biennial appropriation bill.

[See Compact Edition, Volume 4 for text of 21(A) to 32]

[Amended by Acts 1975, 64th Leg., p. 158, ch. 67, § 1, eff. April 24, 1975.]

Art. 5421p. Lease of Lands of Political Subdivisions

Political Subdivisions Authorized to Lease Land for Mineral, Coal, and Lignite Development

Sec. 1. Political subdivisions which are bodies corporate with recognized and defined areas, are hereby authorized to lease for mineral development purposes, including development of coal and lignite, any and all lands which may be owned by any such political subdivision.

[See Compact Edition, Volume 4 for text of 2 and 2a]

Coal and Lignite Leases

Sec. 2b. (a) Leases for coal and lignite may be granted by public auction.

(b) No leases for coal and lignite may be executed unless the lessor retains at least a royalty based on one of the following or a combination of the following:

(1) a sum certain per ton;

(2) a percentage certain of the gross sale price F.O.B. at the mine site of the coal and lignite; or

(3) a sum certain for each acre-foot of coal and lignite mined and removed from the premises.

(c) Royalties paid under this section may be paid as advanced mineral royalties.

(d) No lease for coal and lignite may be for a primary term of more than 35 years from the date of execution.

[Amended by Acts 1975, 64th Leg., p. 1234, ch. 459, §§ 1 and 2, eff. June 19, 1975.]

Art. 5421q. Taking Park, Recreational, etc., Land for Other Public Use; Notice; Hearing

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

Sec. 1a. The department, agency, board, or political subdivision having control of the public land is not required to comply with Section 1 of this Article if:

(1) The land is originally obtained and designated for another public use and is temporarily used as a park, recreation area, or wildlife refuge pending its utilization for the originally designated purpose;

(2) The program or project that requires the use or taking of the land being used temporarily as a park, recreation area, or wildlife refuge is the same program or project for which the land was originally obtained and designated; and

(3) The land was not designated by the department, agency, political subdivision, county, or municipality for use as a park, recreation area, or wildlife refuge prior to the effective date of Section 1a of this Act.

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

[Amended by Acts 1975, 64th Leg., p. 1295, ch. 486, § 1, eff. Sept. 1, 1975.]

Art. 5421s. Geothermal Resources Act of 1975

Short Title

Sec. 1. This Act may be cited as the Geothermal Resources Act of 1975.

Declaration of Policy

Sec. 2. It is declared to be the policy of the State of Texas that:

(1) the rapid and orderly development of geothermal energy and associated resources located within the State of Texas is in the interest of the people of the State of Texas;

(2) in developing the state's geothermal energy and associated resources, the primary purpose is to provide a dependable supply of energy in an efficient manner that avoids waste of the energy resources;

(3) consideration shall be afforded to protection of the environment, to protection of correlative rights, and to conservation of natural resources by all agencies and officials of the State of Texas involved in directing and prescribing rules, regulations, or orders governing the exploration, development, and production of geothermal energy and associated resources and by-products in Texas.

Definitions

Sec. 3. In this Act:

(a) "Geothermal energy and associated resources" means:

(1) all products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;

(2) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) heat or other associated energy found in geothermal formations; and

(4) any by-product derived from them.

(b) The term "by-product" means any element found in a geothermal formation which when brought to the surface is not used in geothermal heat or pressure inducing energy generation; and

(c) "Commissioner" means the commissioner of the general land office.

Authority and Responsibilities of the Railroad Commission

Sec. 4. (a) Except for the duties and responsibilities posited by this Act in other agencies or officials of this state, the railroad commission shall regulate the exploration, development, and production of geothermal energy and associated resources on public and private land for the purposes of conservation of the resource and of protection of correlative rights.

(b) Within 180 days after the effective date of this Act, the railroad commission, in consultation with the land commissioner, the executive director of the Texas Water Quality Board, and the executive director of the Texas Air Control Board, after public hearing, shall make, publish, and enforce rules and regulations providing for the rapid and orderly exploration, development, and production of geothermal energy and associated resources and otherwise to accomplish the purposes of this Act, including rules and regulations governing the following:

(1) protection of the environment against damage resulting from the exploration, development, and production of geothermal energy and associated resources;

(2) prevention of waste of natural resources, including geothermal energy and associated resources, in connection with the exploration, development, and production of geothermal energy and associated resources;

(3) protection of the general public against injury or damage resulting from the exploration, development, and production of geothermal energy and associated resources; and

(4) protection of correlative rights against infringement resulting from the exploration, development, and production of geothermal energy and associated resources.

Authority and Responsibility of the General Land Office

Sec. 5. (a) In order to facilitate and encourage the rapid and orderly development of geothermal energy and associated resources, the commissioner is given authority to provide for the orderly exploration of lands belonging to the Permanent School Fund of Texas, excluding wildlife refuges and recreational areas except as provided in Subsection (e) of this section, and to issue permits and charge reasonable fees for such permits in accordance with rules and regulations promulgated under the authority of this Act by the School Land Board. All fees collected from issuance of permits shall be deposited in General Land Office Fund 80 and used as the legislature may direct.

(b) The School Land Board, on direction of the commissioner, may lease any lands belonging to the Permanent School Fund of Texas, excluding wildlife refuges and recreational areas, for the production of geothermal energy and associated resources. The School Land Board has full authority to set the terms and conditions of leases and may adopt rules and regulations pertaining to exploration, development, and production of such energy that the board determines is in the best interest of the state. The School Land Board may require the taking in kind of the state's interest in the geothermal energy and associated resources or its by-products provided from these lands.

(c) Any such lands offered for lease to the public by the School Land Board shall be advertised in four daily newspapers in the state having general circulation, in three issues of each, at least 30 days in advance of a sale date. All sales of leases shall be by sealed bid. The board has the right to reject any and all bids, but if they accept a bid, such bid must be determined by the board to be in the best interest of the State of Texas.

(d) Prior to advertising tracts of state land for lease, the commissioner shall furnish a list of all tracts to be considered by the board for lease to the Texas Water Quality Board, the Texas Air Control Board, the railroad commission, and any other state

or federal agency which may have information that would be beneficial to the board in its determination of terms and conditions of the proposed lease.

(e) The School Land Board, at its discretion, may grant permits and leases to state and federal institutions, organizations, or groups desiring to do exploratory or experimental research of geothermal energy and associated resource potentials on lands belonging to the Permanent School Fund of Texas, excluding wildlife refuges and recreational areas. Such permits and leases may be granted for such research or experimental purposes under rules, regulations, and conditions, without following the procedure for leasing to the public set out in this section, as the board determines is in the best interest of the state.

(f) The School Land Board, at its discretion, has full authority to approve unit agreements of one or more leased tracts upon application of the lessees. Before approving any unit agreement, the board must find that such unit agreement, when approved by the board, will be in the best interest of the state.

(g) During the first 30 days of each regular session of the legislature, the commissioner shall report on the status of the exploration, development, and production of geothermal energy and associated resources under the lands governed by this section. [Acts 1975, 64th Leg., p. 592, ch. 243, §§ 1 to 5, eff. May 20, 1975.]

Art. 5421z. Indian Commission

SUBCHAPTER A. STRUCTURE OF COMMISSION

Texas Indian Commission

Sec. 1. The Texas Indian Commission, formerly the Commission for Indian Affairs, is an agency of the state.

Members of Commission

Sec. 2. The commission consists of three members appointed by the governor with the advice and consent of the senate.

Terms of Office

Sec. 3. Each member holds office for a term of six years and until his successor is appointed and qualified. One member's term expires on January 31 of each odd-numbered year.

Chairman

Sec. 4. The commission shall elect a chairman from among its members, who shall serve for a period of two years or until his successor is elected. The chairman shall preside over all meetings, appoint committees, make periodic reports to the governor and the legislature, represent the Texas Indian Commission at ceremonies and public functions, and make policy and budget recommendations to the legislature and fellow commission members.

Meetings of Commission

Sec. 5. The commission shall hold at least two public meetings per year at times and places fixed by rule of the commission. One public meeting shall be held at the Alabama-Coushatta Indian Reservation and one at the Tigua Indian Reservation each year. The chairman shall notify each member at least two weeks prior to each regular meeting date and three days before each special meeting date. Two members of the commission constitute a quorum for the transaction of business.

Compensation of Members

Sec. 6. Each member is entitled to receive per diem compensation for each day he actually attends a meeting or travels or attends to commission business, and is entitled to reimbursement for actual and necessary expenses incurred in attending meetings, as provided in the General Appropriations Act.

SUBCHAPTER B. ALABAMA—COUSHATTA INDIAN RESERVATION

Commission Responsibilities

Sec. 7. A responsibility of the commission is the development of the human and economic resources of the Alabama-Coushatta Indian Reservation and the Tigua Indian Reservation, and to assist the Texas Indian people in making their reservations self-sufficient. Specifically, the commission shall assist the Texas Indian tribes in improving their health, educational, agricultural, business, and industrial capacities.

Executive Director

Sec. 8. The commission shall appoint an executive director. The executive director serves at the will of the commission. He is responsible for the management, supervision, and implementation of the policies of the commission in carrying out the responsibilities of the commission as set forth in Section 7 of this Act. The executive director shall employ a superintendent for each reservation. The superintendents shall answer to the executive director and carry out the programs and policies of the commission. The executive director, at the direction of the commission, shall seek all possible federal funds, grants, gifts, and other types of assistance available to help expedite the commission's expressed policy for development and responsibility as outlined in Section 7 of this Act.

Contracts with Local Agencies

Sec. 9. The commission may cooperate, negotiate, and contract with local agencies and with private organizations and foundations concerned with the development of the human and economic resources of the reservations in order to implement the planning and development of the reservations. Counties and local units of government are authoriz-

ed to cooperate with the commission and may furnish the use of any equipment necessary in the development of the reservations.

Gifts; Grants

Sec. 10. The commission may accept gifts, grants, and donations of money, personal property, and real property for use in development of the reservations. It may acquire by gift or purchase any additional land necessary for improvement of the reservations, their income, and their economic self-sufficiency.

Federal Grants

Sec. 11. The commission may negotiate with any agency of the United States in order to obtain grants to assist in the development of the reservations.

Tribal Councils May Issue Bonds

Sec. 12. Subject to the written approval of the commission, the Tribal Councils may issue revenue bonds or any other evidence of indebtedness in order to finance the construction of improvements on the reservations and for the purchase of additional land necessary therefor or for improvement of the income and economic conditions of the reservations. The bonds or other evidences of indebtedness may be secured by the income from one or more revenue-producing properties, interests, or facilities of the land which is held in trust by the State of Texas for the benefit of the Indians.

Maturity; Redemption

Sec. 13. All bonds issued by either Tribal Council shall mature serially or otherwise not more than 40 years from the date of issuance, and they may be made redeemable prior to maturity, at the option of the Tribal Council, with the written approval of the commission, at times and prices and under terms and conditions prescribed in the authorizing proceedings.

Form, Conditions, Details of Bonds

Sec. 14. Subject to the restrictions contained in this Act, either Tribal Council and the commission have complete discretion in fixing the form, conditions, and details of the bonds; and the bonds may be refunded or otherwise refinanced whenever the Tribal Council, with the approval of the commission, deems such action to be necessary or appropriate.

Sale; Terms; Price; Interest

Sec. 15. The bonds may be sold, either at public or private sale, at a price and under terms determined by the Tribal Council and the commission to be the most advantageous price and terms reasonably obtainable. Interest on loans and bonds shall not exceed interest limits approved by the appropriate Tribal Council and the commission; provided, however, that interest on loans and bonds shall not exceed 10 percent per annum.

Expenses; Fees

Sec. 16. Each Tribal Council, with the approval of the commission, may employ attorneys, fiscal agents, and financial advisors in connection with the issuance and sale of bonds; and proceeds from the sale of the bonds may be used to pay their fees and all other expenses of the issuance and sale of the bonds.

Bonds as Investments and Security

Sec. 17. All bonds issued under this Act are legal, authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of all political subdivisions and public agencies of the state, and when accompanied by all unmatured coupons appurtenant to the bonds, are lawful and sufficient security for deposits in the amount of the par value of the bonds.

Pledge of Revenues and Income

Sec. 18. Each Tribal Council, with the approval of the commission, may pledge the rents, royalties, revenue, and income from revenue-producing properties and facilities of the state trust lands to the payment of the interest on and the principal of the bonds, and may enter into agreements regarding the imposition of sufficient charges and other revenues and the collection, pledge, and disposition of them. In making such a pledge, the Tribal Council may specifically reserve the right to issue, with the approval of the commission, additional bonds which will be on a parity with, or subordinate to, the bonds then being issued.

Disposition of Oil and Gas Revenue

Sec. 19. All revenue realized from leasing of Indian reservation land shall be paid to the Commissioner of the General Land Office, and he shall immediately place such money in a depository or

depositories designated by the appropriate Tribal Council and commission. These funds shall be placed in a special account known as either the Alabama-Coushatta Mineral Fund or the Tigua Mineral Fund and shall be expended for such purposes as the appropriate Tribal Council shall recommend and the commission shall approve.

Debt Against State

Sec. 20. No obligation created by a contract, bond, note, or other evidence of indebtedness issued by either Tribal Council under this Act shall be construed as creating a debt against the state; and every such contract, bond, note, or other evidence of indebtedness 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."

Leases to Tribal Members for Residential Purposes

Sec. 21. The Tribal Council, with the approval of the commission, may execute lease agreements under which any member of the tribe, as lessee, may occupy for residential purchase, for a term of not more than 50 years with the option to renew for a term of not more than 50 years, any designated lot or tract of land which may be included in the 1,280-acre tract conveyed to the Alabama Indians by authority of Chapter XLIV, Acts of the 5th Legislature, 1854.

[Amended by Acts 1975, 64th Leg., p. 435, ch. 185, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act repealed art. 5421z-1; § 3 thereof provided: "Sec. 3. Those persons holding office as members of the Commission for Indian Affairs on the effective date of this Act continue to hold office as members of the Texas Indian Commission for the terms for which they were originally appointed."

Art. 5421z-1. Repealed by Acts 1975, 64th Leg., p. 435, ch. 185, § 2, eff. Sept. 1, 1975

TITLE 87

LEGISLATURE

**Act. 5428a. Candidate for Speaker: Campaign Financing
Saved from Repeal**

Acts 1975, 64th Leg., p. 2272, ch. 711, enacting the Political Funds Reporting and Disclosure Act of 1975, provided in § 15: "Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973."

Art. 5429f. Legislative Reorganization Act of 1961

[See Compact Edition, Volume 4 for text of 1 to 19]

Travel Expenses of Legislative Members and Employees

Sec. 20. Members and employees of each House of the Legislature, while in travel status properly

authorized by that House, are entitled to receive, as provided by resolution, either actual and necessary expenses or a per diem not to exceed that set by or pursuant to the constitution for members when the Legislature is in session, and shall also be reimbursed for mileage or other transportation expenses at the same rate as provided by law for state officials or state employees. While in authorized travel status outside the state, members and employees shall be reimbursed for actual and necessary expenses if in excess of the per diem.

[See Compact Edition, Volume 4 for text of 21]

[Amended by Acts 1975, 64th Leg., p. 1975, ch. 656, § 1, eff. June 19, 1975.]

TITLE 89

LIBRARY AND HISTORICAL COMMISSION

Article

5446b. Central Media Depository for Individuals Unable to Use Ordinary Print [NEW].

Art. 5446b. Central Media Depository for Individuals Unable to Use Ordinary Print

Purpose

Sec. 1. The purpose of this article is to enable the Texas State Library, the Central Education Agency, the State Commission for the Blind, volunteer organizations involved in the production of Braille or recorded materials for the blind, the Library of Congress, and related types of organizations to work together more closely and effectively, with minimum cost, through establishing a comprehensive central state depository for Braille, large print, slow speed records and machines, tape recordings and tape players, and related forms of communicative media. It is the intent of this article to allow various agencies and organizations interested in and responsible for such services to work together cooperatively in one facility, without requiring one central management.

Creation of Central Media Depository

Sec. 2. The creation in Austin of a central media depository of materials and devices required by blind and visually handicapped individuals, or by other individuals who are unable to use ordinary printed materials, is hereby authorized.

Coordination

Sec. 3. The establishment and operation of the central media depository shall be under the general supervision of the Governor's Coordinating Office for the Visually Handicapped. Specific arrange-

ments for administrative support, sharing of staff and equipment, and related matters involved in the operation of this facility shall, subject to the approval of the Governor's Coordinating Office for the Visually Handicapped, be developed, periodically evaluated, and from time to time modified by the agencies and organizations using or occupying space in the central media depository.

Ancillary Services

Sec. 4. The Governor's Coordinating Office for the Visually Handicapped shall allow the central media depository to be used for the repair of special media and equipment required by individuals who are unable to use ordinary print for research and demonstration, for training, and for the production by volunteer organizations of materials in special media.

Funding

Sec. 5. The costs of the special media depository, including initial costs of establishment and recurrent costs of operation, shall be defrayed through such sums as the legislature might appropriate for these purposes, through such grants, gifts, bequests, and donations as the cooperating agencies might receive for the establishment and support of the special media depository, through reasonable fees charged for services not customarily available without charge through any of the using or occupying agencies or organizations, and through such budgets as might be developed by the cooperating agencies and organizations through the use of interagency contracts and agreements.

[Added by Acts 1975, 64th Leg., p. 2389, ch. 734, § 15, eff. June 21, 1975.]

TITLE 90

LIENS

CHAPTER ONE. JUDGMENT LIENS

Article

5449(a). Discharge of Judgments and Judgment Liens Against Bankrupts [NEW].

Art. 5449(a). Discharge of Judgments and Judgment Liens Against Bankrupts

Application for Discharge and Cancellation of Judgment and Lien

Sec. 1. At any time after one year has elapsed since a bankrupt or debtor has been discharged from his debts, before or after the effective date of this Act, pursuant to the acts of Congress relating to bankruptcy, the bankrupt or debtor, or his, her, or its receiver, trustee, or any other interested person, including a corporation, may apply, upon proof of the discharge of the bankrupt or debtor, to the court in which a judgment was rendered against the bankrupt or debtor for an order directing the discharge and cancellation of the judgment, any abstract or abstracts of said judgment, and the lien represented thereby.

Order of Discharge and Cancellation: Entry; Effect; Recording

Sec. 2. If it appears upon the hearing that the bankrupt or debtor has been discharged from the payment of the obligation or debt represented by the judgment, the court shall enter an order of discharge and cancellation of said judgment and any abstracts of said judgment, which order of discharge shall be entered upon the docket of the court. Said order of discharge shall constitute a release, discharge, and cancellation of said judgment and any unsatisfied judgment liens represented by all abstracts of said judgment then or thereafter of record; provided, however, that a certified copy of said order of discharge must be duly recorded in the judgment lien records of a county in which an abstract of judgment has been or is thereafter recorded in order to discharge and cancel said abstract of judgment in said county.

Notice of Application for Discharge: Service; Publication

Sec. 3. Notice of said application for discharge, accompanied by copies of the papers upon which it is made, shall be served on the judgment creditor or his attorney of record in the action in which said judgment was rendered, in the manner prescribed for service of a notice in an action, if the residence

or place of business of the judgment creditor, or of his attorney, is known. Upon proof by affidavit that the address of neither the judgment creditor nor his attorney is known, and that the address of neither can be ascertained after due diligence, or that the judgment creditor is a nonresident of this state, and his attorney is dead, or removed from the state, or cannot be found within the state, a judge or justice of the court may by order direct that the notice of the application be published in a newspaper designated in the order once a week for not more than three consecutive weeks. Such publication, shown by the affidavit of the publisher, shall be sufficient service upon the judgment creditor of the application.

Judgment as Lien on Real Property

Sec. 4. Where the judgment was a lien on real property owned by the bankrupt or debtor prior to the time that he, she, or it was adjudged a bankrupt, or that a petition for debtor relief under the federal Bankruptcy Act of July 1, 1898, as amended (Title 11, U.S.C.A.), was filed, and the debt or obligation evidenced by said judgment was not discharged under the provisions of the Bankruptcy Act, the lien thereof upon said real estate shall not be affected by said order and may be enforced, but in all other respects the judgment shall be of no force or validity, nor shall the same be a lien on real property acquired by the bankrupt or debtor subsequent to the discharge in bankruptcy.

Judgment as Lien on Nonexempt Real Property

Sec. 5. Where the judgment was a lien on non-exempt real property owned by the bankrupt or debtor prior to the time he, she, or it was adjudged a bankrupt or that a petition for debtor relief under the federal Bankruptcy Act of July 1, 1898, as amended (Title 11, U.S.C.A.), was filed, and said real property is abandoned during the course of the proceeding, the lien thereof upon said real estate shall not be affected by said order and may be enforced, but in all other respects the judgment shall be of no force or validity, nor shall the same be a lien on real property acquired by the bankrupt or debtor subsequent to the discharge in bankruptcy. [Amended by Acts 1975, 64th Leg., p. 1030, ch. 396, § 1, eff. June 19, 1975.]

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. All laws or parts of law in conflict with the provisions of this Act are hereby repealed, to the extent of the conflict only.

"Sec. 3. If any provision or provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER TWO. MECHANICS, CONTRACTORS AND MATERIAL MEN

Art. 5472a. Lien for Material Furnished Public Contractor; Notice

Any person, firm, corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery, or labor to any contractor under a prime contract where such prime contract does not exceed the sum of \$15,000 for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants due or to become due to such contractor for such improvements provided such person, firm, corporation, trust estate, or stock association shall before any payment is made to such contractor, notify in writing the officials of the state, county, town, or municipality whose duty it is to pay such contractor of his claim, such written notice to provide and be given within the prescribed time as follows:

(a) Such notice to be given by certified or registered mail, with a copy to the contractor at his last known business address, or at his resi-

dence, and given within thirty (30) days after the 10th of the month next following each month in which labor, material, apparatus, fixtures, or machinery were furnished for such lien is claimed.

(b) Such notice, whether based on a written or oral agreement shall state the amount claimed, the name of the party to whom such was delivered or for whom it was performed, with dates and place of delivery or performance and describing the same in such manner as to reasonably identify said material, apparatus, fixtures, machinery, or labor and the amount due therefor, and identify the project where material was delivered or labor performed.

(c) Such notice shall be accompanied by a statement under oath stating that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

(d) Any person who shall file a willfully false and fraudulent notice and statement shall be subject to the penalties for false swearing.

[Amended by Acts 1975, 64th Leg., p. 2285, ch. 713, § 2, eff. Sept. 1, 1975.]

TITLE 91

LIMITATIONS

2. LIMITATIONS OF PERSONAL ACTIONS

Art. 5536a. Architects, Engineers and Persons Performing or Furnishing Construction or Repair of Improvement to Real Property

Sec. 1. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property or the commencement of operation of any equipment attached to real property, and not afterward, all actions or suits in court for damages for any injury, damages or loss to property, real or personal, or for any injury to a person, or for wrongful death, arising out of the defective or unsafe condition of any such real property or any equipment or improvement attached to such real property, for contribution or indemnity for damages sustained on account of such injury, damage, loss or death against any registered or licensed engineer or architect in this state performing or furnishing the design, planning, inspection of construction of any such improvement, equipment or structure or against any such person so performing or furnishing such design, planning, inspection of construction of any such improvement, equipment, or structure; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the registered or licensed engineer or architect performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented.

Sec. 2. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property, and not afterward, all actions or suits in court for damages for

any injury, damages, or loss to property, real or personal, or for any injury to a person, or for wrongful death, or for contribution or indemnity for damages sustained on account of such injury, damage, loss, or death arising out of the defective or unsafe condition of any such real property or any deficiency in the construction or repair of any improvements on such real property against any person performing or furnishing construction or repair of any such improvement; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the person performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented, or if said injury, damage, loss, or death occurs during the tenth year, all actions or suits in court may be brought within two years from the date of such injury, damage, loss, or death; and provided further, however, this section shall not apply and will not operate as a bar to an action or suit in court (a) on a written warranty, guaranty, or other contract which expressly is effective for a period in excess of the period herein prescribed; (b) against persons in actual possession or control of the real property as owner, tenant, or otherwise at the time the injury, damage, loss, or death occurs; or (c) based on willful misconduct or fraudulent concealment in connection with the performing or furnishing of such construction or repair. Nothing in this section shall be construed as extending or affecting the period prescribed for the bringing of any action under Articles 5526, 5527, and 5529, Revised Civil Statutes of Texas, 1925, or any other law of this state.

[Amended by Acts 1975, 64th Leg., p. 649, ch. 269, § 1, eff. Sept. 1, 1975.]

TITLE 92

MENTAL HEALTH

I. MENTAL HEALTH CODE

CHAPTER ONE. GENERAL PROVISIONS

Article

5547-13. County Attorney to Represent State.

5547-14. Costs.

5547-15. Fees Allowed Court-Appointed Attorneys and Physicians.

Art. 5547-13. County Attorney to Represent State

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op. Atty. Gen. 1967, No. M-135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

Art. 5547-14. Costs

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op. Atty. Gen. 1967, No. M-135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

Art. 5547-15. Fees Allowed Court-Appointed Attorneys and Physicians

The county judge may allow reasonable compensation to attorneys and physicians appointed by him under this Code, provided that any compensation he allows to an attorney is not less than \$25. The compensation paid shall be taxed as costs in the case.

[Amended by Acts 1975, 64th Leg., p. 455, ch. 192, § 1, eff. Sept. 1, 1975.]

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op. Atty. Gen. 1967, No. M-135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

CHAPTER THREE. INVOLUNTARY HOSPITALIZATION

PART 4. ORDERS, TRANSPORTATION, PROTECTIVE CUSTODY

Article

5547-68. Admission and Detention [NEW].

PART 1. EMERGENCY ADMISSION PROCEDURE

Art. 5547-27. Authority of Health or Peace Officer

Any health or peace officer, who has reason to believe and does believe upon the representation of a credible person, in writing, or upon the basis of the conduct of a person or the circumstances under which he is found that the person is mentally ill and because of his mental illness is likely to cause injury

to himself or others if not immediately restrained, may upon obtaining a warrant from any magistrate, take such person into custody, and immediately transport him to the nearest hospital or other facility deemed suitable by the county health officer, except in no case shall a jail or similar detention facility be deemed suitable unless such jail or detention facility is specifically equipped and staffed to provide psychiatric care and treatment, and make application for his admission, pursuant to the warrant of the magistrate. Such person admitted upon such warrant may be detained in custody for a period not to exceed twenty-four (24) hours, unless a further written order is obtained from the County Court or Probate Court of such county, ordering further detention. Provided, however, that should the person be taken into custody on a Saturday or Sunday, or a legal holiday, then the twenty-four-hour period allowed for obtaining the court order permitting further detention shall begin at 9:00 o'clock a. m. on the first succeeding business day. [Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

Art. 5547-28. Emergency Admission

The head of a mental hospital, a general hospital, or other facility deemed suitable by the county health officer shall not admit nor detain any person for emergency observation and treatment unless:

(a) A warrant has been obtained from a magistrate ordering the apprehension and taking into custody of such person to be admitted, or an order of protective custody has been issued pursuant to Section 66 of this Code;

(b) A written application is made by a health or peace officer who has such person in his custody stating the circumstances under which the person was taken into custody and the officer's belief and the reasons therefor that the person is mentally ill and that because of his mental illness is likely to cause injury to himself or others if not immediately restrained; and

(c) A written and certified opinion is made by the medical officer on duty at the hospital or other facility, that after a preliminary examination, the person has symptoms of mental illness and is likely to cause injury to himself or others if not immediately restrained.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

Art. 5547-29. Notification of Admission

The head of the facility admitting a person for emergency observation and treatment shall immediately give notice thereof by registered mail to the person's guardian or responsible relative, and shall report the admission to the Board.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

Art. 5547-30. Examination and Certification

The head of the facility shall have a physician examine every person within twenty-four (24) hours after his admission to a hospital for emergency observation and treatment and prepare a Certificate of Medical Examination for Mental Illness. A copy of the Certificate shall be sent forthwith to the person's guardian or responsible relative.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

PART 2. TEMPORARY HOSPITALIZATION FOR OBSERVATION AND/OR TREATMENT**Art. 5547-31. Application for Temporary Hospitalization**

A sworn Application of Temporary Hospitalization of a proposed patient may be filed with the county court of the county in which the proposed patient resides or is found. The Application may be made by any adult person, or by the county judge, and shall state upon information and belief that the proposed patient is not charged with a criminal offense or that he is charged with a criminal offense and has been transferred to the appropriate court for civil commitment proceedings pursuant to Section 6 of Article 46.02, Code of Criminal Procedure, that he is mentally ill, and that for his own welfare and protection or the protection of others he requires observation and/or treatment in a mental hospital.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 1, eff. June 19, 1975.]

Art. 5547-36. Hearing on the Application

(a) The Judge may hold the hearing on an Application for Temporary Hospitalization at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the mental condition of the proposed patient in the event he is present.

(b) The proposed patient is not required to be present at the hearing, but he shall not be denied the right to be present.

(c) The Court may exclude all persons not having a legitimate interest in the proceedings, provided the consent of the proposed patient first shall have been obtained.

(d) The hearing shall be conducted in as informal a manner as is consistent with orderly procedure.

(e) The hearing shall be before the Court without a jury, unless a jury is demanded by a person authorized to make such demand or by the proposed

patient or by the Court. Provided, however, the hearing must be before a jury in the case of a proposed patient who is charged with a criminal offense.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 2, eff. June 19, 1975.]

Art. 5547-38. Order Upon Hearing

[See Compact Edition, Volume 4 for text of (a) and (b)]

(c) If upon the hearing the court finds that the proposed patient is mentally ill and requires observation or treatment for his own welfare and protection or the protection of others but that the required observation or treatment can be accomplished without commitment to a mental hospital, the court may order the proposed patient to submit to other treatment, observation, or care as may be found by the court to be likely to promote the welfare or protection of the proposed patient and the protection of others. If the proposed patient fails to fulfill the terms of the court's order, the court may, on its own motion or on the motion of any interested party, order that the mentally ill person be committed as a patient for observation or treatment in a mental hospital for a period not exceeding 90 days.

[Amended by Acts 1975, 64th Leg., p. 486, ch. 209, § 1, eff. Sept. 1, 1975.]

Art. 5547-39b. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the Court of Civil Appeals of the county.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 1, eff. June 19, 1975.]

Art. 5547-39c. Stay Order

Pending the appeal, the County Judge or District Judge in whose court the cause is pending may stay the Order of Temporary Hospitalization, and release the proposed patient from custody if the Judge is satisfied that the proposed patient is not dangerous to himself or to others, and provided that the proposed patient posts an appearance bond in an amount to be determined by the Court.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 2, eff. June 19, 1975.]

Art. 5547-39d. Hearing of Appeals

In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court in mental illness matters, all proceedings for temporary commitment shall be heard in such courts and the constitutional county courts, rather than in the district courts. In such counties all final orders in such matters shall be appealable to the Courts of Civil Appeals. Such cases shall be advanced on the docket and given a preference setting over all other

cases. The Courts of Civil Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases. [Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 3, eff. June 19, 1975.]

PART 3. INDEFINITE COMMITMENT

Art. 5547-41. Petition

A sworn Petition for the indefinite commitment of a person to a mental hospital may be filed with the county court of the county in which the proposed patient is hospitalized, or if he is not hospitalized, the county in which he resides or is found. The Petition may be filed by any adult person, or by the county judge, and shall be styled "THE STATE OF TEXAS, FOR THE BEST INTEREST AND PROTECTION OF _____, AS A MENTALLY ILL PERSON." The Petition shall contain the following statements upon information and belief:

- (1) Name and address of the proposed patient.
- (2) Name and address of the proposed patient's spouse, parents, children, brothers, sisters, and legal guardian.
- (3) Name and address of petitioner and a statement of his interest in the proceeding, including his relationship, if any, to the proposed patient.
- (4) Name and address of the mental hospital, if any, in which the proposed patient is a patient.
- (5) That the proposed patient is not charged with a crime or that he is charged with a criminal offense and has been transferred to the appropriate court for civil commitment proceedings pursuant to Section 6 of Article 46.02, Code of Criminal Procedure.
- (6) That the proposed patient has been under observation and/or treatment in a mental hospital for at least sixty (60) days pursuant to an Order of Temporary Hospitalization entered within the twelve (12) months immediately preceding the filing of the Petition.
- (7) That the proposed patient is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 3, eff. June 19, 1975.]

Art. 5547-44. Notice of Hearing

At least seven (7) days prior to the date of the hearing a copy of the Petition and Notice of Hearing

shall be personally served on the proposed patient. A copy of the Petition and Notice of Hearing shall be sent by registered mail to the guardian or a responsible relative of the proposed patient. The Notice of Hearing shall read substantially as follows:

THE STATE OF TEXAS NO. _____ IN THE
 FOR THE BEST INTER- COUNTY COURT OF
 EST AND PROTECTION _____ COUNTY,
 OF _____ TEXAS
 As a Mentally Ill Person

NOTICE OF HEARING

TO: _____:
(Proposed Patient)

You are hereby notified that on the _____, at _____, in _____ County, Texas, a hearing will be held on the attached Petition to determine whether or not you shall be indefinitely committed to a mental hospital and to determine the issue of your mental competency.

If you are charged with a criminal offense, the hearing shall be before a jury which cannot be waived. If you are not charged with a criminal offense, you are advised that you have a right to demand a trial by jury or to have a hearing before the judge alone if you wish to waive trial by jury. Unless a waiver of trial by jury, signed by you or your next of kin, and your attorney, is filed with the court, a jury will hear and determine the issues in this case.

Mr. _____, attorney at law, whose address is _____ and whose telephone number is _____, has been appointed by the county judge to represent you in this case for your best interest and protection. However, if you desire you may employ a lawyer of your own choosing to represent you. You may consult with your attorney concerning this Petition and your rights in this case.

You have the right to be present at this hearing, but you are not required to be present.

County Judge

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 4, eff. June 19, 1975.]

Art. 5547-45. Waiver of Trial by Jury

Waiver of trial by jury shall be in writing under oath and may be signed and filed at any time subsequent to service of the Petition and Notice of Hearing upon the proposed patient. The waiver of trial by jury shall be signed and sworn to by the proposed patient, or his next of kin, and by the

attorney ad litem appointed to represent the proposed patient. There shall be no waiver of trial by jury in the case of a proposed patient who is charged with a criminal offense.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 5, eff. June 19, 1975.]

Art. 5547-55. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the Court of Civil Appeals.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 5, eff. June 19, 1975.]

Art. 5547-56. Stay Order

For good cause shown, the county judge, or district judge in whose court the cause is pending, may stay the Order of Indefinite Commitment pending the appeal.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 6, eff. June 19, 1975.]

Art. 5547-57. Hearing of Appeals

In those counties where there is no statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court in mental illness matters, all proceedings for indefinite commitment shall be heard by the county court, except that the proposed patient may request that such proceeding shall then be transferred by the County Judge to the district court of the county, and such proceeding shall be heard in the district court as if originally filed in such court. In such counties all final orders in such matters shall be appealable to the Courts of Civil Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Civil Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

In those counties where there is a statutory probate court, county court at law, or other statutory courts exercising the jurisdiction of a probate court in mental illness matters, all proceedings for indefinite commitment shall be heard in such courts and the constitutional county courts, rather than in the district courts. In such counties all final orders in such matters shall be appealable to the Courts of Civil Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Civil Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 4, eff. June 19, 1975.]

CHAPTER FOUR. GENERAL HOSPITALIZATION PROVISIONS

Art. 5547-68. Admission and Detention

(a) The head of a mental hospital is authorized to admit and detain any patient in accordance with the following procedures provided in this Code:

- (1) Voluntary Hospitalization
- (2) Emergency Admission
- (3) Temporary Hospitalization
- (4) Indefinite Commitment

(b) Nothing in this Code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

(c) This Code does not affect the admission to a State mental hospital of an alcoholic admitted in accordance with Acts 1951, Fifty-second Legislature, Chapter 398 (compiled as Texas Civil Statutes, Article 3196c (Vernon's 1952 Supplement)) nor the admission of a person charged with a criminal offense admitted in accordance with Section 5 of Article 46.02, Code of Criminal Procedure.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 6, eff. June 19, 1975.]

Art. 5547-69. Persons Charged with Criminal Offense

The sections of this Code concerning the discharge, furlough and transfer of a patient are not applicable to a person charged with a criminal offense who is admitted in accordance with Section 5 of Article 46.02, Code of Criminal Procedure.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 7, eff. June 19, 1975.]

CHAPTER FIVE. PRIVATE MENTAL HOSPITALS

Art. 5547-91. License Issuance

(a) After receipt of proper application for license and the required fees, the Department shall make such investigation as it deems desirable. If the Department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the Department, the Department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license. However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act,¹ the Depart-

ment shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.

(b) Subject to the applicable provisions of the Texas Health Planning and Development Act, the authorized bed capacity may be increased at any time upon the approval of the Department and may be reduced at any time by notifying the Department.

[See Compact Edition, Volume 4 for text of (c) and (d)]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.02, eff. May 28, 1975.]

¹ Article 4418h.

Art. 5547-93. Denial, Suspension or Revocation of License

(a) After giving an applicant or licensee opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the Department may deny, suspend, or revoke a license, if it finds substantial failure by the applicant or licensee to comply with the rules or regulations established by the Department or the provisions of this Code or with applicable provisions of the Texas Health Planning and Development Act.

[See Compact Edition, Volume 4 for text of (b) to (f)]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.03, eff. May 28, 1975.]

II. MENTAL HEALTH AND RETARDATION ACT

ARTICLE 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Art. 5547-202. Texas Department of Mental Health and Mental Retardation

[See Compact Edition, Volume 4 for text of 2.01 to 2.23]

Certificate of Need Requirement

Sec. 2.24. The acquisition, development, construction, modification, and expansion of facilities, provision of additional services, and expansion of existing services under Articles 2, 3, and 4 of this Act are subject to the applicable provisions of the Texas Health Planning and Development Act,¹ including requirements for a certificate of need or an exemption certificate.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.01, eff. May 28, 1975.]

¹ Article 4418h.

ARTICLE 3. COMMUNITY CENTERS FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES

Art. 5547-203. Community Centers for Mental Health and Mental Retardation Services

[See Compact Edition, Volume 4 for text of 3.01 to 3.03]

Meetings

Sec. 3.04. The boards of trustees shall make rules to govern the holding of regular and special meetings. All meetings of the boards of trustees shall be open to the public to the extent required by and in accordance with the general law of this state requiring meetings of governmental bodies to be open to the public. A majority of the membership of the board of trustees shall constitute a quorum for the transaction of business. The board shall keep a record of its proceedings, and the record is open to inspection by the public.

[See Compact Edition, Volume 4 for text of 3.05 to 3.14]

Cooperation of Department

Sec. 3.15. (a) The Department shall provide to local agencies, boards of trustees and directors assistance, advice and consultation in the planning, development and operation of community centers.

(b) The Department may transfer ownership of and possession of personal property which is under its control or jurisdiction and which is surplus to its needs to community centers, with or without reimbursement, to be used in providing mental health services or mental retardation services, or both.

[Amended by Acts 1975, 64th Leg., p. 562, ch. 220, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 936, ch. 350, § 1, eff. June 19, 1975.]

III. MISCELLANEOUS PROVISIONS

Art. 5561c. Alcoholism

[See Compact Edition, Volume 4 for text of 1 to 8]

Admission and Certification of Alcoholics

Sec. 9.

[See Compact Edition, Volume 4 for text of 9(a) and (b)]

(c) Upon filing of a petition or application, the court shall set a day for the hearing, which hearing must be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition. The alleged alcoholic shall be personally served with a copy of the petition or application and the order fixing the time of hearing of the same by the sheriff of the county in which he is found. The

court may proceed to hear the cause at the stated time, with or without the presence of the alleged alcoholic and with or without an answer by him, provided such service is perfected at least three (3) days prior to the hearing and provided the alleged alcoholic is represented by an attorney if the right of legal counsel is not waived. If the alleged alcoholic is not represented by an attorney of his own choosing, the court shall appoint an attorney to represent him. The court shall inform relatives of the alleged alcoholic and other persons to appear at the hearing to give evidence in the cause. The judge may, in his discretion or upon request, require an alleged alcoholic to be examined by the county health officer, or by other physicians, as the court may direct, the results of which examination to be considered by the court at the hearing of the application for commitment. If in the county court in which a petition or application is filed, a Certificate of Medical Examination for Alcoholism is filed showing that the pro-

posed patient has been examined within five (5) days of the filing of the Certificate and stating the opinion of the examining physician that the proposed patient is an alcoholic and because of his alcoholism is likely to cause injury to himself or others if not immediately restrained, the Judge may order any health or peace officer to take the proposed patient into protective custody and immediately transport him to a designated mental hospital or other suitable place and detain him pending order of the court; provided, however, that in no event shall the proposed patient be denied the hearing prescribed above to be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition.

[See Compact Edition, Volume 4 for text of 9(d) to 20]

[Amended by Acts 1975, 64th Leg., p. 254, ch. 104, § 1, eff. Sept. 1, 1975.]

TITLE 93

MARKETS AND WAREHOUSES

CHAPTER SEVEN. WEIGHTS AND MEASURES

Art. 5728. Fees; Failure or Refusal to Pay; Repairs; Testing Services; Penalty

The Commissioner of Agriculture shall collect fees for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring whenever he is required to make such tests under the provisions of this Chapter. The fee for testing gasoline, kerosene and diesel fuel pumps not to exceed fifty cents (50¢) for each pump tested; the test certificate or seal shall be protected from weather and attached inside the glass cover, where applicable, of each gasoline, kerosene and diesel fuel pump; fee for testing scales up to nine hundred and ninety-nine (999) pounds not to exceed One Dollar (\$1) for each scale tested; fee for testing scales one thousand (1,000) pounds to one thousand four hundred and ninety-nine (1,499) pounds not to exceed Two Dollars and Fifty Cents (\$2.50) for each scale tested; fee for testing scales one thousand five hundred and ninety-nine (1,500) pounds to four thousand nine hundred and ninety-nine (4,999) pounds not to exceed Five Dollars (\$5) for each scale tested; fee for testing scales four thousand nine hundred and ninety-nine (4,999) pounds and over not to exceed Ten Dollars (\$10) for each scale tested. The fee for testing butane and propane measuring devices not to exceed Ten Dollars (\$10) for each measuring device tested. The fee for testing measuring devices located on raw milk storage tanks situated on farms up to two hundred (200) gallons not to exceed Five Dollars (\$5) for each tank tested; fee for testing measuring devices located on raw milk storage tanks situated on farms two hundred and one (201) gallons to four hundred (400) gallons not to exceed Ten Dollars (\$10) for each tank tested; fee for testing measuring devices located on raw milk storage tanks situated on farms four hundred and one (401) gallons to six hundred (600) gallons not to exceed Fifteen Dollars (\$15) for each tank tested; fee for testing measuring devices located on raw milk storage tanks

situated on farms six hundred and one (601) gallons and over not to exceed Twenty Dollars (\$20) for each tank tested. Such fees shall be collected by the Commissioner of Agriculture, his deputies and agents not to exceed once annually, except where additional tests are requested by the owner of the measuring or weighing device in which event there shall be paid to the Commissioner, his deputies and agents a fee equal to the annual fee for each additional test. The proceeds of such fees shall be paid into the State Treasury by the Commissioner of Agriculture and placed by the State Treasurer in the Special Department of Agriculture Fund, and shall be used only for administration and enforcement purposes of this Act. Provided, however, that no city which maintains a Weights and Measures Department for checking all weights and checking devices shall be precluded by this Act from operating such a Weights and Measures Department. [Amended by Acts 1975, 64th Leg., p. 1866, ch. 586, § 1, eff. Sept. 1, 1975.]

CHAPTER EIGHT. MARKETING ASSOCIATIONS

Art. 5749. Election of Officers

The directors shall elect from their number a president or chairman and one or more vice-presidents or vice-chairmen. They shall also elect a secretary and treasurer, who need not be a director, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

[Amended by Acts 1975, 64th Leg., p. 374, ch. 165, § 1, eff. Sept. 1, 1975.]

TITLE 94

MILITIA—SOLDIERS, SAILORS AND MARINES

CHAPTER THREE. NATIONAL GUARD

Art. 5788. Texas Code of Military Justice

SUBCHAPTER I. GENERAL PROVISIONS

Definitions

Sec. 1. In this Code:

(1) "State Judge Advocate General" means the Judge Advocate General of the State Military Forces, commissioned therein, and responsible for supervising the administration of military justice in the state military forces, and performing such other legal duties as may be required by the Adjutant General.

(2) "State military forces" means the National Guard of this state, as defined in Section 101(3), (4) and (6) of Title 32, United States Code, and any other militia or military forces organized under the laws of the state.

(3) "Commanding Officer" includes commissioned officers and warrant officers, as applicable.

(4) "Officer" means commissioned or warrant officer.

(5) "Superior Commissioned Officer" means a commissioned officer superior in rank or command.

(6) "Officer candidate" means a cadet of the state officer candidate school.

(7) "Enlisted member" means a person in an enlisted grade.

(8) "Military" refers to any or all of the state military forces.

(9) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) "Military Judge" means an official of a court-martial detailed in accordance with Section 26 of this Code.

(11) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(12) "Legal officer" means any commissioned officer of the state military forces designated to perform legal duties for a command.

(13) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(14) "Rank" means the order of precedence among members of the state military forces.

(15) "Active state duty" means all duty authorized under the Constitution and laws of the State of Texas and all training authorized under Title 32, United States Code.

(16) "Judge Advocate" means any commissioned officer who is certified by the State Judge Advocate General.

(17) "Military Court" means a court-martial, a court of inquiry, a military commission, or a provost court.

(18) "May" is used in a permissive sense.

(19) "Shall" is used in an imperative sense.

(20) "He," where used, means, and shall be interpreted to include, both the masculine and feminine gender.

(21) "Code" means this Act.

Persons Subject to This Code

Sec. 2. This Code applies to all members of the state military forces who are not in federal service.

Jurisdiction to Try Certain Personnel

Sec. 3. (a) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to Section 43 of this Code, subject to trial by court-martial on that charge and is, after apprehension, subject to this Code while in custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this Code committed before the fraudulent discharge.

(b) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

Sec. 4. Reserved.

Territorial Applicability of the Code

Sec. 5. (a) This Code applies in all places. It also applies to all persons otherwise subject to this Code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this Code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

Judge Advocates and Legal Officers

Sec. 6. (a) The Adjutant General shall appoint an officer of the state military forces as State Judge Advocate General. To be eligible for appointment, an officer must be a member of the bar of a Federal Court and of the highest court of the State of Texas for at least 5 years.

(b) The Adjutant General shall appoint judge advocates and legal officers upon recommendation of the State Judge Advocate General. To be eligible for appointment, judge advocates or legal officers must be officers of the state military forces and members of the bar of a Federal Court and of the highest court of the State of Texas.

(c) The State Judge Advocate General or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocates or legal officers of any command are entitled to communicate directly with the staff judge advocates or legal officers of a superior or subordinate command, or with the State Judge Advocate General.

(e) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

SUBCHAPTER II. APPREHENSION AND RESTRAINT

Apprehension

Sec. 7. (a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this Code, or by regulations issued under it, to apprehend persons subject to this Code, any marshal of a court-martial appointed pursuant to the provisions of this Code, and any peace officer having authority to apprehend offenders under the laws of the United States or of a state, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this Code and to apprehend persons subject to this Code who take part therein.

Apprehension of Deserters

Sec. 8. Any civil officer or peace officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia, may summarily apprehend a deserter from the state military forces and deliver him into the custody of the state military forces.

Imposition of Restraint

Sec. 9. (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this Code or through any person authorized by this Code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(e) This Section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Restraint of Persons Charged With Offenses

Sec. 10. Any person subject to this Code charged with an offense under this Code shall be ordered into

arrest or confinement, as circumstances may require; but when charged with only an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in civil jails.

Reports and Receiving of Prisoners

Sec. 11. (a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, designated under Section 10 of this Code, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, designated under Section 10 of this Code, to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

Sec. 12. Reserved.

Punishment Prohibited Before Trial

Sec. 13. Subject to Section 57 of this Code, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

Delivery of Offenders to Civil Authorities

Sec. 14. (a) Under such regulations as may be prescribed under this Code a person subject to this Code who is on active state duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this Section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for his offense, shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

SUBCHAPTER III. NON-JUDICIAL PUNISHMENT

Commanding Officer's Non-judicial Punishment

Sec. 15. (a) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this Section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this Section to an accused who demands trial by court-martial and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the state military forces under this Section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Governor, the Governor or an officer of general rank in command may delegate his powers under this Section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 27(b), if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed 3 duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this Section.

(b) Subject to subsection (a) of this Section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

- (1) upon officers of his command;
 - (A) restriction to certain specified limits with or without suspension from duty, for not more than 30 days;
 - (B) if imposed by the Governor, or an officer of general rank in command;
 - (i) arrest in quarters for not more than 30 days;
 - (ii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than \$75;
 - (iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days;

(iv) detention of not more than one-half of one month's pay per month for 3 months;
 (2) upon other personnel of his command;

(A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than 3 days;

(B) correctional custody for not more than 7 days;

(C) forfeiture of not more than 7 days pay or a fine of not more than \$10;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties including fatigue or other duties, for not more than 30 days, which need not be consecutive, and for not more than 2 hours per day, holidays included;

(F) restriction to certain specified limits, with or without suspension from duty for not more than 14 days;

(G) detention of not more than 14 days pay;

(H) if imposed by an officer of the grade of major or above;

(i) the punishment authorized under subsection (b)(2)(A) of this Section;

(ii) correctional custody for not more than 30 days;

(iii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than \$75;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 days which need not be consecutive and for not more than 2 hours per day, holidays included;

(vi) restriction to certain specified limits with or without suspension from duty, for not more than 60 days;

(vii) detention of not more than one-half of 1 month's pay per month for 3 months. Detention of pay shall be for a stated period of not more than 1 year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No 2 or more of the punishments

of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, fine or forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection "correctional custody" is the physical restraint of a person during duty or non-duty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)-(G) of this Section as the Governor may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b) or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine or forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted; and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to fine or forfeiture or detention of pay.

When mitigating:

(1) arrest in quarters to restriction, or

(2) extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to fine, forfeiture or detention of pay, the amount of the fine, forfeiture or detention shall not be greater than the amount that could have been imposed initially under this Section by the officer who imposed the punishment mitigated.

(e) A person punished under this Section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to

undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) of this Section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (1) arrest in quarters for more than 7 days;
- (2) correctional custody for more than 7 days;
- (3) forfeiture of more than 7 days pay;
- (4) reduction of 1 or more pay grades from the fourth or a higher pay grade;
- (5) extra duties for more than 14 days;
- (6) restriction of more than 14 days pay;
- (7) detention of more than 14 days pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this Section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this Section and may also prescribe that certain categories of those proceedings shall be in writing.

SUBCHAPTER IV. COURTS-MARTIAL

Courts-martial Classified

Sec. 16. The three kinds of courts-martial in each of the state military forces are:

- (1) general court-martial, consisting of:
 - (A) a military judge and not less than 5 members; or
 - (B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;
- (2) special court-martial, consisting of:
 - (A) not less than 3 members; or
 - (B) a military judge and not less than 3 members; or
 - (C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

- (3) Summary court-martial, consisting of 1 officer, who shall be a military judge or an attorney licensed to practice law in this state.

Jurisdiction of Courts-martial in General

Sec. 17. Each force of the state military forces has court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

Jurisdiction of General Courts-martial

Sec. 18. (a) Subject to Section 17 of this Code, general courts-martial have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than \$200 or confinement for not more than 200 days;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of these punishments.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this Code was detailed to represent the accused, and a military judge was detailed to the trial.

Jurisdiction of Special Courts-martial

Sec. 19. (a) Subject to Section 17 of this Code, special courts-martial have jurisdiction to try persons subject to this Code, except commissioned officers, for any offense for which they may be punished under this Code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine or confinement imposed by a special court-martial may not be more than \$100 fine or confinement of not more than 100 days for a single offense.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this title was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the

convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

Jurisdiction of Summary Courts-martial

Sec. 20. (a) Subject to Section 17 of this Code, summary courts-martial have jurisdiction to try persons subject to this Code, except officers, for any offense made punishable by this Code.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than \$25 or confinement for not more than 25 days for a single offense, to forfeiture of pay and allowances, and reduction of a noncommissioned officer to the ranks.

Sec. 20A. Reserved.

Jurisdiction of Courts-martial not Exclusive

Sec. 21. The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

SUBCHAPTER V. COMPOSITION OF COURTS-MARTIAL

Who May Convene General Courts-martial

Sec. 22. In the militia or state military forces not in federal service general courts-martial may be convened by:

- (a) the Governor of the State of Texas; or
- (b) the Adjutant General or any other General Officer under such regulations as the Governor may promulgate.

Who May Convene Special Courts-martial

Sec. 23. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court may be convened by superior competent authority if considered advisable by him.

Who May Convene Summary Courts-martial

Sec. 24. (a) In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial.

Who May Serve on Courts-martial

Sec. 25. (a) Any state commissioned officer in a duty status is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer in a state duty status is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of the state military forces in a state duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of the state military forces who may lawfully be brought before such courts for trial but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under Section 39(a) of this Code prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this Section, the word "unit" means any regularly organized body of the state military forces.

(d)(1) When it can be avoided, no person subject to this Code may be tried by a court-martial, any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the state military forces is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

Military Judge of a Court-martial

Sec. 26. (a) The authority convening a general court-martial shall, and, subject to regulations issued by the Governor, the authority convening a special or summary court-martial may detail a military judge thereto. A military judge shall preside over open sessions of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the state military forces who is a member of the bar of a Federal court and a member of the bar of the highest court of this state and who is certified to be qualified for duty as a military judge by the State Judge Advocate General of the state military forces.

(c) The military judge of a general court-martial shall be designated by the State Judge Advocate General, or his designee, for detail by the convening authority, and, unless the court-martial was convened by the Governor or the Adjutant General, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge detailed to preside over a court-martial hereunder shall not be subject to any report concerning the effectiveness, fitness, or efficiency of that military judge so detailed, which relates to his performance of duty as a military judge, by such convening authority, nor any member of his staff.

(g) All trial counsel, defense counsel, military judges, legal officers, summary court officers, and any other person certified by the State Judge Advocate General to perform legal functions under this Code, shall be used interchangeably, as needed, among all of the state military forces.

Detail of Trial Counsel and Defense Counsel

Sec. 27. (a) For each general, special, and summary court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or,

unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial:

(1) Must be a graduate of an accredited law school and a member of the bar of a Federal court or of the highest court of a state; and

(2) Must be certified as competent to perform such duties by the State Judge Advocate General.

(c) In the case of a special or summary court-martial:

(1) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under Section 27(b) of this Code unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) If the trial counsel is a judge advocate, or a member of the bar of a Federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing.

Detail or Employment of Reporters and Interpreters

Sec. 28. Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial, military commission, court of inquiry, or a military tribunal shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court, commission, or tribunal. Under like regulations the convening authority may detail or employ interpreters who shall interpret for the court, commission, or tribunal.

Absent and Additional Members

Sec. 29. (a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a

challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below 5 members the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 5 members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below 3 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 3 members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of Section 16(1)(B) or (2)(C) of this Code, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

SUBCHAPTER VI. PRE-TRIAL PROCEDURE

Charges and Specifications

Sec. 30. (a) Charges and specifications shall be signed by a person subject to this Code under oath before a commissioned officer of the state military force authorized to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

Compulsory Self-Incrimination Prohibited

Sec. 31. (a) No person subject to this Code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

Investigation

Sec. 32. (a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was

present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Section, no further investigation of that charge is necessary under this Section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this Section are binding on all persons administering this Code but failure to follow them does not constitute jurisdictional error.

Forwarding of Charges

Sec. 33. When a person is held for trial by general court-martial the commanding officer shall, within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

Advice of Staff Judge Advocate and Reference for Trial

Sec. 34. (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this Code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

Service of Charges

Sec. 35. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objections, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under Section 39(a) of this Code in a general court-martial case within a period of 5 days after the service of charges upon him, or in a special court-martial case within a period of 3 days after the service of charges upon him.

SUBCHAPTER VII. TRIAL PROCEDURE

Governor May Prescribe Rules

Sec. 36. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations, which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State of Texas, but which may not be contrary to or inconsistent with this Code.

Unlawfully Influencing Action of Court

Sec. 37. (a) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of court-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces or in determining whether a member of the state military forces should be retained on duty, no person subject to this Code may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

Duties of Trial Counsel and Defense Counsel

Sec. 38. (a) The trial counsel of a general or special court-martial shall prosecute in the name of

the State of Texas, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general, special or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 27 of this Code. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings, a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Sessions

Sec. 39. (a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to Section 35 of this Code, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) If permitted by regulations of the Governor, holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to Section 36 of this Code and which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

Continuances

Sec. 40. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

Challenges

Sec. 41. (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than 1 person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel are entitled to 1 peremptory challenge, but the military judge may not be challenged except for cause.

Oaths

Sec. 42. Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The oath or affirmation shall be taken in the presence of the accused, and shall read as follows:

(a) Court members:

"You, _____, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial,

the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(b) Military judge:

"You, _____, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by courts-martial, all the duties incumbent upon you as military judge of this court; that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; and that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court. So help you God."

(c) Trial counsel and assistant trial counsel:

"You, _____ (and) _____, do swear (or affirm) that you will faithfully perform the duties of trial counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(d) Defense counsel and assistant defense counsel:

"You, _____ (and) _____, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(e) Court of inquiry:

The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best

abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

(f) Witnesses:

All persons who give evidence before a court-martial or court of inquiry shall be examined on oath administered by the presiding officer in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

(g) Reporter or interpreter:

"You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God."

Statute of Limitations

Sec. 43. (a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Section, a person charged with desertion in time of peace or with the offenses punishable under Sections 115, 116 and 117 of this Code is not liable to be tried by court-martial if the offense was committed more than 3 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Section, a person charged with any offense is not liable to be tried by court-martial or punished under Section 15 of this Code if the offense was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under Section 15 of this Code.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Section.

Former Jeopardy

Sec. 44. (a) No person may be tried a second time in any military court of the State of Texas for the same offense.

(b) No proceedings in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this Section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this Section.

Pleas of the Accused

Sec. 45. (a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty imprudently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Governor, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

Opportunity to Obtain Witnesses and Other Evidence

Sec. 46. (a) The trial counsel, the defense counsel, accused, and the court-martial shall have equal opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process for obtaining witnesses.

(b) The presiding officer of a court-martial may:

(1) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) Issue subpoenas duces tecum and other subpoenas;

(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers or peace officers as described by the laws of the state.

Refusal to Appear or Testify

Sec. 47. (a) Any person not subject to this Code who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer or peace officer designated to take a deposition to be read in evidence before a court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses under Section 145 of this Code. These fees are to be paid by the Adjutant General's Department as hereinafter provided; and

(3) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state and may be punished by fine not to exceed \$1,000 or confinement not to exceed 60 days in jail, or by both fine and confinement, and such witness shall be prosecuted in the appropriate county court.

(b) The appropriate prosecuting official for the state in any county court having jurisdiction where the military proceeding was convened shall, upon submission of a complaint to him by the presiding officer of a military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this Section.

Contempts

Sec. 48. A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. Punishment may not exceed confinement for 30 days or a fine of \$100, or both.

Depositions

Sec. 49. (a) At any time after charges have been signed, as provided in Section 30 of this Code, any party may take oral or written depositions unless the military judge, a court-martial without a military judge hearing the case, or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(d) Any duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission, or in any proceeding before a court of inquiry or military board, if it appears:

(1) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing;

(2) That the witness by reason of death, age or sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) That the present whereabouts of the witness is unknown.

Admissibility of Records of Courts of Inquiry

Sec. 50. (a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) In all courts of inquiry both enlisted men and officers shall have the right to counsel and the right to cross examination of all witnesses.

Voting and Rulings

Sec. 51. (a) Voting by members of a general or special court-martial on the findings, on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial with-

out a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Section 52 of this Code beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) of this Section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Number of Votes Required

Sec. 52. (a) No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Court to Announce Action

Sec. 53. A court-martial shall announce its findings and sentence to the parties as soon as determined.

Record of Trial

Sec. 54. (a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions that would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the Governor.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the Governor may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

SUBCHAPTER VIII. SENTENCES

Cruel and Unusual Punishments Prohibited

Sec. 55. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to

this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

Maximum Limits

Sec. 56. The punishment which a court-martial may direct for an offense may not exceed the limits prescribed by this Code nor limits prescribed by the Governor of the State of Texas.

Effective Date of Sentences

Sec. 57. (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(d) In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the Governor.

(e) All other sentences of courts-martial are effective on the date ordered executed.

Execution of Confinement

Sec. 58. (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary,

ry, or prison by the courts of the state or of any political subdivision thereof.

(b) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of city or county jails and other jails, penitentiaries, or prisons designated by the Governor, or by such person as he may authorize to act under Section 10 of this Code, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

SUBCHAPTER IX. REVIEW OF COURTS-MARTIAL

Error of Law; Lesser Included Offense

Sec. 59. (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

Initial Action on the Record

Sec. 60. After trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

Same General Court-martial Records

Sec. 61. The convening authority shall refer the record of each general court-martial to his judge advocate who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

Reconsideration and Revision

Sec. 62. (a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(1) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(2) For consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Section of this Code; or

(3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

Rehearings

Sec. 63. (a) If the convening authority disapproves the finding and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

Approval by the Convening Authority

Sec. 64. In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

Disposition of Records After Review by Convening Authority

Sec. 65. (a) If the convening authority is the Governor, his action on the review of any record of trial is final.

(b) In all other cases not covered by subsection (a) of this Section, if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate or legal officer of the state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate or legal officer shall then be sent to the State Judge Advocate General for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate or legal officer of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by the Governor.

(d) The State Judge Advocate General shall review the record of trial in each case sent to him for review as provided under subsection (b) of this Section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate General is limited to questions of jurisdiction.

(e) The State Judge Advocate General shall take final action in any case reviewable by him.

Review by State Judge Advocate General

Sec. 66. (a) In a case reviewable by the State Judge Advocate General under this Section, the State Judge Advocate General may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the State Judge Advocate General sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(b) In a case reviewable by the State Judge Advocate General under this or the preceding Section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Review by Texas Court of Military Appeals

Sec. 67. (a)(1) There is hereby established a Texas Court of Military Appeals, located for administrative purposes only in the Adjutant General's Department, State of Texas. The court shall consist of 5 judges appointed by the Adjutant General of Texas upon the advice and recommendation of the State Judge Advocate General for a term of 6 years. Initial appointments to this court will be: 1 judge for a 2-year term, 2 judges for a 4-year term, and 2 judges for a 6-year term. The term of office of all successor judges shall be for a 6-year period of time, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The Adjutant General of Texas, upon the advice and recommendation of the State Judge Advocate General, shall appoint the chief judge of this court. A person is eligible for appointment to this court who:

(A) is a member of the bar of the highest court of this state;

(B) is a member of a Federal bar;

(C) is a graduate of an accredited school of law;

(D) is a commissioned officer of the state military forces, active or retired, or a retired commissioned officer in the reserves of the armed forces of the United States of America;

(E) has been engaged in the active practice of law for at least 5 years;

(F) has at least 5 years experience as a staff judge advocate, judge advocate, or legal officer with the state military forces. The requirements in (E) and (F) of this Section may be satisfied by equivalent experience or practice in the armed forces of the United States.

(2) The court may promulgate its own rules of procedure, provided, however, that a majority shall constitute a quorum and the concurrence of 3 judges shall be necessary to a decision of the court.

(3) Judges of the Texas Court of Military Appeals may be removed by the Adjutant General of Texas, upon notice and hearing for neglect of duty or malfeasance in office, or for mental or physical disability.

(4) If a judge of the Texas Court of Military Appeals is temporarily unable to perform his duties the Adjutant General upon the advice and recommendation of the State Judge Advocate General may designate a military judge, as defined in this Code, to fill the office for the period of disability.

(5) The judges of the Texas Court of Military Appeals, while actually sitting in review of a matter placed under their jurisdiction by this Code, and while travelling to and from such session, shall be

paid compensation equal to that compensation as prescribed for the Judges of the Texas Courts of Civil Appeals, as per the then current appropriation bill for the State of Texas, together with the actual cost of their meals and lodging and actual travel expense or the amount set by the then current appropriation bill if private transportation is utilized.

(b) The Texas Court of Military Appeals shall have appellate jurisdiction, upon petition of an accused, to hear and review the record in:

(1) All general and special court-martial cases; and

(2) All other cases where a judge of this court has made a determination that there may be a constitutional issue involved.

(c) The accused has 60 calendar days, from the time of receipt of actual notice of the final action on his case, under this Code to petition the Texas Court of Military Appeals for review. The court shall act upon such a petition within 60 calendar days of the receipt thereof. In the event the court fails or refuses to grant such petition for review the final action of the convening authority will be deemed to have been approved; notwithstanding any other provision of this Code, upon the court granting a hearing of an appeal, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this Code until the court's final decision upon the case.

(d) In a case reviewable under subsection (b)(1) of this Section the Texas Court of Military Appeals may act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority. In a case reviewable under subsection (b)(2) of this Section this court need take action only with respect to issues specified in the grant of review. This court shall take action only with respect to matters of law, and the action of this court is final.

(e) If the Texas Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. After the Texas Court of Military Appeals has acted on the case, the record shall be returned to the State Judge Advocate General who shall notify the convening authority of the court's decision. If further action is required the State Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Sec. 68. Reserved.

Sec. 69. Reserved.

Appellate Counsel

Sec. 70. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel upon an appeal authorized under this Code. The accused has the additional right to be represented by civilian counsel at his own expense. Should the defense or trial counsel become unable to perform their duties because of illness or other disability, the convening authority will appoint a qualified trial or defense counsel to continue the proceedings.

Sec. 71. Reserved.

Vacation of Suspension

Sec. 72. (a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a dismissal or dishonorable discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by military counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the Governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subsection (a) of this Section. If the Governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Petition for a New Trial

Sec. 73. At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the State Judge Advocate General for a new trial on ground of newly discovered evidence or fraud on the court-martial. If the accused's case is pending before the Texas Court of Military Appeals when this petition is filed, the appeal will not proceed until the State Judge Advocate General has made a decision on the request. If the petition is granted, the appeal will be dismissed. If the petition is denied, the Court of Military Appeals will continue its proceedings on the case.

Remission or Suspension

Sec. 74. (a) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

Restoration

Sec. 75. (a) Under such regulations as the Governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or hearing.

(b) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such former officer may be made if a position vacancy is available under applicable tables of organization. All the time between the dismissal and reappointment shall be considered as service for all purposes.

Finality of Proceedings, Findings, and Sentences

Sec. 76. The appellate review of records of trial provided by this Code, the proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this Code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this Code, are final and conclusive. Orders publishing the proceedings of the courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in Section 73 of this Code.

SUBCHAPTER X. PUNITIVE ARTICLES

Persons to be Tried or Punished

Sec. 76A. No person may be tried or punished for any offense provided for in Sections 77–134 of

this Code, unless it was committed while he was in a duty status or during a period of time in which he was under lawful orders to be in a duty status.

Principals

Sec. 77. Any person subject to this Code who:

(1) Commits an offense punishable by this Code, or aids, abets, counsels, commands or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this Code;

is a principal.

Accessory After the Fact

Sec. 78. Any person subject to this Code, who knowing that an offense punishable by this Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

Conviction of Lesser Included Offense

Sec. 79. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

Attempts

Sec. 80. (a) An act, done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

Conspiracy

Sec. 81. Any person subject to this Code who conspires with any other person to commit an offense under this Code, shall if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

Solicitation

Sec. 82. (a) Any person subject to this Code who solicits or advises another or others to desert in violation of Section 85 of this Code or mutiny in violation of Section 94 of this Code, shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for

the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this Code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 99 of this Code or sedition in violation of Section 94 of this Code shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

Fraudulent Enlistment, Appointment, or Separation

Sec. 83. Any person who:

(1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

Unlawful Enlistment, Appointment, or Separation

Sec. 84. Any person subject to this Code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

Desertion

Sec. 85. (a) Any member of the state military forces who:

(1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated;

is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his resignation and be-

fore notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

Absence Without Leave

Sec. 86. Any person subject to this Code, who without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; shall be punished as a court-martial may direct.

Missing Movement

Sec. 87. Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

Contempt Towards Governor

Sec. 88. Any person subject to this Code who uses contemptuous words against the Governor of Texas, shall be punished as a court-martial may direct.

Disrespect Toward Superior Commissioned Officer

Sec. 89. Any person subject to this Code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

Assaulting or Wilfully Disobeying Superior Commissioned Officer

Sec. 90. Any person subject to this Code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while in the execution of his office; or

(2) Wilfully disobeys a lawful command of his commissioned officer;

shall be punished as a court-martial may direct.

Insubordinate Conduct Toward Warrant Officer or Noncommissioned Officer

Sec. 91. Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;

(2) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office; shall be punished as a court-martial may direct.

Failure to Obey Order or Regulation

Sec. 92. Any person subject to this Code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

Cruelty and Maltreatment

Sec. 93. Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial may direct.

Mutiny or Seditious

Sec. 94. (a) Any person subject to this Code who:

(1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place,

is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny or sedition, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

Resistance, Breach of Arrest, and Escape

Sec. 95. Any person subject to this Code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

Releasing Prisoner Without Proper Authority

Sec. 96. Any person subject to this Code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

Unlawful Detention of Another

Sec. 97. Any person subject to this Code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

Noncompliance With Procedural Rules

Sec. 98. Any person subject to this Code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this Code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

Misbehavior Before the Enemy

Sec. 99. Any person subject to this Code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits his place of duty to plunder or pillage;

(7) Causes false alarms in the command, unit, or place under control of the armed forces of the United States or the state military forces of Texas, or any other state;

(8) Wilfully fails to do his utmost to encounter, engage, capture or destroy enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty to so encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief, and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle; shall be punished as a court-martial may direct.

Subordinate Compelling Surrender

Sec. 100. Any person subject to this Code who compels or attempts to compel the commander of any of the state military forces of Texas, the United States, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Improper Use of Countersign

Sec. 101. Any person subject to this Code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

Forcing a Safeguard

Sec. 102. Any person subject to this Code who forces a safeguard shall be punished as a court-martial may direct.

Captured or Abandoned Property

Sec. 103. (a) All persons subject to this Code shall secure all public property taken from the enemy for the service of the State of Texas or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this Code who:

(1) Fails to carry out the duties prescribed in subsection (a);

(2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

Aiding the Enemy

Sec. 104. Any person subject to this Code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

Misconduct of a Prisoner

Sec. 105. Any person subject to this Code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

Sec. 106. Reserved.

False Official Statements

Sec. 107. Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

Military Property—Loss, Damage, Destruction, or Wrongful Disposition

Sec. 108. Any person subject to this Code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or of the State of Texas;

shall be punished as a court-martial may direct.

Property Other Than Military Property—Waste, Spoilage or Destruction

Sec. 109. Any person subject to this Code who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of this state shall be punished as a court-martial may direct.

Improper Hazarding of Vessel

Sec. 110. (a) Any person subject to this Code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

(b) Any person subject to this Code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

Driving While Intoxicated or Driving While Under the Influence of a Narcotic Drug

Sec. 111. Any person subject to this Code who operates any vehicle while under the influence of

intoxicating liquor or a narcotic drug, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

Drunk on Duty—Sleeping on Post—Leaving Post Before Relief

Sec. 112. Any person subject to this Code who is found under influence of intoxicating liquor or narcotic drugs while on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

Sec. 113. Reserved.

Sec. 114. Reserved.

Malingering

Sec. 115. Any person subject to this Code who for the purpose of avoiding work, duty or service in the state military forces:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

Riot or Breach of Peace

Sec. 116. Any person subject to this Code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

Provoking Speeches or Gestures

Sec. 117. Any person subject to this Code who uses provoking or reproachful words or gestures towards any other person subject to this Code shall be punished as a court-martial may direct.

Sec. 118. Reserved.

Sec. 119. Reserved.

Sec. 120. Reserved.

Larceny and Wrongful Appropriation

Sec. 121. (a) Any person subject to this Code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind;

(1) With intent permanently to deprive or defraud another person of the use and benefit of property, or to appropriate it to his own use or the use of any person other than the owner, steals that property is guilty of larceny; or

(2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any other person other than the owner,

is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

Sec. 122. Reserved.

Forgery

Sec. 123. Any person subject to this Code who, with intent to defraud:

(1) Falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) Utters, offers, issues, or transfers such a writing, known by him to be so made or altered; is guilty of forgery and shall be punished as a court-martial may direct.

Sec. 124. Reserved.

Sec. 125. Reserved.

Sec. 126. Reserved.

Extortion

Sec. 127. Any person subject to this Code who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

Assault

Sec. 128. Any person subject to this Code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

Sec. 129. Reserved.

Sec. 130. Reserved.

Perjury

Sec. 131. Any person subject to this Code who in a judicial proceeding or in a court of justice conducted under this Code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

Frauds Against the Government

Sec. 132. Any person subject to this Code:

(1) Who, knowing it to be false or fraudulent:

(A) Makes any claim against the United States, the State of Texas, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the State of Texas, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the State of Texas, or any officer thereof:

(A) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements; or

(B) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money or other property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements there contained and with intent to defraud the United States or the State of Texas;

shall, upon conviction, be punished as a court-martial may direct.

Conduct Unbecoming an Officer and a Gentleman

Sec. 133. Any commissioned officer or officer candidate who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

General Article

Sec. 134. Though not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and/or all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of the court.

SUBCHAPTER XI. MISCELLANEOUS PROVISIONS

Courts of Inquiry

Sec. 135. (a) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, or any person authorized to convene a general court-martial by this Code, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of 3 or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this Code or employed in the division of military affairs, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

Authority to Administer Oaths

Sec. 136. (a) The following persons on state active duty may administer oaths for the purpose of military administration including military justice, and they have the general powers of a notary public in the performance of all notarial acts to be executed by members of the state military forces, wherever they may be:

(1) The State Judge Advocate General, and all judge advocates;

- (2) All law specialists and military judges;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (5) All administrative officers, assistant administrative officers, and acting administrative officers;
- (6) all staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and
- (7) All other persons designated by regulations of the state military forces or by statute.

(b) The following persons on state active duty may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (2) The president, counsel for the court, and recorder of any court of inquiry;
- (3) All officers designated to take a deposition;
- (4) All persons detailed to conduct an investigation;
- (5) All recruiting officers; and
- (6) All other persons designated by regulations of the state military forces or by statute.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

Sections to be Explained

Sec. 137. Sections 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 76A-134, and 137-139 of this Code shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the state military forces or within 30 days thereafter. They shall also be explained annually to each unit of the state military forces. A complete text of this Code and of the regulations prescribed by the Governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

Complaints of Wrongs

Sec. 138. (a) Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the next highest commander who shall examine into the complaint

and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Adjutant General a true statement of that complaint with the proceedings had thereon.

(b) When an action or proceeding of any nature shall be commenced in any court, other than a military court, by any person against any member of the state military forces for any act done, or caused, ordered or directed to be done in the line of duty, as determined by a finding of fact made by a court of inquiry under Section 135 of this Code, while such member was on active state duty, all expenses of representation in such action or proceeding, including fees of witnesses, depositions, court costs, and all costs for transcripts of records or other documents that might be needed during trial or appeal shall be paid as provided in this Code. When any action or proceeding of any type is brought, as described in this subsection, the Adjutant General, upon the written request of the member involved, shall designate the State Judge Advocate General, a judge advocate or a legal officer of the state military forces to represent such member. Judge advocates or legal officers performing duty under this subsection will be called to state active duty by order of the Governor. If the military legal services, noted above, are not available, then the Adjutant General, after consultation with the State Judge Advocate General and member involved, shall contract with a competent private attorney to conduct such representation.

Redress of Injuries to Property

Sec. 139. (a) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from 1 to 3 commissioned officers, and for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages

assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

(c) Any person subject to this Code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. The counsel mentioned herein will be military counsel, provided by the commanding officer instituting this inquiry. The accused may also employ civilian counsel of his own choosing at his own expense. He has the right of appeal to the next higher commander.

Immunity for Action of Military Courts

Sec. 139A. No accused may bring an action or proceeding against the convening authority or a member of a military court, board convened under this Code or military regulations, or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court, board convened under this Code, or military regulation.

Delegation of Authority By the Governor

Sec. 140. The Governor may delegate any authority vested in him under this Code, and may provide for the subdelegation of any such authority, except the power given him by Section 57(d) of this Code.

Execution of Process and Sentence

Sec. 141. (a) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(b) When the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening authority, has approved the same in whole or in part, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court-martial was held or where the offense was committed, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority.

Process of Military Courts

Sec. 142. (a) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and

subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this Code.

(c) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this Code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

(d) The president of any court-martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants, or arrest and warrant of commitment.

Payment of Fines, Costs, and Disposition Thereof

Sec. 143. (a) All fines and forfeitures imposed by general court-martial, shall be paid to the officer ordering such court, and/or to the officer commanding for the time being and by said officer, within 5 days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes.

(b) All fines and forfeitures imposed by a special or summary courts-martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within 5 days from the receipt thereof, placed to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) When the sentence of a court-martial adjudges a fine against any person, and such fine has not been fully paid within 10 days after the confirmation thereof, the convening authority shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held or where the offense was committed, directing him to take the body of the person so convicted and confine him in the county jail for 1 day for any fine not exceeding \$1 and 1 additional day for every dollar above that sum.

Presumption of Jurisdiction

Sec. 144. The jurisdiction of the military courts and boards established by this Code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

Witnesses Expenses

Sec. 145. (a) Persons in the employ of this state, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed \$25 per day for each actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence.

(b) A person not in the employ of this state and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive \$50 per day for each day actually in attendance upon the court, and 12 cents a mile for going from his place of residence to the place of trial or hearing, and 12 cents a mile for returning. Civilian witnesses will be paid by the Adjutant General's Department.

(c) The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel.

(d) No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case.

Arrest, Bonds, Laws Applicable

Sec. 146. (a) When charges against any person in the military service of this state are made or referred to a convening authority authorized to convene a court-martial for the trial of such person, and a convening authority, believing that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, a convening authority may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such

time as his case may be finally disposed of; and the sheriff or constable, on the order of the convening authority, shall bring the person so charged before the court-martial for trial, or turn him over to whomever the order may direct; the convening authority issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant, conditioned for his appearance, from time to time, before such court-martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the convening authority of the court-martial before which he may be ordered for trial.

(b) Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court-martial, or upon failure of any person admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of any such person, the court-martial shall certify the fact of such failure to so appear to the convening authority, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor.

(c) The rules laid down in the Code of Criminal Procedure of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this Code.

(d) A warrant of arrest issued by a convening authority to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry shall extend to every part of the state.

(e) When any lawful process, issued by the proper officer of any court-martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this Code imposed or authorized to be performed by any sheriff or constable. Failure of any sheriff or constable to perform the duties required by this Code shall be a misdemeanor offense punishable by a fine of not more than \$1,000 and by confinement of not less than 6 months and not more than 12 months in jail.

Expenses of Administration

Sec. 147. The Adjutant General shall have authority to pay all expenses incurred in the adminis-

tration of state military justice, including the expenses of courts-martial and expenses incurred under Sections 67, 138, and 145 of this Code, from any funds appropriated to the Adjutant General's Department.

Short Title

Sec. 148. This Article may be cited as the "Texas Code of Military Justice."

[Amended by Acts 1975, 64th Leg., p. 687, ch. 287, § 1, eff. May 22, 1975.]

Art. 5789. Awards, Decorations and Medals

[See Compact Edition, Volume 5 for text of 1 to 6]

Rules and Regulations Pertaining to Awards, Decorations, Medals and Ribbons

Sec. 7. The Adjutant General is hereby authorized to promulgate rules and regulations pertaining to the following awards, decorations, medals and ribbons:

(a) Texas Faithful Service Medal. It shall be awarded to any member of the state military forces who has completed 5 years of honorable service therein, during which period he has shown fidelity to duty, efficient service and great loyalty to this state.

(b) Federal Service Medal. It shall be awarded to any person inducted into federal service from the state military forces, between June 15, 1940, and January 1, 1946; and after June 1, 1950; provided, that such federal service was for a period in excess of 9 months with the Armed Forces of the United States.

(c) Texas Medal of Merit. It may be presented to any member of the state military forces who distinguishes himself through outstanding service, or extraordinary achievement, in behalf of the state, or the United States.

(d) Texas Outstanding Service Medal. It may be presented to any member of the state military forces whose performance has been such as to merit recognition for service performed in a superior and clearly outstanding manner.

(e) Texas State Guard Service Medal. It shall be awarded to any member of the state military forces who has completed three consecutive years of honorable service in the Texas State Guard since September 1, 1970, during which period he has shown fidelity to duty, efficient service, and great loyalty to this state.

[Amended by Acts 1975, 64th Leg., p. 595, ch. 244, § 1, eff. May 20, 1975; Acts 1975, 64th Leg., p. 687, ch. 287, § 2, eff. May 22, 1975.]

TITLE 95

MINES AND MINING

3. INTERSTATE MINING COMPACT [NEW]

Article

- 5920-1. Interstate Mining Compact.
- 5920-2. Mining Council.
- 5920-3. Employees Retirement System; Agreements with Interstate Mining Commission.
- 5920-4. Filing Copies of Bylaws and Amendments.
- 5920-5 to 5920-9. [Reserved].

4. SURFACE MINING [NEW].

- 5920-10. Surface Mining and Reclamation Act [NEW]

3. INTERSTATE MINING COMPACT [NEW]

Art. 5920-1. Interstate Mining Compact

The Interstate Mining Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. FINDINGS AND PURPOSES

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(3) Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) advance the protection and restoration of land, water, and other resources affected by mining;

(2) assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining;

(3) encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;

(4) assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources;

(5) assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II. DEFINITIONS

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include

excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III. STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(a) the protection of the public and the protection of adjoining and other landowners from damage to their land and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations;

(b) the conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water;

(c) the institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined land;

(d) the prevention, abatement, and control of water, air, and soil pollution resulting from mining, present, past, and future.

ARTICLE IV. POWERS

In addition to any other powers conferred on the Interstate Mining Commission established by Article V of this compact, such commission shall have power to:

(a) study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change;

(b) study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining;

(c) make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact;

(d) gather and disseminate information relating to any of the matters within the purview of this compact;

(e) cooperate with the federal government and any public or private entities having inter-

est in any subject coming within the purview of this compact;

(f) consult, on the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact;

(g) study and make recommendations with respect to any practice, process techniques, or course of action that may improve the efficiency of mining or the economic yield from mining operations;

(h) study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V. THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the commission." The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV(c), IV(g), and IV(h) of this compact, or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph or Article V(g), V(h), or VII of this compact, shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting; provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may estab-

lish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and service, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to Paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall

file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, legislature, and advisory body required by Article V(a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI. ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII. FINANCE

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V(h) of this compact; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except

where the commission makes use of funds available to it under Article V(h) of this compact, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state on its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX. EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall

be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[Acts 1975, 64th Leg., p. 324, ch. 136, § 1, eff. May 8, 1975.]

Art. 5920-2. Mining Council

(a) The Texas Mining Council is established in the office of the governor. The Texas Mining Council shall perform the duties of the advisory board referred to in Article V(a) of the Interstate Mining Compact.

(b) The Texas Mining Council consists of 11 members appointed by the governor. A member of the Texas Mining Council must be a member of the general public who has demonstrated a continuing interest in conservation matters, the head of a state agency, board, or commission, or a representative of the mining industry. Of the 11 members, at least three shall be members of the general public who have demonstrated an interest in conservation matters, at least three shall be representatives of the mining industry, and at least two shall be heads of state agencies, boards, or commissions. Members of the Texas Mining Council serve without compensation but are entitled to actual expenses incurred for attendance at council meetings or attendance at meetings of the Interstate Mining Commission as alternate for the governor. Service of members who are heads of state agencies, boards, or commissions is in addition to their other duties. The term of a member is two years. A person serving as a member of the Texas Mining Council who is the head of a state agency, board, or commission ceases to be a member of the council if he ceases to be head of a state agency, board, or commission.

[Acts 1975, 64th Leg., p. 324, ch. 136, § 2, eff. May 8, 1975.]

Art. 5920-3. Employees Retirement System; Agreements with Interstate Mining Commission

The Employees Retirement System of Texas may enter into agreements with the Interstate Mining Commission for participation in the retirement system and other benefit programs for state employees administered by such agency or agencies. Any agreement pursuant to this section shall provide, as nearly as may be, for rights, contributions, obligations, and benefits comparable to those accorded employees of this state participating in or benefiting from the program involved.

[Acts 1975, 64th Leg., p. 324, ch. 136, § 3, eff. May 8, 1975.]

Art. 5920-4. Filing Copies of Bylaws and Amendments

Copies of the bylaws and amendments to the bylaws of the Interstate Mining Commission promul-

gated under the provisions of Article V(i) of the Interstate Mining Compact shall be filed in the office of the secretary of state.

[Acts 1975, 64th Leg., p. 324, ch. 136, § 4, eff. May 8, 1975.]

Arts. 5920-5 to 5920-9. [Reserved]

4. SURFACE MINING [NEW]

Art. 5920-10. Surface Mining and Reclamation Act

[Text of article effective Jan. 1, 1976]

Short Title

Sec. 1. This Act shall be known and may be cited as the "Texas Surface Mining and Reclamation Act."

Declaration of Policy

Sec. 2. The legislature finds and declares that:

(1) the extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to the economic well-being of the state and nation;

(2) proper reclamation of surface-mined lands is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of this state;

(3) surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefor must vary accordingly;

(4) it is not always possible to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain types of surface mining operations occasionally precludes complete restoration of the affected lands to their original condition;

(5) unregulated surface mining may destroy or diminish the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitat, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources, which results are hereby declared to be inimical to the public interest and destructive to the public health, safety, welfare, and economy of the State of Texas;

(6) due to their unique character or location, some lands within the state may be unsuitable

for all or certain types of surface mining operations;

(7) reclamation of surface-mined land as provided by this Act will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of these lands.

Purposes

Sec. 3. It is hereby declared to be the purpose of this Act, therefore, to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations, as defined herein; to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are protected from such unregulated surface mining operations; to assure that surface mining operations are not conducted where reclamation as required by this Act is not possible; to assure that surface mining operations are so conducted as to prevent unreasonable degradation to land and water resources; to assure that reclamation of all surface-mined lands is accomplished as contemporaneously as practicable with the surface mining, recognizing that the extraction of minerals by responsible mining operations is an essential and beneficial economic activity.

Definitions

Sec. 4. For the purposes of this Act, unless the context requires a different definition:

(1) "Minerals" means coal, lignite, uranium, and uranium ore.

(2) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit thereof and mining directly from the natural deposits thereby exposed, and those aspects of underground mining having significant effects on the surface.

(3) "Exploration activity" means the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a mineral deposit, except those exploration activities associated with the drilling of test holes or core holes except where required by federal law.

(4) "Affected land" or "land affected" means (A) the area from which any materials are to be or have been displaced in a surface mining operation, (B) the area upon which any materials so displaced are to be or have been deposited, (C) the haul roads and impoundment basins within the surface mining area, and (D) all other land whose natural state has been or will be disturbed as a result of the surface mining operations.

(5) "Surface mining operation" means the activities conducted at a mining site, including extraction, storage, processing, and shipping of minerals and reclamation of the land affected.

(6) "Operator" means the individual or entity, including any public or governmental agency, that is to engage or that is engaged in a surface mining operation, including any individual or entity whose permit has expired or been suspended or revoked.

(7) "Overburden" means all materials displaced in a mining operation which are not, or will not be, removed from the affected area.

(8) "Reclamation" means the process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography. The basic objective is to reestablish, where required, on a continuing basis vegetation and other natural conditions consistent with the anticipated subsequent use of the affected land. The process may require contouring, terracing, grading, backfilling, resoiling, revegetation, compaction and stabilization; settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to minimize water diminution to existing water sources, pollution, soil and wind erosion, or flooding resulting from mining or any other activity which may be deemed necessary to accomplish the reclamation of the land affected to a substantially beneficial condition.

(9) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(10) "Surface mining permit" means the written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification.

(11) "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.

(12) "Commission" means the Railroad Commission of Texas.

(13) "Fund" means the Land Reclamation Fund.

(14) "Toxic material" means any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the surface-mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated, although the new contour may thus subsequently be at a moderately lower or higher elevation than existed prior to the surface mining operation.

(16) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(17) "Party to the administrative proceedings" means any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of this Act.

(18) "Permit area" means all the area designated as such in the permit application and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area which the operator proposes to surface mine thereafter.

Exclusions and Exemptions

Sec. 5. The provisions of this Act shall not apply to any of the following activities or areas:

(1) surface mining operations conducted on public lands regulated by the General Land Office; provided that such affected lands are reclaimed in a manner consistent with the provisions of this Act; and

(2) any land where the overburden has been removed and any minerals have been produced prior to the date of enactment of this Act.

Powers of the Commission

Sec. 6. The commission shall be the mining and reclamation authority for the State of Texas and shall have exclusive jurisdiction for the establishment of reclamation requirements for mining operations in the state. It shall seek the accomplishment of the purposes of this Act by all practicable methods and in so doing shall have the following authority and powers:

(1) to adopt and amend rules and regulations pertaining to surface mining and reclamation operations consistent with the general intent and purposes of this Act;

(2) to issue permits pursuant to the provisions of this Act;

(3) to conduct hearings pursuant to the provisions of this Act, for the purpose of which it may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records that are deemed relevant or material to the administration of this Act;

(4) to issue orders requiring an operator to take such actions as are necessary to comply with this Act and regulations adopted hereunder;

(5) to issue orders modifying prior orders;

(6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take any action required by this Act or regulations adopted hereunder, whereupon the operator's performance bond shall be forfeited if it is determined that this is necessary to reclaim lands disturbed by the operator's surface mining operation;

(7) to order the immediate cessation of an ongoing surface mining operation if it finds that such operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, and to take such other action or make such changes in a permit which are reasonably necessary to avoid or alleviate such conditions;

(8) to hire employees, to adopt standards for employment of such persons, and to hire and authorize the hiring of outside contractors to assist in carrying out the requirements of this Act;

(9) to enter on and inspect for the purpose of assuring compliance with the terms of this Act, in person or by its agents, any surface mining operation that is subject to the provisions of this Act;

(10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise; to prepare and require permittees to prepare reports; and to collect information and disseminate to the public such information as is deemed reasonable and necessary for the proper enforcement of this Act;

(11) to accept, receive, and administer any grants, gifts, loans, or other funds made available from any source for the purpose of this Act, and any money received by the commission pursuant to this subdivision shall be deposited in the Land Reclamation Fund;

(12) to enter into contracts with state boards and agencies having pertinent expertise for the purpose of obtaining professional and technical services necessary to carry out the provisions of this Act; and

(13) to perform such other duties and acts as are required and provided for by this Act.

Publication and Promulgation of Rules and Regulations

Sec. 7. (a) Not later than the end of 120 days, immediately following the effective date of this Act, the commission shall publish proposed rules and regulations, including proposed rules governing practice and procedure, pertaining to surface mining and reclamation operations to accomplish the purposes of this Act. Before adopting any rules and regulations, the commission shall hold a public hearing. Notice of the date, time, place, and purpose of the hearing shall be given 30 days prior to the scheduled date of the hearing:

(1) by mail to all operators known by the commission to be actively engaged in surface mining;

(2) by mail to persons who request notification of such proposed regulations; and

(3) to other interested parties by publication once weekly for three consecutive weeks in the newspaper of greatest general circulation in Travis County, Texas, and in each of the other five most populous counties in the state. Any person shall be entitled to submit written comments or to appear and offer evidence at such public hearing. The commission shall consider all comments and relevant data presented at such hearing before final promulgation and publication of rules and regulations under this Act. The commission shall, in any event, comply with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

(b) Following the publication of proposed rules and regulations and the conduct of a public hearing on such proposed rules and regulations, but in no case later than the end of 180 days, immediately following the effective date of this Act, the commission shall promulgate and publish rules and regulations covering a permanent regulatory procedure for surface mining and reclamation operations setting mining and reclamation performance standards based on the general intent and purposes of this Act.

A certified copy of all rules and regulations adopted by the commission shall be filed with the secretary of state; such rules and regulations shall become effective 30 days after such filing.

(c) The commission, prior to amending or repealing any previously adopted rules and regulations, or adopting additional rules and regulations, shall comply with the notice, hearing, and filing requirements of Subsections (a) and (b) of this section.

(d) A rule or regulation or any amendment thereof adopted by the commission may differ in its terms and provisions as between particular conditions, particular mining techniques, type of minerals being extracted, particular areas of the state or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of the Act.

(e) On passage of any federal surface mining legislation, the commission shall take the steps necessary to establish the exclusive jurisdiction of this state over the regulation of surface mining and reclamation operations. Should the federal administrative agency disapprove the regulatory program of this state as submitted, the commission shall take all necessary and appropriate steps, including making recommendations for remedial legislation, to clarify, alter, or amend such program to comply with the requirements of the federal act.

Permit Applications

Sec. 8. (a) After the expiration of the 180 days following the promulgation of rules and regulations pursuant to Section 7 of this Act, no person shall conduct any surface mining operation without having first obtained a surface mining permit issued by the commission pursuant to this Act; provided, however, that any operator conducting a surface mining operation in this state on such date who has filed a permit application in accordance with the provisions of this Act may continue to conduct such surface mining operation until such time as the commission approves or denies his application.

(b) Surface mining permits issued pursuant to the requirements of this Act shall be issued for a term not to exceed five years in the case of coal and lignite and for a term not to exceed ten years for uranium and uranium ore and shall be nontransferable, except as set out in Section 15 of this Act.

(c) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule. Such fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but in no event shall exceed \$200.

(d) After approval but prior to issuance of the surface mining permit, the applicant shall pay an

approved application fee in the amount of \$10 per acre of the affected land, which may be paid in annual installments apportioned over the term of the permit.

(e) Upon application to the commission for a surface mining permit, an operator shall submit three copies of a permit application on a form prescribed by the commission which shall require such information as the commission reasonably deems necessary to process the application and to insure compliance with the provisions of this Act. The application requirements shall include, but not be limited to, information concerning:

(1) the name, address, ownership, and management officers of the permit applicant and affiliated persons engaged in surface mining;

(2) legal and equitable interests of record, if reasonably ascertainable, in the surface and mineral estates of the permit area and in the surface estate of land located within 500 feet of the permit area; provided, however, that the mineral estate includes only minerals as defined in this Act;

(3) persons residing on the property at the time of the application;

(4) current or previous surface mining permits held by the applicant, including any revocations, suspensions, or bond forfeitures;

(5) the type and method of surface mining operation, the engineering techniques, and the equipment that is proposed to be used, including mining schedules, the nature and expected amount of overburden to be removed, the depth of excavations, a description of the affected land and permit area, the results of any test borings, test pits, or core samplings which have been gathered from the permit area, and the anticipated hydrologic consequences of the mining operation;

(6) the applicant's legal right to surface mine the affected land; and

(7) other pertinent matters which the commission reasonably deems necessary to effectuate the provisions of this Act.

(f) After a permit application has been approved but before the permit is issued, the applicant shall file a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in the State of Texas covering all surface mining operations of the applicant in this state and affording bodily injury protection and accidental business property damage protection in an amount determined by the commission to adequately compensate any persons damaged as a result of surface mining and reclamation operations. Such policy shall be maintained in full force and effect

during the term of the permit or any renewal, including the length of all reclamation operations.

(g) Each application shall include a copy of a reclamation plan prepared pursuant to Section 10 of this Act.

(h) An applicant shall include with the application a copy of the notice published in compliance with the requirements of Section 16 of this Act.

(i) The commission shall file a copy of each application for public inspection with the county clerk at the county courthouse of the county where any portion of the mining is proposed to occur after deleting the confidential information according to Section 24 of this Act.

(j) The commission shall immediately submit copies of the permit application to the Texas Parks and Wildlife Department, Texas Water Development Board, Texas Water Quality Board, General Land Office, Texas Air Control Board, Texas Historical Commission, Texas Water Rights Commission, Texas State Soil and Water Conservation Board, Bureau of Economic Geology, Texas State Department of Health, and to any other state agency whose jurisdiction the commission feels the particular mining operation may affect. Each such agency shall review the permit application and submit such comments as the agency cares to make within 30 days of receipt of the application. Such comments shall include an enumeration of permits or licenses required under the agency's jurisdiction. Such comments shall be made a part of the record and one copy shall be furnished to the applicant.

(k) The commission shall adopt rules and regulations permitting an operator of more than one non-contiguous surface mining operation to submit a single application for a combined surface mining permit covering all of his mining operations. Such application shall require detailing of information as required by this section for each separate location. An operator operating under such a combined permit may submit a consolidated reclamation plan covering all of his operations under rules and regulations prescribed by the commission, but he may be required to furnish specific information relative to reclamation of any single operating area if the commission determines that such is necessary to carry out the purposes of this Act. Except as provided in this subsection, each surface mining operation submitted as part of a combined permit application shall be separate and independent of all other surface mining operations contained in the same permit application. The commission may approve or deny any individual surface mining operation and the reclamation plans that relate thereto without affecting any other portion of the same permit application.

Exploration Activities

Sec. 9. The commission shall promulgate rules and regulations in accordance with Subsections (a) and (b), Section 7 of this Act for the conduct of exploration activities as defined in this Act.

Reclamation Plan

Sec. 10. (a) A reclamation plan shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies. A reclamation plan submitted as part of a permit application shall include the following information:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, which immediately preceded any mining;

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses;

(4) a description of how the proposed post-mining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation;

(5) the steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications;

(6) a general timetable that the operator estimates will be necessary for accomplishing the major events contained in the reclamation plan;

(7) such other information as the commission, by rule or regulation, shall determine to be reasonably necessary to effectuate the purposes of this Act.

(b) The operator may revise or amend the reclamation plan at any time in accordance with the requirements of Subsection (b) of Section 15 of this Act.

Reclamation Standards

Sec. 11. (a) Any permit issued pursuant to this Act to conduct surface mining operations shall re-

quire that such surface mining operations will meet all applicable reclamation standards of this Act and such other requirements as the commission shall establish by rule and regulation.

(b) Reclamation standards shall apply to all surface mining and reclamation operations not otherwise exempted or excluded and shall require the operator as a minimum to:

(1) conduct surface mining operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered so that re-affecting the land in the future through surface mining can be minimized;

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as such condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the permit applicants' declared anticipated land use following reclamation is not deemed to be impractical or unreasonable, to involve unreasonable delay in implementation, or to be violative of federal, state, or local law; provided that a variety of postmining land conditions which differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this section;

(3) reduce all highwalls, spoil piles, and banks to a degree to control erosion effectively and sufficient to sustain vegetation, where required, consistent with the anticipated subsequent use of the affected land; provided that backfilling, compacting, and grading shall be required to restore the approximate original contour where required by federal law and for uranium and uranium ore where the volume of overburden is large in comparison to the volume of mineral deposit and the commission deems such requirement to be practical;

(4) stabilize and protect all surface areas affected by the mining and reclamation operation effectively to control erosion and attendant air and water pollution;

(5) remove the topsoil, if any, from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the

topsoil, maintain a successful cover by quick growing plants or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation; provided that the requirements of this provision shall not apply if a mixing of strata can be shown to be equally suitable for revegetation requirements;

(6) replace the topsoil or the best available subsoil, if any, on top of the land to be reclaimed;

(7) fill any auger holes with an impervious material in order to prevent drainage;

(8) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) preventing or removing water from contact with toxic-producing deposits,

(ii) treating drainage to reduce toxic content,

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters;

(B) conducting surface mining operations so as to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(C) consistent with good water conservation practices, removing such temporary or large siltation structures from drainways after disturbed areas are revegetated and stabilized;

(D) such other actions as the commission may prescribe pursuant to rules or regulations;

(9) stabilize any waste piles;

(10) refrain from surface mining in proximity to active and abandoned underground mines where such mining would cause breakthroughs

or would endanger the health or safety of miners;

(11) with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes, incorporate current engineering practices for the design and construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Section 6.0731, Water Code, and applicable federal laws, insure that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters or combustion;

(13) insure that any explosives are used only in accordance with existing state and federal law and regulations promulgated by the commission;

(14) insure that all reclamation efforts proceed as contemporaneously as practicable with the surface mining operations;

(15) insure that construction, maintenance, and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property; provided that the commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(16) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(17) establish on all affected lands, where required in the approved reclamation plan, a diverse vegetative cover native to the affected land where vegetation existed prior to mining and capable of self-regeneration and plant succession equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable or necessary to achieve the approved reclamation plan;

(18) assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan, provided that the four-year period of responsibility shall commence no later than two

complete growing seasons after the vegetation has been successfully established as determined by the commission;

(19) with respect to permanent impoundments of water as part of the approved reclamation plan, insure that:

(A) the size of the impoundment and the availability of water are adequate for its intended purpose,

(B) the impoundment dam construction will meet the requirements of Section 6.0731, Water Code, and applicable federal laws,

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream,

(D) final grading will provide adequate safety and access for anticipated water users, and

(E) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(20) meet such other criteria pursuant to the commission's rules and regulations as are necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site.

(c) The purpose of this section is to cause the land affected to be restored to the same condition as the land enjoyed before the mining or some substantially beneficial condition. A method of reclamation other than that provided in this section may be approved by the commission, after public hearing, if the commission determines that any method of reclamation required by this section is not practicable and that such alternative method will provide for the affected land to be restored to a substantially beneficial condition. If an alternative method of reclamation is generally applicable to all surface mining operations involving a particular mineral, the commission shall promulgate appropriate rules and regulations in accordance with Subsection (d) of Section 7.

Permit Approval or Denial

Sec. 12. (a) The surface mining permit shall be granted if it is established that the application complies with the requirements of this Act and all applicable federal and state laws. The commission shall deny a permit if:

(1) the commission finds that the reclamation as required by this Act cannot be accomplished by means of the proposed reclamation plan;

(2) any part of the proposed operation lies within an area designated as unsuitable for surface mining as designated by Section 13 of this Act; provided, however, the application may be amended to exclude such designated areas;

(3) the commission is advised by the Texas Water Quality Board that the proposed mining operation will cause pollution of any water of the state, or by the Texas Air Control Board that the proposed mining operation will cause pollution of the ambient air of the state, in violation of the laws of this state;

(4) the applicant has had any other permit issued hereunder revoked, or any bond posted to comply with this Act forfeited, and the conditions causing the bond to be forfeited have not been corrected to the satisfaction of the commission;

(5) the commission determines that the proposed operation will endanger the health and safety of the public;

(6) the surface mining operation will adversely affect any public highway or road; or

(7) the operator is unable to produce the bonds or otherwise meet the requirements of Section 14 of this Act.

(b) The commission may approve a surface mining permit conditioned upon the approval of all other state permits or licenses which may be required.

Designation of Lands Unsuitable for Surface Mining

Sec. 13. (a) The commission shall develop rules and regulations adopting appropriate procedures whereby, in accordance with the provisions of this section, lands in this state can be identified and designated unsuitable for all or certain types of surface mining; provided that such rules and regulations shall be of sufficient detail to provide reasonable notice to prospective operators of areas which might be designated as unsuitable for surface mining.

(b) When application is made to conduct surface mining operations, the commission shall immediately cause such areas included within the proposed permit to be surveyed in accordance with the requirements of this section prior to the issuance of such permit. In conducting the survey and in declaring various areas to be unsuitable for mining, the commission shall employ competent and scientifically sound data and information as the basis for objective decisions with respect to each area surveyed. Prior to designating any land areas as unsuitable for

surface mining operations, the commission shall prepare a detailed statement on the potential mineral and other resources of the area, the demand for such resources, and the impact of such designation on the environment, the economy, and the supply of the mineral.

(c) Following the survey, the area may be designated unsuitable for all or certain types of surface mining if:

(1) the commission determines that reclamation pursuant to the requirements of this Act is not feasible;

(2) such operations will result in significant damage to important areas of historic, cultural, or archaeological value or to important natural systems;

(3) such operations will affect renewable resource lands resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, such lands to include aquifers and aquifer recharge areas;

(4) such operations are located in areas subject to frequent flooding or areas of unstable geology and may reasonably be expected to endanger life and property;

(5) such operations will adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild and scenic river area, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark, or city or county park; or

(6) where such operations would endanger any public road, public building, cemetery, school, church, or similar structure or existing dwelling outside the permit area.

(d) Any person shall have the right to petition the commission to have an area designated as unsuitable for surface mining operations or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which in the opinion of the commission would tend to establish the allegations. The commission shall make a determination of the validity of the petition. If the petition is found to be valid, it shall be kept on file by the commission and made available for public inspection. Upon application for a surface mining permit for which a valid petition has been filed, the commission shall hold a public hearing in accordance with the requirements of Section 16 of this Act in the locality of the proposed mining operation. Any person affected may intervene prior to such public hearing by filing allegations of facts with supporting evidence which would tend to establish the alle-

gations. Within 60 days after such hearing, the commission shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons therefor. In the event that all the petitioners and the applicant stipulate agreement prior to the requested hearing, such hearing need not be held.

(e) The commission may modify, amend, or terminate a designation pursuant to the requirements of this section.

(f) The provisions of this section shall not apply to land on which surface mining operations are being conducted on the date of enactment of this Act.

Performance Bonds

Sec. 14. (a) After a surface mining permit application has been approved but before such a permit is issued, the applicant shall file with the commission on a form prescribed by rule and regulation a bond for performance payable to the State of Texas and conditional on full and faithful performance of all the requirements of this Act and the permit. The bond shall cover that area of land within the permit area on which the operator will initiate and conduct surface mining and reclamation operations. As succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the commission an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend on the reclamation requirements of the approved permit and shall be determined by the commission on the basis of at least two independent estimates, one of which shall be submitted by the permit applicant and the other prepared at the commission's direction under procedures established by rule or regulation; provided that only one independent estimate need be submitted if the applicant waives his right to submit an estimate. The amount of the bond shall be determined by the commission and shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture; provided, however, that in no event shall it exceed the highest independent estimate.

(b) The commission may accept the bond of the operator itself, without separate surety, when the operator demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure or bond such amount.

(c) Liability under the bond shall be for the duration of surface mining and reclamation operations and for a period coincident with the operator's responsibility pursuant to Section 11 of this Act.

(d) The bond shall be executed by the operator and a corporate surety licensed to do business in the State of Texas, except that the operator may elect to deposit cash or negotiable securities acceptable to the commission, or an assignment of a savings account in a Texas bank on an assignment form prescribed by the commission's rules and regulations. The cash deposit or market value of such substitute collateral shall be equal to or greater than the amount of the bond required for the bonded area.

(e) Cash or other substitute collateral shall be deposited on the same terms as the terms on which surety bonds may be deposited.

(f) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or substitute collateral may be increased or decreased from time to time to reflect changes in the cost of future reclamation of land mined or to be mined. The amount of the bond or substitute collateral may be reduced only in accordance with the provisions of Section 23 of this Act.

Renewal, Revision, or Transfer of Permits

Sec. 15. The commission shall promulgate rules and regulations for renewal, revision, or transfer of surface mining permits.

(a) Renewal. Any valid surface mining permit issued pursuant to this Act shall carry with it the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The holder of such permit may apply for renewal and such renewal shall be issued, on the following requirements and written finding by the commission that:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or substitute collateral required under the terms of this Act will continue in full force and effect and unimpaired for the requested renewal, revision, or transfer;

(3) the operator has provided additional or revised information as required by the commission; and

(4) notice under Section 16 of this Act has been provided with respect to the application for renewal, revision or transfer.

Each application for renewal of a surface mining permit shall be accompanied by a renewal application fee as determined by the commission in accordance with a published fee schedule. Such fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but in no event shall exceed \$200. The approved application fee as provided in Subsection (c), Section 8, shall not be applicable to a renewal application except the portion, if any, which addresses any new land areas.

If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards, including application fees, applicable to new applications under this Act.

Any surface mining permit renewal shall be for a term not to exceed the period of the original permit established by this Act. Application for permit renewal shall be made at least 90 days prior to the expiration of the valid permit.

(b) Revision. During the term of any surface mining permit, the permittee may submit an application, together with a revised reclamation plan, to the commission for a revision of the permit.

An application for a revision of a permit shall not be approved unless the commission finds that reclamation as required by the Act can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within 60 days. The commission shall by rule or regulation establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; provided that any revisions which propose a substantial change in the intended future use of the land or significant alteration in the reclamation plan shall, at a minimum, be subject to the notice and hearing requirements set out in Section 16 of this Act.

Any extensions to the area covered by the permit except incidental boundary revisions, must be made by application for another permit or for revision of a permit.

(c) Transfer. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the commission. Any person desiring to succeed to the interests of a permittee hereunder must file an application on a form prescribed by the commission and containing such pertinent information as the commission by regulation may require. Among the information which the commission shall require are the following:

- (1) the information required by Subdivisions (1) and (4), Subsection (e), Section 8 of this Act relating to ownership and other mining activities of the applicant;
- (2) proof that the public liability insurance requirement of Section 8 of this Act will be fulfilled;
- (3) proof that the performance bond or substitute collateral required in Section 14 of this Act will be furnished; and

(4) the statement of the applicant that he will faithfully carry out all of the requirements of the reclamation plan approved in the original application.

The application for transfer shall be approved, subsequent to notice and opportunity for public hearing, if any is required under Section 16 of this Act, on the written finding by the commission that the requirements of Subsection (a) of this section have been met.

The application for transfer shall be denied if the applicant has had any permit issued hereunder revoked, or any bond posted to comply with this Act forfeited, and the conditions causing the bond to be forfeited have not been corrected to the satisfaction of the commission.

Public Notice and Public Hearings

Sec. 16. (a) At the time of submission of an application for a surface mining permit, or for revision, renewal, or transfer of an existing permit, pursuant to the provisions of this Act, the applicant shall publish notice of the ownership, location, and boundaries of the permit area sufficient so that the proposed operation is readily locatable by local residents, and the location where the application is available for public inspection. Such notice shall be placed in the local newspaper of greatest general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The commission shall contact various local governmental bodies, planning agencies, sewage and water treatment authorities or water companies having jurisdiction over or in the locality in which the proposed surface mining will take place, and the owners of record of all surface areas within 500 feet of any part of the permit area, notifying them of the applicant's intention to surface mine a particularly described tract of land and indicating the applicant's permit number, if any, and where a copy of the proposed mining and reclamation plan may be inspected. Such local bodies, agencies, authorities, or companies may submit written comments within 30 days after the last publication of the above notice with respect to the effect of the proposed operation on the environment within their areas or responsibility. Such comments shall be made a part of the record and one copy shall be furnished to the operator.

(b) Any person affected or any federal, state, or local governmental agency or authority shall have the right to file written objections to the application for a surface mining permit or for the renewal, revision, or transfer of such a permit with the commission within 30 days after the last publication of the above notice. Such comments shall be made a part of the record and one copy shall be furnished to the operator.

(c) If the commission determines that the application is of a significance sufficient to warrant a public hearing, the commission shall then hold a public hearing in the locality of the proposed surface mining and reclamation operations. In determining whether to hold public hearing, the commission shall consider any objections which have been filed. Notice of the date, time, and location of such public hearing shall be published by the commission in the newspaper of greatest general circulation in the locality at least once a week for three consecutive weeks prior to the scheduled hearing date.

(d) A verbatim transcript and complete record of the proceedings of each public hearing shall be retained by the commission. On request, the commission shall transcribe all or part of any such proceedings and shall furnish a verbatim transcript within a reasonable time to the requesting party; provided that the commission may charge a fee based on the estimated cost of the service of transcribing and printing the requested material.

Decisions of Commission and Appeals

Sec. 17. (a) If a public hearing has been held pursuant to Section 16 of this Act, the commission shall issue and furnish all of the parties to the administrative proceedings with its written findings based on the record, granting or denying the application in whole or in part and stating the reasons therefor, within 30 days of said hearings.

(b) If there has been no public hearing held pursuant to Section 16 of this Act, the commission shall notify the applicant and any objectors within 45 days after the last publication of the notice required by Section 16 of this Act whether the application has been approved or disapproved. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor shall be set forth in the notification. Within 30 days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for the said disapproval. The commission shall hold a hearing within 30 days of said request and provide notification to all interested parties at the time that the applicant is so notified. Within 30 days after the hearing, the commission shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the commission based on the record granting or denying the permit in whole or in part and stating the reasons therefor.

Judicial Review

Sec. 18. (a) Any party to the administrative proceedings whose interest is or may be adversely affected by any ruling, order, decision, or other act of the commission may appeal by filing a petition in a

district court of Travis County or in the county in which the greater portion of the land in question is located.

(b) The petition must be filed within 30 days after the date of the commission's action, or, in case of a ruling, order, or decision, within 30 days after its effective date.

(c) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(d) The court shall hear such complaint solely on the record made before the commission. The findings of the commission, if supported by substantial evidence on the record considered as a whole, shall be upheld.

(e) The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings.

(f) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the commission.

(g) Any action arising under this Act shall be given precedence by the court over cases of a different nature.

Inspections and Monitoring

Sec. 19. (a) The commission shall require each permittee to:

(1) establish and maintain appropriate records;

(2) make reports, the frequency and nature of which shall be prescribed by the commission;

(3) install, use, and maintain any necessary monitoring equipment for the purpose of observing and determining relevant surface or subsurface effects of the mining operation or reclamation program; and

(4) provide such other information relative to mining and reclamation operations as the commission determines reasonable and necessary.

(b) The authorized representatives of the commission, without advance notice and on presentation of appropriate credentials to the operation supervisor, if present, shall have the right of entry to, on, or through any surface mining operation or any premises in which any records required to be maintained under Subsection (a) of this section are located and may at reasonable times, and without delay, have

access to and copy any records, and inspect any monitoring equipment or method of operation required under this Act.

(c) The inspections by the commission shall occur on an irregular basis at a frequency necessary to insure compliance with the intent and purposes of this Act and the commission's rules and regulations for the surface mining and reclamation operations covered by each permit; occur only during normal operating hours if practicable; occur without prior notice to the permittee or his agents or employees; and include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act, and the commission shall make such reports part of the record and furnish one copy of the report to the operator. The commission shall so far as practicable establish a system of rotation of inspectors.

(d) Each permittee shall maintain at the entrances to the surface mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface mining and reclamation operations.

(e) Each inspector, on detection of each violation of any requirement of this Act, shall forthwith inform the operator orally at the time of the inspection and subsequently in writing and shall report in writing any such violation to the commission.

Enforcement

Sec. 20. (a) When, on the basis of any inspection, the commission or its authorized representative or agent determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, any member of the commission shall immediately order a cessation of surface mining operations on the portion thereof relevant to the condition, practice, or violation. Such cessation order shall fix a time and place for a hearing to be held before the commission which shall be as soon after the order is issued as is practicable. The requirements of Section 16 as to the time for notice, newspaper notice, and method of giving notice do not apply to such hearing, but such general notice shall be given as in the judgment of the commission is practicable under the circumstances. No more than 24 hours after the commencement of such hearing, and without adjournment of the hearing, the commission shall affirm, modify, or set aside the order.

(b) When, on the basis of any inspection, the commission or its authorized representative or agent determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, but such violation does not create an imminent danger to the health or safety of the public, or cause or can be reasonably expected to cause significant imminent harm to land, air, or water resources, the commission shall issue a notice to the permittee or his agent fixing a reasonable time but not more than 30 days for the abatement of the violation. If on expiration of the period of time as originally fixed or subsequently extended, for good cause shown and on the written finding of the commission, the commission finds that the violation has not been abated and after a hearing, if requested by the operator, it may order a cessation of surface mining operations on the portion thereof relevant to the violation. Such cessation order shall remain in effect until the commission determines that the violation has been abated, or until modified, vacated, or terminated by the commission pursuant to Subsection (c) of this section.

(c) When, on the basis of any inspection, the commission has reason to believe that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the commission also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Act or any permit conditions, or that such violations are willfully caused by the permittee, the commission shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked, the commission shall time and place for a public hearing to be held in accordance with the notice and procedural requirements of Section 16 of this Act. On the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner shall forthwith suspend or revoke the permit.

(d) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission and all such notices and orders shall be in writing and shall be signed by the commission or its authorized representative. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commission.

(e) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining or

der, or any other appropriate order in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located, whenever such permittee:

(1) violates or fails or refuses to comply with any order or decision issued by the commission under this Act;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this Act;

(3) refuses to admit such authorized representative to the mine;

(4) refuses to permit inspection of the mine by such authorized representative;

(5) refuses to furnish any information or report requested by the commission in accordance with the rules and regulations of the commission; or

(6) refuses to permit access to, and copying of, such records as the commission reasonably determines necessary in carrying out the provisions of this Act.

Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under Subdivision (1) of this subsection shall continue in effect until the completion or final termination of all proceedings for review of such order under this Act, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

Penalties

Sec. 21. (a) The commission may cause a civil suit to be instituted praying for injunctive relief to restrain the permittee from continuing the violation or threat of violation, or for the assessment of a civil penalty of not more than \$5,000 for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations of this Act; the appropriateness of such penalty to the size of the business of the permittee charged; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(b) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this Act or fails or refuses to comply with any order issued under Section 20 of this Act, or any order incorporated in a final decision issued by the commission under this Act, shall, on conviction by a district court, be punished by a criminal penalty of

not more than \$10,000, or by imprisonment for not more than one year, or both.

(c) Whenever a corporate permittee violates a condition of a permit issued pursuant to this Act or fails or refuses to comply with any order issued under Section 20 of this Act, or any order incorporated in a final decision issued by the commission under this Act, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall on conviction by a district court be punished by a criminal penalty of not more than \$10,000, or by imprisonment for not more than one year, or both.

(d) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act, shall on conviction by a district court be punished by a criminal penalty of not more than \$10,000, or by imprisonment for not more than one year, or both.

(e) The commission may request the attorney general to institute a suit to recover civil or criminal penalties, or for injunctive relief, or for both, as authorized in this section, in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

Land Reclamation Fund

Sec. 22. (a) All sums received through the payment of fees, loans, grants, penalties, and bond forfeitures shall be placed in the State Treasury and credited to a special account to be designated the Land Reclamation Fund. This fund shall be available to the commission and may be expended for the administration and enforcement of this Act and for the reclamation of lands affected by surface mining operations.

(b) All proceeds from the forfeiture of bonds and penalties recovered shall be expended to reclaim in accordance with the provisions of this Act lands with respect to which the bonds were provided and penalties assessed.

(c) In the reclamation of land affected by surface mining for which it has funds available, the commission may avail itself of any services which may be provided by other state agencies or the federal government, and may compensate them for such services. The commission may cause the reclamation work to be done by its own employees or by employees of other governmental agencies or through contracts with qualified persons. Such contracts shall be awarded to the lowest bidder on competitive bids after reasonable advertisement. The commission and any other agency and any con-

tractor under a contract shall have the right of access to the land affected to carry out such reclamation.

Release of Performance Bonds or Deposits

Sec. 23. (a) At any time an operator may file an application with the commission for the release of all or part of the performance bond or deposit. Such application shall be on a form prescribed by the commission and shall contain, in addition to other information the commission may require, the type and the approximate date of reclamation work performed and a description of the results achieved as they relate to the operator's reclamation plan. The commission shall file a copy of the bond release application for public inspection with the county clerk at the county courthouse of the county where the surface mining and reclamation operation is located. The operator shall submit a copy of a notice placed once a week for four consecutive weeks in the newspaper of greatest general circulation in the locality of the surface mining and reclamation operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the location and boundaries of the land affected, the permit number and the date approved, the amount of the bond filed and the portion sought to be released, and where the bond release application has been placed for public inspection.

(b) On receipt of the notification and request, the commission shall within a reasonable time, not to exceed 45 days, conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution.

(c) The commission may release in whole or in part said bond or deposit if it is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Act according to the following schedule:

(1) when the operator completes any required backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of up to 75 percent of the bond or substitute collateral for the applicable permit area; provided, however, that the amount of the unreleased portion of the bond or substitute collateral shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of forfeiture; and

(2) when the operator has successfully completed the remaining reclamation activities, but

not before the expiration of the period specified for operator responsibility in Section 11 of this Act, release the remaining portion of the bond or substitute collateral; provided, however, that no bond shall be fully released until all reclamation requirements of this Act are fully met.

(d) If the commission disapproves the application for release of the bond or portion thereof, he shall notify the operator, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release.

(e) Within 30 days after any application for total or partial bond release is filed with the commission, the commission shall notify the local governmental agency in which the surface mining operation is located by certified mail.

(f) Any person or the officer or head of any federal, state, or local governmental agency shall have the right to file written objections to the proposed release from bond to the commission within 30 days after the last publication of notice under Subsection (a) of this section. Where the commission determines that the application is of a significance sufficient to warrant a public hearing, considering any objections which may have been filed, the commission shall hold a public hearing. The commission shall inform all the interested parties of the time and place of the hearing to be conducted in accordance with Section 16 of this Act, and hold a public hearing in the locality of the surface mining operation proposed for bond release. Notice of the date, time, and location of such public hearings shall be published by the commission in accordance with the provisions of Section 16 of this Act.

Confidentiality

Sec. 24. Information submitted to the commission pertaining to mineral deposits, test borings, core samplings, or information concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the applicant and specifically identified as confidential by the applicant and which is not essential for any public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

Appropriation

Sec. 25. Funds for the operation of the commission under the provisions of this Act shall be appropriated by the legislature.

Severability

Sec. 26. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application,

and to this end the provisions of this Act are declared severable.

[Acts 1975, 64th Leg., p. 2110, ch. 690, §§ 1 to 27, eff. Jan. 1, 1976.]

Effective Date

Sec. 27. This Act shall take effect on January 1, 1976.

TITLE 96B

GIFTS TO MINORS

Art. 5923-101. Texas Uniform Gifts to Minors Act

Definitions

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a)]

(b) A "bank" is a state bank, a national bank, a state building and loan association, a federal savings and loan association, a federal credit union, or an insured credit union chartered and supervised under the laws of this State.

[See Compact Edition, Volume 5 for text of 1(c) and (d)]

(e) "The custodial property" includes:

(1) all securities, money, life or endowment insurance policies, annuity contracts, real property, and tangible personal property under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this Act.

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money, income, life or endowment insurance policies, annuity contracts, real property, and tangible personal property.

[See Compact Edition, Volume 5 for text of 1(f) to (k)]

(I) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, investment contract, or any certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

[See Compact Edition, Volume 5 for text of 1(m) to (o)]

Manner of Making Gift

Sec. 2. (a) An adult person may, during his lifetime or by will, make a gift of a security or money, a life or endowment insurance policy, an annuity contract, real property, or tangible personal property to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for _____ (name of minor) under the Texas Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE TEXAS UNIFORM GIFTS TO MINORS ACT

I, _____ (name of donor), hereby deliver to _____ (name of custodian) as custodian for _____ (name of minor) under the Texas Uniform Gifts to Minors Act, the following security(ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them)

(signature of donor)

(name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Texas Uniform Gifts to Minors Act.

Dated: _____

(signature of custodian) "

(3) if the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person or a bank with trust powers, followed, in substance, by the words: "as custodian for _____ (name of minor) under the Texas Uniform Gifts to Minors Act."

(4) if the subject of the gift is a life or endowment insurance policy or an annuity contract, such policy or contract shall be assigned to the custodian in his own name,

followed, in substance, by the words: "as custodian for _____ (name of minor) under the Texas Uniform Gifts to Minors Act." Such policy or contract shall be delivered to the person who has been designated as custodian thereof.

(5) if the subject of the gift is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment, or similar conveyance of the interest to the custodian in his own name, followed, in substance, by the words: "as custodian for _____ (name of minor) under the Texas Uniform Gifts to Minors Act."

(6) if the subject of the gift is an interest in tangible personal property, by causing the ownership of the property to be transferred by any appropriate written document to the custodian in his own name, followed, in substance, by the words: "as custodian for _____ (name of minor) under the Texas Uniform Gifts to Minors Act."

(7) if the gift is by will or transfer in trust, by giving the subject of the gift to an adult or a trust company, followed, in substance, by the words: "as custodian for _____ (name of minor) under the Texas Uniform Gifts to Minors Act"; if the testator fails to designate the custodian or if the designated custodian dies or is unable or unwilling to serve, the personal representative or trustee shall designate the custodian from among those eligible to become successor custodian under this Act and shall make distribution by transferring the subject of the gift to the custodian in the form and manner provided in this subsection; the receipt of the custodian constitutes a sufficient release and discharge for the gift; if the gift is distributable by a personal representative by will, the personal representative may elect the procedures under this Act for making the gift.

[See Compact Edition, Volume 5 for text of 2(b) and (c)]

Effect of Gift

Sec. 3. (a) A gift made in a manner prescribed in this Act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money, life or endowment insurance policies, annuity contracts, real property, or tangible personal property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this Act.

(b) By making a gift in a manner prescribed in this Act, the donor incorporates in his gift, trust, or will all the provisions of this Act and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this Act.

Duties and Powers of Custodian

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a) to (e)]

(f) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable, provided that a custodian may not acquire as custodial property any property other than securities, money, life or endowment insurance policies, annuity contracts, or real property. He may vote in person or by general or limited proxy a security, policy or contract, which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer of a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. On dissolution or liquidation of an issuer of a security which is custodial property, the custodian may receive the minor's share of any property resulting from such dissolution or liquidation and retain and manage it as custodial property except that he cannot sell or exchange it for property not authorized to be acquired as custodial property. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian. With respect to any interest in real estate, he may perform the same acts that any unmarried adult may perform, including all powers granted to a trustee under Section 25, Texas Trust Act, as amended (Article 7425b-25, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 4(g) to 6]

Resignation, Death or Removal of Custodian; Bond; Appointment of Successor Custodian

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a)]

(b) A successor custodian may be appointed by one of the following procedures:

(1) a custodian, other than the donor, may resign and designate his successor by executing an instrument of resignation designating the successor custodian before a subscribing witness other than the successor and delivering it to the minor and the successor custodian;

(2) in the absence of an effective designation of a successor custodian by the custodian, the donor may designate an adult member of the minor's family, a guardian of the minor, or a trust company as a successor custodian by executing and dating an instrument of designation

before a subscribing witness other than the successor;

(3) in the absence of an effective designation of a successor custodian by either the custodian or the donor, the guardian of the minor shall become successor custodian; in the absence of a guardian, the minor, if he has attained the age of fourteen (14) years, may designate a successor custodian in the manner prescribed for the designation of a successor custodian;

(4) if the minor has not attained the age of fourteen (14) years, and in the absence of an effective designation of a successor custodian by the custodian, donor, or guardian, a parent of the minor may appoint a successor custodian;

(5) if the minor has not attained the age of fourteen (14) years and has no guardian or parent, and no effective designation of a successor custodian has been made by the custodian or the donor, then an adult member of the minor's family may petition the court for the designation of a successor custodian.

[See Compact Edition, Volume 5 for text of 7(c)]

(d) The designation of a successor custodian as provided in Subsection (b) of this section takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his legal representative:

(1) causes each security in registered form, life or endowment insurance policy, annuity contract, or interest in real property to be registered in the name of or conveyed to the successor custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act"; and

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or any additional instruments required for the transfer to the successor custodian.

[See Compact Edition, Volume 5 for text of 7(e) to 10]

[Amended by Acts 1975, 64th Leg., p. 1858, ch. 582, §§ 1 to 5, eff. June 19, 1975.]

Title 99

NOTARIES PUBLIC

Art. 5949. Notary Public

Appointment; Number and Terms

1. (a) The Secretary of State of the State of Texas shall appoint a convenient number of Notaries Public to serve each county of the state. Such appointments may be made at any time, and the term of each appointment shall end two years after the date of qualification of each individual Notary Public, unless sooner revoked by the Secretary of State.

(b) The Notaries Public who qualify as of June 1, 1977, shall have the following terms of office, unless sooner revoked by the Secretary of State:

FIRST LETTER OF SURNAME:	TERM TO EXPIRE:
A through B	June 30, 1978
C	July 31, 1978
D through E	August 31, 1978
F through G	September 30, 1978
H through I	October 31, 1978
J through L	November 30, 1978
M	December 31, 1978
N through P	January 31, 1979
Q through R	February 28, 1979
S	March 31, 1979
T through V	April 30, 1979
W through Z	May 31, 1979

Eligibility

2. To be eligible for appointment as a Notary Public for any county, a person shall be a resident citizen of the United States and of this state and at least eighteen (18) years of age, and either a resident of the county for which he is appointed, or shall maintain his principal place of business or of employment in such county; provided that any person may be appointed, as hereinabove set out, and shall be authorized to act, in only one county in this state at the same time; provided further that where such person resides within the limits of a county with a population of more than fifty thousand (50,000), according to the last preceding federal census, containing an incorporated city, town or village partially located in another county, said person may be appointed a Notary Public for either of such counties; and provided further that nothing herein shall invalidate any commission as Notary Public which has been issued and is outstanding at the time this Act becomes effective.

Procedure for Appointment; Application; Contents; Duties of County Clerks

3. Appointments to the office of Notary Public shall be made as follows:

Any person desiring appointment as a Notary Public shall make application in duplicate to the county clerk of his county of residence, or the county in which he maintains his principal place of business or of employment, on forms prescribed by the Secretary of State, which includes his name as it will be used in acting as such Notary Public, his post-office address, his county of residence, his business address, the name of the county in which his business is located, his social security number, a statement that he has never been convicted of a crime involving moral turpitude, and shall satisfy the clerk that he is at least eighteen (18) years of age and otherwise qualified by law for the appointment which is sought; provided that if the person is a qualified Notary Public for another county his commission in that county shall be surrendered to the Secretary of State at the time application for the appointment is made. One copy of each application, along with the names of all persons making such application shall be sent in duplicate by the county clerk to the Secretary of State with the certificate of the county clerk that according to the information furnished him, such person is eligible for appointment as Notary Public for such county. The Secretary of State shall act upon all such names submitted at the earliest practicable time and notify the county clerk whether such appointment or appointments have been made. Upon receiving notice from the Secretary of State of such appointments, the county clerk shall forthwith notify all persons so appointed to appear before him within fifteen (15) days from the date of such appointment and qualify as hereinafter provided. The appointment of any person failing to qualify within the time allowed shall be void, and if any such person desires thereafter to qualify, his name shall be resubmitted in the same manner as hereinabove provided.

[See Compact Edition, Volume 5 for text of 4
and 5]

Reappointment; Vacation of Office; Notification; Change of Address

6. (a) Any qualified Notary Public whose term is expiring may be reappointed by the Secretary of State without the necessity of the county clerk re-submitting his name to the Secretary of State, provided such appointment is made in sufficient time for such Notary Public to be qualified on the expiration date of the term for which he is then serving; and provided that if any such Notary Public shall permanently remove from the county for which he has been appointed, his office in such county shall be automatically vacated and if he desires to act as a Notary Public in another county, his commission shall be surrendered to the Secretary of State and his name shall be submitted by the clerk of such other county as hereinabove provided.

(b) Upon receiving notice of reappointment made by the Secretary of State for the next term of office, the County Clerk of each county shall forthwith notify such persons, who are reappointed from his or her county, to qualify not later than the expiration date of the term for which he is serving, which qualifying shall become effective on the expiration date of his term and shall not be effective prior thereto. The County Clerk shall give this notification not less than fifteen (15) days prior to the expiration of the person's term. The reappointment of any person who fails to qualify within the

time allowed shall be void, and if the person later desires to qualify, his name must be resubmitted in the same manner as provided in Section 3 of this Article.

(c) Each Notary Public shall notify the Secretary of State and the County Clerk of the county for which he has been appointed of any change of his address within ten (10) days after the change.

[See Compact Edition, Volume 5 for text of 7
to 10]

[Amended by Acts 1975, 64th Leg., p. 1024, ch. 392, § 1, eff. June 19, 1975.]

Art. 5954. Authority of Notary; Printing or Stamping of Name Under Signature

Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protest instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon County Clerks, and provided that all Notaries Public shall print or stamp their names and the expiration dates of their commissions under their signatures on all such written instruments, protest instruments, oaths, or depositions; provided further that failure to so print or stamp their names and expiration dates of their commissions under their signatures shall not invalidate such acknowledgment.

[Amended by Acts 1975, 64th Leg., p. 1024, ch. 392, § 2, eff. June 19, 1975.]

TITLE 100

OFFICERS—REMOVAL OF

Art. 5966a. State Judicial Qualifications Commission

[See Compact Edition, Volume 5 for text of 1 to 6A]

Willful or Persistent Conduct Inconsistent with Performance of Duties

Sec. 6B. A judge engages in willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties if he willfully, persistently, and without justifiable cause fails to execute the business of his court in a timely manner,

considering the quantity and complexity of that business. This section shall not be construed as containing an exclusive definition of that which constitutes a judge's willful or persistent conduct that is clearly inconsistent with the performance of his duties.

[See Compact Edition, Volume 5 for text of 7 to 16]

[Amended by Acts 1975, 64th Leg., p. 1380, ch. 529, § 1, eff. Sept. 1, 1975.]

TITLE 102

OIL AND GAS

GENERAL PROVISIONS

Art. 6020a. Telephone, Telegraph, Electric Transmission and Power Lines; Oil, Gas and Sulphur Pipelines; Irrigation Canals and Water Pipelines; Easements and Right-of-Way Over Public Lands and Waters

Right-of-Way Easements Over Public Lands

Sec. 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, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., 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.

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

Term of Right-of-Way Easements

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, provided, however, that a right-of-way easement for a pipeline connecting onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., may be granted for a term coincident with the term of the license issued by the secretary of transportation pursuant to the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and such easement may be renewed for additional terms of up to ten (10) years coincident with the term for each renewal of the license.

[See Compact Edition, Volume 5 for text of 4 to 10]

[Amended by Acts 1975, 64th Leg., p. 2217, ch. 705, §§ 9, 10, eff. June 21, 1975.]

Art. 6020b. Pipe Lines for Loading Water-Craft in Gulf

[See Compact Edition, Volume 5 for text of 1 to 3]

Sec. 4. Notwithstanding any other provision of this Chapter, it shall be lawful for the pipelines and all other associated facilities and equipment of a deepwater port, as defined in the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., to be utilized for the purposes set forth and permitted by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq.

[Amended by Acts 1975, 64th Leg., p. 2217, ch. 705, § 11, eff. June 21, 1975.]

TITLE 103

PARKS

1. STATE PARKS BOARD

Article

6067 to 6070b. Repealed.
6070c. Omitted.
6070d to 6070d-1. Repealed.
6070g to 6070h. Repealed.
6071a to 6071c. Repealed.
6077a-1 to 6077h-2. Repealed.
6077j to 6077l. Repealed.
6077m-1 to 6077n-1. Repealed.
6077p to 6077u. Repealed.
6081r to 6081s-1. Repealed.

Repeal

Enumerated articles of this Title 103 were repealed by § 2(a)(4) of Acts 1975, 64th Leg., p. 1804, ch. 545, enacting the Parks and Wildlife Code, effective September 1, 1975.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Parks and Wildlife Code.

Arts. 6067 to 6070b. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, §§ 1 and 4 of art. 6067b were amended by Acts 1975, 64th Leg., p. 927, ch. 345, §§ 1 and 2.

Repealed art. 6067d, authorizing issuance of a State Parklands Passport to persons 65 years of age or over, was derived from Acts 1975, 64th Leg., p. 55, ch. 31.

Art. 6070c. Omitted

Acts 1931, 42nd Leg., p. 917, H.C.R. # 43, classified as art. 6070c, setting aside Goose Island for use as a State Park, has been omitted from West's Texas Statutes.

Arts. 6070d, 6070d-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6070g, 6070h. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, § 8 of art. 6070h was amended by Acts 1975, 64th Leg., p. 1129, ch. 428, § 1.

Art. 6071a to 6071c. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077a-1 to 6077h-2. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077j to 6077l. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077m-1 to 6077n-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077p to 6077u. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

5. COUNTY PARKS

Art. 6079e. Counties of 70,000 or More

Applicability of Law

Sec. 1. The provisions of this Act shall apply to any county in this State having a population of seventy thousand (70,000) or more according to the last preceding Federal Census.

[See Compact Edition, Volume 5 for text of 2 to 20]

[Amended by Acts 1975, 64th Leg., p. 1883, ch. 596, § 1, eff. Sept. 1, 1975.]

7. RECREATIONAL AREAS, FACILITIES AND HISTORICAL SITES

Arts. 6081r to 6081s-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Art. 6081t. Joint Establishment and Operation of Recreational Facilities

[See Compact Edition, Volume 5 for text of 1 and 2]

Sec. 2a. In connection with any facilities which may be provided, maintained, constructed, and operated pursuant to the provisions of this Act, the governmental units involved, operating within two or more adjacent counties, acting jointly and, if deemed by them advisable, under the supervision and management of any other duly established oper-

ating board or agency, may exercise such powers and functions and accomplish such purposes as are herein set forth or as are provided for in Articles 1269j-4.1 and 1180b of the Revised Civil Statutes of Texas including those with relation to the issuance of bonds. If acting jointly such governmental units

may, by joint concurrent ordinances or resolutions, provide for the issuance of bonds and such other arrangements as deemed by them appropriate under their agreement.

[Amended by Acts 1975, 64th Leg., p. 1987, ch. 660, § 1, eff. June 19, 1975.]

TITLE 106

PATRIOTISM AND THE FLAG

Art. 6145. Texas Historical Commission

[See Compact Edition, Volume 5 for text of 1 to 11]

State Historical Marker Program; Register; Review; Approval; Designation as Official State Markers; Damage

Sec. 12.

[See Compact Edition, Volume 5 for text of 12(1)]

(2) No person may damage the historical or architectural integrity of any structure which has been designated by the Commission as a Recorded Texas Historic Landmark, without first giving 60 days' notice to the Texas Historical Commission. After receipt of notice, the Commission may waive the waiting period or, if the Commission determines that a longer period will enhance chances for preservation, it may require an additional waiting period of not more than 30 days.

[See Compact Edition, Volume 5 for text of 13 to 23]

Penalty for Violation of Act

Sec. 24. A person who violates this Act is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation.

Filing Suit; Venue

Sec. 25. The attorney general or any resident of this state may file suit in the district court to restrain and enjoin any violation or threatened violation of this Act, to recover on behalf of the state a civil penalty provided in this Act, or for both injunctive relief and a civil penalty. Venue of a suit filed as provided in this section is in either Travis County or the county in which the activity sought to be restrained or penalized is alleged to have occurred, be occurring, or be about to occur.

Costs of Litigation

Sec. 26. In issuing a final order in an action brought as provided in Section 25 of this Act, the court may award costs of litigation, including reasonable attorney's and expert witness' fees. [Amended by Acts 1975, 64th Leg., p. 1023, ch. 391, §§ 1 and 2, eff. June 19, 1975.]

Art. 6145.1. County Historical Commission

(a) The Commissioners Court of each county may appoint a County Historical Commission to consist of at least seven residents of the county for the pur-

pose of initiating and conducting such programs as may be suggested by the Commissioners Court and the Texas Historical Commission for the preservation of the historical heritage of the county. The members of the commission shall be appointed during the month of January of odd-numbered years and shall serve for a term of two years. Should the Commissioners Court fail to appoint a commission by April 1 of each odd-numbered year, the Texas Historical Commission may appoint such commission upon 30 days written notice to the Commissioners Court of its intention to do so.

(b) Each County Historical Commission shall meet at least once each year at its county seat and may meet as often as each commission may determine under rules and regulations adopted by it for its own regulation. Each commission shall make an annual report of its activities and recommendations simultaneously to its Commissioners Court and to the Texas Historical Commission before the end of each calendar year and may make as many other reports and recommendations as it sees fit.

(c) Each commission shall institute and carry out a continuing survey of the county to determine the existence of historical buildings and other historical sites, private collections of historical memorabilia, or other historical features within the county, and shall report the data collected to the Commissioners Court and the Texas Historical Commission.

(d) The Commissioners Court may pay the necessary expenses of the commission and may authorize a car allowance and pay the necessary traveling expenses of the chairman and members of the commission.

(e) The commission shall make recommendations to the Commissioners Court and the Texas Historical Commission concerning the acquisition of property, real or personal, which is of historical significance.

(f) The commission may operate and manage any museum which may be owned or leased by the county, and may acquire artifacts and other museum paraphernalia in the name of the museum or the commission, and may supervise any employees hired by the Commissioners Court to operate the museum.

(g) In addition to the powers already conferred on it by law, the Commissioners Court of each county of this state may appropriate funds from the general fund of the county for the purpose of:

(1) erecting historical markers, monuments, and medallions;

(2) purchasing objects and collections of objects of any kind which are historically significant to the county; and

(3) preparing, publishing, and disseminating, by sale or otherwise, a history of the county.

Amended by Acts 1975, 64th Leg., p. 114, ch. 52, § 1, eff. April 18, 1975.]

Section 2 of the 1975 amendatory act provided:

"County historical survey committees in existence on the effective date of this amendatory Act become county historical commissions as if the members were appointed under Chapter 152, Acts of the 58th Legislature, 1963, as amended by this Act (Article 6145.1, Vernon's Texas Civil Statutes). If the terms of any members expire before January, 1977, the commissioners court shall appoint successors to serve until new appointments are made in January, 1977. Members may be appointed to succeed themselves."

Art. 6145-1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

TITLE 108

PENITENTIARIES

1. DEPARTMENT OF CORRECTIONS

Art. 6166j. Director's Authority

The Texas Department of Corrections shall employ a director, who shall possess qualifications and training which suit him to manage the affairs of a modern correctional institution, and it shall be his duty to carry out the policies of the Texas Department of Corrections. The Department shall manage and control the correctional system through the manager selected by it. In addition to his salary, the director shall be furnished with a dwelling house by the State and all necessary traveling expenses when traveling on business for the correctional system. The Department shall delegate to such manager authority to manage the affairs of the correctional system, subject to its control and supervision. The duty of the director shall extend to the employment and discharge, with the approval of the Department, of such persons as may be necessary for the efficient conduct of the correctional system. The director, with the consent of the Texas Department of Corrections, shall have power to prescribe reasonable rules and regulations governing the humane treatment, training, education, rehabilitation and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured. Neither the Department of Corrections nor the director may discriminate against a prisoner on the basis of sex, race, color, creed, or national origin.

[Amended by Acts 1975, 64th Leg., p. 2356, ch. 725, § 1, eff. Sept. 1, 1975.]

Art. 6166m-1. Funds for Discharged Convicts

From and after the effective date of this Act, the State Treasurer of the State of Texas, shall set aside funds not less than One Hundred Thousand Dollars (\$100,000) in amount received by him from the Director of Corrections to be kept on deposit in a bank or banks in Huntsville, Texas, as determined by the Director and secured by bonds and/or other securities approved by the Attorney General of the State of Texas. The funds shall be used by the Texas Department of Corrections for the prompt payment

in cash to all discharged, pardoned, or paroled convicts.

[Amended by Acts 1975, 64th Leg., p. 277, ch. 119, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided: "The effective date of this Act shall be September 1, 1975."

Art. 6166u. Repealed by Acts 1975, 64th Leg., p. 2356, ch. 725, § 3, eff. Sept. 1, 1975

Art. 6166z1. Discharge

When a convict is entitled to a discharge from the State penitentiary, or is released therefrom on parole or conditional pardon, the Director of Corrections or his Executive Assistant shall prepare and deliver to him a written discharge or release, as the case may be, dated and signed by him with seal annexed, giving convict's name, the name of the offense or offenses for which he was convicted, the term of sentence imposed and the date thereof, the county in which he was sentenced, the amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description of the convict as may be practicable. He shall be furnished, if needed, suitable civilian clothes, and all money held to his credit by any official of the Texas Department of Corrections shall be delivered to him.

The amount of money which a convict is entitled to receive from the State of Texas when he is discharged from the State penitentiary or released from the State penitentiary on parole or conditional pardon shall be \$200.

[Amended by Acts 1975, 64th Leg., p. 2401, ch. 735, § 1, eff. Sept. 1, 1975.]

2. REGULATIONS AND DISCIPLINE

Art. 6203c. Improvement of Department of Corrections

[See Compact Edition, Volume 5 for text of 1]
Powers of Board of Corrections

Sec. 2. To accomplish the purposes enumerated herein the Texas Prison Board¹ is authorized and directed as follows:

[See Compact Edition, Volume 5 for text of 2A to D]

E. The Department of Corrections is further directed to renovate, remodel and repair the present improvements on the Goree Farm, and to make such

additions thereto as may be necessary to provide adequate housing facilities for all female inmates of the correctional system, and to supply industrial employment for such of the female inmates as may be used profitably in such employment. Adequate hospital facilities shall be provided on this farm for all female prisoners.

[See Compact Edition, Volume 5 for text of 2F to 9]

[Amended by Acts 1975, 64th Leg., p. 2356, ch. 725, § 2, eff. Sept. 1, 1975.]

¹ Changed to Texas Board of Corrections. See art. 6166a-1.

TITLE 109

PENSIONS

1. STATE AND COUNTY PENSIONS

Article

6228a-6. Administration of Social Security Programs by Employees Retirement System [NEW].

6228j. Retirement, Disability and Death Benefit Systems for Appointive County Employees [NEW].

2. CITY PENSIONS

6243e.1. Firemen's Relief and Retirement Fund in Cities of 250,000 to 320,000 [NEW].

6243e.2. Firemen's Relief and Retirement Fund in Cities of Not Less Than 1,200,000 [NEW].

6243k. Retirement, Disability and Death Benefit Systems for Appointive City or Town Employees [NEW].

1. STATE AND COUNTY PENSIONS

Art. 6228a. Retirement System for State Employees

[See Compact Edition, Volume 5 for text of 1 and 2]

Membership

Sec. 3. A. The membership of said Retirement System as an appointive officer or employee of any department, commission, institution or agency of the State Government of the State of Texas shall be composed as follows:

All persons who on the effective date of this Act are members of the Employees Retirement System of Texas shall continue to be members of this System subject to the provisions of this Act. The following persons shall, however, not be eligible for participation in the Retirement System:

1. Persons who are covered by the Teachers Retirement System or the Judicial Retirement System of the State of Texas.

2. Persons employed on a piecework basis or operators of equipment or drivers of teams whose wages are included in the rental rate paid the owners of said equipment or team.

[See Compact Edition, Volume 5 for text of 3B and 3C]

D. If a contributing member enters active military duty for which he is later eligible to establish creditable service, such creditable service shall, upon payment of applicable contributions, fees, and interest, be added to other creditable service in the class of membership in which he last performed State service prior to his entry into such military service.

Membership is terminated by death, retirement, or withdrawal of accumulated contributions.

[See Compact Edition, Volume 5 for text of 3E and 4]

Benefits

Sec. 5. A. Service Retirement Benefits for Appointive State Officers or Employees.

[See Compact Edition, Volume 5 for text of 5A1]

2. Any member as an appointive officer or employee who has completed at least ten (10) years of service creditable for retirement eligibility may leave State employment and retain the eligibility to receive a service retirement annuity after attaining the age of sixty (60) years, unless membership is terminated by a withdrawal of accumulated contributions.

3. 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 as an employee or appointive officer, or twelve (12) years of creditable service as an elective official and shall become entitled to a service retirement upon attaining the age of fifty-five (55) without actuarial reduction because of age. Any person previously retired with thirty (30) years or more of creditable service, as an employee or appointive officer, or twelve (12) years or more of creditable service as an elective official and who at the time of retirement was at least fifty-five (55) years, but less than sixty (60) years of age, and whose service annuity was actuarially reduced, may, on and after the effective date of this Act, apply in writing for recomputation of his annuity so as to restore the reduction previously imposed, such restoration to be effective only with respect to annuity payments due for the month of September, 1973, and thereafter. Any member with thirty (30) years or more of creditable service, as an employee or appointive officer, or twelve (12) years or more of creditable service as an elective official may withdraw from service prior to the attainment of the age of fifty-five (55) years and shall become entitled to a service retirement allowance provided such member has attained the age of fifty (50) and provided further that his retirement allowance

shall be actuarially reduced from age fifty-five (55) to the earlier retirement age. Employee and appointive officer members may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least twenty-five (25) years of creditable service and shall become entitled to a service retirement allowance provided that such member has attained the age of fifty-five (55) and provided further that his retirement allowance shall be actuarially reduced from age sixty (60) to the earlier retirement age. It is further provided that a member who has completed twenty (20) or more years of creditable service as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, Parks and Wildlife Department, Alcoholic Beverage Commission, or as a custodial officer of the State Board of Corrections of the State of Texas, may withdraw from service prior to the attainment of the age of fifty-five (55) years and shall become entitled to a service retirement allowance provided such member has attained the age of fifty (50) and provided further that his retirement allowance shall be actuarially reduced from age fifty-five (55) to the earlier retirement age.

[See Compact Edition, Volume 5 for text of 5A4]

B. Allowance for Service Retirement.

[See Compact Edition, Volume 5 for text of 5B1 to 3].

4. Re-employment of Retired Appointive Officers or Employees. Any retired appointive officer or employee may return to state employment as an appointive officer or employee, on a temporary basis, provided, however, that such reemployment shall not be for a longer period than six (6) months within any one (1) year. Any retired appointive officer or employee reemployed by the state on a part-time or consulting basis may work without loss of benefits under the Employees Retirement System. It is provided that in the event a retired state appointive officer or employee resumes temporary employment with a state department, commission, institution or agency, he shall notify the Retirement System in writing prior to resuming actual employment, and the head of any state department, commission, institution or agency of the state shall notify the Retirement System in writing before employment of a retired state appointive officer or employee and furnish the Retirement System the name of said retired appointive officer or employee and the dates of employment. After a reemployed, retired appointive officer or employee has worked six (6) months in any one (1) year, retirement benefit payments that would otherwise have been paid to said member shall be suspended and shall be resumed when said member leaves said employ-

ment. For the purposes of the six (6) months per year limitation on reemployment, employment for any part of a month shall constitute a full month. It is provided further, that if the retired member had elected to receive an annuity in a guaranteed payment for a certain number of years or months after retirement, that the time so spent in state employment over six (6) months within any one (1) year by such retired member after the initial or original retirement shall not count as time within said certain number of years or months. Any retired member temporarily employed in a class of service from which he has retired shall not contribute to the Retirement System during such reemployment, and the Retirement Plan in effect at the time of his original retirement shall remain unchanged.

[See Compact Edition, Volume 5 for text of 5B5 to 5D4]

E. Return of Accumulated Contributions.

1. Any member of the System, after termination of employment with the State, may, on application filed with the Employees Retirement System or with the department or agency by which he was last employed, withdraw his accumulated contributions. Withdrawal may not be made, however, if the member is employed again by the State within the calendar month following the month in which employment is terminated, and withdrawal may be made only if the application is filed prior to any subsequent employment by the State. The withdrawal of accumulated contributions cancels all accumulated creditable service for purposes of retirement or any other benefit under this Act.

[See Compact Edition, Volume 5 for text of 5E2 and 3]

4. (a) After the close of each fiscal year, the Employees Retirement System shall review the active accounts of members who are, according to its records, fifty-eight (58) years of age or older and who have not contributed to the System during that year.

(b) The System shall send by certified mail to each member described in Paragraph (a) of this subdivision, a statement of the member's account and legal rights with respect to it, including a statement of any possible retirement annuity that may become payable. If at the end of sixty (60) days from the date of mailing, the System has not received a written response from the member or, if the member has died, from a designated beneficiary or other lawful claimant, the account is inactive, and the State Board of Trustees shall cause to be published in

a newspaper of general circulation in the State a notice that money is being held in the name of the member. The notice must include the name of the member and his last known mailing address. In the absence of a written response from the member or a lawful claimant, the State Board of Trustees shall cause a second notice including the same information to be published in a newspaper of general circulation in the State five (5) years after publication of the first notice. If no legal claim to the money is made within two (2) years after publication of the second notice, the money in the member's account is forfeited to the State and shall be transferred to the State Accumulation Fund. All forfeitures must be recorded in the minutes of the records of the State Board of Trustees.

[See Compact Edition, Volume 5 for text of 5E5]

Benefit Increases: Continuance of Annuities and Death Benefit Plans

Sec. 5-1. Notwithstanding any other provisions of Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), the provisions of this section shall apply to all annuities payable on and after September 1, 1975. With respect to retirements and deaths occurring prior to February 25, 1975, the annuity increase provided for retired appointive officers and employees in S.B. No. 56, Acts of the 64th Legislature, Regular Session, 1975,¹ is continued in full force and effect. Service retirement standard annuities payable for appointive officers and employees by virtue of retirements or deaths occurring on and after February 25, 1975, shall be computed on the basis of the average monthly compensation of the member for the sixty (60) highest months of compensation during the last one hundred twenty (120) months of creditable service times one and one-half per cent (1½%) of such average for each of the first ten (10) years of creditable service plus two per cent (2%) of such average for each subsequent year of creditable service, but the service retirement standard annuity may not be less than Seventy-five Dollars (\$75.00) per month and may not exceed eighty per cent (80%) of the average compensation so calculated, except that for retirements or deaths after February 24, 1975, and before September 1, 1977, the benefit shall be the greater of (a) the benefit as calculated under this section or (b) the benefit as calculated under the law in effect on September 1, 1973. Service retirement standard annuities for elective state officials payable by virtue of retirement or death of any person retired or who retires as an elective state official or who at the time of death was eligible to select a death benefit annuity as an elective state official shall on and after September 1, 1975, be calculated upon the basis of two per cent (2%) of the State salary paid to district judges on that date or as adjusted thereafter times years of creditable service

as an elective state official, but no service retirement standard annuity so calculated may exceed sixty per cent (60%) of such judicial salary. A disability retirement annuity for appointive officers and employees retiring on disability on and after February 25, 1975, shall be calculated on the basis of one and seven-tenths per cent (1.7%) per year of creditable service, but in no event will the disability retirement annuity be greater than seventy per cent (70%) of compensation as calculated under Section 5 of this Act, nor less than the greater of (a) thirty-five per cent (35%) of such compensation or (b) One Hundred Ten Dollars (\$110.00) per month. Any death benefit annuity plan selected by a member shall remain in effect during such time as such person may be receiving disability retirement benefits; and upon death of the person receiving such benefits, the designated beneficiary shall receive monthly annuities in accordance with the plan selected. Notwithstanding any other provisions of this Act, the State of Texas shall pay from the State Accumulation Fund an additional lump sum death benefit in the amount of Five Thousand Dollars (\$5,000) upon satisfactory proof of the death, occurring on or after September 1, 1975, of any officer or employee retired as an annuitant under the provisions of the Retirement Acts administered by the Board of Trustees of the Employees Retirement System. Such benefit shall be paid as provided by the laws of descent and distribution unless the retiree has directed in writing that it be paid otherwise. Upon certification by the Employees Retirement System the Comptroller of Public Accounts shall transfer each month from the General Revenue Fund to the State Accumulation Fund the estimated amount required for the payment of such death benefits. The Board of Trustees shall certify to the Comptroller of Public Accounts and to the State Treasurer at the close of each fiscal year the amount required for that year. So long as this death benefit is provided no State funds may be used to pay life insurance premiums for retired officers and employees under the jurisdiction of the Employees Retirement System. Nothing herein shall preclude retiree participation in State Group Life Insurance plans for which the retiree pays his own premiums. With respect to retirements on and after September 1, 1975, the calculation of reduced annuities provided in Subsection B of Section 5 of this Act shall be made without regard to the sex of annuitant or nominee involved.

¹ Acts 1975, 64th Leg., p. 10, ch. 8, adding § 5-2 to this article.

Group Insurance Premiums

Sec. 5-2. On and after September 1, 1975, the appropriated amount available for Group Insurance premiums for retired annuitants under the jurisdiction of the Board of Trustees of the Employees Retirement System of Texas shall be applied to

Group Health Insurance premiums for such annuitants.

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

Management of Funds

Sec. 7. A. All money from whatever source coming into the Fund and all other securities, money, and assets of the Employees Retirement System of Texas shall be administered by said Board and said Board shall be the trustees thereof. The Treasurer of the State of Texas shall be custodian of said money and securities. Said Board is hereby authorized and empowered to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any securities, evidences of debt, and other investments in which said securities, money, and assets have been or may hereafter be invested by said Board. Said Board is hereby authorized and empowered to invest and reinvest any of said money, securities, and assets, as well as the proceeds of any of such investments, in bonds, notes, or other evidences of indebtedness which are guaranteed as to principal and interest by the United States or any agency of the United States, or by the State of Texas, or by any county, city, school district, municipal corporation, or other political subdivision of the State of Texas, both general and special obligations; or in home office facilities to be used in administering the Employees Retirement System including land, equipment, and office building; or in such corporation bonds, notes, other evidences of indebtedness, and corporation stocks, including common and preferred stocks, of any corporation created or existing under the laws of the United States or of any of the states of the United States, as said Board may deem to be proper investments; provided that in making each and all of such investments said Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as probable safety of their capital; and further provided, that a sufficient sum shall be kept on hand to meet payments as they become due each year under such retirement plan, as may now or hereafter be provided by law. Unless investments authorized herein are hereafter further restricted by an Act of the Legislature, no more than one per cent (1%) of the book value of the total assets of the Employees Retirement System shall be invested in the stock of 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 cash 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 successor; and provided further, that not less than twenty-five per cent (25%) at any one time of the book value of investments of said Fund shall be invested in Government and Municipal Securities as enumerated above.

B. The State Board of Trustees, on August 31, 1975, and thereafter on the last day of each fiscal year, shall transfer from the Interest Fund to the Employees Saving Fund interest computed at the rate of five per cent (5%) on the mean balances of the amounts for the fiscal year standing to the credit of all members. In addition, the Board shall, as required during the year, transfer interest from the Interest Fund to the Employees Saving Fund in amounts equal to the interest credited during the year to members whose accounts are closed by death, retirement, or withdrawal of contributions.

The State Board of Trustees, on August 31, 1975, and thereafter on the last day of each fiscal year, shall transfer from the Interest Fund to the Retirement Annuity Reserve Fund an amount equal to five per cent (5%) of the mean amount in the Retirement Annuity Reserve Fund for the fiscal year then ending.

The State Board of Trustees shall transfer from the Interest Fund to the Expense Fund such amounts as are determined from time to time to be necessary for the payment of expenses of the Employees Retirement System in excess of amounts otherwise available.

The State Board of Trustees, on August 31, 1975, and thereafter on the last day of each fiscal year, after making other transfers as provided in this subsection, shall transfer all remaining interest in the Interest Fund to the State Accumulation Fund.

[See Compact Edition, Volume 5 for text of 7C to 7F]

Method of Financing

Sec. 8. A. Notwithstanding any other provisions of Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), the provisions of this subsection shall apply on and after September 1, 1975, with respect to the amounts to be paid by members and by the State. The terms "State Contributions," "State Matching," and "State Matching Contributions" as used in this Act shall mean State money paid to the System at the rate of seven and one-half per cent (7½%) of the aggregate compensation paid contributing members. The amount contributed by the State of Texas to the Retirement System during any one (1) year shall be at least seven and one-half per cent (7½%) of the aggregate compensation of all members and shall be paid in monthly installments. For creditable service not previously established, the State shall contribute funds in an amount which

shall bear the same ratio to the members contribution required to establish such service as the State's contribution bears to the contributions required of contributing employee members at the time such service is established. Effective September 1, 1975, the amount contributed by each member of the Retirement System shall be six per cent (6%) of the annual compensation paid to each member, except that members of the Texas Legislature shall contribute eight per cent (8%) of such compensation. Notwithstanding any other provisions of Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), a member's contribution on or after September 1, 1975, for any previous service to be credited as elective state official service shall be the greater of (a) eight per cent (8%) of the salary being paid to members of the Legislature at the time the service is established or (b) six per cent (6%) of the State salary currently applicable to the position previously occupied plus in either case, applicable fees and interest charges. It is provided further, that all contributions made by the State shall be from and charged to the respective funds appropriated, allocated, and provided to pay the salary or compensation of the member for whose benefit the contribution is made. 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 Employees Saving Fund, the State Accumulation Fund, the Retirement Annuity Reserve Fund, the Interest Fund, and the Expense Fund.

1. The Employees Saving Fund.

The Employees Saving Fund shall be a fund in which shall be accumulated six per cent (6%) contributions from the compensation of members, including interest earnings. Contributions to and payments from the Employees Saving Fund shall be made as follows:

(a) Beginning on the effective date of this Act, each department of the State shall cause to be deducted from the salary of each member on each and every payroll period, six per cent (6%) of his earnable compensation. In determining the amount earnable by a member in 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 payroll period, and it may omit deductions from compensation for any period less than one-half ($\frac{1}{2}$) of a full payroll period if an employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deductions required of any member by such an amount as shall not exceed one-tenth ($\frac{1}{10}$) of one per cent (1%) of the annual compensation upon the basis of which such deduction is to be made.

(b) 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 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 department head of the State shall certify to the State Board of Trustees on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

(c) After August 31, 1974, interest computed at the rate of five (5%) per cent per year on amounts credited to the accounts of individual members is earned monthly, to be credited on August 31, 1975, and thereafter on the last day of each fiscal year. However, after the last day of the month in which this Act takes effect, interest shall be credited to accounts closed by death or withdrawal of contributions through the last day of the month preceding the calendar month in which death occurs or in which the withdrawal request is validated by the Employees Retirement System, and interest shall be credited to accounts closed by retirement through the date of retirement. Interest shall be computed on the mean balance standing to the credit of the member for the fiscal year, or for the applicable portion of the fiscal year in case of death, retirement, or withdrawal of contributions.

(d) Upon the retirement of a member, his accumulated contributions shall be transferred from the Employees Saving Fund to the Retirement Annuity Reserve Fund.

2. State Accumulation Fund.

The State Accumulation Fund shall be the fund in which shall be accumulated all contributions made to the Employees Retirement System by the State of Texas. Contributions to and payments from this fund shall be made as follows:

(a) The State of Texas shall pay each year in monthly installments into the State Accumulation Fund the amount of State contributions required by this subsection. The State Board of Trustees shall certify annually to the Comptroller of Public Accounts and to the State Treasurer

er the amount so ascertained, and such an amount shall be paid each year in monthly installments in the manner hereinafter provided into the State Accumulation Fund by the Comptroller from the funds appropriated as contributions to the Employees Retirement System by the State of Texas.

(b) Upon the retirement of a member, an amount equal to the difference between the total reserve at present worth reserve value of the retirement annuity of the member and the amount standing to the credit of the individual account of the member who retires shall be transferred from the State Accumulation Fund into the Retirement Annuity Reserve Fund as a part of the reserve requirements for the annuity to be paid to the retired member.

3. Retirement Annuity Reserve Fund.

The Retirement Annuity Reserve Fund shall be the fund in which shall be held all reserves for annuities granted and in force and from which shall be paid all annuities payable as provided in this Act. This fund shall be made up of the transfers as follows:

(a) At the time of service or disability retirement the accumulated contributions of a retiring member shall be transferred from the Employees Saving Fund to the Retirement Annuity Reserve Fund as a partial reserve for the annuity purchased by his contributions.

(b) An amount equal to the difference between the total reserve at present worth reserve value of the retirement annuity of the member and the amount standing to the credit of the individual account of the member who retires shall be transferred from the State Accumulation Fund into the Retirement Annuity Reserve Fund as a part of the reserve requirements for the annuity to be paid to the retired member.

(c) Transfers and payments from the Retirement Annuity Reserve Fund shall be made as provided in Section 5, Subsection C, Paragraph 6, upon the death, restoration to active service or removal from the disability list of a beneficiary retired on account of disability.

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 this Act shall be paid into the Interest 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 Employees Saving Fund each year and each year thereafter he is a member of the System, and in addition thereto, a sum of Two Dollars (\$2), 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 Employees Saving 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) per member contributor for the year, the State Board of Trustees as evidenced by a resolution by the 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.

(d) With respect to any fiscal year for which the Legislature, on behalf of each contributing member of the Employees Retirement System, appropriates for deposit in the Expense Fund a membership fee equal to or exceeding Two Dollars (\$2) for each such member, the fees required in Paragraph (b) above shall be waived.

[See Compact Edition, Volume 5 for text of 8B and 8C]

Exemption from Execution; Group Insurance; Confidentiality of Records; Lump Sum for Accumulated Leave

Sec. 9. All retirement annuity payments, member's contributions, optional benefit payments, and any and all rights accrued or accruing to any person under the provisions of this Act, as well as the moneys in various funds created by this Act, shall be and the same are hereby exempt from any State, County, or Local tax, levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassigned except as specifically provided in this Act.

[See Compact Edition, Volume 5 for text of 9A and 9B]

C. It is expressly provided that records, in the custody of the System, of all individual members and

beneficiaries under Retirement Acts administered by the System are to be considered in the manner of personnel records and such records are hereby deemed to be confidential information under the provisions of Chapter 424, Acts of the 63rd Legislature, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). Any member who retires under the provisions of this Act is entitled to be paid in a lump sum from funds of the department from which the member retires for any accumulated leave for which he may be paid. The amount paid shall be computed in the same manner as if the employee had taken leave at the rate of compensation being paid the employee at the time of retirement and is payable on the date of retirement.

[See Compact Edition, Volume 5 for text of 10 to 13]

Re-enactment of Existing Laws

Sec. 14. All general laws authorizing, establishing, or governing retirement systems and optional retirement programs for public employees and officers in effect on April 21, 1975, are hereby re-enacted subject only to amendments adopted by the Legislature effective on and after April 22, 1975.

[Amended by Acts 1975, 64th Leg., p. 10, ch. 8, § 1, eff. Feb. 25, 1975; Acts 1975, 64th Leg., p. 551, ch. 218, §§ 1 to 14, eff. Sept. 1, 1975.]

Art. 6228a-6. Administration of Social Security Programs by Employees Retirement System

Sec. 1. [Amends arts. 695g, §§ 1(d), 2, 5; 695h, §§ 1(d), 2, Education Code, § 17.91.]

Transfer of Administration from Department of Public Welfare; Contracts and Agreements to Remain in Force and Effect; Succession to Rights, Powers, Duties, etc.

Sec. 2. The operation and administration of the programs providing federal social security coverage for: (1) employees of counties, municipalities, and other political subdivisions of the State of Texas (Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes)); (2) state employees (Chapter 467, Acts of the 54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes)); and (3) employees of County Board of School Trustees and County School Superintendents (Section 17.91, Texas Education Code) shall be and are hereby transferred effective September 1, 1975, from the State Department of Public Welfare to the Employees Retirement System of Texas. All contracts and agreements in existence on the effective date of the transfer between the State Department of Public Welfare and the United States government or any and all local political subdivisions of the State of Texas or any other governmental entity shall remain in full force

and effect and, upon validation by the Employees Retirement System of Texas, shall become effective contracts or agreements between the Employees Retirement System of Texas and such United States government or any agency thereof or any political subdivisions or other governmental entity of the State of Texas.

The Employees Retirement System of Texas shall succeed to and be vested with all the rights, powers, duties, personnel, property records, trust funds, and appropriations now held by the State Department of Public Welfare for the operation and administration of the social security programs.

Employees: Transfer, Appointment, Duties, Qualifications and Compensation

Sec. 3. All personnel employed in the Social Security Division of the State Department of Public Welfare are transferred to the Employees Retirement System of Texas. The system shall appoint all employees and shall prescribe their duties and qualifications for employment. The salaries and compensations of all employees shall be fixed by the Employees Retirement System of Texas commensurate with prevailing rates for similar state positions.

Transfer of Personal Property and Equipment

Sec. 4. All personal property and equipment purchased out of the Social Security Administration Account now in use by the Social Security Division of the State Department of Public Welfare for the operation and administration of the program are hereby transferred to the Employees Retirement System of Texas.

Transfer of Trust Funds

Sec. 5. All trust funds created for social security purposes and specifically those known as the Social Security Fund Account identified in the state comptroller's records as Fund No. 913 and the Social Security Administration Account identified in the state comptroller's records as Fund No. 929 are hereby transferred to the Employees Retirement System of Texas.

Negotiation For and Acquisition of Lands, Buildings and Facilities

Sec. 6. The Employees Retirement System of Texas is hereby authorized to negotiate for and to acquire from the United States government or any agency thereof or from any source whatever by gift, purchase, or leasehold for and on behalf of the State of Texas for use in the state service and in the operation and administration of the federal social security program as it now exists, or as it may hereafter be amended, any lands, buildings, and facilities within the State of Texas and any personal property and equipment wherever located and to take title thereto for and in the name of the State of Texas.

Use of Trust Funds

Sec. 7. Employees retirement system trust funds shall not be used in any manner or at any time for the administration of the social security trust funds or programs provided for herein.

Effective Date

Sec. 8. This Act shall become effective September 1, 1975.

Repeal of Conflicting Laws; Saving Provisions

Sec. 9. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. It is expressly provided, however, that Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes), Chapter 467, Acts of the 54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes), and Section 17.91, Texas Education Code, shall continue in full force and effect except wherein they conflict with this Act and, more particularly, those portions of those articles placing the operation and administration of the federal social security program under the State Department of Public Welfare, and wherever any power, duty, function, or responsibility is placed upon the executive director (commissioner) of public welfare, it shall be vested in the Employees Retirement System of Texas.

[Acts 1975, 64th Leg., p. 965, ch. 366, eff. Sept. 1, 1975.]

Art. 6228b. Retirement of Justices, Judges and Commissioners of Appellate and District Courts

[See Compact Edition, Volume 5 for text of 1 and 2]

Credit for Service in Armed Forces

Sec. 2A. Any contributing member of the Judicial Retirement System who has completed eight (8) or more years of service creditable under the Judicial Retirement Act (Article 6228b, Vernon's Texas Civil Statutes) and who is not receiving nor eligible to receive a federal military retirement based upon twenty (20) or more years of federal military active duty service or the equivalent thereof may receive creditable service for not more than ¹ forty-eight (48) months of federal military active duty service performed during time of armed conflict by paying to the Judicial Retirement System for deposit in the General Revenue Fund an amount equal to 6 percent of his current monthly salary for each month of such military service established.

¹ So in enrolled bill; probably should read "than".

[See Compact Edition, Volume 5 for text of 2B to 4]

Contributions and Appropriations

Sec. 5. From and after the effective date of this amendment, every Judge of this State, to assist in carrying out the provisions of this Act, shall contribute the same percentage of his annual salary paid to

him by the State which is contributed by each member of the Employees Retirement System of Texas.¹ One-twelfth ($\frac{1}{12}$) of such amount shall be deducted by the State Comptroller each month from the salary of such Judge and the balance only paid him by the Comptroller. The amount deducted shall remain in the State General Fund and be subject to appropriation by the State Legislature as other moneys in said fund. The Legislature shall appropriate such sums of money as may be necessary to carry out this Act.

[See Compact Edition, Volume 5 for text of 6 to 10]

[Amended by Acts 1975, 64th Leg., p. 1367, ch. 522, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1825, ch. 561, § 1, eff. Sept. 1, 1975.]

¹ See art. 6228a.

Art. 6228f. Payments of Assistance by State to Survivors of Law Enforcement Officers, etc., Killed in Performance of Duties

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. (a) As used in this Act:

[See Compact Edition, Volume 5 for text of 2(a)(1)]

(2) "Paid law enforcement officer" means a peace officer as defined in Article 2.12, Texas Code of Criminal Procedure, 1965, and includes game wardens who are employees of the State of Texas paid on a full time basis for the enforcement of game laws and regulations, and campus security personnel commissioned as peace officers by authority granted under Section 51.203, Texas Education Code.

[See Compact Edition, Volume 5 for text of 2(a)(3) to 2(c)]

Assistance Payable

Sec. 3. In any case in which a paid law enforcement officer, capitol security commissioned officers, campus security personnel, a member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, and/or member of an organized volunteer fire department and/or park and recreational patrolmen and security officers suffers violent death in the course of his duty as such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth

Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department, or park and recreational patrolmen and security officers, the State of Texas shall pay to the surviving spouse of such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers the sum of \$20,000 and in addition thereto, if such paid law enforcement officer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail controlled by an administrator instead of the sheriff, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers shall be survived by a minor child or minor children, the State of Texas shall pay to the duly appointed or qualified guardian or other legal representative of each minor child the following assistance:

If one minor child—\$200 per month

If two minor children—\$300 per month

Three or more minor children—\$400 per month.

Provided, that when any child entitled to benefits under this Act ceases to be a minor child as that term is defined herein, his entitlement to benefits shall terminate and any benefits payable under this Act on behalf of his minor brothers and sisters, if any, shall be adjusted to conform with the foregoing schedule if necessary.

[See Compact Edition, Volume 5 for text of 4 to 10]

[Amended by Acts 1975, 64th Leg., p. 480, ch. 204, § 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 810, ch. 215, § 1, eff. Sept. 1, 1975.]

Acts 1973, 64th Leg., p. 810, ch. 315, which by § 1 amended sec. 3 of this article, provided in § 2:

"The increase in the lump-sum payment from \$10,000 to \$20,000 does not apply to the payment of assistance for any death that occurred prior to the effective date of this amendatory Act. The increase in monthly payments to minor children applies to children receiving payments on the effective date of this Act as well as to children entitled to benefits after this Act takes effect."

Art. 6228g. Texas County and District Retirement System

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. Unless a different meaning is plainly indicated by their context, the following words and

phrases as hereafter used in this Act shall have the following meanings:

[See Compact Edition, Volume 5 for text of 2.1 and 2.2]

3. The term "subdivision" means and includes: the several counties of this State; all other political subdivisions of this State now existing or hereafter established, which consists of all of the geographical area of a county, or of all or parts of more than one county; the several political subdivisions of each county of this State which have the power of taxation; and all counties and cities operating a city-county hospital under the provisions of Chapter 383, Acts of the 48th Legislature, Regular Session, 1943, as amended.¹ The term also includes, for the purpose of providing similar coverage for its own employees, the Texas County and District Retirement System. The term also includes, for the purpose of providing similar coverage for its employees, the Texas Association of Counties. But the term "subdivision" excludes all incorporated cities and towns, and all school districts and junior college districts established under the laws of this State.

¹ Article 4494i.

[See Compact Edition, Volume 5 for text of 2.4 to 5]

Creditable Service

Sec. 6.

[See Compact Edition, Volume 5 for text of 6.1 to 6.4]

5. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the current service rendered by him for which he has contributions credited to his account in the Employees Saving Fund, and also, if he has a prior service certificate which is in full force and effect, the length of the service credited on his prior service certificate.

Any member, who has terminated a previous membership by withdrawal of then-accumulated deposits while absent from service, may, if the participating subdivision with which he is presently employed agrees to underwrite and assume the obligations therefor and if the member has at least twenty-four (24) consecutive months of creditable service with his present employer since reestablishment of membership, deposit in the System in a lump sum payment the amount withdrawn, plus a withdrawal charge of five percent (5%) of such amount per annum from the date of withdrawal to the date of redeposit, and shall thereupon be entitled to restoration of all creditable service to which he had been entitled at date of termination of the earlier membership; and the amount redeposited shall be placed

in the member's individual account in the Employees Saving Fund of the System, but the five percent (5%) per annum charge shall be deposited to the credit of the participating subdivision assuming the other obligations arising from granting of credit for such former service. In such event the consenting subdivision's account in the Subdivision Prior Service Accumulation Fund shall be charged with the necessary reserves to fund any prior service credits restored to the member, and its account in the Subdivision Current Service Accumulation Fund shall be charged with the reserves required to provide for funding of any current service credits restored to the member. No such restoration of credits shall be undertaken by any participating subdivision unless it shall first be determined by the actuary that the granting of such credits by the participating subdivision would not impair the ability of the subdivision to meet all present and prospective liabilities of the subdivision's account in the Subdivision Prior Service Accumulation Fund and in the Subdivision Current Service Accumulation Fund, and would not impair the ability of the subdivision to provide for payment of prior service annuities or current service annuities.

[See Compact Edition, Volume 5 for text of 6.6 to 6.11(c)]

(d) The increases in credits or benefits and additional coverages which may be adopted and allowed by the subdivision (conditioned that it may provide for funding the same as hereinbelow provided) are one or more of the following:

(1) Increase in Current Service Credits to be allowed thereafter, which may be increased by 20% multiples;

(2) Increase in Current Service Credits theretofore allowed, which may be increased by 20% multiples;

(3) Increase in Current Service Annuities in effect;

(4) Increase in Allocated Prior Service Credits theretofore granted and in effect;

(5) Increase in Prior Service Annuities in effect;

(6) Granting the right of deferred service retirement, as hereinbelow defined, to any of its employees who has accumulated twenty (20) or more years of Creditable Service with such subdivision and other participating subdivisions which have adopted twenty-year deferred service eligibility.

The terms "right of deferred service retirement" as used above means the right to remain in service and to file a written selection with the Retirement Board of an optional allowance and designated nominee (as provided in Subsection 3 of Section 7), and in the event the member thereafter dies while in service he shall be con-

sidered to have retired effective as of the last day of the calendar month next preceding the month in which death occurs. In event any person eligible for deferred service retirement shall die without having a written selection of optional allowance and designated beneficiary on file with said Board, or whose designated nominee under options one or two is not living at the date of death of the member; such member shall be considered to have elected Option Three retirement, or (at the election of his beneficiary) shall be considered as having been an active member at date of death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

(7) Granting prior service credit for any periods of active service (not in excess of 36 months total), in the armed forces of the United States performed during the time the United States was involved in organized conflict with foreign forces, whether in a formal state of war or police action, to any person who was an employee of such subdivision immediately prior to the beginning of such service in the armed forces, who entered such service without intervening employment and who returned to the employment of the participating subdivision within one hundred eighty (180) days following his discharge from or release from active duty with the armed forces.

(8) Granting the right of deferred service retirement, as that term is defined in Paragraph (6) above, to any of its employees who shall have attained the age of sixty (60) years and has accumulated twelve (12) or more years of creditable service with such subdivision and other participating subdivisions which have adopted twelve-year deferred service eligibility, provided, however, that no participating subdivision shall be eligible to grant the benefits described in this Paragraph (8) unless such subdivision has previously granted or is currently granting the twenty-year deferred service benefits as described in Paragraph (6) above.

(9) Granting to any of its employees who has accumulated at least twelve (12) years of creditable service with such subdivision and other participating subdivisions which have adopted twelve-year vesting, the right, if he withdraws from service prior to attainment of age sixty (60), to remain a member and to retire at age sixty (60), or at any date subsequent thereto which is not later than the date of mandatory retirement, conditioned that the member is still living at date of retirement and conditioned that he has not withdrawn his accumulated contributions.

(10) Granting to any person who is or was a member of the military service during the time the United States was or is involved in organized conflict with foreign forces, whether in a state of war or a police action involving conflict with foreign forces, or for reason of crisis within this country, and within a period of twelve (12) months after the end of the conflict, and who has been or is relieved from active military service under conditions other than dishonorable, and who at any time thereafter becomes a member of the Texas County and District Retirement System, either as an elective or appointive officer or an employee, the right to apply for and receive credit for retirement service under this Act, upon the following conditions having been met: (A) If such elective official or appointive official or employee has been employed by a participating subdivision or subdivisions for ten (10) years and has ten (10) years' retirement credit as an employee, he shall be allowed current service credit for each month of his active military service, but not to exceed three (3) years. (B) If such elective official or appointive official or employee has been employed by a participating subdivision or subdivisions for fifteen (15) years, and has fifteen (15) years' retirement credit as an employee, he shall be allowed current service credit for each month of his active military service, but not to exceed five (5) years. (C) Notwithstanding any other provisions herein no person otherwise eligible for credit for military service herein shall be eligible to receive such credit if such person shall be receiving or hereafter receives any military retirement provided by any federal law or regulation or federal retirement act, for at least twenty (20) years' active duty. No person shall be granted credit for any such service that is simultaneously credited by the Texas County and District Retirement System or by any other retirement system or program established under or governed by the laws of this State. All applications for credit for military service under this Act must be made within one year after the effective date of granting by the subdivision of such credit for military service, or within one year of the date the person making such application first is eligible for said credit, whichever is later. Any person applying for credit authorized by this provision shall pay to the Texas County and District Retirement System a sum equal to the number of months in actual service for which credit or additional credit is sought times his average per month deposit, not to exceed Fifteen Dollars (\$15) per month, made with the retirement system during the first twelve (12) months as an employee after becoming a member of the retirement system. Such

contributions made for military retirement credit shall be deposited in the member's individual account in the Employees Saving Fund. Benefit contributions shall be made by the subdivision in an amount equal to the amount deposited by the member. The Board of Trustees of the Texas County and District Retirement System shall determine and by order define the period or periods which shall be recognized as organized conflict or crisis within the contemplation of this Act; and thereupon shall allow credit for every full month of such period or periods.

[See Compact Edition, Volume 5 for text of 6.11(e) to 13]

[Amended by Acts 1975, 64th Leg., p. 586, ch. 239, § 1, eff. May 20, 1975; Acts 1975, 64th Leg., p. 1013, ch. 384, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1921, ch. 623, § 1, eff. Sept. 1, 1975.]

Art. 6228i. Proportionate Service Retirement, Disability and Death Benefits

Purpose

Sec. 1. The purpose of this Act is to provide proportionate service retirement, disability retirement, and death benefits to eligible members who shall have performed service and made contributions in more than one class of membership in the state funded retirement systems named in this Act; and the applicability of this Act is hereby limited to such persons subject to the provisions of this Act and the provisions of the other state retirement laws not in conflict with this Act.

Creditable Service; Confidentiality of Records

Sec. 2. (a) Effective September 1, 1973, any eligible person who is a member of one of the systems and not retired, except as provided by this section, under any of the provisions of either the Judicial Retirement System of Texas, Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), or the Teacher Retirement System of Texas, Chapter 470, Acts of the 45th Legislature, Regular Session, 1937, as amended (Chapter 3, Texas Education Code, Vernon's Texas Civil Statutes),¹ or the Employees Retirement System of Texas, Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), may: (1) continue membership; (2) become a member of the other systems for the purpose of establishing or re-establishing creditable service in such other systems, provided that the total creditable service among such systems shall equal or exceed the minimum amount of creditable service required for a service retirement at age 60 in any class of membership in which he has performed service creditable in any of the systems. Any person who has retired on the basis of membership in one or more of

the classes of service described above, and who has thereafter served for at least 12 months in any other of such classes of service may, after retirement from such other class of service, apply for benefits based upon that service. The additional benefit shall be payable beginning with the month following the month in which a valid application is made, and any optional plan previously selected in lieu of a standard annuity shall apply. Service may not be claimed for the purposes of this Act unless such service has first been classified as creditable service in the system in which such service is to be established. It is expressly provided that records of all individual members and beneficiaries in the custody of the state retirement systems named in this Act are to be considered in the manner of personnel records, and such records are hereby deemed to be confidential information under the provisions of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 2(b)]

¹ Education Code, § 3.01 et seq.

Membership Contributions

Sec. 3.

[See Compact Edition, Volume 5 for text of 3(a)]

(b) If the service to be established has not heretofore been established the person claiming such service shall pay contributions equal to six percent of the applicable compensation rate of each month of such service; provided, however, the minimum contribution shall not be less than \$18 per month. Persons claiming such service shall pay interest on the contributions due at the rate of 10 percent per year dating from the date the service to be established was performed plus membership fees, provided, however, that if the member establishes such service prior to September 1, 1976, or within one year after first becoming eligible to do so, the interest shall not exceed an amount equal to the required contributions.

[See Compact Edition, Volume 5 for text of 3(c) to (g)]

(h) Any member of the Employees Retirement System of Texas who has served the State of Texas as an employee of a United States senator or congressman from this state and who has been paid for such service from public funds, shall upon verification of service and payment of contributions, interest, and fees as provided in this Act, be granted creditable service for such employment within the limits herein prescribed. It is expressly provided (1) that not more than one month of credit for such service may be granted for each two months of other creditable service in one or more of the classes of

service described in Section 2 of this Act, (2) that credit for such service may not exceed 60 months, and (3) that no credit may be claimed or granted for any service with respect to which an annuity is or may become payable under any federal retirement system or plan.

[See Compact Edition, Volume 5 for text of 4]

Membership Benefits

Sec. 5.

[See Compact Edition, Volume 5 for text of 5(a)]

(b) Any eligible member may receive a service retirement annuity at age 60, or as otherwise provided by law, provided the total creditable service is equal to or exceeds the minimum amount of creditable service required for a service retirement in any class of membership in any of the systems for which he has been granted creditable service, and further provided that any service retirement annuity selection made under the provisions of this Act shall be the same in all systems. In like manner, any member having established sufficient combined service in more than one class of membership, as authorized by this Act, shall be eligible for proportionate disability retirement benefit, or in case of death of such a member his designated nominee shall be entitled to a proportionate death benefit computed on the basis of his length of creditable service in each class of membership in any of the systems in which service has been granted. Each system shall be responsible only for the payment of that portion of the benefit which is computed for each class of service at the relative value of such service in the system in which it has been credited. Nothing herein shall authorize the combining of all such creditable service into one of the systems.

[See Compact Edition, Volume 5 for text of 6 to 9]

[Amended by Acts 1975, 64th Leg., p. 221, ch. 81, §§ 1 to 5, eff. April 30, 1975.]

Sections 6 and 7 of the 1975 Act provided: "Sec. 6. If any section, subsection, or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection, or clause so declared unconstitutional. Sec. 7. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency."

Art. 6228j. Retirement, Disability and Death Benefit Systems for Appointive County Employees

(a) A county may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the county voting on the proposition approve the creation at an election called for that purpose and advertised in at least one newspaper of general circulation in the county once a week for four consecutive weeks before the election is held. Each member of a system shall contribute to the system an amount determined by the county, but not more

than five percent of the member's annual compensation paid by the county. The county shall contribute for each member an equal amount.

(b) The assets of a county system, after a sufficient portion is set aside each year to pay benefits as they accrue, shall be invested in bonds issued or guaranteed by the United States, this state, or counties or cities of this state.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act was classified as art. 6243k; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R. No. 3, 64th Legislature, Regular Session (so adopted at election held on April 22, 1975)."

2. CITY PENSIONS

Art. 6243a. Firemen's, Policemen's and Fire Alarm Operators' Pension System; Cities and Towns of 432,000 or More Having Fully or Partially Paid Departments

[See Compact Edition, Volume 5 for text of 1 to 1B]

Administrator of Fund; Professional Investment Management Services

Sec. 1C. (a) The Board of Trustees shall have the authority to appoint an administrator to keep records, make computations and perform various other related duties necessary for the operation of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, but except for clerical assistance, he shall not have any duties relating to investment of the Reserve Retirement Fund, as provided in Section 15 hereof. Compensation for such an administrator shall be determined by the city and paid out of the general funds of the city.

(b) A person appointed administrator of the Fund shall not, by virtue of that appointment, become Secretary of the Board, but the Board may also appoint him as its Secretary, in which event he shall serve in that capacity with no additional compensation.

(c) If the Board appoints an administrator for the Fund, he shall perform in his office the functions of the City Secretary as they are specified in any other Sections hereof, and the City Secretary shall be relieved of such functions, except that the City Secretary shall continue to attest all certificates and documents issued under the seal of the city.

(d) In the administration of the Reserve Retirement Fund pursuant to Section 15, if the Board of Trustees determines that assistance provided by advisory service alone, as authorized under Section 1A above, will not enable the Board to make investments of such funds as efficiently and beneficially as

could be done with the service of professional investment management, the Board may contract for such service with one or more organizations in such business, including a bank maintaining a trust department, any such investment manager to have the qualifications required by law and also the approval of the Board; provided the Board does not delegate its ultimate responsibility for investing the Reserve Retirement Fund. In any such contract, the Board, in the exercise of its discretion with respect to investments, shall specify policies and guidelines with which the investment manager must comply in respect to each investment arranged by such manager.

(e) The cost of any investment management services contracted for by the Board of Trustees may be paid in whole or in part by the city. If the city does not make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

[See Compact Edition, Volume 5 for text of 2 to 4]
Custody of Fund

Sec. 5. The Treasurer of said city or town shall be Ex-officio Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor. The principal duties hereby imposed on the Treasurer are that he receive and promptly deposit income, including periodic contributions to the Fund, and make transfers of sums in conformity with the system adopted by the Board to make funds available for investment, paying annuities, making refunds, and other authorized payments.

Investment Custody Account Agreements

Sec. 5A. (a) If the Board contracts for investment management service, as authorized by Section 1C(d) above, it may, with respect to every such contract, also enter into an investment custody account agreement, designating a bank as custodian for all the assets allocated to the Reserve Retirement Fund for a particular investment manager.

(b) Under a custody account agreement, the Board shall require the designated bank to perform the duties and assume the responsibilities of custodian in relation to the investment contract to which the custody account agreement is established.

(c) The authority of the Board to make a custody account agreement is supplementary to its authority to make an investment management contract to which it relates. Allocation of assets to a custody

account shall be coordinated by the Treasurer and the bank designated as custodian for such assets.

(d) The cost of any custody account agreement entered into by the Board of Trustees may be paid in whole or in part by the city. If the city does not make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

[See Compact Edition, Volume 5 for text of 6 to 13]

Share of Cost to be Paid Out of Public Treasury

Sec. 14. The financial share of the cost of the pension system to be paid out of the public Treasury shall be as follows:

(a) Funds contributed by the city as its share of the amount required for the payment of benefits due members under the pension system and for no other purpose. Such contributions shall be annually appropriated by the City Council and periodically paid on the basis of a percentage of the total wages and salaries of the members of the Police and Fire Departments who are under the pension system. The amount of this percentage and any change in it can be determined only by a majority vote of the voters of the city.

(b) Funds appropriated by the City Council to carry out various other provisions of the Act that authorize expenditures in connection with the administration of the Act.

Investment of Surplus

Sec. 15. (a) Whenever, in the opinion of said Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon said Fund, such surplus, or so much thereof as in the judgment of said Board is deemed proper, shall be put into a Reserve Fund for investment for the sole benefit of said Pension Fund.

(b) In making investments and supervising investments, members of the Board of Trustees 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 probable income therefrom as well as the probable safety of their capital.

(c) The Board of Trustees has the ultimate responsibility for the investment of funds, which the Board may exercise directly by purchasing or selling securities or other investments, but it shall have the authority to exercise discretion in determining the procedure that it deems most efficient and beneficial for the Reserve Retirement Fund in carrying out

such responsibility. The Board may contract for professional advisory service pursuant to Section 1A(a) and also may contract for professional investment management service pursuant to Section 1C(d). Any contract that the Board may make with an investment manager shall set forth policies and guidelines of the Board with references to standard rating services and specific criteria for determining the quality of investments.

(d) The Board, in exercising its control, may at any time, and shall at frequent intervals, monitor the investments made by any investment manager, and shall enforce full compliance with the requirements of the Board.

(e) No investment manager other than a bank that has a contract with the Board to provide assistance in making investments shall be the custodian of any of the securities or other assets of the Reserve Retirement Fund. Pursuant to Section 5A(a), the Board may designate a bank to serve as custodian to perform the customary duty of safekeeping as well as duties incident to the execution of transactions. When the demands of the Pension Fund require, the Board shall withdraw from the custodian money for use in paying benefits to members of the Pension System and for such other uses as are authorized by this Act and approved by a majority of the Board.

(f) The regulations set forth in this Section for the investment of surplus funds shall apply to the original Pension System specifically established in this Act, as well as to any amended plan established pursuant to Section 11A hereof by Section 11B or related provision of law.

[See Compact Edition, Volume 5 for text of 16 and 17]

[Amended by Acts 1975, 64th Leg., p. 789, ch. 304, §§ 1 to 5, eff. May 27, 1975.]

Section 6 of the 1975 amendatory act provided:

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

Art. 6243b. Firemen and Policemen Pension Fund in Cities of 310,000 to 330,000

Board of Trustees

Sec. 1. (a) In all incorporated cities and towns containing more than three hundred ten thousand (310,000) inhabitants and less than three hundred thirty thousand (330,000) inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department, the mayor, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund, three (3) firemen other than the chief or assistant chief, to

be elected by members of the firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The three policemen and the three firemen named above shall be elected to a term of four (4) years. The term for a citizen designated by the mayor is four (4) years. The board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operators Pension Fund, Trustees of _____, Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

(b) Of the first two (2) citizens designated by the mayor to serve on the board of trustees after the effective date of this subsection, one shall serve a four-year term and the other a two-year term. Thereafter all terms shall be for four (4) years. Of the first six (6) firemen and policemen elected after the effective date of this subsection, three (3) of the firemen and policemen shall serve four-year terms and three (3) of the firemen and policemen shall serve two-year terms. The first four-year terms shall not be served by all three members elected from the firemen's fund nor by all three members elected from the policemen's fund. This determination shall be made by lot under the supervision of the board. Thereafter all elected terms shall be for four (4) years.

(c) The board of trustees shall provide by rule for election of its elected members by secret ballot.

Definitions

Sec. 1A. In this Act:

(1) "Board of Trustees" or "Board" means the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(2) "Member" means a duly appointed and enrolled policeman, fireman, or fire alarm operator of a city covered by this Act who is a contributing member of the pension fund.

(3) "Pension Fund" or "Fund" means the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(4) "Salary" means base pay plus longevity pay received by a member from the city for personal services rendered as a policeman, fire-

man, or fire alarm operator excluding all other forms of compensation.

(5) "Wages" means salary, longevity, and overtime pay received by a member from the city for personal services rendered as a policeman, fireman, or fire alarm operator excluding all other compensation.

Participation in Fund; Wage Deductions

Sec. 2. Each member fireman, policeman and fire alarm operator in the employment of such city or town, must participate in said fund, except in times of national emergency those persons as are employed during that time shall not be required to participate in the fund, and said city or town shall be authorized to deduct a sum of not less than one per cent (1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen, Policemen and Fire Alarm Operators Pension Fund, except that the city or town shall deduct a sum less than one per cent (1%) or more than six per cent (6%) of the member's wages each month to form a part of the Firemen, Policemen and Fire Alarm Operators Pension Fund if the board of trustees of that fund increases or decreases the percentage of wages to be contributed to the fund under the provisions of Section 10A of this Act. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1 of this Act within the minimum and maximum deductions herein provided or as otherwise provided under the provisions of Section 10A of this Act.

Payments to Fund

Sec. 3. There shall be deducted for such fund from the wages of each fireman, policeman and fire alarm operator a sum to be determined by the board of trustees under the provisions of Section 2 or 10A of this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

[See Compact Edition, Volume 5 for text of 4 and 5]

Membership in Pension Fund; Eligibility

Sec. 6. (a) Any person who has been duly appointed and enrolled as a policeman, fireman, or fire alarm operator of any city covered by this Act shall automatically become a member of the pension fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of

age. In all instances where a person is already a member of and contributor to such pension fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

(b) Any person not a member of the pension fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a fireman, policeman, or fire alarm operator of such city shall automatically become a member of the pension system as a condition of his employment provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age.

Retirement Pensions

Sec. 7. Whenever any member of said departments who shall have contributed a portion of his wages, as provided herein, shall have served twenty-five (25) years or more in either of said departments and shall have attained the age of fifty (50) years, he shall be entitled to be retired from said service upon application, and shall be entitled to be paid from said fund a monthly pension of one-half ($\frac{1}{2}$) of the salary received by him at the time of his retirement subject to change under the provisions of Section 10A of this Act.

Disability Pensions

Sec. 8. Whenever any member of the fire department, police department or fire alarm operators' department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly salary received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments subject to change under the provisions of Section 10A of this Act.

Death Benefits, Widows, etc.

Sec. 9. In the case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive

monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child or children) an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly salary received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly salary received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly salary earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits

paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of the said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly salary received by such member paid to the widow and one-fourth of said monthly salary paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 346 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

Death Benefits, Father, etc.

Sec. 10. If any member of the fire department, police department, or fire alarm operators' department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother, or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the salary earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them,

as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

Modification of Benefits, Membership Qualifications, Eligibility Requirements and Contributions; Conditions

Sec. 10A. (a) Notwithstanding anything to the contrary in other parts of this Act, the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators Pension Fund may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications:

(1) modify or change prospectively or retroactively in any manner whatsoever any of the benefits provided by this Act, except that any retroactive change or modification shall only increase pensions or benefits;

(2) modify or change prospectively in any manner whatsoever any of the membership qualifications;

(3) modify or change prospectively or retroactively in any manner whatsoever any of the eligibility requirements for pensions or benefits;

(4) increase or decrease prospectively the percentage of wages less than the one per cent (1%) minimum or above the six per cent (6%) maximum provided in Section 2 of this Act to be contributed to the fund; or

(5) provide prospectively for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for a pension.

(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

(2) the change must be approved by a majority of all persons then making contributions to the fund, voting by secret ballot at an election

held after ten (10) days' notice given by posting at a prominent place in every fire station, every police station and substation, and in the city hall;

(3) whether the fund for the police and the fund for the firemen and fire alarm operators are operated as separate funds or as one fund, all changes shall be uniform for both departments and contributing members of both departments shall have the right to vote;

(4) the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the departments at the time the change becomes effective and those who enter the departments thereafter; and

(5) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured.

[See Compact Edition, Volume 5 for text of 11 to 16]

Validation of Proceedings for Separation of Pension Funds

Sec. 17. All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, maintaining, and administering separate Pension Funds for Firemen, including Fire Alarm Operators and Policemen, are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen, Policemen, and Fire Alarm Operators' Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided. This section and Section 16 of this Act provide only for the separation of pension funds into policeman and fireman divisions and grant the governing body no power or authority granted to the Board of Trustees under any provision of this Act, and the Board of Trustees shall have exclusive charge of administration and maintenance of the fund.

[See Compact Edition, Volume 5 for text of 18]

[Amended by Acts 1975, 64th Leg., p. 1372, ch. 526, §§ 1, 2, eff. Sept. 1, 1975.]

Art. 6243e. Fireman's Relief and Retirement Fund

[See Compact Edition, Volume 5 for text of 1 to 3]

Sec. 3A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 3B to 6A]

Secs. 6B, 6B-1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Secs. 6C to 6C-2. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 6D to 7A]

Secs. 7B, 7C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 7D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 7E to 10C]

Sec. 10D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

Sec. 10E. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 11 and 12]

Sec. 12A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 12B. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 13 to 18]

Sec. 18A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 19 to 23A]

Sec. 23A-1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 23B]

Sec. 23C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 23D and 23E]

Secs. 23F, 23G. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 24 to 28]

[Amended by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975; Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.]

Art. 6243e.1. Firemen's Relief and Retirement Fund in Cities of 250,000 to 320,000

Definitions

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

Creation of Fund; Board of Firemen's Relief and Retirement Fund Trustees

Sec. 2. A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 250,000 nor more than 320,000, according to the last preceding federal census, and having a fully paid fire department. The mayor of the city, the city treasurer, or if no treasurer, then the city secretary, city clerk, or other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three members of the regularly organized active fire department, to be selected by vote of the members of the fire department in the manner provided in this Act, shall be and are constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse the fund for the respective city or town. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas." The mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of the board of trustees respectively. The fire department of any city that comes within the provisions of this Act shall elect by ballot three of its members, one to serve for one year, one to serve for two years, and one to serve for three years, or until their successors may be elected as provided in this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the fire department shall elect by ballot and certify, one member of such board of trustees for a three-year term. The board of trustees shall elect annually from among their number a vice-chairman who shall act as chairman in the absence or disability of the mayor-chairman. The board of trustees shall hold regular

monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose; shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the treasurer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each such city or town in this state shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of their administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the city treasurer.

The board of trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of an incumbent, the vacancy shall be filled in the manner provided in this Act for the selection of the member to be so succeeded.

Eligibility; Amount and Time of Payment of Benefits

Sec. 3. (a) Any person who has been duly appointed and enrolled and who has attained the age of 55 years or served actively for a period of 35 years, regardless of age, that service having been performed in any rank, as a fully paid fireman, in one or more regularly organized fire departments in any city in this state covered by the provisions of this Act may retire from that service or department and on retirement is entitled to receive from the firemen's relief and retirement fund of that city a monthly pension equal to the sum of three-fourths

of one percent of his average monthly salary multiplied by his service, if any, prior to 1941, plus two percent of his average monthly salary multiplied by his service after 1940.

(b) The factor of two percent may be increased in increments of one-tenth of one percent, provided that:

(1) the increase is first approved by an actuary; and

(2) the increase applies only to active full-time firemen in the department at the time of the increase and those who enter the department after the increase is effective.

(c) The average salary means the monthly average of the fireman's salary for the highest three calendar years during his period of service, excluding overtime pay and any temporary pay in higher classification.

(d) Any person who continues to serve actively beyond the date he would normally retire shall continue to make contributions to the fund and accrue pension credits to the date of actual retirement.

(e) Benefits shall be payable on the first day of each month commencing with the month following the date as of which the member retired.

Cost of Living Adjustment

Sec. 4. Any fireman and beneficiaries of a fireman who retires or has retired or who received benefits under Section 3, 6, or 11 of this Act, shall be entitled to an annual cost of living adjustment of his pension allowance and their benefits based on the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjustment must first be approved by a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary. The adjusted pension allowance and adjusted benefits shall never be less than the amount granted the fireman or his beneficiaries on the date of his retirement or death without regard to changes in the consumer price index. The adjusted pension allowance or adjusted benefits may be increased by an amount to be determined by a majority of the board of firemen's relief and retirement fund trustees of the city and an actuary.

Eligibility After 10 Years of Service

Sec. 5. (a) Any fireman who has served in the fire department of the city for a period of at least 10 years and who has contributed to the firemen's relief and retirement fund of the city for a period of at least 10 years, shall be entitled to receive a pension allowance at the age of 55 years, provided that the following conditions are met:

(1) on termination of employment, the fireman shall leave his contributions in the fund, and shall not be required to make any further contributions to the fund;

(2) the pension allowance shall be based on the fireman's highest 60 months of salary within the 10 or more years of service; and

(3) the pension allowance shall be calculated by the formula, as set out in Section 3 of this Act, in effect at the time the fireman terminated his employment.

(b) In the event the fireman dies before he has reached the age of 55, or in the event the fireman dies after he has retired under the provisions of this section, his widow shall receive 75 percent of his pension allowance provided for under this section.

(c) Any fireman qualifying for a pension allowance under Subsection (a) of this section may, on or after termination of his employment, elect to withdraw his contributions from the fund, thereby forfeiting any rights he may have had in the fund.

(d) The provisions of this section shall not become operable until a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary so approve.

Total and Permanent Disability

Sec. 6. (a) If a person, serving as an active fireman duly enrolled in a regularly active fire department becomes totally and permanently disabled, the board of trustees shall, on his request, or without his request if it shall deem proper and for the good of the department, retire the person from active service and order that he be paid from the firemen's relief and retirement fund of the city a monthly amount equal to his accrued unreduced pension as determined under Subsection (a), Section 3 of this Act. If a person becomes totally and permanently disabled while in or as a consequence of the performance of his duty, the amount to be paid shall not be less than \$200 and if a person becomes disabled from any other cause, the amount to be paid shall not be less than \$100.

(b) When the disability of a person who has been granted a pension under Subsection (a) of this section ceases, the pension shall be discontinued and the person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

(c) The provisions of this section shall apply even though the fireman was disabled while gainfully employed by someone other than the respective fire department for which he was employed.

(d) No person may receive retirement benefits under this section for any period of time during which that person received his full salary or compen-

sation including payment received while on sick leave.

Transferred Firemen

Sec. 7. (a) This section applies to all cities having an organized, fully paid fire department covered by a firemen's relief and retirement fund.

(b) A fireman who transfers from the fire department of one city to that of a city covered by this section and desires to participate in the fund of that city shall:

(1) be less than 30 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board;

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus four percent interest.

(c) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus four percent interest.

(d) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this section.

Disability Retirement or Payment; Certificates of Disability; Election of Section Under Which Payments Made

Sec. 8. No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there shall have been filed with the board of trustees, certificates of his disability or eligibility signed and sworn to by the person or by the city physician, if there be one, or if none, then by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

If any fireman or one or more beneficiaries of a fireman shall be or become entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which such payments shall be computed and paid.

Required Contributions

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund and who was participating in the firemen's relief and retirement fund of his city

on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and those firemen shall be entitled to participate in the benefits provided by this Act.

Contributions; Membership; Creditable Service; Investment of Surplus Funds

Sec. 10. (a) The city shall contribute and appropriate each month to the fund an amount equal to 11.85 percent of the monthly payroll, excluding overtime pay and any temporary pay in higher classification of the fire department of the city, and each full-time fireman shall pay into the pension fund 11.85 percent of his monthly salary, excluding overtime pay and any temporary pay in higher classification. The governing body of the city may authorize the city to make an additional contribution to its firemen's relief and retirement fund in whatever amount the governing body of the city may fix. The firemen, by a majority vote in favor of an increase in contributions above the 11.85 percent, shall increase each member's contribution above 11.85 percent in whatever amount the pension board recommends.

(b) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing firemen serve.

(c) Any person who enters service as a fireman in any city that has a firemen's relief and retirement fund to which he is eligible for membership shall become a member of the fund as a condition of his appointment, and shall, by acceptance of the appointment, agree to make the contributions required by this Act of members of the fund and is eligible to participate in the benefits of membership in the fund as provided in this Act. However, no person is eligible to membership in the fund who has reached his 30th birthday at the time he enters service as a fireman, and any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that he is not of sound health. The applicant shall pay the cost of any physical examination required by the board of trustees for this purpose.

(d) Each person who is an active member of a firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this amendment shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this amendment.

(e) The severance benefit of a fireman who subsequently terminates his employment before he is eli-

gible for retirement shall be an amount equal to the sum total of his monthly contributions made while a participating member of the firemen's relief and retirement fund. If the member's employment is terminated by death before retirement and he leaves no surviving beneficiary entitled to pension benefits, his estate shall receive his contributions without interest.

(f) These provisions apply to all active full-time members of the fire department and to those persons who shall become members of the fire department at any time in the future.

(g) When, in the opinion of the board of trustees, there is on hand in the firemen's relief and retirement fund of any city under this Act a surplus over and above a reasonable and safe amount to take care of the current demands on the fund, the surplus, or so much of it as in the judgment of the board is deemed safe, may be invested in federal, state, county, or municipal bonds, and in shares or share accounts of savings and loan associations, where the shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and in the 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 laws, and may also invest in notes and other evidence of debt secured by mortgages insured or guaranteed by the Federal Housing Administration under the provisions of the National Housing Act, and the interest or dividends shall be deposited into the fund and become a part of it.

(h) The mayor shall appoint an investment advisory committee consisting of not less than three nor more than five qualified persons to be selected from the personnel of the banks of the city. The appointees shall be experienced in the handling of securities and investment matters and shall serve for a two-year term. The purpose of this committee shall be to advise and make recommendations on investment procedure and policy, and to review the investments made by the board. From these reviews and observations, the committee shall make an annual report to the board of trustees of the city within 90 days after the end of each calendar year.

Survivor's Benefits

Sec. 11. (a) If a fireman dies before retirement, his surviving widow shall be entitled to receive a monthly pension, the amount of which shall be 75 percent of the member's accrued unreduced pension as determined under Section 3 of this Act. The monthly pension payable to the widow of a member who dies while in or as a consequence of the performance of his duty shall be not less than \$100, and the monthly pension payable to the widow of a member who dies while not in the performance of his duty shall be not less than \$100.

(b) Each child of a deceased member under the age of 18 is entitled to receive as a monthly pension \$50 if there is a surviving widow entitled to a pension, or \$100 if not. The benefits paid to the minor children are in addition to the minimums provided for the widow, or any accrued amount that the widow may be entitled to.

(c) On the death of a retired member, his surviving widow, provided she married the member prior to his retirement, is entitled to receive as a monthly pension, 75 percent of the pension being paid to the member. Each child of such deceased retired member under the age of 18 is entitled to receive as a monthly pension \$50 if there is a widow entitled to a pension, or \$100 if not.

(d) If a deceased member or retired member leaves no widow or children eligible to receive a benefit hereunder but is survived by a dependent parent, or parents, such dependent parent, or one of the surviving parents designated by the board of trustees, is entitled to receive as a monthly pension, the amount otherwise payable to the widow.

(e) If a deceased member leaves no widow, children, or dependent parent eligible to receive a benefit as provided in this section, his total contributions, less any amount previously paid to him, shall be paid to his estate.

(f) Payments to a child shall be made whether or not a widow survives and shall continue after the death of a widow, but shall cease on the earliest of such child's death, marriage, or attainment of age 18. Payment to a widow or parent shall cease upon the earlier of such person's death or marriage. After all payments cease, any excess of the member's total contributions at date of death over any disability and death benefits shall be paid to his estate.

(g) The provisions of this section shall apply even though the death was caused while the member was gainfully employed by someone other than the respective fire department for which he was employed.

(h) Benefits provided in this section shall be payable on the first day of each month commencing with the month following the one in which the member's death occurs.

(i) The board of trustees shall determine all questions of dependency, and their determination shall be final and conclusive on all parties. All unmarried, legitimate, and legally adopted children under age 18, in the absence of a determination to the contrary, are considered dependent.

(j) On a majority vote of the board of trustees, benefits to minor children may be increased to an amount not to exceed the maximum approved by an actuary.

(k) On a majority vote of the board of trustees, benefits to widows may be increased to an amount not to exceed the maximum approved by an actuary.

Exemption From Execution, Attachment, Garnishment, etc.; Transfers or Assignments Void

Sec. 12. No portion of a firemen's relief and retirement fund may, either before or after its order of disbursement by the board of trustees to a retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or his widow, the guardian of his minor child or children, his dependent father or mother, nor shall said fund or any claim thereto be directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

Integration With Benefits Under Federal Social Security Act

Sec. 13. No firemen's relief and retirement fund for fully paid firemen may ever be integrated with benefits payable under the federal Social Security Act,¹ and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive from a firemen's relief and retirement fund for fully paid firemen.

¹ 42 U.S.C.A. § 301 et seq.

Medical Examinations for Disabled Firemen

Sec. 14. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the board of trustees for that purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees is authorized, in its discretion, to reduce or entirely discontinue relief.

Conviction of Felony; Payments to Spouse; Children or Parents

Sec. 15. Whenever any person who shall have been granted an allowance provided in this Act shall

have been convicted of a felony, then the board of trustees shall order the allowance so granted or allowed the person discontinued, and in lieu thereof, order paid to his wife, or dependent child, children, or dependent parent, the amount provided to be paid the dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

Creditable Service

Sec. 16. In computing the time or period for retirement for length of service as provided in this Act, less than one 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 year and less than five 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 years, no previous service shall be counted, provided however, that if a fireman is out of service over five years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him insofar as his retirement time is concerned. He shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed.

City Attorney; Representation of Board of Trustees

Sec. 17. The city attorney, without additional compensation, shall appear for and represent the board of trustees of that city in all cases of appeal by any claimant from the order or decision of the board of trustees.

Investment of Assets; Employment of Professional Counselors

Sec. 18. The board of trustees of a fully paid fire department may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city, the cost may be paid from the assets of the fund.

Employment of Actuaries

Sec. 19. The board of trustees of a firemen's relief and retirement fund coming under the provisions of this Act may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

Civil Actions for Money Wrongfully Paid Out or Obtained

Sec. 20. The board of trustees of any city created and constituted under the provisions of this Act shall have the power and authority to recover by civil action from any offending party or from his

bondsmen, if any, any money paid out or obtained from said fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

Audits; Employment of Certified Public Accountants

Sec. 21. The board of trustees of a fully paid fire department may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at such times and intervals as it may deem necessary. The city may pay the entire cost of such audits; if not paid by the city, the cost may be paid from the assets of the fund.

Insufficient Funds; Prorated Reduction in Benefits

Sec. 22. If, for any reason, the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, then all granted allowances, or disability benefits shall be proratably reduced for the time the deficiency exists.

[Acts 1975, 64th Leg., p. 412, ch. 183, eff. May 13, 1975.]

Art. 6243e.2. Firemen's Relief and Retirement Fund in Cities of Not Less Than 1,200,000

Definitions

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

Fund Created; Membership

Sec. 2. (a) A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 1,200,000 according to the last preceding federal census, and having a fully paid fire department. The board of trustees shall consist of the following persons: the mayor or his duly appointed and authorized representative; the city treasurer, or if no city treasurer then the city secretary, city clerk, or other person or officer who by law, charter provisions, or ordinance performs the duty of city treasurer; five members of the regularly organized active fire department of the city to be selected by vote of the members of the fire department; and two resident citizens of the city to be selected as provided in this section. The board of

firemen's relief and retirement fund trustees shall receive, handle and control, manage, and disburse the fund for the respective city. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas." The board of trustees shall annually elect from among their number a chairman, a vice-chairman, and a secretary. The fire department of any city that comes within the provisions of this Act shall elect by ballot five of its members, two to serve for one year, two to serve for two years, and one to serve for three years, or until their successors may be elected as provided in this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the members shall elect by ballot and certify those members to the board of trustees for a three-year term. The board of trustees shall hold regular monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary, shall keep accurate minutes of its meetings and records of its proceedings, shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund, shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose, and shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the treasurer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each city in this state shall annually and not later than the 31st day of January of each year after this Act takes effect make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of their administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the city treasurer.

(b) The board of trustees may compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking

of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of any incumbent, the vacancy shall be filled in the manner provided in this Act for the selection of the member to be so succeeded.

(c) Three of the members so elected shall be elected from the suppression division of said fire department. One member so elected from the suppression division shall have the rank of private or chauffeur, and the position on the board to which that member is elected shall be designated as Position I. One member so elected from the suppression division shall have the rank of captain, and the position on the board to which that member is elected shall be designated as Position II. One member so elected from the suppression division shall have the rank of battalion chief, district chief, deputy chief, or assistant chief, and the position on the board to which that member is elected shall be designated as Position III.

(d) One of the members so elected shall be elected from among those fire department members who devote full time to prevention and investigation of fire or who are permanently assigned in the record division or fire chief's office and who are not members of the suppression division, and the position on the board to which that member is elected shall be designated as Position IV.

(e) One of the members so elected shall be elected from the fire alarm operators division or the fire department repair division, and the position on the board to which that member is elected shall be designated as Position V.

(f) Two legally qualified taxpaying voters of the city, residents of the city for the preceding three years, are to be chosen by the elected members of the pension board, being neither employees nor officers of the city. One of these appointed members shall be appointed for a term of one year and one of these appointed members shall be appointed for a term of two years. Annually thereafter on the third Monday of January, the elected members of the pension board are to fill one of the appointed positions of the pension board for a period of two years. The appointed members of the pension board are to take the same oath of office required of elected members. 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 appointed member who vacat-

ed his position. These two appointed positions of the pension board are to be filled by the elected members of the pension board on the third Monday in January following the effective date of this Act.

(g) Each member of the board of trustees shall, within 10 days after his election, take an oath of office that he will diligently and honestly administer the affairs of the firemen's relief and retirement fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

(h) Members of a board of trustees of a firemen's relief and retirement fund coming under this Act shall continue to serve in their respective duties and terms.

(i) The secretary of the board of trustees shall, within seven days after each meeting of the board, forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.

Appropriations

Sec. 3. This fund shall continue to receive annually any money appropriated by the legislature which the fund received in prior years.

Pension and Additional Pension Allowances; Service Retirement; Elections; Contributions; Certificate of Service; Limits; Annual Adjustments

Sec. 4. (a) Any person who has been duly appointed and enrolled and who has attained the age of 50 years, and who has served actively for a period of 20 years or more and has participated in a fund in a city which is within the provisions of this Act, shall be entitled to be retired from the service or department and shall be entitled to be paid from the firemen's relief and retirement fund of that city or town, a monthly pension equal to 50 percent of his average salary for the highest 36 months of his service. Any fireman shall be entitled to be paid in addition to the benefits provided for in this subsection an additional pension allowance of one percent of his average monthly salary for the highest 36 months during his participation for each year of service after the date on which such fireman shall be entitled to be retired.

(b) A fireman who has 20 years of service and participation in a fund under this section may, if he so elects, be retired from the department and receive a monthly pension allowance of 35 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 35 percent be paid an additional monthly pension allowance equal to three percent of his average monthly salary for each year of service in excess of 20 years until the fireman completes 25 years of

service thereby providing a monthly pension allowance equal to 50 percent of the fireman's average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 25 years, he shall receive, in addition to the pension allowances provided for in Subsection (b) of this section, an additional monthly pension allowance equal to one percent of his average salary for each year of participation in excess of 25 years.

(c) The maximum pension allowance to be received by any fireman under this section or Section 6 or 7 of this Act shall not exceed 60 percent of the fireman's average monthly salary for the highest 36 months during his participation.

(d) Any eligible and qualified fireman who has completed 20 years of service or more and of participation in a fund in a city to which this section is applicable, before reaching the age of 50 years, may apply to the board of trustees for, and the board shall issue, a certificate showing the completion of service and showing and certifying that the fireman, when reaching the age of 50 years, is entitled to the retirement and other applicable benefits of this Act. When any fireman is issued a certificate he is, when reaching retirement age, entitled to all the applicable benefits of this Act, even though he is not engaged in active service as a fireman after the issuance of the certificate. However, the fireman shall continue to pay his pension contribution monthly or in advance until the fireman reaches retirement age. Any fireman who does not make his pension contribution monthly or in advance shall automatically forfeit any retirement or other benefits he or his beneficiaries may have been entitled to under this Act.

(e) All firemen entering a fire department coming within the provisions of this section after the effective date of this Act shall retire under the benefit provisions of Subsection (b) of this section unless the retirement is for disability.

(f) All firemen who retire under the provisions of this section or Section 6 or 7 of this Act shall have their retirement allowances adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the member on the date of his retirement increased by three percent annually notwithstanding a greater increase in the consumer price index.

Pension Allowance at Age of 50; Calculation

Sec. 5. Any fireman who has served in such fire department for a period of at least 10 years and for

a period of less than 20 years shall be entitled to a pension allowance at age 50 years. The pension allowance shall be calculated as follows:

(a) The monthly pension allowance shall be equal to the sum of one and seven-tenths percent of his average monthly salary multiplied by the number of years of service of the fireman.

(b) The average monthly salary shall be for the highest 36 months of service of the fireman.

(c) In the event the fireman dies:

(1) before he has reached the age of 50 years, his widow or other beneficiaries shall be eligible for a pension allowance on the date the deceased fireman would have been 50 years of age.

(2) after he reached 50 years of age, his widow or other beneficiaries shall be eligible for a pension allowance. The pension allowances shall be granted by the provisions of this section.

Disability Retirement; Amount of Pension; Service Retirement Election

Sec. 6. (a) Whenever a fireman becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the fireman is not capable of performing the usual and customary duties of his classification or position, retire the fireman on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his service, or so much thereof as he may have served.

(b) If the fireman is eligible to be retired under the provisions of Section 4 of this Act, he may elect to have his monthly pension allowance calculated under that section.

Death or Disability From Any Cause Other Than Performance of Duty; Monthly Pension Allowance to Fireman or Beneficiary; Computation; Service Retirement Election; Annual Adjustment

Sec. 7. (a) Whenever a fireman dies or becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to the fireman or his beneficiaries.

(b) The monthly pension allowance shall be computed as follows:

(1) If the fireman becomes disabled, he shall be paid a monthly pension allowance equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the

average monthly salary for each full year of service and of participation in a fund except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during his service, or so much as he may have served preceding the date of the retirement.

(2) If the fireman was eligible to be retired under the provisions of Section 4 of this Act, he or his beneficiaries may elect to have their monthly pension allowance calculated under that section.

(3) If a fireman dies and leaves surviving him both a widow who married the fireman prior to his retirement, and a child or children of the fireman under the age of 18 years, the board of trustees shall order paid to the widow of the fireman a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance for the use and benefit of the child or children equal to the amount provided for the widow. If the fireman leaves no child under the age of 18 years surviving him or if at any time after the death of the fireman no child is entitled to allowance, then the monthly pension allowance to be paid the widow shall be equal to the full amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection, except that the allowance to a widow, if no child is entitled to allowance, shall not exceed one-half of the maximum base salary for the position of pipeman at the time of the death of the fireman.

(4) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection shall be paid for each of the fireman's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection,

nor shall the allowance for the children exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the fireman.

(5) If the fireman dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection shall be paid to each parent of the deceased fireman on proof to the board of trustees that the parent was dependent on the fireman immediately prior to the death of the fireman, except that the total monthly pension allowance provided for parents shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the fireman.

(c) Allowance or benefits payable under the provisions of this section for any minor child shall cease when that child becomes 18 years of age or marries. If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.

(d) The provisions of this section are not applicable to a fireman or his beneficiaries if the fireman's death or disability results from suicide or attempted suicide before the fireman has completed two years of service with the fire department for which he was employed.

(e) The wife of a deceased fireman who had served actively for a period of 20 years or more in a regularly active fire department shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married after the fireman died and she became a widow. A widow covered under this section shall be limited to the pension allowance of the deceased member of this fund, to whom she was last married.

(f) The monthly pension allowance of beneficiaries of a deceased fireman who retired after the effective date of this Act shall have their monthly pension allowances provided for under this section or

Section 11 adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the beneficiaries on the death of the member without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the beneficiaries on the death of the member increased by three percent annually notwithstanding a greater increase in the consumer price index.

Certificates of Disability

Sec. 8. (a) No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there has been filed with the board of trustees certificates of his disability or eligibility signed and sworn to by that person and his physician or by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

(b) Any fireman or beneficiary who is entitled to receive a pension allowance under any provision of this Act is entitled to receive the allowance from and after the date on which the fireman ceases to carry out his regular duties as a fireman, notwithstanding the fact that the fireman may remain on the payroll of his fire department or receive sick leave, vacation, or other pay after the termination of his regular duties as a fireman, except that in the event of a delay resulting from the requirements of Subsection (a) of this section, the fireman or beneficiary shall, when the allowance is approved by the board, be paid the full amount of the allowance which has accrued since the termination of the fireman's regular duties as a fireman.

(c) If any fireman or one or more beneficiaries of a fireman shall be or becomes entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which the payments shall be computed and paid.

Contributions of Members

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund, and who was participating in the firemen's relief and retirement fund of his city on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and each fireman shall be entitled to participate in the benefits provided by this Act.

Monthly Salary Deductions; Contributions and Appropriations; Membership; Service Credit; Termination

Sec. 10. (a) The governing body of the city shall deduct monthly a sum equal to nine percent from the salary or compensation of each fireman participating in the fund.

(b) The city shall contribute and appropriate monthly to the fund an amount equal to twice the total sum paid to the fund by salary deductions of the members, and each city shall contribute and appropriate monthly to the fund, for each person who holds a 20-year pension certificate and who is not engaged in active service as a fireman and who has not retired, an amount equal to twice the total sum paid into the fund by the member. Contributions and appropriations shall be made to the fund at the same time the city makes its contributions for the participating members of the fund.

(c) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing fireman serves.

(d) Each person who becomes a fireman in any city which has a firemen's relief and retirement fund in which he is eligible for membership, shall become a member of the fund as a condition of his appointment, and shall by acceptance of the position agree to make and shall make contributions required under this Act of members of the fund, and shall participate in the benefits of membership in the fund as provided in this Act, except that no person shall be eligible to membership in the fund who is more than 30 years of age at the time he first enters service as a fireman. Any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that the person is not of sound health. The applicant shall pay the cost of any physical examination required in that instance by the board of trustees.

(e) Each person who is an active member of the firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this Act shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this Act.

(f) If any member's employment by the city, as an employee of the fire department, is terminated for any reason other than those qualifying the employee for a pension, neither the employee nor his beneficiary or estate shall receive any amount paid by him into the pension fund or any interest his contributions may have accrued.

Allowance to Beneficiaries of Deceased Members

Sec. 11. (a) If a member of a fire department who has been retired on allowances because of length of service or disability dies from any cause whatsoever, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty and the member is participating in a fund, or dies from any cause whatsoever after he has become entitled to an allowance or pension certificate, and if the fireman leaves surviving a widow, a child or children under the age of 18 years, or a dependent parent or parents, the board of trustees shall order paid a monthly pension allowance which shall be based on the amount which the fireman would have been entitled to receive had he continued to live and be retired on allowance at the date of his death. The allowance or allowances shall be paid as follows:

(1) If the member dies and leaves surviving him both a widow who married the member prior to his retirement and a child or children of the member under the age of 18 years, the board of trustees shall order paid to the widow of the member a monthly pension allowance equal to one-half of the amount the member would have been entitled to receive, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance, for the use and benefit of the child or children, equal to the amount provided for the widow. If the member leaves no child under the age of 18 years surviving him or if at any time after the death of the member no child is entitled to allowance, the monthly pension allowance to be paid the widow shall equal the full amount the member would have been entitled to receive, except that the allowance to a widow, if no child is entitled to allowance, shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(2) If the member dies and if his widow dies after being entitled to her allowance, or in the event there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for the use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to one-half of the amount that member would have been entitled to receive shall be paid for each of the member's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount which the member would have been entitled to receive, nor shall

such allowance for the children exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(3) If the member dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount that member would have been entitled to receive shall be paid to each parent of the deceased member on proof of the board of trustees that the parent was dependent on the member immediately prior to the death of the member, except that the total monthly pension allowance provided for parents shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(b) Allowance or benefits payable under the provisions of this section for any minor child shall cease when the child becomes 18 years of age or marries, except that if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he or she remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he or she is over the maximum age at the time of the death of his or her parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he or she would have been entitled had he or she been under the maximum age at the time of the death of his parent.

(c) The wife of a deceased fireman who has been retired on disability allowances because of length of service or has been retired for disability after having served actively for a period of 20 years or more shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married and became a widow after such fireman died. A widow covered under this section shall be limited to the pension allowance of the deceased member to whom she was last married.

Exemption of Benefits from Judicial Process

Sec. 12. No portion of the firemen's relief and retirement fund shall, either before or after its order of disbursement by the board of trustees to retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or

levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings whatsoever issued out of, or by, any court for the payment or satisfaction in whole or in part of any debt, damage, claim, demand, or judgment against a fireman or his widow, the guardian of his minor child or children, or his dependent father or mother, nor shall the fund or any claim be directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose.

Integration of Fund with Social Security Benefits

Sec. 13. No benefit or pension allowance shall ever be integrated with benefits payable under the federal Social Security Act, and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive under the provisions of this Act.

Certificate to Fireman Eligible For the Retirement or Disability Allowance; Continuance in Service

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement who elects to continue in the service of the fire department may apply to the board of trustees for a certificate, and if found to possess the qualifications and be eligible for retirement as provided in this Act, the board of trustees shall issue to the fireman a certificate showing him to be entitled to retirement or disability allowance, and on his death the certificate is prima facie proof that his widow or dependents are entitled to their respective allowances without further proof except as to her or their relationship.

Medical Examination of Persons Retiring for Disability

Sec. 15. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by any physician appointed or selected by the board of trustees for the purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees may in its discretion reduce or entirely discontinue relief.

Recall for Duty in Emergency

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against a city for payment for duty so performed.

Appeal to District Court

Sec. 17. Any person possessing the qualifications required for retirement for length of service or disability or having claim for temporary disability, or any of his beneficiaries, who deems himself aggrieved by the decision or order of the board of trustees, whether because of rejection or the amount allowed, may appeal from the decision or order of the board of a district court in the county where the board is located by giving written notice of the intention to appeal. The notice shall contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally on the chairman or secretary or treasurer of the board within 20 days after the date of the order or decision. After service of the notice, the party appealing shall file with the district court a copy of the notice of intention to appeal, together with the affidavit of the party making service showing how, when, and on whom the notice was served. Within 30 days after service of the notice of intention to appeal upon the board, the secretary or treasurer of the board shall make up and file with the district court a transcript of all papers and proceedings in the case before the board and when the copy of the notice of intention to appeal and the transcript has been filed with the court, the appeal shall be deemed perfected and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the board of the date fixed for the hearing. At any time before rendering its decision on the appeal, the court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on the appeal, the court shall give to each party to the appeal a copy of the decision and shall direct the board as to the disposition of the case. The final decision or order of the district court is appealable in the same manner as are civil cases generally.

Employment of Certified Public Accountants; Audit

Sec. 18. The board of trustees may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at times and intervals as it may deem necessary. The city may pay the entire cost of the audits; if not paid by the city, the cost may be paid from the assets of the fund.

Computation of Length of Service

Sec. 19. In computing the time or period for retirement for length of service, less than one 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 year and less than five 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 years, no previous service shall be counted, except that if a fireman is out of service over five years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him insofar as his retirement time is concerned.

City Attorney to Represent Board of Trustees in Appeals

Sec. 20. The city attorney, without additional compensation, shall appear for and represent the board of trustees of the fund in that city in all legal matters of litigation.

Investment of Surplus

Sec. 21. (a) Whenever, in the opinion of the board of trustees, there is on hand in the firemen's relief and retirement fund a surplus over and above a reasonably safe amount to take care of current demands upon the fund, the surplus, or so much of the fund as in the judgment of the board is deemed proper, may be invested in bonds or other interest bearing obligations and securities of the United States, the State of Texas, or any county, city, or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where the shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; in first lien real estate mortgage securities issued by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time; and in such corporation bonds, preferred stocks, and common stocks as the board may deem to be proper investments for the fund.

(b) In making each and all investments, the board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(c) Not more than four percent of the fund shall be invested in corporate securities issued by any one corporation, nor shall more than five percent of the voting stock of any one corporation be owned.

(d) Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the Unit-

ed States which have paid dividends for five consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed on an exchange registered with the Securities and Exchange Commission or its successors.

Employment of Counseling Service

Sec. 22. The board of trustees may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund.

Employment of Actuary

Sec. 23. The board of trustees may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

Action for Recovery of Benefits Wrongfully Obtained

Sec. 24. The board of trustees may recover by civil action from any offending party or from his bondsmen, if any, any money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

Pro Rata Reduction of Benefits on Deficiency

Sec. 25. If for any reason the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, all granted allowances or disability benefits shall be proratably reduced for such time as the deficiency exists.

Termination of Active Service; Allowances and Benefits

Sec. 26. After a fireman terminates his active service, the amounts of all allowances and benefits which the fireman or his beneficiaries may thereafter become entitled to receive from a firemen's relief and retirement fund shall be computed on the basis of the schedule of allowances and benefits in effect for the firemen's relief and retirement fund at the time of the termination of the fireman's active service.

Employment of Attorney

Sec. 27. The board of trustees of the firemen's relief and retirement fund may employ an attorney to render a legal opinion or to represent the trustees in any litigation involving matters coming under this Act.

Employment of Physician

Sec. 28. The board of trustees of the firemen's relief and retirement fund may employ a physician or physicians to examine firemen prior to their becoming a member of the fund or to examine a fireman applying for a disability pension allowance.

Increase of Monthly Allowance

Sec. 29. The monthly pension benefit or allowance provided by any section of this Act may be increased if:

(1) the increase is first approved by a qualified actuary selected by the board of trustees of the firemen's relief and retirement fund; the qualified actuary shall if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries;

(2) a majority of the participating members of the pension fund vote for the increase by a secret ballot;

(3) increase applies only to active firemen in the department at the time of the change of the increase and those who enter the department thereafter; and

(4) the increase does not deprive a member, without his written consent, of a right to receive benefits which have already become fully vested and matured in a member.

Cities With Full Paid Fire Department; Transfer of Firemen

Sec. 30. (a) A fireman who transfers from the fire department of one city to that of a city covered by this Act and desires to participate in the fund of that city shall:

(1) be less than 35 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board; and

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus six percent interest.

(b) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus six percent interest.

(c) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this Act.

Repealer

Sec. 31. Sections 3A, 6B, 6B-1, 7B, 7C, 10E, 12A, 18A, 23A-1, 23C, 23F, and 23G, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), are repealed.

[Acts 1975, 64th Leg., p. 1135, ch. 432, eff. June 19, 1975.]

Art. 6243f. Firemen and Policemen's Pension Fund in Cities of 500,000 to 750,000

[See Compact Edition, Volume 5 for text of 1 to 26]

Cost of Living Increases or Decreases

Sec. 26A.

[See Compact Edition, Volume 5 for text of 26A(1)]

(2) The Board shall annually, beginning in 1972, at or before its regular meeting in the month of March, review the Cost of Living Indexes of the United States Bureau of Labor Statistics for the preceding calendar year. If such index should report an increase or decrease during such calendar year in the cost of living as much as three percent (3%) as compared with the Cost of Living Index at the close of the year 1971 (which is hereby declared to be the base index) the Board shall enter its order increasing or decreasing all pension payments by three percent (3%), or more (depending on the amount of increase or decrease) but only by full percentage points closest to the exact amount of such increase or decrease. Such increase or decrease shall be effective retroactively as of the month of January next preceding such March (or earlier) Board meeting and shall continue in effect for at least one full year thereafter, and until there has been an additional increase or decrease of at least three percent (3%) compared to such base figure. Provided, however, that no pension shall ever be decreased below the amount at which it was originally granted, except pursuant to the provisions of Section 15 of this Act. Provided, further, that all pensions granted on or before December 31, 1974, whether granted in compliance herewith or not as to amount are hereby validated and confirmed as to amount.

[See Compact Edition, Volume 5 for text of 26A(3) to 26B(3)]

Cost of Living Increases

Sec. 26C. (a) All pensions granted before September 1, 1971, in the Fund created by this Act, are increased in the amount of Sixty Dollars (\$60) per month beginning with the first whole calendar month after the effective date of this Act, subject to the continuing right of the Board to change any percentage of disability as provided in Section 15 of this Act.

(b) The increase granted in Subsection (a) of this section shall be subject to the cost of living increases or decreases provided for in Subsection (2), Section 26A of this Act in the same way and to the same extent as the rest of the pensions.

(c) The cost of paying the increases provided for in this section shall be paid by the city out of general funds of the city.

[See Compact Edition, Volume 5 for text of 27]

[Amended by Acts 1975, 64th Leg., p. 101, ch. 43, § 1, eff. April 10, 1975; Acts 1975, 64th Leg., p. 597, ch. 246, § 1, eff. May 20, 1975.]

Art. 6243g. Municipal Pension System in Cities of 1,200,000 or More

Creation of Pension System

Sec. 1. There is hereby created a Municipal Pension System in all cities in this state having a population of one million two hundred thousand (1,200,000) or more according to the last preceding or any future Federal Census.

[See Compact Edition, Volume 5 for text of 2 to 4]

Pension Board

Sec. 5.

[See Compact Edition, Volume 5 for text of 5(a) to (i)]

(j) The Pension Board shall determine each member's credited service on the basis of the personnel and financial records of the city and the records of the Pension Board. The Board may permit any member to pay into the Pension Fund and thereby obtain credit for any service with the city for which credit would otherwise be allowable under this amended Act save only for the fact that no contributions were made by such member with respect to such service, or the fact that contributions, although made with respect thereto, were thereafter refunded to such member as a separation allowance and not subsequently repaid. The following provisions shall apply to such payments:

(1) For service during the period September 1, 1943, to May 29, 1967, the employee shall pay a sum computed at the rate of Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(2) For service during the period May 29, 1967, to January 5, 1970, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(3) For service during the period January 5, 1970, to September 1, 1971, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars (\$12) a month, and the city shall pay into the Pension Fund an amount equal to eleven and one-quarter percent (11¼%) of such salary for the same period of time.

(4) For service during the period September 1, 1971, to January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to thirteen and one-half percent (13½%) of such salary for the same period of time.

(5) For service on and after January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to eighteen percent (18%) of such salary for the same period of time.

(6) In addition to the amounts to be paid by the employee as specified above, the employee shall also pay interest on the same amounts at the rate of six percent (6%) per annum from the time the contributions would have been deducted, if made, or the time contributions were refunded as a separation allowance, as the case may be, to the time of repayment of such contributions into the Pension Fund.

[See Compact Edition, Volume 5 for text of 6 and 7]

Contributions by City

Sec. 8. In addition to the payments provided for in the next preceding section, such city shall pay monthly into such Pension Fund, from its general fund or other available source, an amount equal to eighteen percent (18%) of the total of the monthly salaries paid to members for the same period of time, less an amount equal to the total amount of the employer's part of the payments made by the city for such period of time with respect to such members, to the federal government under the provisions of the Social Security Act and Federal Insurance Contributions Act, it being the intention hereof that the combined total of the payments made by such city, as an employer, with respect to such members, for social security and pension fund purposes shall at all times be eighteen percent (18%) of the total of all salaries paid to all such members.

Surplus: Investment

Sec. 10. (a) Whenever, in the opinion of the said Pension Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe

amount to take care of current demands upon such Funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in the following:

(1) In bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas;

(2) In first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time;¹

(3) In such corporation bonds, preferred stocks and common stocks as the Pension Board may deem to be proper investments for said Funds, provided, however, that not more than fifty percent (50%) of said Funds shall be invested at any given time in corporate stocks, nor shall investments in securities issued by any one (1) corporation be more than five percent (5%) of this Fund, nor shall more than five percent (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, except that two percent (2%) of the Fund may be invested in common stocks that do not have a ten (10) year dividend record; or

(4) In real property, divided or undivided, whether or not productive or unproductive of income, including, without limitation, investments of undivided interests in real property consisting of beneficial shares or interests in any commingled fund or any commingled trust which is established for the purpose of, and is primarily engaged in, investment in real property, such as, for example, a group or collective investment trust administered and controlled by a bank or trust company; provided that not more than ten percent (10%) of said Fund shall be invested at any given time in such real property.

(b) In making each and all such investments said Pension Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the safety of their capital. The said Board shall have authority to buy and sell any of its authorized investments.

¹ 12 U.S.C.A. § 1701 et seq.

Retirement on Pension

Sec. 11. (a) Any member of such Pension System who has attained fifty (50) years of age and completed twenty-five (25) or more years of credited service, and any member of such Pension System who has attained fifty-five (55) years of age and completed twenty (20) or more years of credited service, and any member of the Pension System who has attained sixty (60) years of age and completed ten (10) or more years of credited service shall be eligible for a pension.

(b) The amount of pension a month for each such member shall equal two percent (2%) of the member's average monthly salary multiplied by the total number of years of credited service of such member. For purposes of this Subsection, such average monthly salary shall be computed by adding together the thirty-six (36) highest monthly salaries paid to a member during his period of credited service and dividing the sum by thirty-six (36). Provided, however, that no member's pension shall be more than eighty percent (80%) of such average monthly salary; and no member's pension shall be less than Eight Dollars (\$8) a month for each year of credited service, or One Hundred Dollars (\$100) a month total pension, whichever is the greater amount.

(c) A member shall continue to accrue benefits in the Pension System as long as he remains an employee, regardless of his age. Any present employee who was prohibited by previous amendments from accruing any additional benefits upon reaching seventy (70) years of age and prevented from making further contributions into the Pension Fund shall be permitted to continue the accrual of credited service for the period from age seventy (70) until retirement by repaying in one lump sum Twelve Dollars (\$12) a month for each month of service with the city from the date that he reached seventy (70) years of age to the effective date of this amendment and making regular employee contributions thereafter. Any present employee who failed to become a member because he had passed sixty (60) years of age at the time his employment commenced shall now be permitted to become a member by repaying, in one lump sum, Twelve Dollars (\$12) a month for each month of service with the city to the effective date of this amendment and making regular employee contributions thereafter. Any elected official who becomes a member of the Pension System as permitted by this amended Act may receive credit for any service as an elected official that preceded the effective date of this amended Act by paying, in one lump sum, Twelve Dollars (\$12) a month for each month of such preceding service and making regular employee contributions for any service with the city after the effective date of this amended Act. The city shall also contribute one and one-half (1½) times the amount so paid into the Fund by such employees and officials.

(d) All members who retire under this section or under Section 12 on or after January 1, 1976, shall have their pensions adjusted annually upward or downward in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member would otherwise be entitled to receive without regard to changes in the Consumer Price Index. The adjusted pension shall never be greater than the amount of the retired member's basic pension plus cumulative increases of not to exceed two percent (2%) annually, notwithstanding a greater increase in the Consumer Price Index.

Disability Pensions

Sec. 12.

[See Compact Edition, Volume 5 for text of 12(a) to (c)]

(d) Any member receiving a pension on account of "ordinary" or "accidental disability" shall, each January 1, submit a sworn affidavit stating his earnings, if any, obtained from any gainful occupation. If the earnings together with the pension being received by any member exceed the monthly salary of such member at the time of his separation from service, the Pension Board shall have authority to reduce the amount of pension. Failure to submit an affidavit of earnings or a materially false affidavit shall be cause for suspension of the pension upon proper action by the Pension Board.

No member shall receive payment of a pension under Section 11 and this section at the same time. However, in the event a member already eligible for retirement under Section 11 should retire for disability under this section, and, thereafter, although his disability ceases to exist, he does not return to work for the city, he shall be entitled to continue to receive a pension under Section 11, calculated in accordance with the length of service and the schedule of benefits for Section 11 which would have been applicable at the time of his original retirement for disability.

When any member has been retired for ordinary or accidental disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for

said city, and such member is reinstated or tendered reinstatement to the position he had at the time of his retirement, then the Pension Board shall order such pension payments stopped.

Monthly Allowance to Widows and Children

Sec. 13. If any member of the Pension System, as herein defined, shall die from any cause whatsoever after having completed ten (10) years of service with the city, or if, while in the service of the city, any member shall die from any cause growing out of or in consequence of the performance of his duty, or shall die after he has been retired on pension because of length of service or disability and shall leave a surviving widow or widower, or a child or children under the age of eighteen (18) years, or both such widow or widower and child or children, said Board shall order paid monthly allowances as follows:

(a) To the widow or widower, so long as she or he remains a single person and provided she or he shall have married such member prior to her or his retirement, a sum equal to one-half ($\frac{1}{2}$) of the retirement benefits that the deceased member would have been entitled to had she or he been totally disabled at the time of her or his retirement or death, but the allowance payable to any such widow or widower shall not in any event be less than Fifty Dollars (\$50) a month.

(b) To the guardian of each child the sum of Sixteen Dollars (\$16) a month until such child reaches the age of eighteen (18) years.

(c) In the event the widow or widower dies after being entitled to her or his allowance as provided, or in the event there be no widow or widower to receive such allowance, the amount to be paid to the guardian of any child or children under the age of eighteen (18) years shall be increased to the sum of Thirty-Two Dollars (\$32) a month for each such child; provided, however, that the total allowance to be paid all beneficiaries or dependents, as herein provided, shall not exceed the monthly pension that would have been paid the pensioner had he continued to live and retire on pension at the date of his death. Allowances or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries, provided that when there are only children to collect a pension as beneficiaries, if at the time the last child reaches eighteen (18) years of age, the amount the employee contributed has not been paid out in pensions, the balance shall be refunded to the children. By the term "guardian," as used herein, shall be meant the surviving widow or widower with whom the child or children reside, or any guard-

ian appointed by law, or the person standing in "loco parentis" to such dependent minor child responsible for his or her care and upbringing.

[See Compact Edition, Volume 5 for text of 14 and 15]

Termination of Employment; Death; Reemployment

Sec. 16. When any member of such Pension System shall leave the employment of such city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall thereupon cease to be a member of such Pension System, and shall have refunded to him all of the payments made by him into said Pension Fund by way of salary deductions without interest, subject to the following provisos:

(a) If such member has completed twenty-five (25) or more years of service at the time of termination of employment but has not yet attained the age of fifty (50) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty (50) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from the service.

(b) If such member has completed twenty (20) or more years of service at the time of termination of employment but has not yet attained the age of fifty-five (55) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty-five (55) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from service.

(c) If such member has completed fifteen (15) or more years of service at the time of termination of employment but has not yet attained the age of sixty (60) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of sixty (60) years, be entitled to a pension on the basis of the schedule of benefits for retiring members that was in effect at the time of his separation from service.

(d) If, while still employed by the city, whether eligible for a pension or not, a member dies, then, unless the provisions of Section 13 hereof are applicable, all of his rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(e) The provisions of Section 13 concerning payments to widows, widowers and children shall apply in the case of any former member who has made the election permitted by (a), (b) or (c), above, and who dies before reaching the age at which he would be entitled to a pension. If there be no surviving widow, widower or children, then all of such member's rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(f) It is not the intention of this Amendatory Act to change the status of any former member of the Pension System whose services with the city were terminated under a previous Act. Refunds of contributions above provided for shall be paid such departing member, his beneficiary or estate in a lump sum, but if, in the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

(g) When a member has left the service of such city, as aforesaid, and has therefore ceased to be a member of such Pension System, if such person shall thereafter be reemployed by the city, he shall thereupon be reinstated as a member of such Pension System, provided he is in good physical and mental condition as evidenced by a written certificate by a duly licensed and practicing physician residing in said city, satisfactory to the Pension Board. Previous service of such member with such city shall not be counted toward his retirement pension unless such member returns to the service of the city within ten (10) years from his separation therefrom and also shall, within three (3) months after his reemployment by the city, repay in one lump sum to such Pension Fund all moneys withdrawn by him upon his separation from the service plus interest thereon at the rate of six percent (6%) a year from the date of such withdrawal. The three (3) months limitation above mentioned is subject, nevertheless, to the Board's authority as expressed in Section 5(j).

(h) If any member of the pension system, after having made the election permitted by (a), (b) or (c), above, at the time of separation from the service of the city, shall be reemployed by the city before becoming eligible to receive pension benefits, the following provisions shall apply to the computation of the pension due such member upon his subsequent retirement:

1. The portion of such member's pension attributable to his period of credited service

accrued prior to his making the aforesaid election shall be calculated on the basis of the schedule of benefits for retiring members that was in effect at the time said election was made.

2. The portion of such member's pension attributable to his period of credited service accrued after his reemployment by the city shall be calculated on the basis of the schedule of benefits for retiring members that is in effect at the time of such subsequent retirement.

[See Compact Edition, Volume 5 for text of 17 to 21]

Employees on Retirement When Act Enacted

Sec. 22. Subject to the provisions of Section 17, any former employee of any city now on retirement by such city shall hereafter be paid at the same rate he is now receiving and it is not the intention of this Act to change the status of any member now on Pension by such city. Provided, however, that the minimum pension payable to retired employees shall be One Hundred Dollars (\$100) a month, and as to those surviving spouses of former employees, who receive pensions under Section 13 of this Act, the minimum pension shall be Fifty Dollars (\$50) a month, it being further provided that this provision shall not apply retroactively to any pension payments previously made to any of such persons.

[See Compact Edition, Volume 5 for text of 23 to 24]

[Amended by Acts 1975, 64th Leg., p. 93, ch. 41, §§ 1, 2, 4 to 9, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 93, ch. 41, § 3, eff. Jan. 1, 1976.]

Acts 1975, 64th Leg., p. 93, ch. 41, which by §§ 1 to 9 amended §§ 1, 5(j), 8, 10, 11, 12(d), 13, 16 and 22 of this article, provided in § 10: "If any provision, section, part, subsection, paragraph, clause or phrase of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

Art. 6243g-1. Pension System in Cities Over 900,000

[See Compact Edition, Volume 5 for text of 1 to 6]

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 percent (7½%) of the payroll of the police department. However, should the Police Pension Board deem it necessary for the welfare of the Pension System to increase the contribution of each member of the Police Pension System within the statutory limits of Section 6 of this Act, then the contribution made to the Police Pension System by the city may, with the approval of the City Council, be increased by not less than one and one-half (1½) times the percentage increase in contribution of the members. As an example: If contributing members

are assessed at a six percent (6%) contribution rate, then the city may, by appropriate Council action, raise its contribution to not more than nine percent (9%) of the payroll of the police department. Effective on January 1, 1976, the city shall pay monthly into the Pension Fund, from the general or other appropriate fund of the city, an amount equal to two times the sum of the salary deductions paid into the pension fund by members of the pension system.

[See Compact Edition, Volume 5 for text of 8 to 10]

Retirement: Amount of Pension

Sec. 11. (a) A person who becomes a member of the Pension System on or after the effective date of this amendatory Act and who has been in the service of the city police department for the period of twenty (20) years may retire at the age of fifty (50) years and shall be entitled to a retirement pension of an amount equal to thirty percent (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 five (5) years preceding retirement. Except as provided in Subsection (a-1) of this section, no retirement pension may be paid to a member who has not attained the age of fifty (50) years. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(a-1) A person who was a member of the pension system before the effective date of this amendatory Act, may retire regardless of age upon completion of twenty (20) years of service in the city police department and shall be entitled to a retirement pension of an amount equal to thirty percent (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 five (5) years preceding retirement. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(b) If a member of the Police Pension System is promoted or appointed to any classified position above the third highest in the personnel classifica-

tion schedule, that member's contribution and retirement benefits will be computed on the base salary of the third highest classified positions in the police department. For the purposes of this Act, the position of Chief of Police shall be considered the highest classified position in the personnel classification schedule in the police department.

(c) 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 retires from the service of the police department, shall, in addition to the thirty percent (30%) of his base salary be paid an additional sum equal to two percent (2%) 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 (25) years' service would be entitled to forty percent (40%); a member with thirty (30) years, fifty percent (50%); etc.

(d) 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 percent (1½%) of the base salary of the classified position of the member per month for each year of service completed. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(e) Upon a member's completion of twenty (20) years of service in the police department and thereafter, when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. However, when such member has completed twenty (20) years' service in the police department and if the physicians of 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.

(f) No member shall be required to make any payments into the Pension Fund after the member has retired from the service of the police department.

[See Compact Edition, Volume 5 for text of 12]
Rights of Survivors

Sec. 13. (a) 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 after he has become entitled to an allowance or pension, 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 spouse to whom the member was married prior to his retirement, 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 spouse, so long as he or she remains a widow or widower, a sum equal to the allowance which was 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 twenty-five (\$25) Dollars a month until the child reaches the age of eighteen (18) years or marries;

(c) to the guardian of each child, only in case no spouse is entitled to an allowance, the sum the spouse would have received, to be divided equally among the unmarried children under eighteen (18) years;

(d) to the dependent parent, only in case no spouse or dependent child is entitled to an allowance, the sum the spouse would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board.

(b) If any member of the Pension System has not completed ten (10) years or more 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 spouse or dependent child or children shall be refunded any contributions which the member made to the Pension System.

[See Compact Edition, Volume 5 for text of
13(c) to 23]

Nonforfeiture of Funds

Sec. 23A. In the event that the pension fund is terminated or contributions to the pension fund are discontinued completely, there shall be no reversion of funds to the employer. The funds shall be used exclusively for police pensions, and the employees' rights to the benefits, to the extent funded, shall be nonforfeitable.

Former Employees on Retirement When Act Enacted

Sec. 24.

[See Compact Edition, Volume 5 for text of 24(a)]

(b) Any person who retired prior to January 1, 1974, and who held a position above the third highest

classification in the police department salary schedule shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, but if the member had 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 five (5) years preceding retirement. In addition, he shall be paid an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. The computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired, even though the increase or decrease occurs after retirement.

(c) Repealed by Acts 1975, 64th Leg., p. 1882, ch. 594, § 6, eff. June 19, 1975.

[Amended by Acts 1975, 64th Leg., p. 1879, ch. 594, §§ 1 to 6, eff. June 19, 1975.]

Art. 6243h. Texas Municipal Retirement System

[See Compact Edition, Volume 5 for text of I]

Definitions

Sec. II. The following words and phrases as used herein, unless different meanings are plainly indicated by their context, shall have the following meanings, respectively:

[See Compact Edition, Volume 5 for text of II, 1 to 11]

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. The term earnings shall not include amounts specified to be excluded in determining earnings as provided in participation ordinances adopted by participating municipalities prior to January 1, 1976; but any such municipality may amend such prior ordinances to increase the amount of earnings on which contributions are to be made.

[See Compact Edition, Volume 5 for text of II, 13 to 22]

23. "Prior Service Annuity" means the annuity, actuarially determined, which can be provided from the "Accumulated Prior Service Credit", the "Accumulated Special Prior Service Credit", and from the "Accumulated Antecedent Service Credit", or from the Accumulated Updated Service Credit, if any, to which a member is entitled at time of his retirement.

[See Compact Edition, Volume 5 for text of II, 24 to III]

Revenue

Sec. IV.

[See Compact Edition, Volume 5 for text of IV, 1(a) and (b)]

(c) Repealed by Acts 1975, 64th Leg., p. 382, ch. 171, § 2, eff. Sept. 1, 1975.

[See Compact Edition, Volume 5 for text of IV, 1(d) to 2(b)]

(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:

(i) 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 or by or before the end of the twentieth year from date of allowance by such municipality of any special prior service credits or antecedent service credits pursuant to Sections XV or XVI hereof, or by the end of the twenty-fifth year from date of (a) allowance of or increase in Updated Service Credits, or (b) increase in annuities pursuant to Sections XVII or XVIII hereof, whichever date is the later, 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) to meet in full all payments which may become due after the end of such period under existing and anticipated prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits, or Updated Service Credits granted by such participating municipality; and

(ii) to provide the amount required according to this Act to be paid during such period under prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits or Updated 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 prescribed in paragraph (a) of this subdivision, then in such event, the per cent of earnings for Prior Service Contribu-

tions shall be reduced to a per cent which together with the percentage for normal contributions will equal the maximum contributions prescribed by paragraph (a) of this subsection.

[See Compact Edition, Volume 5 for text of
IV, 2(d) to (f)]

Method of Financing

Sec. V. All of the assets of the System shall be credited according to the purpose for which they are held to one (1) of eight (8) funds, namely, the Employees Saving Fund, the Municipality Current Service Accumulation Fund, the Municipality Prior Service Accumulation Fund, the Current Service Annuity Reserve Fund, the Prior Service Annuity Reserve Fund, the Interest Fund, the Endowment Fund and the Expense Fund.

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

3. Municipality Prior Service Accumulation Fund:

The Municipality Prior Service Accumulation Fund shall be the Fund in which shall be accumulated all prior service contributions made to the Retirement System by the participating municipalities for the purpose of providing the amounts required for payment of prior service annuities; and from which prior service annuities shall be paid to the extent herein provided.

Contributions to and payments from this Fund shall be made as follows:

(a) All prior service contributions payable by participating municipalities shall be paid into the Municipality Prior Service Accumulation Fund and shall be credited to the accounts of the respective participating municipalities in such Fund.

(b) All payments under prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits, or updated service credits granted by a participating municipality shall be paid from this Fund and charged to such participating municipality's account in this Fund subject to the following: the Board shall have the power to reduce proportionately all payments under prior service annuities arising from prior service credits, special prior service credits, and antecedent service credits, or updated service credits granted by any participating municipality, at any time and for such period of time as is necessary so that the payments under such prior service annuities in any year shall not exceed the amounts available in such participating municipality's account in the Municipality Prior Service Accumulation Fund for payment of prior service annuities in such year.

(c) Whenever, at the end of any year, the amount accumulated in any municipality's account in the Municipality Prior Service Accumulation Fund shall equal or exceed the reserve required, as of the end of such year, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, to meet all future payments in full under prior service annuities, arising from prior service credits, special prior service credits, and antecedent service credits, or updated service credits granted by such participating municipality, then in effect or to become effective thereafter, then the payment of prior service contributions to the System by such participating municipality shall be discontinued.

Thereafter, should it be determined, according to calculations made by the actuary and approved by the Board on the basis of mortality and other tables adopted by the Board, that the amount to the credit of such participating municipality's account in the Municipality Prior Service Accumulation Fund at the end of any year is less than the reserve required as of the end of such year to meet all future payments in full under prior service annuities, then in effect or to become effective thereafter arising from prior service credits, special prior service credits, antecedent service credits, or updated service credits granted by such participating municipality, such municipality shall resume payment of Prior Service Contributions, subject to the limitations of Section IV of this Act.

[See Compact Edition, Volume 5 for text of V, 4]

5. Refunds to Certain Municipalities.

If any participating municipality has no employees who are currently members of the System, and has no present or potential liabilities resulting from the participation of former employees, then in such event any amount standing to the credit of such municipality in the Prior Service Accumulation Fund and in the Municipality Current Service Accumulation Fund shall upon its application be repaid to such municipality, and its participation in the System shall cease.

[See Compact Edition, Volume 5 for text of V,
6 to 8]

Creditable Service

Sec. VI.

[See Compact Edition, Volume 5 for text of VI,
1 to 5]

6. (a) As to employees of municipalities beginning participation in the System prior to January 1, 1976, "Prior Service Credit" shall mean an amount equivalent to the accumulation at interest of a series

of equal monthly payments of ten per cent (10%) of a member's "average prior service compensation" (not to exceed Three Hundred Dollars (\$300.00) per month) for the number of months of prior service certified to in such member's Prior Service Certificate. Such accumulation shall be at regular interest and on the basis that interest is allowed at the end of each twelve (12) months period and is allowed on the accumulation at the beginning of each such twelve (12) months period and is not to be allowed for parts of a year.

(b) As to employees of municipalities beginning participation in the System on and after January 1, 1976, "Prior Service Credit" shall mean such percentage (any multiple of ten percent (10%) but not exceeding one hundred percent (100%)) of the "Base Prior Service Credit" as may be specified in the participation ordinance adopted by the governing body, condition that it shall first have been determined, according to calculations made by the actuary and approved by the Board, that the municipality has the ability to fund within twenty-five (25) years from date of participation all prior service obligations proposed to be undertaken by the municipality. "Base Prior Service Credit" shall be determined as an amount equivalent to the accumulation at three percent (3%) interest of a series of monthly payments for the number of months of prior service certified to in such member's Prior Service Certificate. Each monthly payment will be equal to the member's "average prior service compensation" multiplied by the sum of (1) the member's deposit rate and (2) the member's deposit rate multiplied by the municipal current service matching ratio.

[See Compact Edition, Volume 5 for text of VI, 7]

8. Any member who has terminated a previous membership by withdrawal of then-accumulated deposits while absent from service, may if the municipality with which he is presently employed agrees to underwrite and assumes the obligations therefor and if the member has at least twenty-four (24) consecutive months of creditable service with his present employer since reestablishment of membership, deposit in the System in a lump-sum payment the amount withdrawn, plus a withdrawal charge of five percent (5%) of such amount per annum from the date of withdrawal to the date of redeposit, and shall thereupon be entitled to credit for all service to which he had been entitled at date of termination of the earlier membership, with like effect as if all such service had been performed as an employee of the consenting municipality. The amount so redeposited shall be placed in the member's individual account in the Employees Saving Fund of the System, but the five percent (5%) per annum charge shall be deposited to the Municipality Current Service Accumulation account of the municipality assuming the municipali-

ty obligations arising from granting of credit for such former service. Upon granting of such credits to the member, the consenting municipality's account in the Municipality Prior Service Accumulation Fund shall be charged with the necessary reserves to fund any such prior service credits so granted to the member, and its account in the Municipality Current Service Accumulation Fund shall be charged with the reserves required to provide for funding of any such current service credits so granted to the member. No such granting of credits shall be undertaken by any municipality unless it shall first be determined by the actuary that the granting of such credits by the participating municipality would not impair the ability of the municipality to meet all present and prospective liabilities of the municipality's account in the Municipality Prior Service Accumulation Fund and in the Municipality Current Service Accumulation Fund, and would not impair the ability of the municipality to provide for payment of prior service annuities or current service annuities.

Benefits

Sec. VII. 1. Service Retirement Eligibility;

[See Compact Edition, Volume 5 for text of VII, 1(a)]

(b) In any participating municipality which hereafter elects to participate in the System, and in those presently participating municipalities which by action of the governing body shall hereafter elect to provide the additional coverage allowed by this paragraph, any member of the System, after one year from the effective date of his membership, shall also be eligible for service retirement who shall have attained the age of fifty (50) years, and shall have completed at least twenty-five (25) years of creditable service in the municipality electing to provide the coverage allowed by this paragraph, and in any such participating municipality as shall have elected to provide the additional coverage allowed by this paragraph, any member who is an employee of such participating municipality at the time of his completion of at least twenty (20) years of creditable service with cities that have granted such vesting who may withdraw from service shall continue to be a member despite the fact that his absence from service may exceed sixty (60) consecutive months, and shall become eligible for service retirement at attainment of a prescribed minimum service retirement age. If it is so elected by a presently participating municipality, and approved by the Board, the amount of additional current service reserves required on account of the increased coverages permitted by this subsection shall be transferred as the effective date of such increased coverages from the municipality's account in the Municipality Prior

Service Accumulation Fund to its account in the Municipality Current Service Accumulation Fund. No such transfer shall be authorized, unless it shall be determined, according to calculations made by the actuary, that such transfer would not impair the ability of the municipality to meet all liabilities of the municipality's account in the Municipality Prior Service Accumulation Fund and would not impair the ability of the municipality to provide for payment of prior service annuities.

[See Compact Edition, Volume 5 for text of VII, 1(c) to (e)]

2. Standard Benefit on Service Retirement;

(a) A member who retires upon the basis of service eligibility shall be entitled to receive a "standard service retirement benefit" which shall be an allowance payable in equal monthly installments during the lifetime of the member, and in the event of his death before sixty (60) monthly payments of such benefit have been made, such payments shall continue to be paid to the member's beneficiary until the remainder of the sixty (60) monthly payments have been made. The "standard service retirement benefit" of a member shall consist of (1) a current service benefit which is the actuarial equivalent of his current service annuity reserve, and (2) a prior service benefit to which his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit, and Accumulated Antecedent Service Credit, or to which his Accumulated Updated Service Credit, if any, entitles him under the provisions of this Act.

(b) The current service annuity reserve of the member shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum, from the Municipality Current Service Accumulation Fund, equal to the accumulated deposits provided by the member, or such greater sum as the participating municipality has undertaken to provide.

(c) The prior service annuity reserve shall be (i) the sum of his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit, and Accumulated Antecedent Service Credit, or (ii) of his Accumulated Updated Service Credit, if any, at the time of retirement.

[See Compact Edition, Volume 5 for text of VII, 3 to 5]

6. Standard Disability Retirement Benefits;

Upon retirement for disability a member shall receive a disability retirement benefit consisting of (1) a current service annuity, which shall be the actuarial equivalent of his current service annuity reserve, and (2) a prior service annuity to which his Accumulated Prior Service Credit, Accumulated

Special Prior Service Credit and Accumulated Antecedent Service Credit, or of his Accumulated Updated Service Credit, as applicable, entitles him under the provisions of this Act.

(a) His current service annuity reserve shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum from the Municipality Current Service Accumulation Fund equal to the accumulated deposits provided by the member, or such greater sum as the participating municipality has undertaken to provide.

(b) If at time of retirement, a member is entitled to and has in full force and effect any prior service credits, special prior service credits, antecedent service credits, or updated service credits, the prior service annuity shall be the actuarial equivalent of his Accumulated Prior Service Credit, Accumulated Special Prior Service Credit and Accumulated Antecedent Service Credit, or of his Accumulated Updated Service Credit, as applicable, at time of retirement. Upon the recommendation of the actuary, the Board shall have the power to reduce payments for prior service annuities as provided in Section V of this Act.

7. Requirements and Conditions Applicable to Disability Benefits;

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board may, and upon his application shall, require any disability annuitant who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said annuitant or any other place mutually agreed upon, by a physician or physicians designated by the Board. Should any disability annuitant who has not yet attained the age of sixty (60) years refuse to submit to at least one (1) medical examination in any such periods by a physician or physicians designated by the Board, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the Board.

[See Compact Edition, Volume 5 for text of VII, 7(a)]

(b) Should a disability annuitant under the age of sixty (60) years be restored to active service in a participating department of a participating municipality, his retirement allowance shall cease, he shall again become a member of the System, and any reserves on his current service annuity at that time in the Current Service Annuity Reserve Fund shall be transferred to the Employees Saving Fund and to

the Municipality Current Service Accumulation Fund, respectively, in proportion to the original sum transferred to the Current Service Annuity Reserve Fund. Upon restoration to membership, any Prior Service Credit, Special Prior Service Credit, Antecedent Service Credit, or Updated Service Credit, on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement, he shall be credited with all his membership service. Should a disability annuitant die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such annuitant's accumulated deposits at the time of disability retirement exceed the current service annuity payments received by such annuitant under his disability allowance, if any such excess exists, shall be paid from the Current Service Annuity Reserve Fund to such annuitant if living; otherwise, such amount shall be paid to his estate unless he has directed such amount to be paid otherwise.

[See Compact Edition, Volume 5 for text of VII, 8 to XIII, 6]

Optional Provision for Increased Current Service Annuities

Sec. XIV. Any participating municipality electing to do so may provide for an increased current service annuity reserve at retirement of employees of such municipality, upon the following terms and conditions:

[See Compact Edition, Volume 5 for text of XIV, 1 to 5]

6. The increased rate of contributions authorized hereunder shall only be made effective at the beginning of a calendar year. A municipality beginning participation in the System on or after January 1, 1976, however, may elect to begin participation on the basis of contributing at retirement one hundred fifty percent (150%) or two hundred percent (200%) of its member's accumulated deposits arising from service during each year such undertaking remains in effect.

7. A participating municipality may revert to current-service contributions on an equal-matching basis, or reduce from two hundred per centum (200%) matching to one hundred fifty per centum (150%) matching of deposits as to any service rendered by its members or after the 1st day of January of the ensuing calendar year after adoption of an ordinance terminating (as to such future service) contributions at the higher percentages allowed under this Section; provided such ordinance shall have been adopted prior to the 1st day of January of the ensuing calendar year.

Optional Provision for Antecedent Service Credits

Sec. XV. Any participating municipality electing to do so may provide for "special prior service credits" to be allowed as to employees of such municipality retiring subsequent to the effective date of the undertaking of the municipality to provide such increased credits, upon the following terms and conditions:

[See Compact Edition, Volume 5 for text of XV, (1) to (6)]

(7) No participating municipality may allow special prior service credits after January 1, 1976, but any such credits theretofore allowed shall remain in effect, unless supplanted by Updated Service Credits allowed by such municipality.

Optional Provision for Antecedent Service Credits

Sec. XVI. Subject to the terms and conditions hereinafter stated, any participating municipality electing to do so may undertake to grant antecedent service credit to those persons in its employment at the effective date of the municipality's election to provide such credit.

[See Compact Edition, Volume 5 for text of XVI, (1) to (8)]

(9) No participating municipality may allow Antecedent Service Credits after January 1, 1976, but any such credits theretofore allowed shall continue in effect unless supplanted by Updated Service Credits allowed by such municipality.

Optional Provision for Updated Service Credits

Sec. XVII. (1)(a) Under the conditions hereinbelow set forth, any municipality participating in this System prior to January 1, 1975, may provide for each of its members to be granted an "Updated Service Credit" as a substitute for and in lieu of all Prior Service Credits, Special Prior Service Credits and Antecedent Service Credits theretofore allowed such member by reason of service with such municipality, or as a substitute for previously granted Updated Service Credits.

(b) Any municipality beginning participation between January 1, 1975, and December 1, 1975, shall not be eligible to allow Updated Service Credits until it has been a participating municipality in the System for one or more calendar years. Any municipality beginning participation on or after January 1, 1976, shall not be eligible to allow Updated Service Credits until it has been a participating municipality in the System for four or more calendar years.

(2) The governing body by ordinance shall determine whether to grant Updated Service Credits to

members by reason of employment with such municipality, and shall designate the effective date of election of such credits; provided that the date elected shall be the beginning of any calendar year subsequent to the effective date of this section and further provided that the System shall receive the ordinance prior to the effective date of election. Except for the first election to grant Updated Service Credits, the effective date of any such election by a participating municipality must be four or more years subsequent to the effective date of any previous election.

(3) Updated Service Credit shall mean such percentage (any multiple of ten percent (10%) but not exceeding one hundred percent (100%)) of the "Base Updated Service Credit" as the governing body may select; provided, however, that each member shall be entitled as a minimum to an Updated Service Credit that is equal to the total of the member's Accumulated Prior Service Credit, Accumulated Special Prior Service Credit and Accumulated Antecedent Service Credit, or his previously granted Accumulated Updated Service Credit, as of the study date. The study date on which updated service credits are calculated shall be one year prior to the effective date of election of such Updated Service Credits.

(4) "Base Updated Service Credit" shall be determined as the number 1.03 multiplied by the difference by which the amount calculated as provided in (a) below, exceeds the amount calculated as provided in (b) below, and where:

"(a)" is an amount equivalent to the accumulation at three percent (3%) interest of a series of monthly payments for the number of months of creditable service standing to the credit of the member for service to the study date. Each such monthly payment shall be equal to the member's average updated service compensation, as defined below, multiplied by the sum of (1) the member's deposit rate and (2) the member's deposit rate multiplied by the municipal current service matching ratio in effect at the effective date of election. "Average updated service compensation" means the monthly average compensation received by an employee member for the three (3) years immediately preceding the study date; but if there are less than three (3) years of such service, the average shall be computed for the number of months of such service within such thirty-six (36) month period. If an employee member has no service during the three (3) years immediately preceding the study date, then the average shall be computed for the three (3) years, or fraction thereof, of service rendered in the most recent period preceding the study date; and

"(b)" is an amount equal to the sum of: (1) the member's accumulated contributions on the study date subject to a 1 to 1 matching ratio multiplied by 2, and (2) the member's accumulated contributions on the study date subject to a 1.5 to 1 matching ratio multiplied by 2.5, and (3) the member's accumulated contributions on the study date subject to a 2 to 1 matching ratio multiplied by 3.

(5) Municipality liabilities attributable to Updated Service Credits shall be an obligation of the municipality to the Municipality Prior Service Accumulation Fund and shall be paid for by prior service contributions by the participating municipality as provided elsewhere in this statute. The actuary shall annually determine the municipality prior service contribution rate necessary to pay for these liabilities and other liabilities of the municipality to the Municipality Prior Service Accumulation Fund.

(6) No Updated Service Credit shall be permitted, and no provision therefor shall become effective, unless and until the proposal is approved by the Board as conforming to requirements of this Act. The Board shall adopt such rules as it deems necessary to insure that the System receives from the participating municipality such certified information as is required by the actuary in sufficient time to make the necessary studies prior to the effective date of election of Updated Service Credits. The Board shall not approve the allowance of Updated Service Credit by any participating municipality until it shall have been determined (according to calculations made by the Actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board) that (a) all obligations of the Municipality Prior Service Accumulation Fund including those arising from the Updated Service Credits can be funded by the municipality within its maximum total contribution rate by the end of the twenty-fifth year from the latest effective date of election of allowance of Updated Service Credits, or from the latest effective date of increase in annuities to retired members and their beneficiaries, whichever period is longer; and (b) prior service annuities payable thereafter will not result in a probable future depletion of the Municipality's Prior Service Accumulation Fund with the resulting need to reduce prior service annuities payable to retired members.

(7) Accumulated Updated Service Credit shall mean Updated Service Credit accumulated at regular interest from the effective date of election of Updated Service Credits until the effective date of such member's retirement.

(8) Any participating municipality electing to provide Updated Service Credits must also elect on the same date to base member's monthly deposits on the member's total monthly earnings, if not previously so elected.

(9) Any municipality granting Updated Service Credits shall not be eligible to grant Special Prior Service Credits, as defined in Section XV, and Antecedent Service Credits, as defined in Section XVI, subsequent to their date of election of Updated Service Credits.

Optional Increases in Benefits to Persons Drawing Annuities

Sec. XVIII. (1) Subject to the limitations hereinbelow set out, any participating municipality may from time to time authorize and provide for increases in the current service annuities and prior service annuities being paid to retired employees and to beneficiaries of deceased employees of such municipality.

(2) The increased benefit shall be ten percent (10%), twenty percent (20%), thirty percent (30%), forty percent (40%), or fifty percent (50%) of the then benefit being paid to such retired member or beneficiary by reason of service performed by such member for the municipality undertaking to grant such increase; and the governing body of the municipality shall by ordinance determine the percentage of increase to be so allowed.

(3) On the effective date of such increased benefits, there shall be transferred out of the participating municipality's account in the Prior Service Accumulation Fund, to the Current Service Annuity Reserve Fund, the amount determined by the actuary as required to fund the increased liabilities attributable to the increases allowed by such municipality in the current service annuities being paid to its retired employees and beneficiaries of deceased employees.

(4) The reserves required to fund increases allowed by such municipality in the prior service annuities being paid to its retired employees and their beneficiaries, shall become a charge against and an additional obligation of the municipality's account in the Prior Service Accumulation Fund of the System; and such liabilities, together with all other liabilities chargeable to its account in the Municipality Prior Service Accumulation Fund, shall be paid for by contributions to said Fund as elsewhere provided in this statute. The actuary shall annually determine the municipality prior service contribution rate necessary to pay for the additional liabilities above, and all other liabilities of the municipality to the Municipality Prior Service Accumulation Fund, within a period of twenty-five (25) years from effective date of latest increases in annuities to retired members and beneficiaries, or from the latest effective date of allowance by the municipality of Updated Service Credits, whichever is later.

(5) The increases in benefits payable to retired employees and their beneficiaries may be made effective January 1, 1976, or on the first day of any year thereafter; provided, that no additional in-

crease in benefits shall be allowed by a participating municipality until four years have elapsed since the effective date of the latest increase in any such benefits.

(6) No increases in benefits being paid to retired members and their beneficiaries shall be permitted, and no provision therefor shall become effective, unless and until the proposal is approved by the Board as conforming to requirements of this Act. The Board shall not approve the allowance by any participating municipality of increases in annuities to retired employees and their beneficiaries, until it shall have been determined (according to calculations made by the Actuary and approved by the Board, on the basis of mortality and other tables adopted by the Board) that (a) all obligations of the municipality in the Municipality Prior Service Accumulation Fund, including those arising from such increased benefits can be funded by the municipality within its maximum total contribution rate by the end of the twenty-fifth year from the effective date of election of such increased benefits or the granting of Updated Service Credits, whichever is later, and (b) prior service annuities payable thereafter will not result in a probable future depletion of the municipality's account in the Municipality Prior Service Accumulation Fund with the resulting need to reduce prior service annuities payable to retired members.

[Amended by Acts 1975, 64th Leg., p. 382, ch. 171, §§ 1 to 16, eff. Sept. 1, 1975.]

Section 17 of the 1975 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 6243k. Retirement, Disability and Death Benefit Systems for Appointive City or Town Employees

An incorporated city or town may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the city or town voting on the proposition approve the creation at an election called for that purpose. Each member of the system shall contribute to the system an amount determined by the city or town, but not more than seven and one-half percent of his annual compensation paid by the city or town, and the city or town shall contribute for each member an equal amount. A member of a municipal system is eligible for disability benefits if he is disabled in the course of his employment with the city or town. A member is eligible for retirement benefits if he is 65 years old or older, or he is 60 years old but less than 65 years old and has been employed by the city or town for 25 years or more.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act was classified as art. 6228j; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R.No.3, 64th Legislature, Regular Session [so adopted at election held on April 22, 1975]."

TITLE 109A

PLUMBING

Art. 6243-101. Plumbing License Law of 1947

[See Compact Edition, Volume 5 for text of 1 to 13]

Prohibition Against Practicing Without License

Sec. 14. After the expiration of one hundred twenty days from the effective date of this Act, no person, whether as a master plumber, employing plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act; and after the expiration of one hundred twenty days from the effective date of this Act it shall be unlawful for any person to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein

defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby; and it shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act.

An offense under this Act is a Class C misdemeanor as defined by the Texas Penal Code.¹

[See Compact Edition, Volume 5 for text of 15 to 17]

[Amended by Acts 1975, 64th Leg., p. 1914, ch. 617, § 1, eff. Sept. 1, 1975.]

¹ See Penal Code, § 12.23.

TITLE 110A

PUBLIC OFFICES, OFFICERS AND EMPLOYEES

Article

6252-8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee [NEW].

6252-13a. Administrative Procedure and Texas Register Act [NEW].

6252-20a. Longevity Pay for Certain Commissioned Law-Enforcement Personnel [NEW].

6252-26. Payment by State of Actual Damages Adjudged in Actions Against Certain State Employees; Defense by Attorney General [NEW].

Art. 6252-8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee

A state employee who resigns, is dismissed, or separated from state employment shall be entitled to be paid in a lump sum for all vacation time duly accrued at the time of separation from state employment; provided the employee has had continuous employment with the state for six months.

[Acts 1975, 64th Leg., p. 766, ch. 298, § 1, eff. May 27, 1975.]

Art. 6252-9b. Standards of Conduct of State Officers and Employees

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. In this Act:

[See Compact Edition, Volume 5 for text of 2(1) to (4)]

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Industrial Commission;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Building Commission;

(viii) a member of the State Board of Control;

(ix) a member of the Texas Board of Corrections;

(x) a member of the Board of Trustees of the Employees Retirement System of Texas;

(xi) a member of the State Highway Commission;

(xii) a member of the Industrial Accident Board;

(xiii) a member of the State Board of Insurance;

(xiv) a member of the Board of Pardons and Paroles;

(xv) a member of the Parks and Wildlife Commission;

(xvi) a member of the Public Safety Commission;

(xvii) the Secretary of State;

(xviii) a member of the State Securities Board;

(xix) a member of the Texas Vending Commission;

(xx) a member of the Texas Water Development Board;

(xxi) a member of the Texas Water Quality Board;

(xxii) a member of the Texas Water Rights Commission;

(xxiii) a member of the Coordinating Board, Texas College and University System;

(xxiv) a member of the Texas Employment Commission;

(xxv) a member of the State Banking Board;

(xxvi) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvii) a member of the Credit Union Commission; or

(xxviii) a member of the School Land Board.

[See Compact Edition, Volume 5 for text of 2(5)(B) to 15]

[Amended by Acts 1975, 64th Leg., p. 2351, ch. 721, § 86, eff. Sept. 1, 1975.]

Art. 6252-9c. Registration and Reporting Requirements of Persons Engaged in Activities Designed to Influence Legislation

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

Definitions

Sec. 2. As used in this Act:

(1) "Person" means an individual, corporation, association, firm, partnership, committee, club, or other organization, or a group of persons who are voluntarily acting in concert.

(2) "Legislation" means a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature; any other matter which is or may be the subject of action by either house, or any committee thereof, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or any matter pending in or which may be the subject of action by a constitutional convention.

(3) "Legislative branch" means a member, member-elect, candidate for, or officer of the legislature or a legislative committee, or an employee of the legislature.

(4) "Executive branch" means an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of government.

(5) "Communicates directly with," "communicated directly with," "communicating directly with," "directly communicating with," and "direct communication" mean contact in person or by telephone, telegraph, or letter.

(6) "Compensation" means money, service, facility, or thing of value or financial benefit which is received or to be received in return for or in connection with services rendered or to be rendered.

(7) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(8) "Secretary" means the Secretary of State of the State of Texas.

(9) "Registrant" means a person required by Section 3 of this Act to register.

Persons Required to Register

Sec. 3. The following persons must register with the secretary as provided in Section 5 of this Act:

(a) a person who makes a total expenditure in excess of \$200 in a calendar quarter, not including his own travel, food, or lodging expenses, or his own membership dues, for communicating

directly with one or more members of the legislative or executive branch to influence legislation; and

(b) A person who receives compensation or reimbursement from another to communicate directly with a member of the legislative or executive branch to influence legislation. This subsection requires the registration of a person, other than a member of the judicial, legislative, or executive branch, who, as a part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation on behalf of the person by whom he is compensated or reimbursed, whether or not any compensation in addition to the salary for that regular employment is received for the communication.

Exceptions

Sec. 4. The following persons are not required to register under the provisions of this Act:

(1) persons who own, publish, or are employed by a newspaper or other regularly published periodical, or a radio station, television station, wire service, or other bona fide news medium which in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements which directly or indirectly oppose or promote legislation, if such persons engage in no further or other activities and represent no other persons in connection with influencing legislation;

(2) persons whose only direct communication with a member of the legislative or executive branch to influence legislation is an appearance before or testimony to one or more members of the legislative or executive branch in a hearing conducted by or on behalf of either the legislative or executive branch if such persons receive no special or extra compensation for their appearance other than actual expenses in attending the hearing;

(3) persons who encourage or solicit others to communicate directly with members of the legislative or executive branch to influence legislation; and

(4) persons whose only activity to influence legislation is compensating or reimbursing an individual registrant to act in their behalf to communicate directly with a member of the legislative or executive branch to influence legislation.

Registration

Sec. 5. (a) Every person required to register under this Act shall file a registration form with the

secretary within five days after the first direct communication with a member of the legislative or executive branch requiring such person's registration.

(b) The registration shall be written, verified, and shall contain the following information:

- (1) the registrant's full name and address;
- (2) the registrant's normal business and business address;

(3) the full name and address of each person who paid a membership fee, dues or other assessment in excess of \$500 during the preceding calendar or fiscal year to the registrant or to the person by whom the registrant is reimbursed, retained, or employed regardless of whether it was paid solely to influence legislation;

(4) the full name and address of each person:

(A) by whom the registrant is reimbursed, retained, or employed to communicate directly with a member of the legislative or executive branch to influence legislation; and

(B) on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation; and

(5) a specific description of, or, if pending, the number assigned to the legislation about which the registrant has communicated directly with a member of the legislative or executive branch to influence legislation, including, if known, the bill numbers and, if known, whether the registrant supports or opposes each bill listed.

(c) If a registrant's activities are done on behalf of the members of a group other than a corporation, the registration form shall include a statement of the number of members of the group and a full description of the methods by which the registrant develops and makes decisions about positions on policy.

Supplemental Registration and Activities Report

Sec. 6. (a) Every person registered under Section 5 of this Act shall file with the secretary a report concerning the activities set out in Subsection (b) of this section. The report must be filed:

(1) between the 1st and 10th day of each month subsequent to a month in which the legislature is in session covering the activities during the previous month; and

(2) between the 1st and 10th day of each month immediately subsequent to the last month in a calendar quarter when the legislature is not in session covering the activities during the previous quarter.

(b) The report shall be written, verified, and contain the following information:

(1) the total expenditures made by the registrant for directly communicating with a member of the legislative or executive branch to influence legislation, including expenditures made by others on behalf of the registrant for those direct communications if the expenditures were made with his express or implied consent or were ratified by him. The expenditures for directly communicating with a member of the legislative or executive branch to influence legislation shall be stated in the following categories:

(A) postage;

(B) telegraph;

(C) publication, printing, and reproduction;

(D) entertainment, including any transportation, dining, lodging, or admission expenses incurred in connection with such entertainment; and

(E) gifts or loans, other than contributions as defined by Article 14.01 of the Texas Election Code;

(2) a list of legislation, including, if pending, the number assigned to the legislation, about which the registrant, any person retained or employed by the registrant to appear on his behalf, or any other person appearing on his behalf, communicated directly with a member of the legislative or executive branch, including, if known, a statement of the registrant's position on such legislation.

(c) Each person who made expenditures on behalf of a registrant that are required to be reported by Subsection (b) of this section or who has other information required to be reported by the registrant under this Act shall provide a full, verified account of his expenditures to the registrant at least seven days before the registrant's report is due to be filed.

Termination Notice

Sec. 7. (a) A person who ceases to engage in activities requiring him to register under this Act shall file a written, verified statement with the secretary acknowledging the termination of activities. The notice is effective immediately.

(b) A person who files a notice of termination under this section must file the reports required under Section 6 of this Act for any reporting period during which he was registered under this Act.

[See Compact Edition, Volume 4 for text of 8]
Penalty

Sec. 9. (a) A person, as defined in this Act, who violates any provision of this Act other than Section 11 commits a Class A misdemeanor. A person, as defined in this Act, who violates Section 11 of this Act commits a felony of the third degree. Nothing in this Act relieves a person of criminal responsibility under the laws of this state relating to perjury.

(b) A person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation and who fails to file any registration form or activities report which such person is required to file by this Act, in addition, shall pay to the state an amount equal to three times the compensation, reimbursement, or expenditure.

[See Compact Edition, Volume 4 for text of 10 to 17]

[Amended by Acts 1975, 64th Leg., p. 1811, ch. 550, §§ 1 and 2, eff. Sept. 1, 1975.]

Art. 6252-13. Repealed by Acts 1975, 64th Leg., p. 136, ch. 61, § 22, eff. Jan. 1, 1976

See, now, art. 6252-13a.

Art. 6252-13a. Administrative Procedure and Texas Register Act

Purpose

Sec. 1. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

Short Title

Sec. 2. This Act shall be known and may be cited as the Administrative Procedure and Texas Register Act.

Definitions

Sec. 3. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an

agency after an opportunity for adjudicative hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

(8) "Register" means the Texas Register established by this Act.

Public Information; Adoption of Rules; Availability of Rules and Orders

Sec. 4. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

(2) index and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(3) index and make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision made or issued on or after the effective date of this Act is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been indexed and made available for public inspection as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order, or decision.

Procedure for Adoption of Rules

Sec. 5. (a) Prior to the adoption of any rule, an agency shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall

be filed with the secretary of state and published by the secretary of state in the Texas Register. The notice must include:

- (1) a brief explanation of the proposed rule;
- (2) the text of the proposed rule, except any portion omitted as provided in Section 6(c) of this Act, prepared in a manner to indicate the words to be added or deleted from the current text, if any;
- (3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;
- (4) a request for comments on the proposed rule from any interested person; and
- (5) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the register. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

(c) Prior to the adoption of any rule, an agency shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The agency shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

(d) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under Subsections (a) and (c) of this section is not precluded. An emergency rule adopted under the provisions of this subsection, and the agency's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

(e) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of

this section must be commenced within two years after the effective date of the rule.

(f) An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. Each agency also is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of these committees are advisory only.

Creation of Texas Register

Sec. 6. (a) The secretary of state shall compile, index, and publish a publication to be known as the Texas Register, which shall contain:

(1) notices of proposed rules issued after the effective date of this Act and filed in the office of the secretary of state as provided in Section 5 of this Act;

(2) the text of rules adopted after the effective date of this Act and filed in the office of the secretary of state;

(3) notices of open meetings issued after the effective date of this Act and filed in the office of the secretary of state as provided by law;

(4) executive orders issued by the governor after the effective date of this Act;

(5) summaries of requests made after the effective date of this Act for opinions of the attorney general, which shall be prepared by the attorney general and forwarded to the secretary of state;

(6) summaries of opinions of the attorney general issued after the effective date of this Act, which shall be prepared by the attorney general and forwarded to the secretary of state; and

(7) other information of general interest to the public of Texas, which may include, but is not limited to, federal legislation or regulations affecting the state or state agencies and state agency organizational and personnel changes.

(b) The secretary of state shall publish the register at regular intervals, but not less than 100 times each calendar year.

(c) The secretary of state may omit from the register any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the register contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained.

(d) One copy of each issue of the register shall be made available free on request to each board, commission, and department having statewide jurisdiction, to the governor, to the lieutenant governor, to the attorney general, to each member of the legislature, to each county clerk in the state, and to the supreme court, court of criminal appeals, and each court of civil appeals.

(e) The secretary of state shall make copies of the register available to other persons on payment of reasonable fees to be fixed by the secretary of state.

Filing of Existing Documents

Sec. 7. Before March 1, 1976, each agency shall file in the office of the secretary of state two certified copies of each rule existing on the effective date of this Act. Existing rules become effective immediately on filing with the secretary of state.

Filing Procedures

Sec. 8. (a) Each agency shall file a document for publication in the Texas Register by delivering to the office of the secretary of state during normal working hours two certified copies of the document to be filed. On receipt of a document required by this Act to be filed in the office of the secretary of state and published in the register, the secretary of state shall note the day and hour of filing on the certified copies. One certified copy of each filed document must be maintained in original form or on microfilm in a permanent register in the office of the secretary of state and, on filing, shall be made available immediately for public inspection during regular business hours.

(b) If there is a conflict, the official text of a rule is the text on file with the secretary of state, and not the text published in the register or on file with the issuing agency.

(c) The secretary of state may promulgate rules to insure the effective administration of this Act. The rules may include, but are not limited to, rules prescribing paper size and the format of documents required to be filed by this Act. The secretary of state may refuse to accept for filing and publication any document that does not substantially conform to the promulgated rules.

(d) The secretary of state may maintain on microfilm the files of agency rules and any other information required by this Act to be published in the register and, after microfilming, destroy the original copies of all information submitted for publication.

Tables of Contents; Certification; Liaison

Sec. 9. (a) Each issue of the register must contain a table of contents.

(b) A cumulative index to all information required by this Act to be published during the previous year shall be published at least once each year.

(c) Each document submitted to the secretary of state for filing or publication as provided in this Act must be certified by an official of the submitting agency authorized to certify documents of that agency.

(d) Each agency shall designate at least one individual to act as a liaison through whom all required documents may be submitted to the secretary of state for filing and publication.

Effect of Filing

Sec. 10. (a) Each rule hereafter adopted becomes effective 20 days after the filing of two certified copies in the office of the secretary of state, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date; and

(2) subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately on filing with the secretary of state, or on a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare; and

(3) if a federal statute or regulation requires that an agency implement a rule by a certain date, the rule is effective on the prescribed date.

(b) An agency finding, as described in Subsection (a)(2) of this section, and a brief statement of the reasons for it, shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided in Subsection (a)(3) of this section shall be filed in the office of the secretary of state and published in the register.

Petition for Adoption of Rules

Sec. 11. Any interested person may petition an agency requesting the adoption of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 5 of this Act.

Declaratory Judgment on Validity or Applicability of Rules

Sec. 12. The validity or applicability of any rule, including an emergency rule adopted under Section

5(d) of this Act, may be determined in an action for declaratory judgment in a district court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency must be made a party to the action. A declaratory judgment may be rendered whether the plaintiff has requested the agency to pass on the validity or applicability of the rule in question. However, no proceeding brought under this section may be used to delay or stay a hearing after notice of hearing has been given if a suspension, revocation, or cancellation of a license by an agency is at issue before the agency.

Contested Cases; Notice; Hearings; Records

Sec. 13. (a) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

(b) The notice must include:

- (1) a statement of time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the matters asserted.

(c) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(d) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) The record in a contested case includes:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings of them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or members

of the agency who are involved in making the decision.

(g) Proceedings, or any part of them, must be transcribed on written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties. This Act does not limit an agency to a stenographic record of proceedings.

(h) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

Rules of Evidence, Official Notice

Sec. 14. (a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) In connection with any contested case held under the provisions of this Act, an agency may swear witnesses and take their testimony under oath.

(c) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1) and (2) of this section, an agency shall issue a subpoena addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(d) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1) and (2) of this section, an agency shall issue a commission, addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding. The deposition of a

member of an agency board may not be taken after a date has been set for hearing.

(e) The place of taking the depositions shall be in the county of the witness' residence, or where the witness is employed or regularly transacts business in person. The commission shall authorize and require the officer or officers to whom it is addressed, or either of them, to examine the witness before him on the date and at the place named in the commission and to take answers under oath to questions which may be propounded to the witness by the parties to the proceeding, the agency, or the attorneys for the parties or the agency. The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

(f) The witness shall be carefully examined, the testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under the officer's personal supervision, or by the deponent in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent.

(g) The officer taking the oral deposition may not sustain objections to any of the testimony taken, or exclude any of it, and any of the parties or attorneys engaged in taking testimony have their objections reserved for the action of the agency before which the matter is pending. The administrator or other officer conducting the hearing is not confined to objections made at the taking of the testimony.

(h) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and read to or by the witness, unless the examination and reading are waived by the witness and by the parties in writing. However, if the witness is a party to the contested case pending before the agency with an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that the deposition is ready for examination and reading at the office of the deposition officer, and if the witness does not appear and examine, read, and sign the deposition within 20 days after the mailing of the notice, the deposition shall be returned as provided in this Act for unsigned depositions. In any event, the witness must sign the deposition at least three days prior to the hearing, or it shall be returned as provided in this Act for unsigned depositions. Any changes in form or substance which the witness desires to make shall be entered on the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties present at the taking of the deposition by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposi-

tion is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given for failure to sign. The deposition may then be used as fully as though signed.

(i) A deposition may be returned to the agency before which the contested case is pending either by mail, or by a party interested in taking the deposition, or by any other person. If returned by mail, the agency shall endorse on the deposition that it was received from the post office and shall cause the agency employee so receiving the deposition to sign it. If not sent by mail, the person delivering it to the agency shall make affidavit before the agency that he received it from the hands of the officer before whom it was taken, that it has not been out of his possession since, and that it has undergone no alteration.

(j) A deposition, after being filed with the agency, may be opened by any employee of the agency at the request of either party or his counsel. The employee shall endorse on the deposition on what day and at whose request it was opened, signing the deposition, and it shall remain on file with the agency for the inspection of any party.

(k) Regardless of whether cross interrogatories have been propounded, any party is entitled to use the deposition in the contested case pending before the agency.

(l) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

(1) mileage of 10 cents a mile, or a greater amount as prescribed by agency rule, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of \$10 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a witness or deponent.

(m) Mileage and fees to which a witness is entitled under this section shall be paid by the party or agency at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the agency.

(n) In the case of failure of a person to comply with a subpoena or commission issued under the authority of this Act, the agency issuing the subpoena or commission, acting through the attorney agen-

eral, or the party requesting the subpoena or commission, may bring suit to enforce the subpoena or commission in a district court in Travis County. The court, if it determines that good cause exists for the issuance of the subpoena or commission, shall order compliance with the requirements of the subpoena or commission. Failure to obey the order of the court may be punished by the court as contempt.

(o) In contested cases, documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(p) In contested cases, a party may conduct cross-examinations required for a full and true disclosure of the facts.

(q) In connection with any hearing held under the provisions of this Act, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(r) In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Examination of Record by Agency

Sec. 15. If in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the officials who are to render the decision. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section.

Decisions and Orders

Sec. 16. (a) A final decision or order adverse to a party in a contested case must be in writing or stated in the record.

(b) A final decision must include findings of fact and conclusions of law, separately stated. Findings

of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If an agency board includes a member who (1) receives no salary for his work as a board member and who (2) resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication. If an agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by other than a majority of the officials of an agency, the agency may prescribe a longer period of time within which the final order or decision of the agency shall be issued. The extension, if so prescribed, shall be announced at the conclusion of the hearing.

(e) Except as provided in Subsection (c) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the agency within 25 days after the date of rendition of the final decision or order, and agency action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The agency may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the

date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

(f) The parties may by agreement with the approval of the agency provide for a modification of the times provided in this section.

Ex Parte Consultations

Sec. 17. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

Licenses

Sec. 18. (a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

Judicial Review of Contested Cases

Sec. 19. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in a District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

(1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under

the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appeals

Sec. 20. Appeals from any final judgment of the district court may be taken by any party in the manner provided for in civil actions generally, but no appeal bond may be required of an agency.

Exceptions

Sec. 21. (a) This Act does not apply to suspensions of driver's licenses as authorized in Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

(b) Sections 12 through 20 of this Act do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs of the State Department of Public Welfare.

(c) Sections 12 through 20 of this Act do not apply to the Texas Department of Mental Health and Mental Retardation in the allocation of grants-in-aid by the department to mental health and mental retardation services provided by community centers.

Repeal of Conflicting Laws

Sec. 22. Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes), and all other laws and parts of laws in conflict with this Act are repealed. This Act does not repeal any existing statutory provisions conferring investigatory authority on any agency, including any provision which grants an agency the power, in connection with

investigatory authority, to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings, or issue subpoenas or summons.

Effective Date

Sec. 23. This Act takes effect on January 1, 1976.

[Acts 1975, 64th Leg., p. 136, ch. 61, §§ 1 to 23, eff. Jan. 1, 1976.]

Art. 6252-16. Discrimination Against Persons Because of Race, Religion, Color, Sex or National Origin

[See Compact Edition, Volume 5 for text of 1 and 2]

Officers or Employees of Political Subdivisions; Discriminatory Employment Practices; Hearing Procedure

Sec. 2a. (a) A political subdivision of this state may establish a formal procedure by ordinance or other action of the governing body for processing a charge of a discriminatory act or practice prohibited by Section 1(a)(1) or (2) of this Act, against an officer or employee of the political subdivision. The political subdivision which adopts this formal procedure shall have authority to promulgate rules and regulations to effectuate the purpose of this Act.

(b) The procedure must include the following:

- (1) Provision for an impartial hearing within a reasonable time after the receipt of a written charge;
- (2) Appointment of an impartial hearing officer or board to investigate and determine the validity of the charge;
- (3) Delegation of authority to the impartial hearing officer or board to take appropriate corrective action if a violation has occurred, including, but not limited to, reinstatement, hiring, or promotion of the aggrieved individual, with or without back pay, or any other equitable relief necessary to correct and rectify the violation; and
- (4) Designation of an officer as the deferral officer to receive notice of alleged unlawful employment practices from the Equal Employment Opportunity Commission as provided for in Public Law 88-352, Title VII, Section 706(c); 78 Stat. 241 (42 U.S.C. 2000e-5).

(c) If a political subdivision establishes a formal procedure in compliance with this section, the deferral officer designated in the procedure shall become the appropriate local official for purposes of receiving the notice as set out in Section 4 of this Act.

[See Compact Edition, Volume 5 for text of 3 and 4]

[Amended by Acts 1975, 64th Leg., p. 366, ch. 157, § 1, eff. Sept. 1, 1975.]

Art. 6252-17. Prohibition on Governmental Bodies From Holding Meetings Which are Closed to the Public

[See Compact Edition, Volume 5 for text of 1 to 3]

Notice of Meetings

Sec. 3A.

[See Compact Edition, Volume 5 for text of 3A(a) to (g)]

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Industrial Accident Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be expressed in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

[See Compact Edition, Volume 5 for text of 4 and 5]

[Amended by Acts 1975, 64th Leg., p. 968, ch. 367, § 1, eff. Sept. 1, 1975.]

Art. 6252-17a. Access by Public to Information in Custody of Government Agencies and Bodies

[See Compact Edition, Volume 5 for text of 1 to 13]

Interpretation of this Act

Sec. 14.

[See Compact Edition, Volume 5 for text of 14(a) to (d)]

(e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

[See Compact Edition, Volume 5 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 809, ch. 314, § 1, eff. May 27, 1975.]

Section 2 of the 1975 amendatory act, the emergency clause, provided, in part:

"The regulations promulgated by the Secretary of Health, Education and Welfare pursuant to the authority of the Family Educational Rights and Privacy Act of 1974 require, as a condition for federal funding, that educational institutions certify compliance with the provisions of such Act. Without the amendment contained in this bill the educational institutions of the State of Texas cannot make the required certification and will be unable to qualify for federal funds * * *"

Art. 6252-20a. Longevity Pay for Certain Commissioned Law-Enforcement Personnel

All commissioned law-enforcement personnel of the Department of Public Safety, all commissioned law-enforcement personnel of the State Board of Control, all commissioned law-enforcement personnel of the Texas Alcoholic Beverage Commission, all law-enforcement officers commissioned by the Texas Parks and Wildlife Commission, all commissioned peace officers of state institutions of higher education, and all law-enforcement personnel commissioned by the Texas Department of Corrections shall be paid as longevity pay \$4 per month for each year of service in the respective agency, up to and including 25 years in service. This longevity pay shall be in lieu of existing longevity pay.

[Acts 1975, 64th Leg., p. 1274, ch. 477, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided: "This Act takes effect September 1, 1975."

Art. 6252-26. Payment by State of Actual Damages Adjudged in Actions Against Certain State Employees; Defense by Attorney General

Sec. 1. (a) The State of Texas shall pay actual damages adjudged against officers, employees, or members of the Texas Department of Mental Health and Mental Retardation, Texas Department of Cor-

rections, State Military Forces, Texas Youth Council, State Department of Health,¹ State Commission for the Blind, Texas Rehabilitation Commission, or Texas Department of Public Safety, or against an employee of a state-supported institution of higher education who is involved in health related activities and is not directly or indirectly compensated on a fee for service basis, or against the estate of such an officer, employee or member:

(1) based on an act or omission by the officer, employee, or member in the exercise of his duties for the department or agency;

(2) arising out of a cause of action against the officer, employee, or member for medical malpractice or for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States; and

(3) only to the extent that the damages are not paid under a contract of insurance.

(b) The benefits of this Act inure only to the officers, employees, and members covered by this Act. This Act does not enlarge or diminish the

rights of any party. No payment by the state may be made under this Act if damages are found by the trial court to have been proximately caused by the officer's, employee's, or member's willful and wrongful act or gross negligence.

Sec. 2. The attorney general shall defend an officer, employee, or member or his estate in a cause of action covered by this Act. Any officer, employee, or member against whom a cause of action covered by this Act is brought shall deliver to his department or agency all process served on him not later than 10 days after it is served. The attorney general may settle or compromise the portion of a lawsuit that may result in liability of the state under this Act.

Sec. 3. A member of the commission, board, or other governing body of an agency is an officer of the agency for purposes of this Act.

[Acts 1975, 64th Leg., p. 799, ch. 309, §§ 1 to 3, eff. May 27, 1975.]

¹ Name changed to Department of Health Resources; see art. 4414a.

TITLE 113A

REAL ESTATE DEALERS

Art. 6573a. The Real Estate License Act

Short Title; License Required; Responsibility for Acts and Conduct; Compensation and Commissions

Sec. 1. (a) This Act shall be known and may be cited as "The Real Estate License Act."

(b) It is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the Texas Real Estate Commission. It is unlawful for a person licensed as a real estate salesman to act or attempt to act as a real estate agent unless he is, at such time, associated with a licensed Texas real estate broker and acting for the licensed real estate broker.

(c) Each real estate broker licensed pursuant to this Act is responsible to the commission, members of the public, and his clients for all acts and conduct performed under this Act by himself or by a real estate salesman associated with or acting for the broker.

(d) No real estate salesman shall accept compensation for real estate sales and transactions from any person other than the broker under whom he is at the time licensed.

(e) No real estate salesman shall pay a commission to any person except through the broker under whom he is at the time licensed.

Definitions

Sec. 2. As used in this Act:

(1) "Real estate" means a leasehold, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(2) "Real estate broker" means a person who, for another person and for a fee, commission, or other valuable consideration, or with the intention or in the expectation or on the promise of receiving or collecting a fee, commission, or other valuable consideration from another person:

(A) sells, exchanges, purchases, rents, or leases real estate;

(B) offers to sell, exchange, purchase, rent, or lease real estate;

(C) negotiates or attempts to negotiate the listing, 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) aids, attempts, or offers to aid in locating or obtaining for purchase, rent, or lease any real estate;

(I) procures or assists in the procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate; or

(J) procures or assists in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate.

(3) "Broker" also includes a person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes a person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning the real estate to brokers, or both.

(4) "Real estate salesman" means a person associated with a Texas licensed real estate broker for the purposes of performing acts or transactions comprehended by the definition of "real estate broker" as defined in this Act.

(5) "Person" means an individual, a partnership, or a corporation, foreign or domestic.

(6) "Commission" means the Texas Real Estate Commission.

(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; the word "and" may be read "or"; and the word "or" may be read "and."

Exemptions

Sec. 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

- (a) an attorney at law licensed in this state or in any other state;
- (b) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;
- (c) a public official in the conduct of his official duties;
- (d) a person acting officially as a receiver, trustee, administrator, executor, or guardian;
- (e) a person acting under a court order or under the authority of a will or a written trust instrument;
- (f) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;
- (g) an on-site manager of an apartment complex;
- (h) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;
- (i) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;
- (j) transactions involving the sale, lease, or transfer of cemetery lots.

Acts Constituting Broker or Salesman

Sec. 4. A person who, directly or indirectly for another, with the intention or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs, a single act defined in Subdivisions 2 and 3, Section 2 of this Act, whether as a part of a transaction, or as an entire transaction, is deemed to be acting as a real estate broker or salesman within the meaning of this Act. The commission of a single such act by a person required to be licensed under this Act and not so licensed shall constitute a violation of this Act.

Real Estate Commission; Disposition of Fees; Research Center

Sec. 5. (a) The administration of the provisions of this Act is vested in a commission, to be known as the "Texas Real Estate Commission," consisting of six members to be appointed by the governor with the advice and consent of two-thirds of the senate present. The commissioners hold office for six years or until their successors are appointed and have qualified. Within 15 days after their appointments, they shall qualify by taking the constitutional oath of office and furnishing a bond payable to the Governor of Texas in the penal sum of \$10,000, conditional on the faithful performance of their duties as prescribed by law. A vacancy for any cause shall be filled by the governor for the unexpired term. The members of the commission in office at the effective date of this Act shall constitute the commission and shall continue in office until the 5th day of October of the years in which their respective terms expire, or until their successors are appointed and have qualified. At a regular meeting in October of each year, the commission shall elect from its own membership a chairman, vice-chairman, and secretary. A quorum of the commission consists of four members.

(b) All members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(c) Each member of the commission shall be a citizen of Texas and a qualified voter, and shall have been engaged in the real estate brokerage business as a licensed real estate broker as his major occupation for at least five years next preceding his appointment.

(d) Each member of the commission shall receive as compensation for each day actually spent on his official duties the sum of \$50 and his actual and necessary expenses incurred in the performance of his official duties.

(e) The commission shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposes and intent of this Act or to insure compliance with the provisions of this Act. In addition to any other action, proceeding, or remedy authorized by law, the commission shall have the right to institute an action in its own name to enjoin any violation of any provision of this Act or any rule or regulation of the commission and in order for the commission to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having

jurisdiction of said cause. The commission shall not be required to give any appeal bond in any action or proceeding to enforce the provisions of this Act.

(f) The commission is 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 are necessary to administer this Act. The salaries of the administrator and the officers and employees shall be fixed by the commission not to exceed such amounts as are fixed by the applicable 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.

(g) When in this Act a power, right, or duty is conferred on the commission, the power, right, or duty shall be exercised by the administrator or by the assistant administrator, unless the commission directs otherwise by an order entered in the minutes of a commission meeting; and in such case, the power, right, or duty shall rest in or on the commission. Service of process on the administrator or assistant administrator shall be service of process on the commission. 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 or assistant administrator. A decision, order, or act of the commission referred to in this Act, other than an order of the commission relative to the administrator or his powers, rights, or duties, means and includes an order, decision, or act of the administrator or of the assistant administrator when duly acting for the administrator. Where the commission is authorized in this Act to delegate authority or to designate agents, the administrator, or the assistant administrator when duly acting for the administrator, shall have the right and the power to delegate authority and designate agents, unless the commission shall enter its order in the minutes of a commission meeting directing otherwise. The administrator, or the assistant administrator when duly acting for the administrator, shall act as manager, secretary, and custodian of all records, unless the commission shall otherwise order, and each shall devote his entire time to his office.

(h) The commission shall adopt a seal of a design which it shall prescribe. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original.

(i) Except as provided in Subsection (j) of this section, all money derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall be placed by the State Treasurer in a separate fund to be available for the use of the commission in

the administration of this Act on requisition by the commission. A necessary amount of the money so paid into the State Treasury is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses necessary and proper for the administration of this Act, including equipment and maintenance of supplies for the offices or quarters occupied by the commission, and necessary travel expenses for the commission or persons authorized to act for it when performing duties under this Act. At the end of the state fiscal year, any unused portion of the funds in the special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be paid into the General Revenue Fund. The comptroller shall, on requisition of the commission, draw warrants from time to time on the State Treasurer for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. However, all money 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.

(j) Fifteen dollars received by the commission for each annual certification of real estate broker licensure status and \$7.50 received by the commission for each annual certification of real estate salesman licensure status shall be transmitted to Texas A&M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of the center.

Licenses; Qualification

Sec. 6. (a) A person desiring to act as a real estate broker in this state shall file an application for a license with the commission on a form prescribed by the commission. A broker desiring to engage a person to participate in real estate brokerage activity shall join the person in filing an application for a salesman license on a form prescribed by the commission.

(b) To be eligible for a license, an individual must be a citizen of the United States, be at least 18 years of age, and be a legal resident of Texas for at least six months immediately preceding the filing of an application, and must satisfy the commission as to his honesty, trustworthiness, integrity, and competency. However, the competency of the individual, for the purpose of qualifying for the granting of licensure privileges, shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

(c) To be eligible for a license, a corporation must designate one of its officers to act for it. The designated person must be a citizen of the United States, be at least 18 years of age, and be a resident of Texas for at least six months immediately preceding the filing of an application, and must be qualified to be licensed individually as a real estate broker. However, the competency of the person shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

Examinations; Educational Requirements

Sec. 7. (a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for real estate licensure fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement shall be satisfied within one year from the date the application for a license is filed. Courses of study required for licensure shall include but not be limited to the following: arithmetical calculations as used in real estate transactions; rudimentary principles of conveyancing; the general purposes and effect of deeds, deeds of trust, mortgages, land contracts of sales, leases, liens, and listing contracts; elementary principles of land economics and appraisals; fundamentals of obligations between principal and agent; principles of real estate practice and canons of ethics pertaining thereto; and the provisions of this Act and rules and regulations of the commission.

(b) The commission shall waive the examination of an applicant for broker licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker, and shall waive the examination of an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as either a broker or salesman.

(c) From and after the effective date of this Act, each applicant for broker licensure shall furnish the commission satisfactory evidence that he has had not less than two years active experience in this state as a licensed real estate salesman practitioner during

the 36-month period immediately preceding the filing of the application; and, in addition, prior to January 1, 1977, shall furnish the commission satisfactory evidence that he has successfully completed 180 classroom hours in real estate courses or related courses accepted by the commission. On or after January 1, 1977, an applicant for real estate broker licensure shall submit evidence, satisfactory to the commission, of successful completion at an accredited college or university of 12 semester hours of real estate or related courses accepted by the commission, or of a course of study accepted by the commission as being equivalent to the courses offered by accredited colleges and universities. On or after January 1, 1979, the number of required semester hours shall be increased to 15; on or after January 1, 1981, the number of required semester hours shall be increased to 36; and on or after January 1, 1983, the number of required semester hours shall be increased to 48. On or after January 1, 1985, an applicant for a real estate broker license shall submit evidence, satisfactory to the commission, that he has successfully completed 60 semester hours in real estate or related courses accepted by the commission from an accredited college or university, or that he has completed a course of study accepted by the commission as being equivalent to the courses offered by accredited colleges and universities. The requirement of not less than two years experience as a Texas real estate licensee during the 36-month period immediately preceding the filing of the application for broker licensure shall not apply to applications submitted on or after January 1, 1985. These qualifications for broker licensure shall not be required of an applicant who, at the time of making the application, is duly licensed as a real estate broker by any other state in the United States if that state's requirements for licensure are comparable to those of Texas.

(d) From and after the effective date of this Act, as a prerequisite for applying for salesman licensure prior to January 1, 1977, each applicant shall furnish the commission satisfactory evidence that he has completed 30 classroom hours in a basic real estate fundamentals course or related course accepted by the commission. As a condition for the second annual certification of salesman licensure privileges, the licensee shall furnish the commission satisfactory evidence that he has successfully completed an additional 30 classroom hours of real estate courses or related courses accepted by the commission, and as a condition for the third annual certification of salesman licensure privileges, the licensee shall furnish the commission satisfactory evidence that he has successfully completed an additional 30 classroom hours of real estate courses or related courses accepted by the commission. On or after January 1, 1977, an applicant for real estate salesman licensure shall submit evidence, satisfactory to the commis-

sion, of successful completion at an accredited college or university of six semester hours of real estate courses or related courses accepted by the commission, or of a course of study accepted by the commission as being equivalent to the courses offered by accredited colleges and universities. On or after January 1, 1979, the number of required semester hours shall be increased to 12; on or after January 1, 1981, the number of required semester hours shall be increased to 21; and on or after January 1, 1983, the number of required semester hours shall be increased to 36.

(e) On or after January 1, 1985, the commission shall accept applications for broker licensure only, and each license issued on or after January 1, 1985, shall be designated as a license to practice real estate.

(f) Insofar as is necessary for the administration of this Act, the commission is authorized to inspect and accredit educational programs or courses of study in real estate and to establish standards of accreditation for such programs conducted in the State of Texas, other than accredited colleges and universities. Schools, other than accredited colleges and universities, which are authorized to offer real estate educational courses pursuant to provisions of this section shall be required to maintain a corporate surety bond in the sum of \$10,000 payable to the commission, for the benefit of a party who may suffer damages resulting from failure of a commission approved school or course to fulfill obligations attendant to the approval.

(g) A person who is licensed as a salesman on the effective date of this Act is not subject to the educational requirements or prerequisites of this Act as a condition for holding salesman licensure privileges. A person who is licensed as a broker on the effective date of this Act is not subject to the educational requirements or prerequisites of this Act as a condition for holding broker licensure privileges. A person who is licensed as a real estate salesman on the effective date of this Act may submit an application for broker licensure during the 24-month period immediately following such date if he furnishes evidence satisfactory to the commission that he meets the prerequisites for applying for broker licensure in force and effect on the day prior to the effective date of this Act.

Real Estate Recovery Fund

Sec. 8. Part 1. (a) The commission shall establish a real estate recovery fund which shall be set apart and maintained by the commission as provided in this section. The fund shall be used in the manner provided in this section for reimbursing aggrieved persons who suffer monetary damages by reason of certain acts committed by a duly licensed real estate broker or salesman, or by an unlicensed em-

ployee or agent of a broker or salesman, provided the broker or salesman was licensed by the State of Texas at the time the act was committed, provided the act was performed in the scope of activity which constitutes a broker or salesman as defined by this Act, and provided recovery is ordered by a court of competent jurisdiction against the broker or salesman. The use of the fund as provided in Part 1 of this section is limited to an act that is either:

(1) a violation of Section 15(3) and (4) of this Act, or

(2) conduct which constitutes fraud, misrepresentation, deceit, false pretenses, or trickery.

(b) On the effective date of this Act, the commission shall collect from each real estate broker and salesman licensed by this state a fee of \$10 which shall be deposited in the real estate recovery fund. The commission shall suspend a license issued under the provisions of this Act for failure to pay this fee. After the effective date of this Act, when a person makes application for an original license pursuant to this Act he shall pay, in addition to his original license application fee, a fee of \$10 which shall be deposited in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

Part 2. If on December 31 of any year the balance remaining in the real estate recovery fund is less than \$300,000, each real estate broker and each real estate salesman, on recertification of his license during the following calendar year, shall pay, in addition to his license recertification fee, a fee of \$10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount necessary to bring the fund to \$1 million, whichever is less.

Part 3. (a) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the real estate broker or real estate salesman shall notify the commission in writing to this effect at the time of the commencement of the action.

(b) Upon the entry of a final judgment in any suit which may involve payment from the real estate recovery fund, the judgment creditor shall promptly notify the commission of the granting of the judgment. In the event payment is to be requested from the real estate recovery fund, such notice must be given at least 20 days prior to any post-judgment hearing held in accordance with this Act.

(c) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate broker, or real estate salesman,

on the grounds described in Part 1(a) of this section that occurred on or after the effective date of this Act, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission, may apply to the court for an order directing payment out of the real estate recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Part 8 of this section.

(d) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show that:

(1) the judgment is based on facts allowing recovery under Part 1(a) of this section;

(2) he is not a spouse of the debtor, or the personal representative of the spouse;

(3) he has complied with all the requirements of Part 3 of this section;

(4) he has obtained a judgment as set out in Part 3(c) of this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(5) he has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(6) that by the search he has discovered no real or personal property or other assets liable to be sold or applied, or has discovered insufficient real or personal property or other assets liable to be sold or applied, and that he has taken all necessary action and proceedings for the realization of satisfaction of the judgment, and that the amount realized was insufficient to satisfy the judgment, stating the amount realized and the balance remaining due on the judgment after application of the amount realized.

(e) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Part 3(d) of this section and that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(f) If the commission pays from the real estate recovery fund any amount toward satisfaction of a judgment against a licensed real estate broker or real estate salesman, the license of the broker or salesman shall be automatically revoked on the issuance of a court order authorizing payment from

the real estate recovery fund. No broker or salesman is eligible to receive a new license until he has repaid in full, plus interest at the rate of six percent a year, the amount paid from the real estate recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this Act.

Part 4. The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purposes of the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System, and the interest from these investments shall be deposited to the credit of the real estate recovery fund, provided, however, that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this section.

Part 5. When the real estate commission receives notice of entry of a final judgment and a hearing is scheduled under Part 3(d) of this section, the commission may notify the Attorney General of Texas of its desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf of, and in the name of, the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. In taking such action the real estate commission and attorney general shall act only to protect the fund from spurious or unjust claims.

Part 6. When, on the order of the court, the commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission which amount shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

Part 7. The failure of an aggrieved person to comply with the provisions of this section relating to the real estate recovery fund shall constitute a waiver of any rights under this section.

Part 8. (a) Notwithstanding any other provision, payments from the real estate recovery fund are subject to the conditions and limitations in Subsections (b) through (d) of this part.

(b) Payments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Part 3, and in the manner prescribed by this section.

(c) Payments for claims arising out of the same transaction shall be limited in the aggregate to \$10,000 irrespective of the number of claimants.

(d) Payments for claims based on judgments against any one licensed real estate broker or salesman may not exceed in the aggregate \$20,000 within any calendar year, but in no event may payments for claims based on judgments against any one licensed real estate broker or salesman exceed in the aggregate \$40,000, until the fund has been reimbursed by the licensee for all amounts paid.

Part 9. Nothing contained in this section shall limit the authority of the commission to take disciplinary action against a licensee for a violation of this Act or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by a licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this Act.

Part 10. Any person receiving payment out of the real estate recovery fund pursuant to Section 8 of this Act shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in Part 8 of this section.

Issuance of License; Annual Certification Fees; Expiration Dates

Sec. 9. (a) When an applicant has satisfactorily met all requirements and conditions of this Act, a license shall be issued which may remain in force and effect so long as the holder of the license remains in compliance with the obligations of this Act, which include payment of the annual certification fee as provided in Section 11 of this Act. Annual certification fees shall be paid in September, October, and November of each calendar year. Each salesman license issued shall be delivered or mailed to the broker with whom the salesman is associated and shall be kept under his custody and control.

(b) An applicant is not permitted to engage in the real estate business either as a broker or salesman until a license evidencing his authority to engage in the real estate business has been received.

(c) The commission by rule may adopt a system under which licenses expire on various dates during the year. Dates for payment of the annual certification fee shall be adjusted accordingly. For the year in which the certification date is changed, annual certification fees payable shall be prorated on a monthly basis so each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On certification of the license on the new certification date, the total annual certification fee is payable.

Refusal to Issue License; Review

Sec. 10. If the commission declines or fails to license an applicant, it shall immediately give written notice of the refusal to the applicant. Before the applicant may appeal to a district court as provided in Section 18 of this Act, he must file within 10 days after the receipt of the notice an appeal from the ruling, requesting a time and place for a hearing before the commission. A sponsoring broker is an applicant and must file the appeal if an application to license a person as a salesman has been disapproved. The commission shall set a time and place for the hearing within 30 days from the receipt of the appeal, giving 10 days' notice of the hearing to the applicant. The time of the hearing may be continued from time to time with the consent of the applicant. Following the hearing, the commission shall enter an order which is, in its opinion, appropriate in the matter concerned.

If an applicant fails to request a hearing as provided in this section, the commission's ruling shall become final and not subject to review by the courts.

Fees

Sec. 11. The commission shall charge and collect the following fees:

- (1) a fee not to exceed \$40 for the filing of an original application for real estate broker licensure;
- (2) a fee not to exceed \$40 for annual certification of real estate broker licensure status;
- (3) a fee of \$20 for the filing of an original application for salesman licensure;
- (4) a fee of \$20 for annual certification of real estate salesman licensure status;
- (5) a fee not to exceed \$10 for taking a license examination;
- (6) a fee of \$10 for filing a request for a license for each additional office or place of business;
- (7) a fee of \$10 for filing a request for a license for a change of place of business or change of sponsoring broker;
- (8) a fee of \$10 for filing a request to replace a license lost or destroyed;
- (9) a fee of \$400 for filing an application for approval of a real estate course pursuant to the provisions of Subsection (f) of Section 7 of this Act; and
- (10) a fee of \$200 per annum for and in each year of operation of a real estate course, established pursuant to the provisions of Subsection (f) of Section 7 of this Act.

Maintenance and Location of Offices; Display of License

Sec. 12. (a) Each resident broker shall maintain a fixed office within this state. The address of the office shall be designated on the broker's license. Within 10 days after a move from a previously designated address, the broker shall submit applications for new licenses for himself and each salesman associated with him, designating the new location of his office, together with the required fee, or fees, whereupon the commission shall issue a license, or licenses, reflecting the new location, provided the new location complies with the terms of this section.

(b) If a broker maintains more than one place of business within this state, he shall apply for, pay the required fee for, and obtain an additional license to be known as a branch office license for each additional office he maintains.

(c) The license or licenses of the broker shall at all times be prominently displayed in the licensee's place or places of business.

(d) Each broker shall also prominently display in his place or in one of his places of business the license of each real estate salesman associated with him.

Inactive Licenses

Sec. 13. (a) When the association of a salesman with his sponsoring broker is terminated, the broker shall immediately return the salesman license to the commission. The salesman license then becomes inactive.

(b) The salesman license may be activated if, within the calendar year, a request, accompanied by the required fee, is filed with the commission by a licensed broker advising that he assumes sponsorship of the salesman.

Unlawful Employment or Compensation; Nonresident License

Sec. 14. (a) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing an act enumerated in the definition of real estate broker in Section 2 of this Act if the person is not a licensed broker or licensed salesman in this state or an attorney at law licensed in this state or in any other state. However, a licensed broker may pay a commission to a licensed broker of another state if the foreign broker does not conduct in this state any of the negotiations for which the fee, compensation, or commission is paid.

(b) A resident broker of another state may obtain a license as a broker in this state by complying with all requirements of this Act, provided that the nonresident broker is licensed as a broker by the state of his residence and provided that the state of his residence has legal standards of qualification which

the commission finds equivalent to this Act and which state offers the same privileges to licensed brokers of this state. A nonresident licensee need not maintain a place of business within this state. The commission may license the nonresident broker without examination if he has qualified for a broker license in the state in which he resides by written examination considered equivalent to that offered by this state and if his state of residence permits licenses to be issued without written examinations to brokers resident in and licensed after passing an examination by this state. However, the commission may, in its discretion, refuse to issue a broker license to an applicant who is not a resident of this state for the same reasons that it may refuse to license a resident of this state.

(c) Each nonresident applicant shall file an irrevocable consent that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise, or in which the plaintiff may reside, by service of process or pleading authorized by the laws of this state, or by serving the administrator or assistant administrator of the commission. The consent shall stipulate that the service of process or pleading shall be valid and binding in all courts as if personal service had been made on the nonresident broker in this state. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. A service of process or pleading served on the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address which the commission has for the nonresident broker against whom the process or pleading is directed. No default in an action may be taken except on certification by the commission that a copy of the process or pleading was mailed to the defendant as provided in this section, and no default judgment may be taken in an action or proceeding until 20 days after the day of mailing of the process or pleading to the defendant.

Notwithstanding any other provision of this subsection, a nonresident 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 has been an actual bona fide resident of that city for at least six months immediately preceding the filing of his application, is 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 to the city in which he resides, and he may not maintain a place of business at another location in this state unless he also complies with the requirements of Section 14(b) of this Act. The place of business

must satisfy the requirements of Subsection (a) of Section 12 of this Act, but the place of business shall be deemed a definite place of business in this state within the meaning of Subsection (a) of Section 12.

Investigations; Suspension or Revocation of License; Civil or Criminal Liability

Sec. 15. The commission may, on its own motion, and shall, on the verified complaint in writing of any person, provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesman. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1)(A) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence; or

(B) a final money judgment has been rendered against the licensee resulting from contractual obligations of the licensee incurred in the pursuit of his business, and such judgment remains unsatisfied for a period of more than six months after becoming final; or

(2) the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license; or

(3) the licensee, when selling, trading, or renting real property in his own name, engaged in misrepresentation or dishonest or fraudulent action; or

(4) the licensee, while performing an act constituting a broker or salesman, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesman. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase; or

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agree-

ment when the licensee could not or did not intend to keep such promise; or

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salesmen, advertising, or otherwise; or

(D) failing to make clear, to all parties to a transaction, which party he is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties; or

(E) failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds; or

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesman in this state or in any other state, or not an attorney at law licensed in this state or any other state, for compensation for services as a real estate agent; or

(G) failing to specify in a listing contract a definite termination date which is not subject to prior notice; or

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal; or

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice; or

(J) acting in the dual capacity of broker and undisclosed principal in a transaction; or

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property; or

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or his authorized agent; or

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract; or

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner or lessor, knowing that the owner or lessor had a written outstanding contract, granting exclusive agency in connection with the property to another real estate broker; or

(O) offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or on terms other than those authorized by the owner or his authorized agent; or

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent; or

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular; or

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action; or

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act; or

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document; or

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either 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 be furnished with or obtain a policy of title insurance; or

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness; or

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license; or

(X) disregarding or violating a provision of this Act; or

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state; or

(Z) disbursing money deposited in a custodial trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) failing or refusing on demand to produce a document, book, or record in his possession concerning a real estate transaction conducted by him for inspection by the Real Estate Commission or its authorized personnel or representative; or

(BB) failing within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(CC) failing without just cause to surrender to the rightful owner, on demand, a document or instrument coming into his possession.

The provisions of this section do not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.

Unauthorized Practice of Law

Sec. 16. A license granted under the provisions of this Act shall be suspended or revoked by the commission on 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 relationship as a licensee, drew a deed, note, deed of trust, will, or other written instrument that may transfer or anyway affect the title to or an interest in land, or advised or counseled a person as to the validity or legal sufficiency of an instrument or as to the validity of title to real estate.

Hearings

Sec. 17. (a) Before a license is suspended or revoked, the licensee is entitled to a public hearing. The commission shall prescribe the time and place of the hearing. However, the hearing shall be held, if the licensee so desires, within the county where the licensee has his principal place of business, or if the licensee is a nonresident, the hearing may be called for and held in any county within this state. The notice calling the hearing shall recite the allegations against the licensee and the notice may be served personally or by mailing it by certified mail to the licensee's last known business address, as reflected by the commission's records, at least 10 days prior to the date set for the hearing. In the hearing, all witnesses shall be duly sworn and stenographic notes of the proceedings shall be taken and filed as a part of the records in the case. A party to the proceeding desiring it shall be furnished with a copy of the

stenographic notes on the payment to the commission of a fee of \$1.50 per page plus applicable sales tax and postage. After a hearing, the commission shall enter an order based on its findings of fact adduced from the evidence presented.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. The process issued by the commission may extend to all parts of the state, and the process may be served by any person designated by the commission. The person serving the process shall receive compensation to be allowed by the commission, not to exceed the fee prescribed by law for similar services. A witness subpoenaed who appears in a proceeding before the commission shall receive the same fees and mileage allowances as allowed by law, and the fees and allowances shall be taxed as part of the cost of the proceedings.

(c) If, in a proceeding before the commission, a witness fails or refuses to attend on subpoena issued by the commission, or refuses to testify, or refuses to produce a record or document, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the documents and records shall be enforced by a court of competent jurisdiction of this state in the same manner as the attendance, testimony of witnesses, and production of records are enforced in civil cases in the courts of this state.

Judicial Review

Sec. 18. (a) A person aggrieved by a ruling, order, or decision of the commission has the right to appeal to a district court in the county where the hearing was held within 30 days from the service of notice of the action of the commission.

(b) The appeal having been properly filed, the court may request of the commission, and the commission on receiving the request shall within 30 days prepare and transmit to the court, a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with Texas Rules of Civil Procedure.

(c) In the event an appeal is taken by a licensee or applicant, the appeal does not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

(d) If an aggrieved person fails to perfect an appeal as provided in this section, the commission's ruling becomes final.

Penalties; Injunctions

Sec. 19. (a) A person acting as a real estate broker or real estate salesman without first obtaining a license is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than \$100

nor more than \$500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a corporation, shall be punishable by a fine of not less than \$1,000 nor more than \$2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less than \$500 nor more than \$1,000, or by imprisonment for a term not to exceed two years, or both; and if a corporation, shall be punishable by a fine of not less than \$2,000 nor more than \$5,000.

(b) In case a person received money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of a provision of this Act, he shall, in addition, be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person.

(c) When in the judgment of the commission a person has engaged, or is about to engage, in an act or practice which constitutes or will constitute a violation of a provision of this Act, the county attorney or district attorney in the county in which the 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 the acts and practices and to enforce compliance with this Act. The plaintiff in an action under this subsection is not required to give a bond, and court costs may not be adjudged against the plaintiff.

Actions for Compensation or Commission; Abstracts or Title Insurance

Sec. 20. (a) A person may not bring or maintain an action for the collection of compensation for the performance in this state of an act set forth in Section 2 of this Act without alleging and proving that the person performing the brokerage services was a duly licensed real estate broker or salesman at the time the alleged services were commenced, or was a duly licensed attorney at law in this state or in any other state.

(b) An action may not be brought in a court in this state for the recovery of a commission for the sale or purchase of real estate unless the promise or agreement on which the action is brought, or some memorandum thereof, is in writing and signed by the party to be charged or signed by a person lawfully authorized by him to sign it.

(c) When an offer to purchase real estate in this state is signed, the real estate broker or salesman shall advise the purchaser or purchasers, in writing, that the 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 the purchaser or purchasers should be furnished with or obtain a policy of title insurance. Failure to advise the pur-

chaser as provided in this subsection precludes the payment of or recovery of any commission agreed to be paid on the sale.

[Amended by Acts 1975, 64th Leg., p. 533, ch. 216, § 1, eff. May 19, 1975.]

TITLE 114

RECORDS

1. RECORDS

Article

6574c. Microfilming and Retention of Public Records by Incorporated Cities [NEW].

1. RECORDS

Art. 6574b. Photographic Duplication of Public Records; Disposition of Original Records

Acts 1975, 64th Leg., p. 367, ch. 158, classified as art. 6574c, relating to microfilming and retention of public records by incorporated cities, provided in section 4 that this article is repealed, to the extent of any conflict, including but not limited to art. 6574c.

Art. 6574c. Microfilming and Retention of Public Records by Incorporated Cities

Ordinance for Microfilm Process

Sec. 1. Any incorporated city in this state may adopt an ordinance providing for a microphotograph or microfilm process which accurately and permanently copies or reproduces public records on film, if the ordinance contains:

- (a) a provision specifying the types of records for recording on microfilm;
- (b) a provision requiring indices to microfilm records;
- (c) a provision requiring microfilm to meet requirements of the United States of America Standards Institute for archival quality, density, resolution, and definition;
- (d) a provision requiring a person or persons to check and certify that each microfilm record is a true and correct duplication of the original public record; and
- (e) a provision which guarantees the public free access to information in microphotographs or microfilms to which they are entitled under law.

Microfilm Records as Original Record; Certified Copy

Sec. 2. A microfilm record of an incorporated city is an original record and will be accepted by any court or administrative agency of this state, if the microfilm record is made in compliance with an ordinance authorized by this Act. When issued and certified by a record keeper of an incorporated city, a copy on paper or film of the microfilm record will be accepted as a certified copy of an original record by any court or administrative agency of this state.

Destruction of Original Records; Notice; Transfer to State Library

Sec. 3. Original public records which are microfilmed in compliance with an ordinance authorized by this Act may be destroyed after five years. Original public records which are not microfilmed in compliance with an ordinance authorized by this Act or are determined worthless by the governing body of an incorporated city may be destroyed as directed by the governing body. Notice of proposed destruction or disposition of original public records shall first be given to the State Librarian or State Archivist, and if such records are, in his opinion, needed for the State Library, the records shall be transferred thereto.

Repealer

Sec. 4. Chapter 58, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6574b, Vernon's Texas Civil Statutes), is repealed, to the extent of any conflict, including but not limited to this Act.

Severability

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

[Acts 1975, 64th Leg., p. 367, ch. 158, eff. Sept. 1, 1975.]

TITLE 115

REGISTRATION

CHAPTER THREE. EFFECT OF RECORDING

Art. 6626. What May Be Recorded

The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or moveable property of any description; provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision or re-subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners Court of the county in which the real estate is situated by order duly entered in the minutes of said Court, except in cases of the partition or other subdivision through a court of record; provided that where the real estate is situated within the corporate limits or within five miles of the corporate limits of any incorporated city or town, the governing body thereof or the city planning commission, as the case may be, as provided in Article 974a, Vernon's Texas Civil Statutes, shall perform the duties hereinabove imposed upon the Commissioners Court. Nothing in this Article shall require the acknowledgement of the party or parties to, nor prohibit the recording of, financing statements or security agreements filed as financing statements or continuation statements filed for record pursuant to the Business & Commerce Code. [Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 13, eff. June 19, 1975.]

Art. 6627. When Sales, etc., to be Void Unless Registered

All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding; provided, however, that the rights, duties, obli-

gations, and priorities of debtors, secured parties and their heirs, successors, and assigns, and the rights and priorities of creditors and subsequent purchasers with respect to the goods or other collateral described in the financing statements or security agreements filed as financing statements or continuation statements filed for record pursuant to the Business & Commerce Code, shall be governed by that code. [Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 14, eff. June 19, 1975.]

Art. 6630. Deeds, etc., Recorded

All deeds, conveyances, mortgages, deeds of trust, bonds for title, financing statements, security agreements filed as financing statements, continuation statements, covenants, defeasances, or other instruments of writing relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that where such instruments grant security interests by a utility, as such term is defined in Section 35.01 of the Business & Commerce Code, they shall be filed in the place and manner described in Section 35.02 of the Business & Commerce Code.

All such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, shall deliver such book or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. When such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or

officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be.

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 15, eff. June 19, 1975.]

TITLE 116

ROADS, BRIDGES, AND FERRIES

CHAPTER ONE. STATE HIGHWAYS

1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

Article

6663b. Mass Transportation [NEW].

6663c. Administration and Funding of Mass Transportation [NEW].

2. REGULATION OF VEHICLES

6675a-5e.1. Disabled Persons; Special License Devices; Fee; Parking Privileges [NEW].

6675a-5f. Refund of Overcharges on Registration [NEW].

1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

Change of Names

The names of the State Highway Department and the State Highway Commission were changed to the State Department of Highways and Public Transportation and the State Highway and Public Transportation Commission, respectively, by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, amending art. 6663.

Art. 6663. Department

(a) The name of the State Highway Department is changed to the State Department of Highways and Public Transportation. The name of the State Highway Commission is changed to the State Highway and Public Transportation Commission. The name of the State Highway Engineer is changed to the State Engineer-Director for Highways and Public Transportation. Any reference in law to the State Highway Department or Texas Highway Department shall be construed as meaning the State Department of Highways and Public Transportation. A reference in law to the State Highway Commission shall be construed as meaning the State Highway and Public Transportation Commission. A reference in law to the State Highway Engineer shall be construed as meaning the State Engineer-Director for Highways and Public Transportation.

(b) The administrative control of the State Department of Highways and Public Transportation, hereinafter called the Department, shall be vested in the State Highway and Public Transportation Commission, hereinafter called the Commission, and the State Engineer-Director for Highways and Public

Transportation. Said Department shall have its office at Austin where all its records shall be kept. [Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, eff. June 20, 1975.]

Art. 6663b. Mass Transportation

Sec. 1. (a) The State Department of Highways and Public Transportation:

(1) may purchase, construct, lease, and contract for public transportation systems in the state;

(2) shall encourage, foster, and assist in the development of public and mass transportation, both intracity and intercity, in this state;

(3) shall encourage the establishment of rapid transit and other transportation media;

(4) shall develop and maintain a comprehensive master plan for public and mass transportation development in this state;

(5) shall assist any political subdivision of the state in procuring aid offered by the federal government for the purpose of establishing or maintaining public and mass transportation systems;

(6) shall conduct hearings and make investigations it considers necessary to determine the location, type of construction, and cost to the state or its political subdivisions of public mass transportation systems owned, operated, or directly financed in whole or in part by the state;

(7) may enter into any contracts necessary to exercise any functions under this Act;

(8) may apply for and receive gifts and grants from governmental and private sources to be used in carrying out its function under this Act;

(9) may represent the state in public and mass transportation matters before federal and state agencies;

(10) may recommend necessary legislation to advance the interests of the state in public and mass transportation;

(11) may not issue certification of convenience and necessity;

(12) may utilize the expertise of recognized authorities and consultants in the private sector,

both for the planning and design of public and mass transportation systems.

(b) In the exercise of the power of eminent domain under the provisions of this Act which relate to public and mass transportation, the department shall be prohibited from any action which would unduly interfere with interstate commerce or which would establish any right to operate any vehicle on railroad tracks used to transport freight or other property.

Sec. 2. On the effective date of this Act, all programs, contracts, assets, and personnel of the Texas Mass Transportation Commission are transferred to the State Department of Highways and Public Transportation. The comptroller of public accounts and the State Board of Control shall assist in the orderly implementation of this transfer.

[Acts 1975, 64th Leg., p. 2062, ch. 678, §§ 1, 2, eff. June 20, 1975.]

Sections 3 and 4 of the 1975 Act amended arts. 6663 and 6669; § 5 thereof repealed art. 4413(34) creating the Mass Transportation Commission.

Art. 6663c. Administration and Funding of Mass Transportation

Findings and Purpose

Sec. 1. (a) The legislature finds that:

(1) transportation is the lifeblood of an urbanized society, and the health and welfare of that society depend on the provision of efficient, economical, and convenient transportation within and between urban areas;

(2) public transportation is an essential component of the state's transportation system;

(3) energy consumption and economic growth are vitally influenced by the availability of public transportation;

(4) providing public transportation has become so financially burdensome that private industry can no longer provide service in many areas in the state and that the continuation of this essential service on a private or proprietary basis is threatened; and

(5) providing public transportation is a public, governmental responsibility and a matter of direct concern to state government and to all the citizens of the state.

(b) The purposes of this Act are to provide:

(1) improved public transportation for the state through local governments acting as agents and instrumentalities of the state;

(2) state assistance to local governments and their instrumentalities in financing public transportation systems to be operated by local governments as determined by local needs; and

(3) coordinated direction by a single state agency of both highway development and public transportation improvement.

Definitions

Sec. 2. In this Act:

(1) "Capital improvement" means the acquisition, construction, reconstruction, or improvement of facilities, equipment, or land for use by operation, lease, or otherwise in public transportation service in urbanized areas, and all expenses incidental to the acquisition, construction, reconstruction, or improvement including designing, engineering, supervising, inspecting, surveying, mapping, relocation assistance, acquisition of rights-of-way, and replacement of housing sites.

(2) "Commission" means the State Highway and Public Transportation Commission.

(3) "Department" means the State Department of Highways and Public Transportation.

(4) "Federally funded project" means a public transportation project proposed for funding under this Act which is being funded in part under the provisions of the Urban Mass Transportation Act of 1964, as amended,¹ the Federal-Aid Highway Act of 1973, as amended,² or other federal program for funding public transportation.

(5) "Local share requirement" means the amount of funds which are required and are eligible to match federally funded projects for the improvement of public transportation in this state.

(6) "Public transportation" means transportation by bus, rail, watercraft, or other means which provides general or specialized service to the public on a regular or continuing basis.

(7) "Urbanized area" means an area so designated by the United States Bureau of the Census or by general state law.

Formula Program

Sec. 3. (a) The commission shall administer the formula program and allocate 60 percent of the funds in the public transportation fund to that program.

(b) Only an urbanized area with a population in excess of 200,000 according to the last preceding federal census is eligible for participation in the formula program. A municipality, regional authority, or other local governmental entity designated as a recipient of federal funds by the governor with the concurrence of the Secretary of the United States Department of Transportation is a designated recipient of funds under the formula program.

(c) The funds allocated to the formula program shall be apportioned annually on the basis of a formula under which the designated recipients of an

eligible urbanized area are entitled to receive an amount equal to the sum of:

(1) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the population of the eligible urbanized area bears to the total population of all eligible urbanized areas that are eligible for the formula program; and

(2) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the number of inhabitants per square mile of the eligible urbanized area bears to the combined number of inhabitants per square mile of all eligible urbanized areas.

(d) Designated recipients may only use formula program funds to provide 65 percent of the local share requirement of federally funded projects for capital improvements.

(e) Within 30 days after an application for funds under the formula program is received, if there are unallocated formula funds for the applicant, the commission shall certify to the federal government that the state share of the local share requirement is available. The application must contain a certification by the designated recipient that:

(1) funds are available to provide 35 percent of the local share requirement of federally assisted programs; and

(2) the proposed public transportation project is consistent with ongoing, continuing, cooperative, and comprehensive regional transportation planning being carried out in accordance with the provisions of the Urban Mass Transportation Act of 1964, as amended, and the Federal-Aid Highway Act of 1973, as amended.

(f) If the commission has previously certified that the state share is available for a project, the commission shall direct that payment of the state share be made to the designated recipient within 30 days after federal approval of a proposed transportation project proposal.

(g) Funds allocated by the department for use in the formula program which are unencumbered and unexpended one year after the close of the fiscal year for which the funds were originally allocated shall be transferred at that time by the commission for use in the discretionary program.

Discretionary Program

Sec. 4. (a) The commission shall allocate 40 percent of the funds annually credited to the public transportation fund to the discretionary program, which shall be administered by the commission.

(b) Except as provided in Subsection (e) of this section, only rural and urban areas of the state other than urbanized areas eligible for participation in the

formula program are eligible for participation in the discretionary program. Any local government having the power to operate or maintain a public transportation system may be a designated recipient of funds from the discretionary program.

(c) Designated recipients under the discretionary program may use discretionary program funds only to provide 65 percent of the local share requirement of federally funded projects for capital improvements, except that if a designated recipient certifies that federal funds are unavailable for a proposed project and the commission finds that the project is vitally important to the development of public transportation in this state, the commission may supply 50 percent of the total cost of that public transportation project to the designated recipient.

(d) In considering any project under this section, the commission shall take into consideration the need for fast, safe, efficient, and economical public transportation.

(e) Designated recipients in urbanized areas eligible for participation in the formula program and any local government having the power to operate or maintain a public transportation system within an urbanized area are also eligible to apply for and receive funds allocated by the commission for use in the discretionary program which are unexpended and unencumbered one year after the close of the fiscal year for which the funds were originally allocated and all unexpended and unencumbered funds transferred from the formula program to the discretionary program. The commission shall make grants out of the discretionary fund to designated recipients under the provisions of this section.

Public Transportation Fund

Sec. 5. The Public Transportation Fund is established as a special fund in the State Treasury. The Public Transportation Fund may only be used by the State Department of Highways and Public Transportation in carrying out the responsibilities and duties of the commission and the department for public transportation purposes as established under this state law. Grants of money to the state from public and private sources for public transportation shall be deposited in the Public Transportation Fund. On the effective date of this Act, the comptroller of public accounts shall transfer the sum of \$1,000,000 from the General Revenue Fund to the Public Transportation Fund. There is hereby appropriated from the Public Transportation Fund the sum of \$1,000,000 for use by the department for the period from the effective date of this Act through August 31, 1975, and thereafter. On September 1, 1975, and on September 1, 1976, the comptroller of public accounts shall transfer the sum of \$15,000,000 each year from the General Revenue Fund to the Public Transportation Fund. There is hereby appro-

priated from the Public Transportation Fund the sum of \$15,000,000 for each year of the biennium beginning September 1, 1975, for use by the department for public transportation in the state.

[Acts 1975, 64th Leg., p. 2064, ch. 679, eff. June 20, 1975.]

¹ 49 U.S.C.A. § 1601 et seq.

² 23 U.S.C.A. § 101 et seq.

Art. 6669. Engineer-Director

The Commission shall elect a State Engineer-Director for Highways and Public Transportation who shall be a Registered Professional Engineer in the State of Texas and a competent civil engineer, experienced and skilled in highway construction and maintenance and in public and mass transportation planning or development. He shall hold his position until removed by the Commission. He shall first execute a bond payable to the state in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction, public and mass transportation development, and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission.

[Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 4, eff. June 20, 1975.]

Art. 6674m. Partial Payments

Said contracts may provide for partial payments to an amount not exceeding ninety-five per cent (95%) of the value of the work done. Five per cent (5%) of the contract price shall be retained until the entire work has been completed and accepted. Provided, that at the request of the contractor and with the approval of the State Highway Department and the State Treasurer the five per cent (5%) retained amount may be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas as selected by the contractor. Said bank, acting as escrow agent and by instructions from the contractor, may reinvest the retained amount in certificates of deposit issued by state or national banks domiciled in Texas, bank time deposits, or other similar investments prescribed by the trust agreement. Interest earned on said funds shall be paid to the contractor unless otherwise specified under the terms of said trust agreement. The escrow agent shall be responsible for all investments and funds as a result of the deposits of the retained amounts until released from such responsibility as instructed by the provisions of said trust agreement. The State Highway Department shall provide a trust agreement that will protect the interests of the

State of Texas. All expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest thereon shall be paid solely by the contractor. No such expense or charge shall apply to either the contract or the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 404, ch. 180, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided: "If any provision of this Act or the application thereof to any body or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

1A. CONSTRUCTION AND MAINTENANCE

Art. 6674v-1. Highway Beautification Act

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. In this Act, unless the context requires a different definition:

(A) "Commission" means the Texas Highway Commission.

(B) "Interstate System" means that portion of the national system of interstate and defense highways located within this State which now or hereafter may be designated officially by the Commission and approved pursuant to Title 23, United States Code.

(C) "Primary System" means that portion of connected main highways located within this State which now or hereafter may be designated officially by the Commission and approved pursuant to Title 23, United States Code.

(D) "Outdoor Advertising" or "Sign" includes any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, if any part of the advertising or information contents is visible from any place on the main traveled way of the interstate or primary systems.

(E) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles or parts thereof, or iron, steel and other old or scrap ferrous or nonferrous material.

(F) "Automobile Graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

(G) "Junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk, for processing scrap metal, or for the maintenance or operation of an automobile graveyard, including garbage dumps and sanitary fills.

(H) "Person" means any person, firm or corporation.

(I) "Urbanized Area" means an area defined by the Commission in cooperation with local officials, subject to the approval of the Secretary of the United States Department of Transportation, which as a minimum includes an urbanized area as defined by the United States Bureau of the Census or that part of a multi-state urbanized area located in this State.

(J) "Urban Area" means an urbanized area or an area defined by the Commission in cooperation with local officials, subject to the approval of the Secretary of the United States Department of Transportation, which as a minimum includes an urban place as designated by the United States Bureau of the Census having a population of 5,000 or more and not located within an urbanized area.

[See Compact Edition, Volume 5 for text of 3]

Control of Outdoor Advertising

Sec. 4. (A) No outdoor advertising may be erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary systems, or that is outside an urban area if located more than 660 feet from the nearest edge of the right-of-way and is visible and erected for the purpose of its message being seen from the main traveled way of the interstate or primary systems, except:

(1) Directional and other official signs authorized by law, including signs pertaining to natural wonders and scenic and historic attractions;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property upon which they are located;

(4) Signs located within 660 feet of the nearest edge of the right-of-way in areas in which the land use is designated industrial or commercial under authority of law, such areas to be determined from actual land uses and defined by regulations established by the Commission;

(5) Signs located within 660 feet of the nearest edge of the right-of-way in areas in which the land use is not designated industrial or commercial under authority of law but in which the land use is consistent with areas designated industrial or commercial, such areas to be determined from actual land uses and defined by regulations established by the Commission;

(6) Signs located on property within the prescribed limits which have as their purpose the protection of life and property; and

(7) Signs erected on or before October 22, 1965, which the Commission with the approval of the Secretary of the United States Department

of Transportation determines to be landmark signs of such historic or artistic significance that preservation would be consistent with the purposes of this section.

[See Compact Edition, Volume 5 for text of 4(B) to (E)]

Licenses

Sec. 5. (A) A person who has not obtained a license under this Act may not erect or maintain a sign:

(1) within 660 feet of the interstate or primary systems, if the sign is visible from the main traveled way; or

(2) outside an urban area if the sign is located more than 660 feet from the nearest edge of the right-of-way and is visible and erected for the purpose of its message being seen from the main traveled way of the interstate or primary systems.

[See Compact Edition, Volume 5 for text of 5(B) to (D)]

Permits

Sec. 6. (A) Before a person with a license may erect or maintain a sign covered by Subsection (A), Section 5 of this Act, he must have a permit for each sign.

[See Compact Edition, Volume 5 for text of 6(B) to 15]

[Amended by Acts 1975, 64th Leg., p. 1106, ch. 417, §§ 1 to 4, eff. Sept. 1, 1975.]

2. REGULATION OF VEHICLES

Art. 6675a-3e. Operation of Motor Vehicles without License Number Plates

[See Compact Edition, Volume 5 for text of 1 to 4]

Violation a Misdemeanor; Dealers; Purchase of Plates in February or March or Month Preceding Expiration Date

Text of sec. 5 effective Jan. 1, 1978

Sec. 5. Any person who operates a passenger car or a commercial motor vehicle upon the public highways of this State at any time without having displayed thereon, and attached thereto, two (2) license number plates, one (1) plate at the front and one (1) at the rear, which have been duly and lawfully assigned for said vehicle for the current registration period or have been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be guilty of a misdemeanor; this shall not apply to dealers operating vehicles under present provisions of the law, and provided, however, license number plates may be purchased during the months of February and March and beginning February first, or if this date

falls on Sunday they may be purchased February second, for registration and when purchased may be used from and after date of purchase preceding and during the registration period for which they are issued upon the motor vehicle for which they are issued. Beginning April 1, 1978, license plates may be purchased during the month preceding the date on which the registration expires.

For text of sec. 5 effective until Jan. 1, 1978, see Compact Edition, Volume 5

Road-tractors, Motorcycles, Trailers, etc.

Text of sec. 6 effective Jan. 1, 1978

Sec. 6. Any person who operates a road-tractor, motorcycle, trailer or semi-trailer upon the public highways of this State at any time without having attached thereto and displayed on the rear thereof, a license number plate duly and lawfully assigned therefor for the current period or validated by the attachment of a symbol, tab, or other device showing that the vehicle is currently registered, shall be guilty of a misdemeanor.

Nothing herein contained shall be construed as changing or repealing any law with reference to any requirement to pay or not to pay a license or registration fee or the amount thereof not expressly enumerated in Sections 1, 2 and 3 hereof.¹

¹ Articles 6675a-3, 6675a-4, 6675a-3d.

For text of sec. 6 effective until Jan. 1, 1978, see Compact Edition, Volume 5

Operation with Old License Plates

Text of sec. 7 effective Jan. 1, 1978

Sec. 7. Any person operating any motor vehicle, trailer or semi-trailer upon the highways of this State with a license plate or plates for any preceding period which have not been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be deemed guilty of a misdemeanor.

For text of sec. 7 effective until Jan. 1, 1978, see Compact Edition, Volume 5

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 3, eff. Jan. 1, 1978.]

Art. 6675a-4. Registration Dates

Text of article effective Jan. 1, 1978

(a) By January 1, 1978, the Department shall establish a year-round system for registering vehicles. The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county tax assessor-collectors, as well as the Department, on a year-round basis. In implementing a year-round registration system, the Department may establish separate and distinct registration years for any vehicles or classifications of vehicles. Each registration year so designated

shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive calendar months and registration fees shall be computed at a rate of one-twelfth of the appropriate annual registration fee per month in each registration period. The Department shall not establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. Each application for registration filed more than one month subsequent to the expiration date of the previous year's registration shall be accompanied by an affidavit that the vehicle has not been operated upon the streets or highways of this state at any time subsequent to the expiration of the previous year's registration. The Department may promulgate reasonable rules and regulations to carry out the orderly implementation and administration of the year-round registration system.

(b) Notwithstanding the provisions of Subsection (a) of this section or any other section of this Act, the registration or license of any vehicle shall not be issued for or reduced to a fee less than \$5.00, regardless of the month of the registration period in which application is filed.

For text of article effective until Jan. 1, 1978 see Compact Edition, Volume 5

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 1, eff. Jan. 1, 1978.]

Section 2 of the 1975 amendatory act amended art. 6675a-13(a); § 3 amended secs. 5, 6 and 7 of art. 6675a-3e; § 4 thereof provided: "This Act is effective on January 1, 1978."

Art. 6675a-5e.1. Disabled Persons; Special License Devices; Fee; Parking Privileges

Provision for License Plate Devices

Sec. 1. The State Highway Department shall provide for the issuance of specially designed symbols, tabs, or other devices to be attached to the license plates of motor vehicles regularly operated by or for the transportation of permanently disabled persons. Such devices shall be of a design prescribed by the department and shall have the word "Disabled" printed thereon. They shall be issued in addition to regular license plates in years in which license plates are issued or as the legal registration insignia in years in which license plates are not issued.

"Permanently Disabled" Defined; Application

Sec. 2. A person is "permanently disabled" if he has lost, or lost the use of, both legs or is so severely disabled as to be unable to ambulate without the aid of a wheelchair or other mechanical device. Owners of motor vehicles regularly operated by or for the

transportation of such persons may make application to the department through the county tax collector of the county in which they reside for the special symbol, tab, or other device on a form prescribed and furnished by the department. The first such application must be accompanied by acceptable medical proof that the operator or regularly transported passenger is currently and permanently disabled.

Submission of Application; Fee

Sec. 3. Such applications shall be submitted to the county tax collector of the vehicle owner's resident county and shall be accompanied by the annual registration fee prescribed by law for the particular vehicle being registered plus \$1. The county tax collector shall forward the \$1 fee to the State Highway Department for deposit in the State Highway Fund to defray the cost of providing the specially designed symbols, tabs, or other devices.

Limit on Devices

Sec. 4. Only one such set of devices shall be issued for a passenger vehicle operated by or for the transportation of a permanently disabled person for noncommercial use.

Furnishing of Devices

Sec. 5. The State Highway Department shall furnish the special devices to the appropriate county tax assessor-collector.

Parking Privileges

Sec. 6. Any vehicle upon which such special devices are displayed, when being operated by or for the transportation of a permanently disabled person, shall be allowed to park for unlimited periods in any parking space or parking area designated specifically for the physically handicapped.

Disposition of Devices Upon Disposal of Vehicle

Sec. 7. If the owner of a vehicle bearing such special devices disposes of the vehicle during the registration year, he shall turn the devices in to the county tax assessor-collector and receive from him replacement devices for the fee prescribed by law.

Registration Year

Sec. 8. Devices with the "Disabled" designation provided for by this Act shall be issued for the registration year beginning April 1, 1976, and thereafter.

Registration under Other Act

Sec. 9. A person who is eligible to register a motor vehicle under both this Act and Section 5e, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-5e, Vernon's Texas Civil Statutes), may register a vehicle under either Act but may not register vehicles under both Acts.

Penalty

Sec. 10. A person not disabled or not transporting a disabled person who parks a vehicle with such special device in any parking space or parking area designated specifically for the physically handicapped shall be guilty of a Class C misdemeanor. [Acts 1975, 64th Leg., p. 906, ch. 338, eff. Sept. 1, 1975.]

Art. 6675a-5f. Refund of Overcharges on Registration Fees

If the owner of a motor vehicle that is required to be registered pays an annual registration fee in excess of the statutory amount, he shall be entitled to a refund of the overcharge from the county tax collector who collected the excessive fee. The refund shall be paid from the fund in which the county's share of registration fees is deposited. A refund of the overcharge shall be made on presentation of satisfactory evidence of the overcharge to the county tax collector who collected the excessive fee. The owner of a motor vehicle who pays an excessive registration fee shall make his claim for a refund of the overcharge within five (5) years of the date that the excessive registration fee was paid.

[Added by Acts 1975, 64th Leg., p. 369, ch. 160, § 1, eff. Sept. 1, 1975.]

Art. 6675a-13. Plate or Plates or Other Devices for Attachment to Vehicles

Text of subsec. (a) effective Jan. 1, 1978

(a) The Department shall issue to applicants for a motor vehicle registration, on payment of the required fee, a plate or plates, symbols, tabs, or other devices which when attached to a vehicle as prescribed by the Department are the legal registration insignia for the period issued.

For text of subsec. (a) effective until Jan. 1, 1978, see Compact Edition, Volume 5

[See Compact Edition, Volume 5 for text of (b) to (g)]

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 2, eff. Jan. 1, 1975.]

Art. 6675a-13½. Designs and Specifications or Reflectorized Plates, Symbols and Tabs

(a) The State Highway Department shall prepare the designs and specifications for the single plate or plates of metal or other material, symbols, tabs, or other devices selected by the State Highway Commission to be used as the legal registration insignia with the requirement, however, that all license plates shall be made with a reflective material so as to be a reflectorized safety license plate. The reflectorized material shall be of such a nature as to provide effective and dependable brightness in the promotion of highway safety during the service period of the license plate issued. The State Highway

Department shall design the license plates to include a design at least one-half inch wide that represents in silhouette the shape of the State of Texas and that appears, in lieu of a star, between letters and numerals.

Text of subsection (a-1) effective until April 2, 1977

(a-1) The colors of the symbols, tabs, or other devices to be attached to license plates for the registration year 1976 shall be red, white, and blue in honor of the bicentennial of the United States of America. This subsection expires on April 2, 1977.

[See Compact Edition, Volume 5 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 444, ch. 188, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1371, ch. 525, § 1, eff. Sept. 1, 1975.]

Section 2 of Acts 1975, 64th Leg., ch. 188, provided: "The design change required by this Act applies to license plates manufactured after this Act takes effect."

Art. 6686. Dealer's and Manufacturer's License Plates and Tags

(a) Dealer's and Manufacturer's License Plates for Unregistered Motor Vehicles, Motorcycles, House Trailers, Trailers, and Semitrailers.

(1) Dealer's License. Any dealer in motor vehicles, motorcycles, house trailers, trailers, or semitrailers doing business in this State may, instead of registering each vehicle he operates or permits to be operated for any reason upon the streets or public highways, apply for and secure a general distinguishing number and master dealer's license plate which may be attached to any such vehicle he owns and operates or permits to be operated unregistered. Each dealer holding a current distinguishing number and master dealer's license plate may apply for and be issued additional or supplemental metal dealer's plates, as hereinafter provided, which may be attached to any vehicle which he owns and operates or permits to be operated unregistered in the same manner as a vehicle operated on the master dealer's license plate. A dealer within the meaning of this Act means any person, firm, or corporation regularly and actively engaged in the business of buying, selling, or exchanging motor vehicles, motorcycles, house trailers, trailers, or semitrailers at an established and permanent place of business; provided, however, that at each such place of business a sign in letters at least six (6) inches in height must be conspicuously displayed showing the name of the dealership under which such dealer is doing business, and that each such place of business must have a furnished office and, except for dealers who are licensed by the Texas Motor Vehicle Commission pursuant to the Texas Motor Vehicle Commission Code¹ and

dealers who sell vehicles to or exchange vehicles with no person other than another dealer licensed under this Act, sufficient space to display five (5) vehicles of the type customarily bought, sold, or exchanged by such dealer.

[See Compact Edition, Volume 5 for text of (a)(2)]

(3) Buyer's Temporary Cardboard Tags. Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may be used by a buyer to operate an unregistered vehicle he purchased from said dealer for a period of twenty (20) days from the date of purchase; provided, however, that a dealer may issue only one (1) buyer's tag to a purchaser for each unregistered vehicle said dealer sells. The specifications, color, and form of such buyer's cardboard tag shall be prescribed by the Department; provided, however, that each dealer shall be responsible for the safekeeping and distribution of all cardboard tags obtained by him; and furthermore, each dealer is responsible for showing in ink on each buyer's cardboard tag he issues the actual date of sale of each unregistered vehicle together with other information asked for thereon.

(4) Dealer's Temporary Cardboard Tags. Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may only be used by such dealer or his employees for the following purposes:

(a) to demonstrate or cause to be demonstrated his unregistered vehicles to prospective buyers only for the purpose of sale; provided, however, that no provision of this Act shall be construed to prohibit a dealer from permitting a prospective buyer to operate such vehicles in the course of demonstration.

(b) to convey or cause to be conveyed his unregistered vehicles from the dealer's place of business in one part of the State to his place of business in another part of the State, or from his place of business to a place to be repaired, reconditioned, or serviced, or from the point in this State where such vehicles are unloaded to his place of business, including the moving of such vehicles from the State line to his place of business, or to convey such vehicles from one dealer's place of business to another dealer's place of business or from the point of purchase of such vehicles by the dealer to the dealer's place of business, or for the purpose of road testing, and such vehicles displaying such tags while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.²

Such tags shall not be used to operate vehicles for the personal use of a dealer or his employees. Whenever a dealer sells an unregistered vehicle to a retail purchaser, it shall be such dealer's responsibility to display the Buyer's Temporary Cardboard Tag thereon pursuant to Subsection (3) of this Act. The specifications, form, and color of such dealer's cardboard tags shall be prescribed by the Department.

(5) Cancellation of License. It shall be the duty of the Department to cancel the dealer's or manufacturer's license issued to a person, firm or corporation when such license was obtained by submitting false or misleading information; and the Department is hereby authorized to cancel dealer's licenses whenever a person, firm, or corporation fails, upon demand, to furnish within thirty (30) days to the Department satisfactory and reasonable evidence of being regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, trailers, or semitrailers at either wholesale or retail; and, it is also provided that the Department may cancel dealer's or manufacturer's licenses issued under this Act for the violation of any provisions of this Act or for the misuse or for allowing the misuse of any cardboard tag authorized under this Act; and, furthermore, the Department is hereby authorized to cancel such licenses whenever a dealer refuses to show on such tags the date of sale or any other reasonable information required to be shown thereon by the Department; provided, however, that nothing in this Act shall be construed to prohibit new entries into the business of buying, selling, exchanging, or manufacturing such vehicles; and provided further that any dealer or manufacturer whose license was cancelled under the terms of this Act shall, within ten (10) days, surrender to a representative of the Department any and all license plates, cardboard tags, license stickers, and receipts issued pursuant to this Act. If any dealer or manufacturer shall fail to surrender to the Department the license plates, the cardboard tags, license stickers, and receipts as provided herein, the Department shall forthwith direct any peace officer to secure possession thereof and to return same to the Department. Whenever a dealer's or manufacturer's license is cancelled under the provisions of this Act, all benefits and privileges afforded to Texas licensed dealers or manufacturers under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), are automatically cancelled, also.

(6) Limited Use of Dealer's Plates and Tags. The use of dealer's license or dealer's temporary

cardboard tags is prohibited on service or work vehicles or on commercial vehicles carrying a load; provided, however, that a boat trailer carrying a boat will not be considered to be a commercial vehicle carrying a load, and a dealer complying with the provisions of this Act may affix to the rear of a boat trailer he owns or to the rear of a boat trailer he sells such dealer's distinguishing number or cardboard tags pursuant to the provisions of Subsections (1), (3) and (4) of this section; and, further provided, that the term "commercial vehicle carrying a load" shall not be construed to prohibit the operation or conveyance of unregistered vehicles by licensed dealers (or buyers therefrom) utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof, pursuant to Subsections (3) and (4) of this section.

(7) Fees and Forms. Each applicant for a dealer's or manufacturer's general distinguishing number and master dealer's license plate shall pay to the Department an annual fee of One Hundred Dollars (\$100) for the number and master dealer's plate and Ten Dollars (\$10) for each additional or supplemental metal dealer's plate desired, and all such fees shall be deposited in the State Highway Fund. Applications for a dealer's or manufacturer's license plate, and for renewals thereof, shall be made in writing on forms prescribed and furnished by the Department, and such applications shall require any pertinent information, including sufficient information for the Department to determine that the applicant is actively and regularly engaged in the sale of motor vehicles, motorcycles, house trailers, trailers, or semitrailers as a dealer, to insure proper enforcement and administration; and, furthermore, each such application shall contain a statement to the effect that the applying dealer agrees to permit the Department to examine during working hours the ownership papers for each vehicle, registered or unregistered, in the possession of said dealer or under his control. All facts stated in an application shall be sworn to before an officer authorized to administer oaths and no dealer's or manufacturer's distinguishing number shall be issued until this Act is complied with. All such applications for dealer's or manufacturer's licenses, accompanied by the prescribed fee, should be made to the Department by January 15 of each year and the license plates for those applications meeting the provisions of this Act will be mailed to the applicants during the succeeding months of February and March. Each dealer's and manufacturer's license shall expire at the expiration of the "Motor Vehicle Registration Year".

[See Compact Edition, Volume 5 for text of (a)(8) to (f)]

[Amended by Acts 1975, 64th Leg., p. 57, ch. 33, § 1, eff. April 3, 1975.]

¹ Article 4413(36).

² Article 6701d, §§ 140, 141.

Art. 6687b. Driver's, Chauffeur's, and Commercial Operator's Licenses; Accident Reports

[See Compact Edition, Volume 5 for text of 1]

ARTICLE II—ISSUANCE OF LICENSES, EXPIRATION, AND RENEWAL

[See Compact Edition, Volume 5 for text of 2 to 4]

Special Restrictions on Drivers of School Buses and Public or Common Carrier Motor Vehicles; Temporary Taxicab Permits in Home-rule Cities Over 800,000

Sec. 5.

[See Compact Edition, Volume 5 for text of 5(a)]

(b) No person who is under the age of twenty-one (21) years shall drive any motor vehicle except a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur. No person who is under the age of nineteen (19) years shall drive a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur. However, the governing body of a home-rule city having a population of more than 800,000, according to the last preceding federal census, may authorize by ordinance the issuance of temporary taxicab permits to persons who are qualified by age to drive a taxicab and who hold a valid Texas operator's license. A temporary taxicab permit must be issued for a definite period of time not to exceed 10 days and may not be issued to the same individual more than once every 90 days. The holder of a valid temporary taxicab permit may operate a taxicab while it is in use as a public or common carrier of persons. Temporary taxicab permits may be issued only in connection with special events in the city being attended by out-of-city visitors resulting in demand for transportation beyond the capabilities of established transportation facilities and may not be issued for the purpose of providing transportation in lieu of transportation services suspended or lapsed as the result of a dispute between employees and their employer. Proof of liability insurance coverage in an amount equal to that required by locally franchised taxicab companies shall be required before a temporary taxicab permit may be issued.

[See Compact Edition, Volume 5 for text of 5A to 11A]

Anatomical Gifts; Execution on Reverse Side of Driver's License

Sec. 11B. (a) A gift of any needed parts of the body may be made by executing a statement of gift

printed on the reverse side of the donor's operator's, commercial operator's, or chauffeur's license. A signed and witnessed statement of gift thereon shall be deemed to comply with the Texas Anatomical Gift Act (Article 4590-2, Vernon's Texas Civil Statutes). The gift is invalid on expiration, cancellation, revocation, or suspension of the operator's, commercial operator's, or chauffeur's license. To be valid, the statement must be executed each time the operator's, commercial operator's, or chauffeur's license is replaced, reinstated, or renewed.

(b) The Department shall print a statement certifying the willingness to make an anatomical gift on the reverse side of each operator's, commercial operator's, and chauffeur's license.

[See Compact Edition, Volume 5 for text of 12 to 14A]

Person Identification Certificates: Handicap or Health Condition; Fee

Sec. 14B. (a) The department may issue to persons who have a physical handicap or health condition that may cause unconsciousness, incoherence, or inability to communicate a specially notated personal identification certificate that indicates the particular handicap or health condition by word, symbol, or code.

(b) Original applications and applications for renewal of identification certificates shall require information and be submitted on a form promulgated by the department.

(c) The department shall levy and collect a fee of \$5 for preparation and issuance of the certificate.

(d) Fees collected for these certificates shall be deposited in the Operator's and Chauffeur's License Fund and are hereby appropriated to defray the cost incurred in issuing these certificates. Any collections in excess of cost shall be deposited in the State Treasury in the General Revenue Fund.

[See Compact Edition, Volume 5 for text of 15 to 21A]

ARTICLE IV—CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

[See Compact Edition, Volume 5 for text of 22 to 24A]

Court to Report Convictions; Restricted Licenses for Convicted Persons

Sec. 25. (a) Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the operator's, commercial operator's, or chauffeur's license of such person, the court in which such conviction is had shall require the surrender to it of all operators', commercial operators', and chauffeurs' licenses then held by the person so convicted and the clerk of said court shall thereupon forward the same together with a record of such conviction. If, by order of the court, the person convicted is not confined or imprisoned, the court

may enter an order restricting the operation of a motor vehicle to the person's occupation or to participation in an alcoholic or drug treatment, rehabilitation, or educational program, provided the person gives proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes). The order shall state restrictions as to hours of the day, days of the week, type of occupation or program, and areas or routes of travel to be permitted, except that the person convicted may not be allowed to operate a motor vehicle more than ten (10) hours in any consecutive twenty-four (24) hours, providing, on proper showing of necessity, the court may waive the ten (10) hour restriction. The order shall be effective for a period to be determined by the judge and may be extended at the discretion of the judge, provided that if the order is granted for longer than a twelve (12) month period, the person convicted must give proof to the Department of Public Safety of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). But in no event may the order remain in effect beyond the period for which the convicted person's license has been suspended. A certified copy of the order shall be given to the person convicted and shall be forwarded to the Department together with the person's licenses and the record of his conviction. Upon receipt of the order, the Department shall issue a license showing upon its face the restrictions and expiration date set out in the order. The person convicted may use the order of the court as a restricted license for a period of fourteen (14) days following the date of the order. Any person who violates the restrictions of the order of the court or on the license issued under this section is guilty of a misdemeanor and upon conviction shall be punished in the same manner as one convicted of driving a motor vehicle while license is suspended, and the license and order shall be automatically cancelled.

[See Compact Edition, Volume 5 for text of 25(b) to 46]

[Amended by Acts 1975, 64th Leg., p. 219, ch. 80, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 267, ch. 113, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 378, ch. 167, § 1, eff. Jan. 1, 1975; Acts 1975, 64th Leg., p. 905, ch. 337, § 1, eff. June 19, 1975.]

Section 2 of Acts 1975, 64th Leg., ch. 167, provided: "This Act takes effect January 1, 1976."

Art. 6687-1. Certificate of Title Act

[See Compact Edition, Volume 5 for text of 1 and 1a]

"Motor Vehicle" Defined

Sec. 2. The term "motor vehicle" means every kind of motor driven or propelled vehicle now or hereafter required to be registered or licensed under

the laws of this state, including trailers, house trailers, and semitrailers, and shall also include motorcycles, whether required to be registered or not, except motorcycles designed and used exclusively on golf courses. "Motor vehicle" does not include a motor-assisted bicycle as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).¹

[See Compact Edition, Volume 5 for text of 2a to 2c]

"Motorcycle" Defined

Sec. 2d. The term "motorcycle" means every motor vehicle designed to propel itself on not more than three wheels in contact with the ground.

[See Compact Edition, Volume 5 for text of 3 to 65]

[Amended by Acts 1975, 64th Leg., p. 1370, ch. 524, §§ 1, 2, eff. Sept. 1, 1975.]

¹ Business and Commerce Code, §§ 1.101 et seq. to 9.101 et seq.

CHAPTER ONE A. TRAFFIC REGULATIONS

Art. 6701d. Uniform Act Regulating Traffic on Highways

[See Compact Edition, Volume 5 for text of 1 to 50]

Sec. 50A. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975.

[See Compact Edition, Volume 5 for text of 51 to 70]

ARTICLE VII—RIGHT-OF-WAY

Vehicles Approaching or Entering Intersection

Sec. 71.

[See Compact Edition, Volume 5 for text of 71(a) to (c)]

(d) Except as provided in Subsection (d-1) of this section, the driver of a vehicle approaching the intersection of a different street or roadway, not otherwise regulated herein, or controlled by traffic control signs or signals, shall stop, yield and grant the privilege of immediate use of such intersection to any other vehicle which has entered the intersection from such driver's right or is approaching such intersection from such driver's right in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter such intersection without interference or collision with traffic using such different street or roadway.

(d-1) The driver of a vehicle approaching the intersection of a through street or roadway from a street or roadway which terminates at the intersection, not otherwise regulated in this section or controlled by traffic control signs or signals, shall stop, yield, and grant the privilege of immediate use of the intersection to another vehicle which has entered

the intersection from the through street or roadway or is approaching the intersection on the through street or roadway in such proximity as to constitute a hazard and after stopping may only proceed when the driver may safely enter the intersection without interference or collision with the traffic using the through street or roadway.

(e) A driver obligated to stop and yield the right-of-way in accord with Sections (a), (b), (c), (d), and (d-1) of Section 71, who is involved in a collision or interference with other traffic at such intersection is presumed not to have yielded the right-of-way as required by this Act.

[See Compact Edition, Volume 5 for text of 72 to 139F]

ARTICLE XV—INSPECTION OF VEHICLES

[See Compact Edition, Volume 5 for text of 140]

State Appointed Inspection Stations

Sec. 141.

[See Compact Edition, Volume 5 for text of 141(a) to (f)]

(g) No person who performs an inspection at a state-appointed inspection station may fraudulently represent to an applicant that a mechanism or item of equipment required to be inspected must be repaired, adjusted, or replaced before the vehicle will pass inspection when that is not the case. The Department may cancel or suspend the certificate of appointment of any state-appointed inspection station or the certificate of the person performing the inspection if it finds, after notice and hearing, that a violation of this Section occurred at the inspection station.

[See Compact Edition, Volume 5 for text of 142]

ARTICLE XVI—PENALTIES AND DISPOSITION OF FINES AND FORFEITURES

[See Compact Edition, Volume 5 for text of 143]

Dismissal of Certain Misdemeanor, Changes Upon Completing Driving Safety Course

Sec. 143A. (a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Sections 50, 50A, or 51, committed while operating a motor vehicle, the court in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, he has successfully completed a defensive driver's course or other driving safety course approved by the court.

(b) When the person complies with the provisions of Subsection (a) of this section and the evidence presented is accepted by the court, the court shall dismiss the charge against him. When a charge is dismissed under this section, the charge may not be part of the person's driving record or used for any purpose.

Disposition of Fines and Forfeitures

Sec. 144. (a) Fines collected for violation of any highway law as set forth in this Act shall be used by the municipality or the counties in which the same are assessed and to which the same are payable in the construction and maintenance of roads, bridges, and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles and to help defray the expense of county traffic officers.

(b) When a person is convicted in a municipal court of the offense of operating a vehicle on an interstate highway, as that term is defined in Subsection 144(c), at a speed greater than is reasonable and prudent under the circumstances, the municipal court shall remit to the state treasurer any portion of the fine assessed and collected which exceeds two dollars (\$2) times the number of miles per hour by which the offender exceeded the posted speed limit as such excess speed is determined by a speed-measuring device as defined in Subsection 144(d). The number of miles per hour by which an offender exceeds the posted speed limit is determined by subtracting the posted prima facie speed limit from the number of miles per hour the offender is alleged to have driven at the time of the offense according to the summons or promise to appear. The state treasurer shall deposit funds received under this Section in the General Revenue Fund.

(c) Definition: "Interstate highway" as used herein is a portion of the national system of interstate and defense highways located within this state which now or hereafter may be designated officially by the Texas Highway Commission and approved pursuant to Title 23, United States Code.¹

(d) Definition: "Speed-measuring device" as used herein is any "Doppler shift speed meter" or other "radar" device whether operating under a pulse principle or a continuous-wave principle, photo-traffic camera, or any other electronic device used to detect and measure speed.

¹ 23 U.S.C.A. § 101 et seq.

[See Compact Edition, Volume 5 for text of 145 to 165]

ARTICLE XIX—SPEED RESTRICTIONS [1963 ENACTMENT]

[See Compact Edition, Volume 5 for text of 166 to 168]

Authority of County Commissioners Court and Governing Bodies of Incorporated Cities, Towns and Villages to Alter Maximum Prima Facie Speed Limits

Sec. 169.

[See Compact Edition, Volume 5 for text of 169(a) and (b)]

(c) An incorporated city, town, or village with respect to any highway, street, or part of a highway

or street, including those marked as a route of a highway of the State Highway System, within its corporate limits, shall have the same authority to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road, or street of the State Highway System, when the highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System, is under repair, construction, or maintenance, which limits, when appropriate signs giving notice of the limits are erected, shall be effective at that highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System at all times or during hours of daylight or darkness, or at other times as may be determined; provided that under no circumstances may any governing body have the authority to modify or alter the basic rule established in Subsection (a) of Section 166, nor to establish a speed limit higher than sixty (60) miles per hour, and that any order of the State Highway Commission declaring a speed limit upon any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B shall supersede any conflicting designated speed established under the provisions of this section.

[See Compact Edition, Volume 5 for text of 169A]
Temporary Speed Limits

Sec. 169B.

[See Compact Edition, Volume 5 for text of 169B(a) to (i)]

(j) This section expires when the national maximum speed limit of 55 miles per hour as provided in Section 154, Chapter 1, Title 23, United States Code,¹ is repealed.

¹ 23 U.S.C.A. § 154.

[See Compact Edition, Volume 5 for text of 170 to 177]

ARTICLE XXI—OPERATION OF BICYCLES AND PLAY VEHICLES

[See Compact Edition, Volume 5 for text of 178]
Traffic Laws Apply to Person Riding Bicycles; Competitive Racing

Sec. 179. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except as to special regulations in this Article and except as to those provisions of this Act which by their nature can have no application.

However, organized, competitive bicycle races may be held on public roads, provided that the sponsoring organization shall have obtained the approval of the appropriate local law enforcement agencies. The

sponsoring organization and the local law enforcement agency may establish by agreement special regulations regarding the movement of bicycles during such races, or in training for races, including, but not limited to, permission to ride abreast and other regulations to facilitate the safe conduct of such races or training for races. "Bicycle" as used herein means a nonmotorized vehicle propelled by human power.

[See Compact Edition, Volume 5 for text of 180 to 188]

[Amended by Acts 1975, 64th Leg., p. 52, ch. 28, § 1, eff. March 27, 1975; Acts 1975, 64th Leg., p. 485, ch. 208, § 2, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 651, ch. 271, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1091, ch. 411, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1291, ch. 483, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2106, ch. 686, § 1, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2406, ch. 738, § 1, eff. Sept. 1, 1975.]

Section 1 of Acts 1975, 64th Leg., p. 485, ch. 208, provided: "This Act takes effect on January 1, 1976."

Art. 6701d-4. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Art. 6701d-11. Regulating Operating of Vehicles on Highways

[See Compact Edition, Volume 5 for text of 1 to 4]
Weight of Load

Sec. 5. Except as otherwise provided by law, no commercial motor vehicle, truck-tractor, trailer or semitrailer, nor combination of such vehicles, shall be operated over, on, or upon the public highways outside the limits of an incorporated city or town, having a weight in excess of one or more of the following limitations:

(1) No such vehicle nor combination of vehicles shall have a greater weight than twenty thousand (20,000) pounds carried on any one axle, including all enforcement tolerances; or which a tandem axle weight in excess of thirty-four thousand (34,000) pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula:

$$W=500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W = overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of any group of two or more consecutive axles, and N = number of axles in group

under consideration, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more; provided, that such overall gross weight may not exceed eighty thousand (80,000) pounds, including all enforcement tolerances.

(2) No such vehicle nor combination of vehicles shall have a greater weight than six hundred (600) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-pressure tires, and a greater weight than six hundred and fifty (650) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of eight thousand (8,000) pounds on high-pressure tires and ten thousand (10,000) pounds on low-pressure tires, nor any axle a load in excess of sixteen thousand (16,000) pounds on high-pressure tires, and twenty thousand (20,000) pounds on low-pressure tires.

(3) Nothing in this section shall be construed as permitting size or weight limits on the national system of interstate and defense highways in this state in excess of those permitted under 23 U.S.C. Section 127. If the federal government prescribes or adopts vehicle size or weight limits greater than those now prescribed by 23 U.S.C. Section 127 for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways in this state.

(4) Nothing in this section shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the highways and roads of this state on December 16, 1974.

(5) In this section, an axle load is defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle. Tandem axle group is defined as two (2) or more axles spaced forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension.

[See Compact Edition, Volume 5 for text of 6 to 16a-3]

[Amended by Acts 1975, 64th Leg., p. 34, ch. 18, § 1, eff. March 18, 1975.]

Section 2 of the 1975 amendatory act provided: "Sec. 2. This amendatory Act does not affect Section 5½ or 6, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11,

Vernon's Texas Civil Statutes); Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

Art. 6701d-12. Weight of Vehicles Transporting Ready-Mix Concrete

Acts 1975, 64th Leg., p. 34, ch. 18, which by § 1 amended § 5 of art. 6701d-11, in § 2 provided, in part: "This amendatory Act does not affect * * * Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

Art. 6701h. Safety Responsibility Law

[See Compact Edition, Volume 5 for text of 1 to 3]

ARTICLE III—SECURITY FOLLOWING ACCIDENT

[See Compact Edition, Volume 5 for text of 4 and 4A]

Security; Determination of Amount; Suspension of License and Registration; Notice; Exceptions

Sec. 5. (a) If twenty (20) days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death, or damage to the property of any one person of at least Two Hundred Fifty Dollars (\$250), the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, and the Department finds that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the Department shall determine the amount of security which shall be sufficient in its judgment, and in no event less than Two Hundred Fifty Dollars (\$250) to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, subject to the provisions of Subsection (c) of this section, suspend the license and all registrations of each operator and owner of a motor vehicle in any manner involved in such accident, if there is found to be a reasonable probability of a judgment being rendered against that person as a result of the accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, and the privilege of the use within this State of any motor vehicle owned by him unless such operator, owner or operator and owner shall deposit security in the sum so determined by the Department or by a person presiding at a hearing and in no event less than Two Hundred Fifty Dollars (\$250), and unless such operator and owner shall give proof of financial responsibility.

Before suspension of a license, registration, or privilege, the Department must find that there is a reasonable probability of a judgment being rendered against the person as a result of the accident and the amount of security that must be deposited. For this purpose it may consider the report of the investigating officer, the accident reports of all parties involved, and any affidavits of persons having knowledge of the facts. Notice of the determination by the Department shall be served personally on the person or mailed by certified mail, return receipt requested, to the affected person's last known address, as shown by the records of the Department. The notice shall specify that the license to operate a motor vehicle and the registration, or nonresident's operating privilege, will be suspended unless the person, within twenty (20) days after personal service or the mailing of the notice, establishes that the provisions of this section are not applicable to him and that he has previously furnished such information to the Department or that there is no reasonable probability of a judgment being rendered against him as a result of the accident. The notice shall recite that the person to whom it is addressed is entitled to a hearing as provided in this Act if a written request for a hearing is delivered or mailed to the Department within twenty (20) days after personal service or the mailing of the notice. The person's license to operate the vehicle and his registration or nonresident's operating privilege may not be suspended pending the outcome of the hearing and any appeal.

If a hearing is requested, the Department shall summon the person requesting the hearing to appear for the hearing as provided in this subsection. The hearing shall be held not less than ten (10) days after notice is given to the person requesting the hearing and written charges shall be made and a copy given to the person requesting the hearing at the time he is given the hearing notice. Jurisdiction for the hearing is vested in the judge of a police court, or a justice of the peace in the county and precinct in which the person requesting the hearing resides. The hearing officer may receive a fee for hearing these cases if the fee is approved by the commissioners court of the county of jurisdiction, but the fee may not be more than Five Dollars (\$5) a case and shall be paid from the general revenue fund of the county. The hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Department. Such proceeding shall have precedence over all other matters of a different nature, and shall be tried before the judge within fifteen (15) days from the filing thereof, and neither party shall be entitled to a jury. At the hearing, the issues to be determined are whether

there is a reasonable probability of a judgment being rendered against the person requesting the hearing as a result of the accident and, if so, the amount of security that will be sufficient to satisfy any judgment or judgments for damages resulting from the accident, but in no event less than Two Hundred Fifty Dollars (\$250), that may be recovered from the person requesting the hearing. The officer who presides at the hearing shall report the findings in the case to the Department. Notice as required by this paragraph shall be served personally on the person or mailed by certified mail, return receipt requested, to the person's last known address, as shown by the records of the Department.

If, after a hearing, the determination is that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the person may appeal the findings to the county court of the county in which the hearing was held and the appeal shall be de novo.

If a written request for a hearing is not delivered or mailed to the Department within twenty (20) days after personal service or the mailing of notice and the person has not established within that time that the provisions of this section do not apply to him or if within twenty (20) days after a hearing and exhaustion of the appeal procedure, if an appeal is made in which the decision is against the person requesting the hearing, security and proof of financial responsibility are not deposited with the Department, the Department shall suspend the person's license to operate a motor vehicle, the vehicle registration, or nonresident's operating privilege until the person complies with the provisions of this Act.

Notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security and the necessity for proof of financial responsibility. Where erroneous information is given the Department with respect to the matters set forth in subdivisions 2, 3, and 4 of Subsection (c) of this Section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it or correct information with respect to said matters.

The determination by the Department or by a person presiding at a hearing of the question of whether there is a reasonable probability of a judgment being rendered against a person as a result of an accident may not be introduced in evidence in any civil suit for damages arising from the accident.

(c) This section shall not apply under the conditions stated in Section 6 nor:

1. To a motor vehicle operator or owner against whom the Department or a person presiding at a hearing finds there is not a reasona-

ble probability of a judgment being rendered as a result of the accident;

2. To such operator or owner if such owner had in effect at the time of such accident a motor vehicle liability policy with respect to the motor vehicle involved in such accident;

3. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

4. To any person employed by the government of the United States, when such person is acting within the scope or office of his employment;

5. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Department, covered by any other form of liability insurance policy or bond; nor

6. To any person qualifying as a self-insurer under Section 34 of this Act, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section or under Section 7 unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; providing, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than Ten Thousand Dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than Twenty Thousand Dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Five Thousand Dollars (\$5,000) because of injury to or destruction of property of others in any one accident. The policy or bond may exclude coverage of the first Two Hundred Fifty Dollars (\$250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude

coverage for the first Five Hundred Dollars (\$500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude coverage for the first Two Hundred Fifty Dollars (\$250) of liability for the injury to or destruction of property of others in any one accident.

7. Wherever the word "bond" appears in this section or this Act, it shall mean a bond filed with and approved by the Department of Public Safety.

[See Compact Edition, Volume 5 for text of 6 to 43]

[Amended by Acts 1975, 64th Leg., p. 931, ch. 347, § 1, eff. June 19, 1975.]

CHAPTER FIVE. BRIDGES AND FERRIES

Art. 6795c. Toll Bridges in Counties Bordering River Between Texas and Mexico

[See Compact Edition, Volume 5 for text of 1 to 3]

Operating Board

Sec. 3a. Any such county acquiring any such toll bridge or bridges, upon a determination by the Commissioners Court thereof that the same could be better and more efficiently operated by an operating board, may provide by either the resolution or order providing for the issuance of bonds or the trust indenture securing same that such toll bridge or bridges will be operated by an operating board to be appointed as provided in such resolution, order, or trust indenture and with such powers, except the power of eminent domain and the power to borrow money, as may be granted by such resolution, order, or trust indenture.

[See Compact Edition, Volume 5 for text of 4 to 22]

[Amended by Acts 1975, 64th Leg., p. 1922, ch. 624, § 1, eff. Sept. 1, 1975.]

CHAPTER SIX. PARTICULAR COUNTIES LAW RELATING TO

ARTICLE

6812f. Road Improvements and Assessments by Galveston County Commissioners Court [NEW].

Art. 6812f. Road Improvements and Assessments by Galveston County Commissioners Court

Improvements Authorized

Sec. 1. The Commissioners Court of Galveston County may cause to be improved any county road in the county, whether by filling, grading, raising, paving, or repairing in a permanent manner, or by

constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, or by constructing drains and culverts.

Constitutional Basis

Sec. 2. This Act is a local law relating to the maintenance of public roads authorized by Article VIII, Section 9, of the Texas Constitution.

Assessments Against Property Owners; Liens

Sec. 3. (a) The commissioners court by order may assess all or any part of the cost of constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, and not more than nine-tenths of the cost of any other improvements authorized by this Act, against property abutting on the portion of the county road to be improved, and against the owners of that property. The commissioners court may provide the time, terms, and conditions of payment and default of the assessments, and may prescribe the rate of interest on them, which may not exceed eight percent a year.

(b) Any assessment against abutting property is a first and prior lien on the property from the date improvements are ordered, and is a personal liability and charge against the owner or owners of the property, whether named or not. Nothing in this Act empowers the commissioners court to fix a lien against any interest in property that is exempt at the time the improvements are ordered, but the owner or owners of the property are personally liable for any assessment in connection with the property.

Front Foot Rule

Sec. 4. The part of the cost of improvements on each portion of the county road ordered improved which is assessed against abutting property and owners of the property shall be apportioned among the parcels of abutting property and the owners thereof in accordance with the front foot plan or rule, except that if the application of this rule would, in the judgment of the commissioners court, in particular cases, result in injustice or inequity, the commissioners court may apportion and assess the costs against abutting property owners in a manner that the commissioners court determines is just and equitable, so as to produce a substantial equality of benefits received and burdens imposed. Provided, however, it is expressly found and determined that railroad rights-of-way will not benefit from such improvements and may not be assessed therefor.

Certificates

Sec. 5. (a) The commissioners court may order the issuance of assignable certificates in evidence of assessments levied, declaring the lien on the property and the liability of the true owner or owners of

the property, and may fix the terms and conditions of the certificates. Any certificate that recites substantially that the proceedings referred to in it have occurred in compliance with law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate and the personal liability of the owner or owners of the property have been performed, is prima facie evidence of all matters recited in the certificate, and no further proof of the matters is required.

(b) In any suit on an assessment or reassessment in evidence of which a certificate may be issued in accordance with the provisions of this Act, it is sufficient to allege the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations as to the proceedings relating to the assessment or reassessment are not necessary.

(c) The assessments are collectable with interest, expense of collections, and reasonable attorney's fee, if any are incurred, and are a first and prior lien on the property assessed, superior to all other liens and claims except county, school district, and city ad valorem taxes, and are a personal liability and charge against owners of the property assessed.

Joint Assessments

Sec. 6. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation, or estate, and property owned jointly may be assessed jointly.

Estimate

Sec. 7. No assessment is valid unless the commissioners court makes or causes to be made an estimate of the cost of the improvement or improvements to be constructed, and the estimate is included in any published or mailed notice of the public hearing required by this Act.

Public Hearing and Notice

Sec. 8. (a) No assessment may be made against any abutting property or its owners until after notice and opportunity for hearing has been provided in accordance with this Act, and no assessment may be made against any abutting property or owners of it in excess of the special benefits to the property and owners resulting from the enhanced value of the property by means of the improvement, as may be determined at the hearing.

(b) Notice shall be by advertisement inserted at least three times in a newspaper of general circulation in the county, the first publication to be made at least 21 days before the date of the hearing. Additional written notice of the hearing shall be given by depositing in the United States mail, at least 14 days before the date of the hearing, postage

prepaid, in an envelope addressed to the owners of the respective properties abutting the county road to be improved, as the names of the owners are shown on the then current rendered or unrendered tax rolls of the county, at the addresses listed there. To be sufficient and binding on any person owning or claiming the abutting property, or any interest in it, the mailed notice must describe in general terms the nature of the improvements for which assessments are to be levied, the county road or portion of it to be improved, the estimated cost per front foot proposed to be assessed against the property and the owner or owners of the property, the estimated total cost of the improvement or improvements, and the time and place of the hearing. The notice to be mailed may be a copy of the public notice, which must contain all of the information required for a mailed notice to be sufficient and binding. If the owner is listed on the county tax rolls as "unknown," no notice is required to be mailed. If the owner is shown on the county tax roll as an estate, the mailed notice may be addressed to the estate.

(c) The commissioners court shall hold the hearing. Any person owning abutting property or any interest in it may be heard at the hearing on any matter relating to the improvement or assessment, including the amount of the proposed assessment or assessments, the lien and liability created by it, the special benefits to the abutting property and owners of the property by the improvements for which assessments are to be levied, and the accuracy, sufficiency, regularity, and validity of the proceedings and contract in connection with the improvements and proposed assessments.

(d) The commissioners court may correct any errors, inaccuracies, irregularities, and invalidities, and may supply any deficiencies, and may determine the amount of assessments and all other matters necessary, and may levy the assessments before, during, or after the construction of the improvements, except no part of any assessment may be made to mature prior to acceptance by the county of the improvements for which the assessment is levied.

Appeal

Sec. 9. Any person owning or claiming any interest in any property assessed under the provisions of this Act, who desires to contest any assessment because of the amount of it or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference to it, or with reference to the improvements, or because of any matter or thing not in the discretion of the commis-

sioners court, may appeal to a district court in the county within 15 days after the time the assessment is levied. Any person who fails to institute suit within this time shall be held to have waived every matter that might have been heard at the hearing before the commissioners court, and shall be barred and estopped from contesting or questioning the assessment or any matter relating to it, and the only defense to any assessment in a suit to enforce it is that the notice of hearing was not mailed or delivered as required by this Act, was not published, or did not contain the information required by this Act, or that the assessments exceeded the amount of the estimate. No words or acts of any officer or employee of the county, or any member of the commissioners court, shall in any way affect the force and effect of the provisions of this Act.

Changes in Proceedings

Sec. 10. The commissioners court may provide for any changes in plans, methods, or contracts for improvements, but any change substantially affecting the nature or quality of any improvements may be made only after it is determined by a four-fifths vote of the commissioners court that it is not practical to proceed with the improvement as previously provided, and following any such vote, the commissioners court may make the substantial change only after first obtaining the consent of the person, firm, or corporation with which the commissioners court has contracted for construction of the improvements, and after obtaining a new estimate for the cost of the improvements and holding a new hearing, together with the issuance of proper notice as required by this Act. The commissioners court may at any time abandon any improvement with the consent of the person, firm, or corporation constructing the improvements, and shall by order cancel any assessments levied for abandoned improvements.

Correction

Sec. 11. If any assessment is for any reason held or determined to be invalid or unenforceable, the commissioners court may supply any deficiency in proceedings and correct any mistake or irregularity relating to the assessment, and may at any time make and levy reassessments after notice and hearing as nearly as possible in the manner provided by this Act for the original improvements. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals relating to original assessments.

[Acts 1975, 64th Leg., p. 1396, ch. 540, §§ 1 to 11, eff. June 19, 1975.]

TITLE 117

SALARIES

Article

6813c. Increases in Salaries, Expenses and Insurance Premiums for State Employees [NEW].

6819a-45. Additional Compensation for Judges of the 103rd, 107th, 138th and 197th Judicial Districts [NEW].

Art. 6813c. Increases in Salaries, Expenses and Insurance Premiums for State Employees

Sec. 1. Expired.

Insurance Premiums; Expenses for Travel, Meals and Lodging

Sec. 2. The amounts authorized in Article V, Sections 10, 12, 13, and 15, of House Bill 139, Chapter 659, Acts of the 63rd Legislature, Regular Session, 1973, for:

(a) employee premiums on group life, health, accident, accidental death and dismemberment, disability income and hospital, surgical and/or medical insurance policies shall be increased from \$12.50 per month to \$15 per month;

(b) reimbursement for use of motor vehicles and airplanes shall be increased from 12 cents to 16 cents per mile for reimbursement for use of employees' personally-owned or leased automobiles; from 12 cents to 21 cents for use of employees' personally-owned or leased airplanes, and from 16 cents to 21 cents for use of privately-owned or leased airplanes by executive heads, key officials, and members of the legislature; and

(c) per diem allowance in lieu of expenses for meals and lodging shall be increased from \$18 per diem to \$22 per diem, respectively, on the effective date of this Act, notwithstanding the provisions of Chapter 46, Acts of the 59th Legislature, Regular Session, 1965 (Article 6813b, Vernon's Texas Civil Statutes).

Sec. 3. Expired.

Reimbursement of General Revenue Fund for Supplementation
[Text of section effective until August 31, 1977]

Sec. 4. In order to preserve fund equities, the comptroller shall transfer from the special funds in the state treasury the amounts necessary to reimburse the General Revenue Fund for this supplementation out of unexpended and unencumbered cash balances as of August 31, 1975. In the event such unexpended and unencumbered cash balances are

insufficient to totally reimburse the General Revenue Fund as of August 31, 1975, the legislature shall appropriate out of such funds from any income to said funds during the biennium beginning September 1, 1975, a sufficient amount to totally reimburse the General Revenue Fund for any supplementation required to implement the salary, wage, or other increases provided by this Act.

Secs. 5 and 6. Expired.

Effective and Expiration Dates

Sec. 7. This Act takes effect February 1, 1975, and expires August 31, 1975, except that Section 4 expires August 31, 1977, and Section 2 has continuing effect.

[Acts 1975, 64th Leg., p. 2, ch. 2, §§ 1 to 7, eff. Feb. 1, 1975.]

Sections 1, 3, 5 and 6 of the 1975 Act provided:

"Sec. 1. Each state agency, board, commission, department, or institution for which appropriations were made by the 63rd Legislature out of the state treasury shall pay a salary increase to all employee positions, in addition to the amounts previously authorized by legislative appropriation or from other funds available for the remainder of the fiscal year ending August 31, 1975, notwithstanding the provisions of Chapter 46, Acts of the 59th Legislature, Regular Session, 1965 (Article 6813b, Vernon's Texas Civil Statutes). This increase shall not apply to employees of the house of representatives or senate or employees of members of the legislature.

"The salary increases authorized by this section shall be in amounts as follows:

"(a) Positions covered by the Position Classification Plan which are classified in Salary Groups 2 through 12 inclusive shall receive a salary increase of 13 percent of the salary rate in effect on January 1, 1975. Such increase shall be granted notwithstanding the maximum limits for each salary group in the Classification Salary Schedule provided for the fiscal year beginning September 1, 1974, by House Bill 139, Chapter 659, Acts of the 63rd Legislature, Regular Session, 1973.

"(b) Positions covered by the Position Classification Plan which are classified in Salary Groups 13 through 21 inclusive shall receive a salary increase of nine percent of the salary rate in effect on January 1, 1975. Such increase shall be granted notwithstanding the maximum limits for each salary group in the Classification Salary Schedule provided for the fiscal year beginning September 1, 1974, by House Bill 139, Chapter 659, Acts of the 63rd Legislature, Regular Session, 1973.

"(c) All positions not covered by the Position Classification Plan, and for which monthly rates are less than \$876 on January 1, 1975, shall receive a salary or wage increase of 13 percent.

"(d) All positions not covered by the Position Classification Plan, and for which monthly rates are \$876 to \$1,267 inclusive, on January 1, 1975, shall receive a salary increase of \$114 per month.

"(e) All positions not covered by the Position Classification Plan, and for which monthly rates are more than \$1,267 but not greater than \$1,935 on January 1, 1975, shall receive a salary or wage increase of nine percent.

"(f) All positions not covered by the Position Classification Plan, and for which monthly rates are greater than \$1,935 on January 1, 1975, shall receive a salary or wage increase of \$174 per month.

"(g) For the purpose of determining which percentage salary increase an individual shall receive who is on a contract salary for a period of less than 12 months (such as a faculty member in a college or university), the monthly salary rate which determines the percentage salary increase such individual shall receive shall be that total contract salary divided by the number of months in the contract period. No salary or wage increase under this Act shall exceed \$174 per month.

"(h) The salary increases authorized herein are to be calculated on the basis of regular full-time employment. Persons paid hourly wages shall receive wage increases in the proportion that the number of hours worked bears to regular full-time employment for the type of work.

"Sec. 3. Within the limit of institutional funds available, the salary, travel expense, and insurance premium increases authorized in Section 1 and Section 2 shall be granted to auxiliary employees of agencies of higher education.

"Sec. 5. Restrictions placed on supplementation of special funds in the treasury with general revenue funds by other provisions of general law are hereby repealed for the purposes of this Act.

"Sec. 6. The comptroller of public accounts shall promulgate rules, regulations, and procedures necessary to carry out the provisions of this Act and may require prior to the disbursement of funds under this Act such information as he may deem necessary to carry out the intent of this Act. Such information shall include a statement from each state agency, board, commission, department, and institution reflecting the salary of each employee position, including all auxiliary and staff positions, and all other employee positions paid from institutional funds of agencies of higher education either in or out of the state treasury, and the fund from which such salary was paid on January 31, 1975."

Appropriation. Acts 1975, 64th Leg., p. 5, ch. 3, §§ 1 to 5, provided:

"Sec. 1. There is hereby appropriated the sum of \$93 million from the general revenue fund to supplement the appropriations made by the 63rd Legislature for the purpose of paying salaries and wages, travel expenses, per diem, and employee group insurance premiums for the period ending August 31, 1975. The comptroller of public accounts is authorized to make transfers of appropriation authority and/or cash from this \$93 million appropriation to accounts within the general revenue fund and to the special funds in the state treasury.

"Sec. 2. Transfer of the unexpended balances of line-item salaries previously appropriated in House Bill 139, Chapter 659, Acts of the 63rd Legislature, Regular Session, 1973, are hereby reappropriated for transfer to salaries of classified positions for the purpose of funding salary increases.

"Sec. 3. To defray administrative costs to be incurred by the comptroller of public accounts under this Act and Senate Bill 1, Acts of the 64th Legislature, Regular Session, 1975, there is hereby appropriated from the general revenue fund the sum of \$275,000.

"Sec. 4. None of the funds appropriated by Section 1 of this Act shall be used to employ additional personnel.

"Sec. 5. This Act expires August 31, 1975."

Art. 6819a-15. Additional Compensation of District Court Judges in El Paso County

Sec. 1. For all services rendered to the county and for performing administrative services, the judges of the district courts having jurisdiction in El Paso County may receive, in addition to the salary paid to them by the state and in lieu of all the compensation now paid or authorized to be paid by the county to the district judges, the sum of \$9,000 per annum, subject to the provisions of Section 2 of this Act, to be paid in equal monthly installments out of the general fund or officers salary fund of the county. The commissioners court shall make proper budget provisions for the payment thereof. A district judge of the state who may be assigned to sit for the judge of a district court in El Paso County under the provisions of Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes), may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of the visiting judge from all sources and the pay received from all sources by district judges in El Paso County, such amount to be paid by the county on approval of the presiding judge of the administrative judicial district.

Sec. 2. The combined yearly salary rate from state and county sources of the judges of the district courts in El Paso County may not exceed an amount which is \$1,000 less than the combined yearly salary rate from state and county sources received by the judges of the court of civil appeals in whose district El Paso County is located.

Sec. 3. The provisions of this Act do not affect the salary and compensation authorized to be paid to the County Judge of El Paso County as a member of the El Paso County Juvenile Board and do not affect the existence or the functions of the juvenile board.

Sec. 4. This Act is cumulative of existing laws and any laws in conflict are repealed to the extent of conflict only.

[Amended by Acts 1975, 64th Leg., p. 346, ch. 147, § 1, eff. May 8, 1975.]

Arts. 6819a-16, 6819a-17. Repealed by Acts 1975, 64th Leg., p. 346, ch. 147, § 2, eff. May 8, 1975

See, now, art. 6819a-15.

Art. 6819a-28. Additional Compensation of District Court Judges of 10th, 56th, 122nd and 212th Judicial Districts

In addition to the compensation paid by the State of Texas to District Judges, the Commissioners Court of Galveston County may pay to the District Judges of the 10th Judicial District, the 56th Judicial District, the 122nd Judicial District, and the 212th Judicial District, respectively, for services rendered to Galveston County for performing administrative duties, a sum of not less than Ten Thousand Dollars (\$10,000) nor more than Fifteen Thousand Dollars (\$15,000) annually to each of the Judges of said District Courts. This amount shall be paid in equal monthly installments out of the General Fund or Officers Salary Fund of Galveston County. The Commissioners Court of Galveston County may make proper budget provisions for the payment of the sums authorized in this Act.

[Amended by Acts 1975, 64th Leg., p. 256, ch. 105, § 1, eff. Sept. 1, 1975.]

Art. 6819a-39. Additional Compensation for District Court Judges of 58th, 60th, 136th, 172nd Judicial Districts and Criminal District Court of Jefferson County.

Sec. 1. In addition to the compensation paid by the State of Texas to the District Judges, the Commissioners Court of Jefferson County may pay District Judges of the 58th Judicial District, the 60th Judicial District, the 136th Judicial District, the 172nd Judicial District, and the Criminal District Court of Jefferson County, respectively, for services rendered to Jefferson County and for performing administrative duties, an annual sum of not more than Fifteen Thousand Dollars (\$15,000) to each of said Judges, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of Jefferson County. Such compensation shall be for all judicial and administrative services now rendered by such Judges, and any additional judicial and administrative services hereafter to be assigned to them, and in addition to all salaries paid or hereafter to be paid to them by the State of Texas out of state revenues.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 1395, ch. 539, § 1, eff. Sept. 1, 1975.]

Art. 6819a-45. Additional Compensation for Judges of the 103rd, 107th, 138th and 197th Judicial Districts

Sec. 1. The Commissioners Court of Cameron County may supplement the compensation of the judges of the 103rd, 107th, 138th, and 197th Judicial Districts in an amount not to exceed \$8,000 a year.

Sec. 2. The compensation provided for in Section 1 of this Act shall be in addition to all other compensation now paid or authorized to be paid the district judges of the 103rd, 107th, 138th, and 197th Judicial Districts by the state or the county.

[Acts 1975, 64th Leg., p. 114, ch. 51, §§ 1, 2, eff. April 18, 1975.]

Art. 6823a. Travel Regulations Act of 1959

[See Compact Edition, Volume 5 for text of 1 and 2]

Basis of Reimbursement or Advance; Per Diem and Transportation Allowance: Rate and Computation; Revolving Petty Cash Fund

Sec. 3. a. A reimbursement or advance from funds appropriated by the Legislature for traveling and other necessary expenses incurred by the various officials, heads of state agencies, and employees of the state in the active discharge of their duties shall be on the basis of either a per diem or actual expenses as specifically fixed and appropriated by the Legislature in General Appropriation Acts. A per diem allowance shall mean a flat daily rate payment in lieu of actual expenses incurred for meals and lodging and as such shall be legally construed as additional compensation for official travel purposes only.

[See Compact Edition, Volume 5 for text of 3b]

c. All agencies, boards, commissions, departments, and institutions are authorized to establish a revolving petty cash fund out of funds in the State Treasury or local funds in accordance with Section 6, Subsection g of this Article. The sole purpose of the petty cash fund shall be to advance projected travel expense. This fund shall be reimbursed by warrants drawn and approved by the Comptroller of Public Accounts out of funds in the State Treasury or checks drawn against funds held outside the treasury.

[See Compact Edition, Volume 5 for text of 4]

Advanced Approval of Governor; Travel Outside United States

Sec. 5. Any travel connected with official business of the state for which reimbursement for travel expenses incurred is claimed or for which an ad-

vance for travel expenses to be incurred is sought, with the exception of travel to, in, and from the several states, United States possessions, Mexico, and Canada, must have the advance written approval of the Governor. Blanket authority by the Governor may be given the Department of Public Safety to law enforcement personnel.

Rules and Regulations; Standard Expense Account Forms; Reimbursement or Advance Payment for Travel by Private Conveyance; Overpayment

Sec. 6.

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

b. Standard expense account forms shall be used by all state agencies in preparing the expense accounts for traveling state employees. Such forms shall contain information stating

(1) the point of origin and the town, place or point of destination of each trip and the reimbursable mileage travelled, or projected, between each point, town, or place. This provision shall also apply to intra-city mileage;

(2) the actual period of time the employee is away, or plans to be away, from his designated headquarters entitling him to travel expenses; and

(3) a brief statement which clearly shows the purpose of the trip and the character of official business performed or to be performed.

c. In determining transportation reimbursement or advance payment for travel by private conveyance, the Comptroller shall determine the mileage by shortest highway distance between point of origin and the destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. In determining the amounts of reimbursement or advance payment for transportation by personal car within the State, the Comptroller shall compute all distances according to the shortest route between points. In determining the amount of reimbursement or advance payment for transportation by personal car within this state, the Comptroller shall adopt a mileage guide including a chart of distances showing the shortest route between points, and which shall include all Farm-to-Market roads and shall be reissued annually.

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

e. When two, three, or four officials or employees of the same state agency with the same itinerary on the same dates are required to travel on the same official state business for which travel reimbursement for mileage in a personal car is claimed, or for which an advance payment is sought, a payment will be claimed and allowed for only one of the employees except as provided hereafter. To the extent of mileage claimed, the Comptroller shall consider such

travel claims as multiple claims and may pay only one such claim. If more than four employees attend such meeting or conference in more than one car, full mileage shall be allowed for one car for each four employees and for any fraction in excess of a multiple of four employees. If, in any instance, it is not feasible for these officials or employees to travel in the same car, then prior official approval from the head of the state department or agency shall be obtained and shall be considered as authorization and the basis for reimbursement, or advance payment, for travel for each person authorized to use his personal car in such travel.

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

g. The Comptroller shall, by promulgation of appropriate rules and regulations, establish a procedure by which a state officer or employee may receive in advance the projected travel expense to be incurred in a particular exercise of official duties. The Comptroller shall require a final accounting after the actual travel expense has been determined to provide for reimbursement and adjustment, as necessary, to equalize the allowance and the actual expense incurred.

Double Travel Expense Payments; Compensation by Non-state Agency

Sec. 7. Double travel expense payments to state officials or employees are prohibited. When an employee engages in travel for which he is to be compensated by a non-state agency, he shall not receive any reimbursement, and may not seek an

advance payment, for such travel from authorized amounts in the General Appropriation Acts.

Local Transportation Allowance; Limits

Sec. 8. An employee whose duties customarily require travel within his designated headquarters may be authorized a local transportation allowance for this travel. Such allowance, however, may not exceed the transportation allowance for use of a privately owned automobile as set by the Legislature in the General Appropriations Acts, except that an employee with a physical handicap which precludes his personal operation of a privately owned automobile may, without regard to the standard otherwise set in the General Appropriations Acts, be authorized a reasonable transportation allowance not to exceed the amount to which such handicapped employee would be entitled for similar travel occurring outside of his designated headquarters.

[See Compact Edition, Volume 5 for text of 9]

Public Conveyances; Courtesy Cards

Sec. 10. The provisions of this Act shall not preclude reimbursement of claims, or requests for advance payments, by officials or employees for use of public conveyances. Transportation is authorized by courtesy cards for air, rail and bus lines.

[See Compact Edition, Volume 5 for text of 11]

[Amended by Acts 1975, 64th Leg., p. 1090, ch. 410, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1387, ch. 535, §§ 1 to 5, eff. Sept. 1, 1975.]

TITLE 119

SEQUESTRATION

Art. 6840. Grounds for Issuance and Dissolution

Sec. 1. (a) Judges of the district and county courts and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the cases and upon the grounds provided for in Subsections (b) through (e) of this section.

(b) When a person sues for the title or possession of any personal property or fixtures of any type or kind or sues for the foreclosure or enforcement of a mortgage or lien or security interest upon personal property or fixtures of any type or kind, a writ of sequestration may be issued if a reasonable conclusion may be drawn that there is immediate danger that the defendant or party in possession thereof will conceal, dispose of, ill-treat, waste, or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

(c) When a person sues for the title or possession of real property or sues for the foreclosure or enforcement of a mortgage or of a lien on real property, a writ of sequestration may be issued if a reasonable conclusion may be drawn that there is immediate danger that the defendant or party in possession thereof will make use of his possession to injure or ill-treat such property or waste or convert to his own use the timber, rents, fruits, or revenue thereof.

(d) A writ of sequestration may be issued when any person sues for the title or possession of any property from which he has been ejected by force or violence.

(e) A writ of sequestration may be issued when any person sues to try the title to any real property, or to remove cloud upon the title to such real property, or to foreclose a lien upon any such real property, or for a partition of real property, and makes oath that the defendant or either of them, in the event there be more than one defendant, is a nonresident of this state.

Sec. 2. The application for the issuance of the writ shall be made under oath and shall set forth specific facts stating the nature of the plaintiff's claim, the amount in controversy, if any, and the facts justifying the issuance.

Sec. 3. (a) When a writ of sequestration has been issued as provided in this article and the rules of civil procedure, the defendant may seek a dissolution of the writ by written motion filed with the court.

(b) A hearing on the motion to dissolve the writ shall be held and the issue determined not later than 10 days after the motion to dissolve is filed, unless the parties agree to an extension of time. At the hearing, the writ shall be dissolved unless the party who secured the issuance of the writ proves the specific facts alleged and the grounds relied upon for its issuance.

(c) If the writ is dissolved, the action shall proceed as if no writ had been issued except that an action for damages for wrongfully securing the issuance of the writ must be brought as a compulsory counterclaim. In addition to all other elements of damages, the party moving to dissolve the writ may recover his reasonable attorney's fees incurred in the dissolution of the writ.

(d) If the writ is dissolved and the personal property sought to be subjected to the writ is consumer goods, as that term is defined in the Texas Business and Commerce Code, the defendant or the party in possession shall be entitled to damages which shall be reasonable attorney's fees and the greatest of One Hundred Dollars (\$100.00), the finance charge contracted for, or actual damages. No damages may be awarded for the failure of the plaintiff to prove by a preponderance of the evidence the specific facts alleged and such failure is a result of a bona fide error. For a bona fide error to be available as a defense, the plaintiff must prove the use of reasonable procedures to avoid such error.

(e) A motion to dissolve the writ is cumulative of the right of replevy, and the filing of the motion to dissolve shall stay any further proceedings under the writ until a hearing is had, and the issue is determined.

Sec. 4. Requisites of Writ of Sequestration. There shall be prominently displayed on the face of the writ, in 10-point type and in a manner calculated

to advise a reasonably attentive person of its contents, the following:

“YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A ‘REPLEVY’ BOND.

“YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.”

[Amended by Acts 1975, 64th Leg., p. 1246, ch. 470, § 1, eff. Sept. 1, 1975.]

TITLE 120A

STATE AND NATIONAL DEFENSE

CIVIL DEFENSE

Article

6889-6. [Repealed].

6889-7. Disaster Act of 1975 [NEW].

CIVIL DEFENSE

Art. 6889-6. Repealed by Acts 1975, 64th Leg., p. 731, ch. 289, § 19, eff. May 22, 1975

See, now, art. 6889-7.

Art. 6889-7. Disaster Act of 1975

Short Title

Sec. 1. This Act may be cited as the Texas Disaster Act of 1975.

Purposes

Sec. 2. The purposes of this Act are to

(1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide a disaster management system embodying all aspects of predisaster preparedness and postdisaster response; and

(8) assist in prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use.

Limitations

Sec. 3. Nothing in this Act may be construed to

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this Act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs, but any communications facility or organization, including radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency;

(3) affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any of their personnel when on active duty, but state, local, and interjurisdictional disaster emergency plans shall place reliance on the forces available for performance of functions related to disaster emergencies; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution or laws of this state independent of or in conjunction with any provisions of this Act.

Definitions

Sec. 4. In this Act

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action.

(2) "Political subdivision" means a county or incorporated city.

(3) "Organized volunteer groups" means organizations such as the American National Red Cross, the Salvation Army, Civil Air Patrol, Radio Amateur Civil Emergency Services, and other similar organizations recognized by federal or state statute, regulation, or memorandum.

(4) "Temporary housing" means temporary housing as defined in the Federal Disaster Relief Act of 1974 (PL 93-288, 88 Stat. 143).¹

(5) "Interjurisdictional agency" means a county government and the government of the city which is the county seat, the governments of a group of municipalities within a single county, or the government of a single county and the governments of all or any number of municipalities in that county.

¹ 42 U.S.C.A. §§ 5121 et seq., 5174.

The Governor and Disaster Emergencies

Sec. 5. (a) The governor is responsible for meeting the dangers to the state and people presented by disasters.

(b) Under this Act, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(c) The governor may establish by executive order a Disaster Emergency Services Council to advise and assist him in all matters relating to disaster preparedness, emergency services, and disaster recovery. The Disaster Emergency Services Council is composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups.

(d) A disaster emergency may be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat of disaster is imminent. The state of disaster emergency continues until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order, but no state of disaster emergency may continue for longer than 30 days unless renewed by the governor. The legislature by law may terminate a state of disaster emergency at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive

order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant on the disaster prevent or impede, promptly filed with the State Division of Disaster Emergency Services, the secretary of state, and the county clerk or city secretary in the area or areas to which it applies.

(e) An executive order or proclamation setting forth a state of disaster emergency activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and is authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this Act or any other provision of law relating to disaster emergencies.

(f) During the continuance of any state of disaster emergency and the pursuant recovery period, the governor is commander-in-chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans, but nothing in this Act restricts his authority to do so by orders issued at the time of the disaster emergency.

(g) In addition to any other powers conferred on the governor by law, he may

(1) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) utilize all available resources of the state government and of each political subdivision of the state which are reasonably necessary to cope with the disaster emergency;

(3) temporarily reassign direction, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services;

(4) subject to any applicable requirements for compensation under Section 13 of this Act, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency;

(5) recommend the evacuation of all or part of the population from any stricken or threatened area in the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) enter into purchase, lease, or other arrangements with an agency of the United States for temporary housing units to be occupied by disaster victims and to make units available to any political subdivision of the state;

(10) assist any political subdivision which is the locus of temporary housing for disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source; "passing through" funds made available by any agency, public or private; or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project;

(11) under such regulations as he shall prescribe, temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, transportation within or across the state, or other requirement of law or regulation within this state when by proclamation he deems the suspension or modification essential to provide temporary housing for disaster victims;

(12) on his determination that a local government of the state has or will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, certify that to the federal government provided that no application amount may exceed 25 percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs, and recommend to the federal government, based on his review, the cancellation of all or any part of repayment when in the first three full fiscal-year periods following the major disaster the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character;

(13) through the use of state departments or agencies or the use of any of the state's instrumentalities, clear or remove from publicly or privately owned land or water, debris and wreckage that may threaten public health or safety or public or private property in any disaster emergency declared by the governor or major disaster as declared by the President of the United States;

(14) accept funds from the federal government and utilize the funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water;

(15) on his determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund financial assistance, subject to terms and conditions as may be imposed on the grant, and enter into an agreement with the federal government or any officer or agency of the United States pledging the state to participate in funding not more than 25 percent of the financial assistance authorized in this subsection;

(16) make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance, which shall not exceed an aggregate amount in excess of that established by federal statute to an individual or family in any single major disaster declared by the President of the United States; and

(17) make rules and regulations as are necessary for carrying out the purposes of this Act, including standards of eligibility for persons applying for benefits, procedures for applying and administration, methods of investigation, filing, and approving applications, and formation of local or statewide boards to pass on applications and procedures for appeals.

(h) The governor may designate the Texas Department of Public Welfare or other state agency to carry out the functions of providing financial aid to individuals or families qualified for disaster relief. The governor may allocate funds appropriated under this Act to implement the purposes of this Act.

(i) Nothing in this Act may be construed to limit the governor's authority to apply for, administer, or expend any grant, gift, or payment in aid of disaster prevention, preparedness, response, or recovery.

(j) No debris or wreckage from public or private property may be removed until the affected local

government, corporation, organization, or individual presents an unconditional authorization for removal to the governor. No debris or wreckage may be removed from private property until the state is indemnified against any claim arising from removal. Whenever the governor provides for clearance of debris or wreckage under the provisions of this Act, state employees or other individuals acting by authority of the governor may enter on private land or water to perform tasks necessary to the removal or clearance operation. Except in cases of willful misconduct, gross negligence, or bad faith, a state employee or agent performing his duties while complying with orders of the governor issued under the provisions of this Act shall not be liable for the death of or injury to persons or damage to property.

(k) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims and to enter into whatever arrangements (including purchase of temporary housing units and payment of transportation charges) which are necessary to prepare or equip the sites to utilize the housing units.

State Division of Disaster Emergency Services

Sec. 6. (a) A Division of Disaster Emergency Services is established in the office of the governor. The division shall have a director appointed by and shall serve at the pleasure of the governor. The division shall have coordinating and planning officers and other professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

(b) The Division of Disaster Emergency Services shall prepare and maintain a comprehensive state disaster plan and keep it current. The plan may include

- (1) provisions for prevention and minimization of injury and damage caused by disaster;
- (2) provisions for prompt and effective response to disaster;
- (3) provisions for emergency relief;
- (4) identification of areas particularly vulnerable to disasters;
- (5) recommendations for zoning, building, and other land-use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (6) provisions for assistance to local officials in designing local emergency action plans;
- (7) authorization and procedures for the erection or other construction of temporary works

designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster;

(8) preparation and distribution to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs;

(9) organization of manpower and channels of assistance;

(10) coordination of federal, state, and local disaster activities;

(11) coordination of the state disaster plan with the disaster plans of the federal government; and

(12) other necessary matters relating to disasters.

(c) The Division of Disaster Emergency Services shall take an integral part in the development and revision of local and interjurisdictional disaster plans prepared under Section 8 of this Act. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with subdivisions and agencies on a regularly scheduled basis and shall make field reviews of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply and may suggest revisions.

(d) In preparing and revising the state disaster plan, the Division of Disaster Emergency Services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the Division of Disaster Emergency Services shall encourage them also to seek advice from the sources.

(e) The state disaster plan or any part of it may be incorporated in regulations of the Division of Disaster Emergency Services or executive orders which have the force and effect of law.

(f) The Division of Disaster Emergency Services shall

- (1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of an emergency;
- (2) procure and pre-position supplies, medicines, materials, and equipment;
- (3) promulgate standards and requirements for local and interjurisdictional disaster plans;
- (4) periodically review local and interjurisdictional disaster plans;
- (5) provide for mobile support units;
- (6) establish and operate or assist political subdivisions, their disaster agencies, and interju-

risdictional disaster agencies to establish and operate training programs and programs of public information;

(7) make surveys of public and private industries, resources, and facilities in the state which are necessary to carry out the purposes of this Act;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed on if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the governor, executive orders and regulations necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this Act and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) do other things necessary, incidental, or appropriate for the implementation of this Act.

Financing

Sec. 7. (a) It is the intent of the legislature and declared to be the policy of the state that funds to meet disaster emergencies always be available.

(b) The Disaster Emergency Funding Board, which is composed of the governor, the lieutenant governor, the chairman of the State Board of Insurance, the commissioner of the State Department of Public Welfare, and the director of the Division of Disaster Emergency Services, is established.

(c) A disaster contingency fund is established which shall receive money appropriated by the legislature.

(d) It is the legislative intent that the first recourse shall be to funds regularly appropriated to state and local agencies. If the governor finds that the demands placed on these funds in coping with a particular disaster are unreasonably great, he may with the concurrence of the Disaster Emergency Funding Board make funds available from the Disaster Contingency Fund.

(e) Whenever the federal government or any other public or private agency or individual offers to the state or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds as gifts, grants, or loans for

purposes of emergency services or disaster recovery, the governor, if required by the donor, and the political subdivision through its executive officer or governing body may accept the offer in behalf of the state or its political subdivision. The governor or his designated agent is authorized to determine when a public calamity or disaster has occurred. Where any gift, grant, or loan is accepted by the state, the governor or on his designation the State Disaster Emergency Services Council or the State Coordinator of Disaster Emergency Services may dispense the gift, grant, or loan directly to accomplish the purpose for which it was made or allocate and transfer to any political subdivision of this state, services, equipment, supplies, materials, or funds in the amount he or his designated agent may determine. All these funds received by the state shall be placed in a special fund or funds and shall be disbursed by warrants issued by the comptroller of public accounts on order of the governor or his designated agent, who may be named by him either in a written agreement accepting the funds or in a written authorization filed with the secretary of state. Where the funds are to be used for the purchase of equipment, supplies, or commodities of any kind, it is not necessary that bids be obtained or that the purchases be approved by any other agency. On receipt of an order for disbursement, the comptroller shall issue a warrant without delay. Political subdivisions are authorized to accept and utilize all services, equipment, supplies, materials, and funds to the full extent authorized by the agreement under which they are received by the state or by the political subdivision.

Local and Interjurisdictional Disaster Agencies and Services

Sec. 8. (a) Each political subdivision within this state is within the jurisdiction of and served by the Division of Disaster Emergency Services and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency which, except as otherwise provided under this Act, has jurisdiction over and serves the entire county or interjurisdictional area.

(c) The governor shall determine which municipal corporations need disaster agencies of their own and shall recommend that they be established and maintained. He shall make his determinations on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration. The disaster agency of a county shall cooperate with the disaster agencies of municipalities situated within its borders but shall not have jurisdiction in a municipality having its own disaster agency. The Division of Disaster Emergency Serv-

ices shall publish and keep current a list of municipalities required to have disaster agencies under this subsection. Nothing in this subsection may be construed as limiting the constitutional and statutory powers of local governments.

(d) The governor may recommend that a political subdivision establish and maintain a disaster agency jointly with one or more contiguous political subdivisions if he finds that the establishment and maintenance of any agency or participation in it is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this Act.

(e) Each political subdivision which does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have a liaison officer designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.

(f) The mayor, county judge, or other principal executive officer of each political subdivision in the state shall notify the Division of Disaster Emergency Services of the manner in which the political subdivision is providing or securing disaster planning and emergency services, identify the person who heads the agency from which the service is obtained, and furnish additional pertinent information that the division requires.

(g) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(h) The local or interjurisdictional disaster agency shall prepare in written form and distribute to all appropriate officials a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster channels of assistance.

(i) A political subdivision may make appropriations for disaster emergency services as provided by law for making appropriations for ordinary expenses of the political subdivisions and may enter into agreements for the purpose of organizing disaster emergency service divisions, provide for a mutual method of financing the organization of units on a basis satisfactory to the political subdivisions, and render aid to other subdivisions under mutual aid agreements provided that the functioning of said units shall be coordinated by the State Disaster Emergency Services Council. For the payment of the cost of any equipment, construction, acquisition, or any improvements for carrying out the provisions of this Act, counties and incorporated cities and towns may issue time warrants. These time warrants shall be issued in accordance with the provisions of Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Ar-

ticle 2368a, Vernon's Texas Civil Statutes). Time warrants shall not be issued for financing permanent construction or improvements for disaster emergency services purposes except on the right of a referendum vote as provided in Section 4, Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes).

Establishment of Interjurisdictional Disaster Planning and Service Areas

Sec. 9. (a) If the governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, he may delineate by executive order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency planning and services. A finding of the governor pursuant to this subsection shall be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on a unijurisdictional basis, such as

- (1) small or sparse population;
- (2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;
- (3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;
- (4) the interrelated character of the counties in a multicounty area; or
- (5) other relevant conditions or circumstances.

(b) If the governor finds that a vulnerable area lies only partly within this state and includes territory in another state or states or territory in a foreign jurisdiction and that it would be desirable to establish an interstate or international relationship, mutual aid, or an area organization for disaster, he shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes), any resulting agreement or agreements may be considered supplemental agreements pursuant to Article 6 of that compact.

(c) If the other jurisdiction with which the governor proposes to cooperate pursuant to Subsection (b) of this section has not enacted that compact, he may

negotiate special agreements with the jurisdiction. Any agreement, if sufficient authority for its making does not otherwise exist, becomes effective only after its text has been communicated to the legislature and provided that neither house of the legislature has disapproved it by adjournment of the next ensuing session competent to consider it or within 30 days of its submission, whichever is longer.

Intergovernmental Arrangements

Sec. 10. (a) This state has enacted into law and enters into the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes) with all states, as defined in that Act, bordering this state which have enacted or may enact the compact in the form substantially contained in Chapter 312, Acts of the 52nd Legislature, 1951 (Article 6889-5, Vernon's Texas Civil Statutes).

(b) The governor may enter into the compact with any state which does not border this state if he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

(c) Nothing in Subsections (a) and (b) of this section may be construed to limit previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states.

(d) If any person holds a license, certificate, or other permit issued by any state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving the skill in this state to meet an emergency or disaster, and this state shall give due consideration to the license, certificate, or other permit.

Local Disaster Emergencies

Sec. 11. (a) A local disaster emergency may be declared only by the governing body of a political subdivision. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing body of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the city secretary or county clerk as applicable.

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under the declaration.

(c) No interjurisdictional agency or its official may declare a local disaster emergency unless ex-

pressly authorized to do so by the agreement pursuant to which the agency functions. However, an interjurisdictional disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.

Disaster Prevention

Sec. 12. (a) In addition to disaster prevention measures as included in the state, local, and interjurisdictional disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction and pursuant to any other authority and competence they have, state agencies including but not limited to those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards shall make studies of disaster-prevention-related matters. The governor from time to time shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) The Water Development Board and other state agencies in conjunction with the Division of Disaster Emergency Services shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies undertaken under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or its consequences.

(c) If the Division of Disaster Emergency Services believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor on review of the recommendations finds after public hearing that the changes are essential, he shall make appropriate recommendations to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his recommendations is taken within the time specified by the governor, he shall so inform the legislature and request legislative action appropriate to mitigate the impact of disaster.

(d) The governor, at the same time that he makes his recommendations pursuant to Subsection (c) of this section, may suspend the standard or control which he finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the legislature or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation shall be administered and given effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review but is not subject to temporary stay pending litigation.

Compensation

Sec. 13. (a) Each person in this state shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. This Act neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this Act are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency of the state except pursuant to statute or ordinance.

(c) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or a member of the disaster emergency forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this Act shall file a claim for compensation with the Division of Disaster Emergency Services in the form and manner the Division of Disaster Emergency Services provides.

(e) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the Division of Disaster Emergency Services, the amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state.

(f) Nothing in this section applies to or authorizes compensation for the destruction or damaging of

standing timber or other property in order to provide a firebreak or to the release of water or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood, or contravention of Article I, Section 17, of the Texas Constitution, or statutes pertaining to that section.

Communications

Sec. 14. The Division of Disaster Emergency Services shall ascertain in cooperation with the Criminal Justice Council or its successor agency what means exist for rapid and efficient communication in times of disaster emergencies. The division shall consider the desirability of supplementing these communication resources or of integrating them into a comprehensive state or state-federal telecommunication or other communication system or network. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of their multipurpose use for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate.

Mutual Aid

Sec. 15. (a) Political subdivisions not participating in interjurisdictional arrangements pursuant to this Act nevertheless shall be encouraged and assisted by the Division of Disaster Emergency Services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employ.

(b) In reviewing local disaster plans, the governor or his agent shall consider whether they obtain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor or his agent to require an interjurisdictional agreement or arrangement pursuant to Section 9 of this Act that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid, but in requiring the making of an interjurisdictional arrangement to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes.

Weather Modification

Sec. 16. The Division of Disaster Emergency Services shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activities service enough to constitute a disaster. If the division determines that precipita-

tion that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall request in the name of the governor that the officer or agency empowered to issue permits for weather modification operations suspend the issuance of the permits. On the governor's request, no permits may be issued until the division informs the officer or agency that the danger has passed.

Insurance Coverage

Sec. 17. The Disaster Emergency Funding Board may expend money from the Disaster Contingency Fund to acquire insurance coverage on state-owned facilities not already covered by insurance that have been damaged or destroyed by a disaster in an area

declared a major disaster area by the governor and the President of the United States under the provisions of federal and state laws relating to disaster.

Severability

Sec. 18. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Act, and to this end the provisions of this Act are held to be severable. All plans, regulations, and executive orders and proclamations not in conflict herewith are continued in full force and effect.

Repealer

Sec. 19. The Texas Disaster Act of 1973 (Article 6889-6, Vernon's Texas Civil Statutes) is repealed. [Acts 1975, 64th Leg., p. 731, ch. 289, eff. May 22, 1975.]

TITLE 121

STOCK LAWS

CHAPTER THREE. SLAUGHTER AND SHIPMENT

Article

6910b. Payment for Livestock Purchased for Slaughter [NEW].

Art. 6910b. Payment for Livestock Purchased for Slaughter

Definitions

Sec. 1. As used in this Act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section:

(a) "Livestock" means cattle, sheep, goats, or hogs.

(b) "Meat Processor" means a person, corporation, association, or other legal entity engaged in the business of slaughtering cattle, sheep, goats, or hogs, and processing or packaging them for sale as meat.

Method and Time of Payment

Sec. 2. A meat processor who purchases livestock from a seller, or any person, corporation, association, or other legal entity who purchases livestock from a seller for slaughter, shall make payment by cash or check for the purchase price of the livestock and actually deliver the cash or check to the seller or his representative at the location where the purchaser takes physical possession of the livestock on the day the transfer of possession occurs or shall wire transfer of funds on the business day within which the possession of said livestock is transferred; provided that if the transfer of possession is accomplished after normal banking hours, said payment shall be made in the manner herein provided not later than the close of the first business day following said transfer of possession. In the case of "grade and yield" selling, the purchaser shall make payment by wire transfer of funds not later than the close of the first business day following determination of "grade and yield." Provided, however, that an alternate method of payment may be made by an agreement in writing between the owner of the livestock and the purchaser thereof, or their respective representatives with express authority; that such agreement must state that it may be cancelled at any time by

either party, from and after which cancellation, payment as herein provided shall be required. No such agreement shall alter any other provision of this or any other section of this Act.

Further, all instruments issued in payment hereunder shall be drawn on banks which are so located as not to artificially delay collection of funds through mail or otherwise cause a lapse of undue time in the clearance process.

Penalty for Noncompliance

Sec. 3. In all cases where a purchaser who purchases livestock for slaughter from a seller shall fail to make payment for such livestock as herein provided or shall artificially delay collection of funds for the payment of such livestock, such purchaser shall be liable to pay the owner of such livestock, in addition to the price of the livestock, twelve percent (12%) damages on the amount of such price, together with interest on the purchase price of the livestock at the highest legal rate from and after the transfer of possession until payment is made as herein provided, together with a reasonable attorneys' fee for the prosecution of collection of such payment.

Lien to Secure Sales Price

Sec. 4. Any person, partnership, firm, corporation, or other organization who sells livestock for slaughter shall have a lien on such animal, its carcass, all products therefrom, and proceeds thereof to secure all or a part of its sales price.

Attachment and Perfection of Lien

Sec. 5. The lien provided herein shall be deemed to have attached and to be perfected upon delivery of the livestock to the purchaser without further action, and such lien shall continue in the livestock, its carcass, all products therefrom, and proceeds thereof without regard to possession thereof by the party entitled to such lien without further perfection.

Lien on Commingled Livestock, Carcasses or Products

Sec. 6. If the livestock or its carcass or products therefrom are so commingled with other livestock, carcasses, or products therefrom so that the identity thereof is lost, then the lien herein granted shall extend to the same effect as if same had been perfected originally in all such animals, carcasses,

and products with which it has become commingled; provided, however, that all liens so extended under this section to such commingled livestock, carcasses, and products shall be on a parity with one another, and provided further that with respect to such commingled carcasses or products upon which a lien or liens have been so extended under this section, no such lien shall be enforceable as against any purchaser without actual knowledge thereof purchasing one or more of such carcasses or products in the ordinary course of trade or business from the party having commingled such carcasses or products, nor against any subsequent transferee from such purchaser, but in the event of such sale, such lien shall instead extend to the proceeds of such sale.

Priority of Lien

Sec. 7. The lien provided for in this article shall have priority over any other lien or perfected security interest in the livestock, its carcass, all products therefrom, and proceeds thereof not granted hereunder.

Severability

Sec. 8. 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.

[Acts 1975, 64th Leg., p. 660, ch. 276, eff. Sept. 1, 1975.]

CHAPTER FOUR. ESTRAYS

Article

6927a. Estray Act [NEW].

Arts. 6911 to 6927. Repealed by Acts 1975, 64th Leg., p. 1933, ch. 630, § 12, eff. June 19, 1975

See, now, art. 6927a.

Art. 6927a. Estray Act

Short Title

Sec. 1. This Act may be cited as the Estray Act.

Purpose

Sec. 2. The purpose of this Act is to provide for a method to dispose finally of an estray.

Definitions

Sec. 3. In this Act:

(1) "Affidavit of ownership of estray" means a document containing at least the following information:

- (A) the name and address of the owner;
- (B) the date the owner discovered that the animal was an estray;

(C) the property from which the animal strayed; and

(D) a description of the animal including its breed, its color, sex, age, size, all markings of any kind and any other identifying characteristics.

(2) "Affidavit of receipt of estray" means a document containing at least the following information:

(A) the name and address of person receiving estray;

(B) date of receipt of estray;

(C) method of claim to estray (previous owner, purchaser at sale);

(D) if purchased at sale, amount of gross purchase price;

(E) estray handling fees paid; and

(F) net proceeds of sale.

(3) "Estray" means any stray horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jennet, hog, sheep, goat, or any species of cattle.

(4) "Estray book" means a book located in the office of the county clerk of each county in which information on estrays is filed.

(5) "Estray handling fees" means expenses for the impounding, holding, seeking the owner of, or selling an estray incurred by a person or by a sheriff, his designee, or the county.

(6) "Notice of estray" means a document containing at least the following information:

(A) the name and address of the person who notified the sheriff of the estray;

(B) the location of the estray when found;

(C) the location of the estray until disposition; and

(D) a description of the animal including its breed, if known, its color, sex, age, size, all markings of any kind, and any other identifying characteristics.

(7) "Public auction" means an auction that is licensed by the United States Department of Agriculture.

Finding an Estray

Sec. 4. (a) A person who discovers an estray on his property shall report the presence of the estray to the sheriff of the county in which the estray is found. The report shall be made as soon as reasonably possible. The sheriff or his designee shall impound the animal and hold it for disposition as provided by this Act.

(b) A person who discovers an estray on public property shall report the presence of the animal to

the sheriff of the county in which the estray is found. The report shall be given as soon as reasonably possible. The sheriff or his designee shall impound the animal and hold it for disposition as provided by this Act.

(c) After impounding an estray, the sheriff or his designee shall prepare a notice of estray and file the notice in the estray book.

Advertisement

Sec. 5. When an estray has been impounded, the sheriff or his designee shall make a diligent search of the register of recorded brands in the county for the owner of the estray. If the search does not reveal the owner, the sheriff or his designee shall advertise the impoundment of the estray in a newspaper of general circulation in the county at least twice during the next 15 days and post a notice of the impoundment of the estray on the public notice board of the courthouse.

Recovery by Owner

Sec. 6. The owner of an estray may recover possession of the estray at any time before the estray is sold under the terms of this Act if:

- (1) the owner has provided the sheriff or his designee with an affidavit of ownership of estray;
- (2) the sheriff or his designee has approved the affidavit;
- (3) the approved affidavit has been filed in the estray book;
- (4) the owner has paid all estray handling fees to those entitled to receive them;
- (5) the owner has executed an affidavit of receipt of estray and delivered it to the sheriff; and
- (6) the sheriff has filed the affidavit of receipt of estray in the estray book.

Sale of Estray

Sec. 7. (a) If the ownership of an animal is not determined within 14 days following the final advertisement required by this Act, title to the animal rests in the county. The sheriff or his designee shall cause the estray to be sold at a public auction. Title to the animal shall be deemed vested in the sheriff or his designee for purposes of passing good title, free and clear of all claims, to the purchaser at the sale.

(b) The purchaser of an estray at public auction may take possession of the animal upon payment therefor.

(c) The sheriff shall receive the proceeds from the sale of the animal and do the following:

- (1) pay all estray handling fees to those entitled to receive them;
- (2) execute a report of sale of impounded stock; and
- (3) cause the report of sale of impounded stock to be filed in the estray book.

(d) The net proceeds remaining from the sale of an estray after estray handling fees have been paid shall be delivered by the sheriff to the county treasury. These net proceeds shall be placed in the jury fund of the county for the uses made of that fund, subject to claim by the original owner of the estray as provided herein.

Use of Estray

Sec. 8. During the period of time an estray is held by one who impounded the estray, the animal may not be used by that person for any purpose.

Injury or Death to Estray

Sec. 9. A person who has impounded an estray is liable for any abuse or negligent injury of the animal. If the animal dies or escapes while held by the person who impounded it, the person shall report the death or escape to the sheriff or his designee under oath. The report shall be filed in the estray book.

Recovery by Owner of Proceeds Delivered to County Treasurer

Sec. 10. Within 12 months after the sale of an estray under the provisions of this Act, the original owner of the estray may recover the proceeds of the sale of the animal that were delivered by the sheriff to the county treasurer if:

- (1) the owner has provided the sheriff with an affidavit of ownership of estrays;
- (2) the sheriff has approved the affidavit; and
- (3) the approved affidavit has been filed in the estray book.

Escheat of Sale Proceeds

Sec. 11. After the expiration of 12 months from the sale of an estray as provided by this Act, the sale proceeds shall escheat to the state.

Repealer

Sec. 12. Chapter 4, Title 121, Revised Civil Statutes of Texas, 1925, is repealed.
[Acts 1975, 64th Leg., p. 1930, ch. 630, eff. June 19, 1975.]

**CHAPTER EIGHT. ANIMAL HEALTH
COMMISSION**

Article

7014f-1a. Compensation to Owners of Cattle Exposed to Bovine
Brucellosis [NEW].

**Art. 7014f-1a. Compensation to Owners of Cattle
Exposed to Bovine Brucellosis**

Sec. 1. In order to aid the Texas Animal Health Commission in its program to control and eventually eradicate bovine brucellosis in this state, as provided in Chapter 52, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 7014f-1, Vernon's Texas Civil Statutes), the Texas Animal Health Commission may pay the owner of any cattle which are exposed to bovine brucellosis an amount

of not more than \$40 per head in problem herds and extreme hardship cases as determined by the Texas Animal Health Commission.

Sec. 2. The Texas Animal Health Commission may promulgate regulations to implement this Act, including regulations determining eligibility for compensation as provided in this Act. The commission shall determine in each case the amount to be paid for each head of cattle exposed to bovine brucellosis, within the limit prescribed in this Act and within the amount of funds appropriated for this purpose by the legislature. However, no funds so appropriated shall be used for any purpose other than direct payment to owners of exposed cattle. [Acts 1975, 64th Leg., p. 1886, ch. 598, eff. June 19, 1975.]

TITLE 125A

TRUSTS AND TRUSTEES

PENSION TRUSTS

Article

7425d-1. Death Benefits Under Employees' Trusts [NEW].

PENSION TRUSTS

Art. 7425d-1. Death Benefits Under Employees' Trusts

Definitions

Sec. 1. When used in this Act, unless the context otherwise requires:

(a) "Death benefits" means benefits of any kind, including, but not limited to, proceeds of life-insurance policies of which a trustee of an employees' trust is beneficiary and other payments, in cash or property, pursuant to an employees' trust (or contract purchased by such a trust) or pursuant to a retirement-annuity contract, payable on account of an employee's death to or for the benefit of his beneficiary.

(b) "Employees' trust" means a trust forming a part of a stock-bonus, pension, or profit-sharing plan described in Section 401 of the Internal Revenue Code of 1954,¹ and pension trusts described in Article 7425d, Title 125A, Vernon's Texas Civil Statutes.

(c) "Retirement-Annuity Contract" means an annuity contract described in Section 403 of the Internal Revenue Code of 1954.²

(d) "Employee" means any person who is covered by the plan of which an employees' trust is made a part, any person whose interest in such trust has not been distributed in full, and any person covered by a plan of which a retirement-annuity contract is a part.

(e) "Internal Revenue Code of 1954" means such code and all references in this Act to specific sections of such code include corresponding provisions of any subsequent federal tax laws.

(f) The definitions of "trust" and "trustee" contained in the Texas Trust Act³ shall apply to such terms as used in this Act, provided that "trust" shall include any trust, regardless of when created.

¹ 26 U.S.C.A. (I.R.C.1954) § 401.

² 26 U.S.C.A. (I.R.C.1954) § 403.

³ See arts. 7425b-2; 7425b-4, § C.

Payments to Trustee Under Declaration of Trust or Written Instrument

Sec. 2. Death benefits may be made payable to a trustee of a trust, the terms of which are evidenced by a written instrument or declaration of trust in existence on the date of the death of the employee, if such trustee is designated as beneficiary in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract. Such death benefits shall be held, administered, and disposed of by such trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the employee. The validity of the trust agreement or declaration of trust shall not be affected even though the trust has no corpus other than the right of the trustee to receive such death benefits as beneficiary, even though the employee has reserved the right to designate another beneficiary of the death benefits, and even though such trust agreement or declaration of trust is subject to amendment, modification, revocation, or termination.

Payments to Trustee Under Will

Sec. 3. Death benefits may be made payable to a trustee named, or to be named, as trustee of a trust created by a will of the employee, if such trustee is designated as beneficiary in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract, whether or not such will has been executed at the time of such designation. Upon probate of such will the death benefits shall be payable to such trustee to be held, administered, and disposed of in accordance with the terms of the trust created by such will as they exist on the date of death of the employee. Death benefits may be made payable to a trustee named as trustee of a trust created by a will of any person other than the employee if such will has been probated at the death of the employee and the death benefits shall be payable to such trustee to be held, administered, and disposed of in accordance with the terms of the trust created by such will.

Payment Where No Trustee Makes Claim

Sec. 4. In the event no trustee makes claim to the death benefits within a period of one year after the date of death of the employee or if satisfactory

evidence is furnished to a trustee or other fiduciary of the employees' trust or other obligor within such one-year period that there is or will be no trustee to receive the death benefits, payment of such death benefits shall be made as required or permitted by such employee's beneficiary designation, the plan of which the employees' trust is a part, or the retirement-annuity contract, and failing such other designation or provision in such plan or contract, such death benefits shall be paid to the personal representative of the deceased employee as a part of such deceased employee's estate.

Exemption from Taxes and Debts

Sec. 5. Unless the trust agreement, declaration of trust, or will provides otherwise, death benefits payable to a trustee as provided in Sections 2, 3, and 4 of this Act (i) shall not be deemed part of the deceased employee's estate, (ii) shall not be subject to any obligation to pay debts of the deceased employee or his estate or other charges enforceable against such estate, and (iii) shall not be subject to any obligation to pay any taxes enforceable against the deceased employee's estate to any greater extent than if such death benefits were payable, free of trust, to beneficiaries other than the executor or administrator of the estate of the deceased employee.

Commingling of Assets

Sec. 6. Death benefits paid to a trustee in accordance with Sections 2, 3, or 4 of this Act may be

commingled with any other assets accepted by such trustee either before or after receipt of such death benefits, and held in trust.

Application of This Act

Sec. 7. Nothing in this Act shall affect the validity of any beneficiary designation heretofore made by an employee, in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract, naming a trustee of a trust under a trust agreement, declaration of trust, or under a will as beneficiary of death benefits.

Declaratory of Common Law; Liberal Construction

Sec. 8. This Act shall, insofar as possible, be deemed declaratory of the common law of the State of Texas and shall be liberally construed so as to effectuate the intent that death benefits received by a trustee of a trust under a trust agreement, declaration of trust, or will are not subject to the obligations of the employee or of his estate unless such trust expressly provides otherwise. Neither a reference in any will to any death benefits nor the naming of the trustee of a trust created by a will shall cause such death benefits to be included in the property administered as a part of the testator's estate or require inclusion of such death benefits in any inventory filed with the county court.

[Acts 1975, 64th Leg., p. 60, ch. 34, eff. April 3, 1975.]

TITLE 130

WORKMEN'S COMPENSATION LAW

PART 2

Article

8307d. Nonsuit in Appeals from Industrial Accident Board Award
[NEW].

PART 2

Art. 8307. Industrial Accident Board

[See Compact Edition, Volume 5 for text of 1
to 9]

Hearings; Investigations; Appearance of Claimants; Pre-hearing
Conferences and Officers; Rules and Regulations

Sec. 10. (a) Said Board or any member thereof may hold hearings or take testimony or make investigations at any point within this state, reporting the result thereof, if the same is made by one member, to the Board. The Board shall also employ and use the assistance of a sufficient number of pre-hearing officers for the purpose of adjusting and settling claims for compensation; provided, however, that pre-hearing officers shall not be empowered to take testimony.

Notwithstanding any provision of this Act, no claimant shall be required to appear before the Board or Board Member within a distance greater than one hundred (100) miles from the courthouse of the county of the claimant's residence or within a greater distance than one hundred (100) miles of the courthouse of the county where the injury occurred.

(b) The Board shall examine and review all controverted claims and shall schedule and hold pre-hearing conferences on such claims as the Board may designate. It shall have the power to direct the parties to appear before the Board, any member thereof or a pre-hearing officer for pre-hearing conferences to attempt to adjust and settle the claim amicably and to take such other action other than taking of testimony that may aid in the disposition of the claim. Provided, however, that no matter occurring during, or fact developed in, a pre-hearing conference shall be deemed as admissions or evidence or impeachment against the association, employee or the subscriber in any other proceedings except before the Board.

Provided further that pre-hearing officers shall prepare a report to the Board Members on cases not settled at pre-hearing conference, stating the pre-hearing officer's recommendations for the award, and the basis therefor, with copies of said recommendations furnished to all interested parties and

the association shall furnish a copy of the recommendation to the subscriber.

The Board shall provide a reasonable time to all interested parties in each case for filing a formal statement of respective positions, both factual and legal, as well as reply to pre-hearing officer's recommendations, all of which evidence shall be duly considered by the Board Members in making said final award. Unrepresented claimants are exempted from the provision requiring formal statement of respective positions.

The Association and counsel for claimant shall be required to admit, deny, or qualify each point in the pre-hearing officer's recommendations.

The Board shall promulgate procedural rules and regulations not inconsistent with this law to govern such pre-hearing conferences and provided further, such rules and regulations shall not affect nor change any substantive portion of this law.

[See Compact Edition, Volume 5 for text of 11
to 14]

[Amended by Acts 1975, 64th Leg., p. 1131, ch. 430, § 1, eff.
Sept. 1, 1975.]

Art. 8307d. Nonsuit in Appeals from Industrial Accident Board Award

At any time before the jury has retired in the trial of a workmen's compensation case on appeal from an award of the Industrial Accident Board, the plaintiff may take a nonsuit after notice to the other parties to the suit and a hearing held by which time all parties must perfect their cause of action, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief. When the case is tried by the judge of a district or county court, such nonsuit, after notice and hearing, may be taken at any time before the decision is announced.

[Acts 1975, 64th Leg., p. 952, ch. 358, § 1, eff. June 19,
1976.]

PART 4

Art. 8309. Definitions and General Provisions

[See Compact Edition, Volume 5 for text of 1]
Individuals Covered by Subscriber

Sec. 1a. (a) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a partner, a sole proprietor, or a corporate

executive officer, except an officer of a state educational institution. The insurance contract shall specifically include the partner, sole proprietor, or corporate executive officer; and the elected coverage shall continue while the policy is in effect and while the named individual is endorsed thereon by a subscriber.

(b) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a real estate salesman who is compensated solely by commissions. The insurance contract shall specifically include the salesman; and the elected coverage shall continue while the policy is in effect and while the named salesman is endorsed thereon by the subscriber.

[See Compact Edition, Volume 5 for text of 1b to 5]

[Amended by Acts 1975, 64th Leg., p. 100, ch. 42, § 1, eff. Sept. 1, 1975.]

Art. 8309f. Texas Tech University Employees

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Institution" whenever used in this Act shall be held to mean the institution and agency under the direction or government of the Board of Regents of Texas Tech University including the following:

- Texas Tech University, Lubbock;
- Pan Tech Farm, Carson County, Texas;
- Texas Tech University School of Medicine at Lubbock;

Any other agencies now or hereafter under the direction and control of said Board of Regents.

2. "Workman" shall mean every person in the service of Texas Tech University under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the university.

3. "Insurance" shall mean workmen's compensation insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Any reference to a workman herein who has been injured shall, when the workman is

dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

[See Compact Edition, Volume 5 for text of 3 to 23]

[Amended by Acts 1973, 63rd Leg., p. 195, ch. 88, § 14, eff. Sept. 1, 1973.]

Art. 8309g. Workmen's Compensation Insurance for Employees of Political Subdivisions

Definitions

Sec. 1. In this article:

(1) "Employee" means a person in the service of the state pursuant to election, appointment, or an express contract of hire, oral or written, except a person employed by the State Highway Department or by an institution of higher education subject to a separate workman's compensation law.

[See Compact Edition, Volume 5 for text of 1(2) to 2]

State Employees Division; Director

Sec. 3. The Attorney General shall establish a state employees division within his office to administer this article. He shall appoint a director to act as the chief executive and administrative officer of the division, and shall provide him with office space and sufficient personnel to administer this article. The director shall administer this article with money appropriated by the Legislature. The director, with the approval of the Attorney General, may contract with a company authorized to do business in this state for any or all of the administrative services required by this article. Such contract shall be awarded on the basis of competitive bidding by qualified companies.

[See Compact Edition, Volume 5 for text of 4 to 16]

[Amended by Acts 1975, 64th Leg., p. 1042, ch. 405, §§ 1, 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 Act provided:

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

Art. 8309h. Workmen's Compensation Insurance for Employees of Political Subdivisions

[See Compact Edition, Volume 5 for text of 1 and 2]

Adoption of General Workmen's Compensation Laws

Sec. 3. (a) The following laws as amended or as they may hereafter be amended are adopted except

to the extent that they are inconsistent with this article:

(1) Sections 1, 3, 3a, 3b, 4, 5, 6, 7, 7a, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12c-1, 12c-2, 12d, 12e, 12f, 12g, 12h, 12i, 13, 14, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended;

(2) Section 1, Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);

(3) Sections 4a, 5, 5a, 6a, 7, 7a, 7b, 11, 12, 13, and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended;

(4) Article 8307b, Revised Civil Statutes of Texas, 1925, as added by Section 2, Chapter 261, Acts of the 45th Legislature, Regular Session, 1937;

(5) Sections 18 and 18a, Article 8308, Revised Civil Statutes of Texas, 1925, as amended;

(6) Sections 1, 1b, 4, and 5, Article 8309, Revised Civil Statutes of Texas, 1925, as amended; and

(7) Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953 (Article 8309a, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 3(b)]
Establishment of Joint Fund

Sec. 4. A joint fund, as herein provided for, may be established by the concurrence of any two or more political subdivisions. The fund may be oper-

ated under the rules, regulations, and bylaws as established by the political subdivisions which desire to participate therein. Each political subdivision shall be and is hereby empowered to pay into said fund its proportionate part as due and to contract for the fund, by and through its directors, to make the payments due hereunder to the employees of the contracting political subdivision. The joint insurance fund herein provided for shall not be considered insurance for the purpose of any other statute of this state and shall not be subject to the regulations of the State Board of Insurance.

Purpose

Sec. 5. It is the purpose of this article that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is deemed as in such cases provided elsewhere herein. Provided further, however, that any and all sums for incapacity received in accordance with Chapter 325, Acts of the 50th Legislature, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), and any other statutes now in force and effect that provide for payment for incapacity to work because of injury on the job that is also covered by this Act are hereby offset as against the benefits provided under this Act to the extent applicable.

[See Compact Edition, Volume 4 for text of 6 to 8]

[Amended by Acts 1975, 64th Leg., p. 787, ch. 302, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1040, ch. 403, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1041, ch. 404, § 1, eff. June 19, 1975.]

TITLE 132

OCCUPATIONAL AND BUSINESS REGULATION

Chapter	Article
6. Auctioneers [New]	8700
7 to 19. Reserved	

CHAPTER ONE. BARBERS

Art. 8402. Registering Name and Location; Exclusive Jurisdiction of State Board of Barber Examiners and Cosmetology Commission

Every person owning, operating or managing a barber shop or beauty parlor shall register his full name and the location of said shop or parlor in a book to be kept in the office of the State Board of Health for that purpose, and every owner, operator or manager of a barber shop or beauty parlor that is first opened for business hereafter shall within five days after the opening of such shop or parlor register in like manner. In event of a change in the manager or location of any such shop or parlor, the manager of same shall call at or communicate by mail with said board within five days after such change takes place and inform said board thereof. In order that the public may fix responsibility for services, acts, or treatments performed by persons licensed by the State Board of Barber Examiners vis-a-vis those performed by persons licensed by the Texas Cosmetology Commission, to promote the efficient and orderly administration of laws regulating barbers and the practice of barbering and the laws regulating cosmetologists and the practice of cosmetology and to avoid confusion of the public as well as avoiding conflicts of jurisdiction between such board and commission which might impede effective administration or enforcement of the laws under their respective jurisdictions, from and after January 31, 1976, no person licensed by the barber board shall perform, offer, or attempt to perform any act, service, or treatment by authority of any such license on the premises of any beauty parlor, beauty salon, specialty salon, beauty culture school or college, or any location under the jurisdiction of the Texas Cosmetology Commission, and no person licensed by the cosmetology commission shall perform, offer, or attempt to perform any act, service, or treatment by authority of any such license on the premises of any barber shop, specialty shop, barber school or college, or any location under the jurisdiction of the State Board of Barber Examiners.

[Amended by Acts 1975, 64th Leg., p. 2144, ch. 691, § 27, eff. Sept. 1, 1975.]

Art. 8407a. Texas Barber Law

[See Compact Edition, Volume 5 for text of 1]
Unlicensed Practice Prohibited

Sec. 2. From and after the effective date of this Act, unless duly licensed and registered in accordance with all laws of this state regulating the practice of barbering, no person shall:

(a) practice, continue to practice, offer, or attempt to practice barbering or any part thereof;

(b) directly or indirectly, employ, use, cause to be used, or make use of any of the following terms or any combinations, variations, or abbreviations thereof, as a professional, business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit: "barber," "barbering," "barber school," "barber college," "barber shop," "barber salon";

(c) directly or indirectly, employ, use, cause to be used, or make use of any letter, abbreviation, word, symbol, slogan, sign, or any combination or variation thereof, which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice barbering or own or manage any barber shop, barber school or college.

Barber Shop Permit; Application; Fees; Display; Transfer; Renewal; Supervision; Recovery Operation

Sec. 3. (a) No person may own, operate, or manage a barber shop without a barber shop permit issued by the board.

(b) Any firm, corporation or person who opens a new barber shop shall within three days submit an application in writing to the board for a temporary barber shop permit together with an inspection fee of \$25. The applicant must place in his application the permanent address of his shop including a legal description of the premises to be licensed and such other information as shall be required by the board.

(c) The board shall issue a barber shop permit to an applicant who holds a valid class A barber license and whose shop meets the minimum health standards for barber shops as promulgated by the State Department of Public Health and all rules and regulations of the board.

(d) A barber shop permit must be displayed in a conspicuous place in the barber shop for which the permit is issued.

(e) Permits are not transferable to another person. If the ownership of a barber shop is transferred to another person, the shop may continue in operation if the new owner applies for and obtains a new permit within 30 days after the transfer of ownership.

(f) To continue operating a barber shop, a person must renew the permit issued to his shop by paying a renewal fee of \$25. All permits expire on July 1 of odd-numbered years.

(g) No person may operate a barber shop unless the shop is at all times under the sole and exclusive supervision and management of a registered Class A barber, and no person is practicing on the premises by authority of any license, permit or certificate issued by the Texas Cosmetology Commission.

(h) A person operating under a permit who wishes to move his operation to another location approved by the board may do so by notifying the Board of Barber Examiners ten days before he makes the move.

Definitions

Sec. 4. In this Act, unless the context otherwise requires:

(a) "barber" shall mean any person who performs, offers, or attempts to perform any act of barbering, professes to do barbering or to be engaged in the practice thereof, or who directly or indirectly or in any manner whatsoever advertises or holds himself out as a barber or as authorized to practice barbering;

(b) "barbering," "practicing barbering," or the "practice of barbering" shall mean the performing or doing, or offering or attempting to do or perform, any, all or any combination of the following acts, services, works, treatments, or undertakings:

(1) arranging, beautifying, coloring, processing, shaving, styling, or trimming the mustache or beard by any means or method;

(2) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, waving, or otherwise treating the hair as primary services, treatments, or undertakings by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services;

(3) cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in Section 4(b)(2), or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, as such, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner whatsoever;

(4) cleansing, stimulating, or massaging the scalp, face, neck, arms, shoulders, or that part of the body above the shoulders, by means of the hands, devices, apparatuses, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(5) beautifying the face, neck, arms, shoulders, or that part of the body above the shoulders, by the use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(6) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person or attaching false nails;

(7) massaging, cleansing, treating, or beautifying the hands of any person;

(8) administering facial treatments;

(9) hair weaving;

(10) shampooing or conditioning hair;

(11) servicing a wig, toupee, or artificial hairpiece on a human head or on a block, subsequent to the initial retail sale by any of the acts, services, works, treatments, or undertakings enumerated in Section 4(b)(2) of this Act;

(12) advertising or holding out to the public by any manner whatsoever that any person is a barber or authorized to practice barbering;

(13) advertising or holding out to the public by any manner whatsoever that any location or place of business is a barber shop, barber school, barber college, or barber salon;

(14) receiving any fee, salary, compensation, or financial benefit, or the promise of any fee, salary, compensation, or financial benefit, for performing, doing, offering, or attempting to perform or do any act, work, service, or thing, which is any part of the practice of barbering as herein defined;

(c) "barber shop" or "barber salon" shall mean any place where barbering is practiced,

offered, or attempted to be practiced except when such place is duly licensed as a barber school or college;

(d) "board" shall mean the State Board of Barber Examiners as established and provided for in the Texas Barber Law;

(e) "certificate" shall mean a certificate of registration issued by the board in accordance with the provisions of this Act;

(f) "license" shall mean any license issued by the board in accordance with the provisions of this Act;

(g) "manager" shall mean any person who controls or directs the business affairs of a barber shop or directs the work of a person employed in a barber shop or both;

(h) "permit" shall mean any permit issued by the board in accordance with the provisions of this Act;

(i) "person" shall mean any individual, association, firm, corporation, partnership, or other legal entity.

(j) In addition to the foregoing definitions, the board shall have authority to define by rule any words or terms necessary in the administration or enforcement of this Act.

Registered Assistant Barber Classification Terminated and Considered Class A Registered Barber

Sec. 5. The classification of "registered assistant barber" is hereby terminated. Any person holding a valid certificate as a registered assistant barber, as of the effective date of this Act, shall for all purposes of this Act be considered as a Class A registered barber and on the next renewal of any certificate as a registered assistant barber the board shall issue such assistant barber a certificate as a Class A registered barber on payment of the applicable renewal fee.

Exemptions

Sec. 6. The following persons shall be exempt from the provisions of this Act, provided such persons are not represented, advertised, or held out to the public, directly or indirectly, or in any manner whatsoever, as barbers, journeymen barbers, barber technicians or under any name, title, or designation indicating such person is authorized to practice by authority of any license or permit issued by the board:

(a) physicians, osteopaths, and registered nurses licensed and regulated by the State of Texas;

(b) commissioned or authorized medical or surgical officers of the United States Army, Navy, or Marine Hospital Service;

(c) persons licensed or practicing by authority of the Texas Cosmetology Commission under the provisions of Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), so long as such persons practice within the scope of the license or permit duly issued by the Texas Cosmetology Commission.

Qualifications of Applicant for Registration

Sec. 7. The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for registration as a Class A registered barber:

(a) being at least 16-1/2 years of age;

(b) successfully passing a written and practical examination demonstrating to the satisfaction of the board the applicant's fitness and competence to practice the art and science of barbering.

Forms for Applications

Sec. 8. All applications for any certificate, license, or permit issued by the board shall be on forms prescribed and furnished by the board, shall contain statements made under oath showing the applicant's education and other information required by the board.

Permit to Operate Barber School or College

Sec. 9. (a) Any person desiring to conduct or operate a barber school or college in this state shall first obtain a permit from the board after demonstrating that said school or college has first met the requirements of this section. Said permit shall be prominently displayed at all times at such school or college. No such school or college shall be approved unless such school or college requires as a prerequisite to graduation a course of instruction of not less than 1,500 hours as determined by the board, to be completed within a period of not less than nine months, for a Class A certificate, and at least 800 hours of such course of instruction shall be in the actual practice of cutting hair as a primary service in accordance with the definition set forth in Section 4(b)(3) of this Act. No certificate or permit shall be issued as provided for herein to an applicant to be a student in such a school or college unless said applicant has completed at least a seventh grade education and such other requirements as shall be specified by the board. Provided, however, that any person licensed as a Class A registered barber or registered assistant barber as of the effective date of this Act shall be considered qualified to perform any acts or services within the scope of the definition of barbering and shall be entitled to any or all licenses, certificates, or permits which the board is

authorized to issue on payment of the required fees but without meeting further educational or experience requirements.

(b) Such schools or colleges shall instruct students in the theory and practice of such subjects as may be necessary and beneficial in the practice of barbering, including the following: scientific fundamentals of barbering; hygienic bacteriology, histology of the hair, skin, muscles, and nerves; structure of the head, neck and face; elementary chemistry relating to sterilization and antiseptics; common disorders of the skin and hair; massaging muscles of the scalp, face, and neck; hair-cutting; shaving, shampooing, and bleaching and dyeing of the hair; manicuring, administering facial treatments, hair weaving, servicing wigs, or any other skills, techniques, services, treatments, or undertakings within the definition of the practice of barbering provided for in this Act.

[See Compact Edition, Volume 5 for text of 9(c) to (e)]

(f) No barber school or college which issues "Class A" certificates shall be approved by the Board unless it is under the direct supervision and control of a barber who holds a current registered "Class A" certificate to practice barbering under the Texas Barber Law, and who can show evidence of at least five (5) years experience as a practicing barber. Each school shall have at least one (1) teacher who has a teacher's certificate issued by the Board upon examination and who is capable and qualified to teach the curriculum outlined herein to the students of such school. All such teachers are required to obtain a teacher's certificate from the Board and, in addition to requirements set forth by the Board, must meet the following requirements:

(1) Demonstrate their ability to teach the said curriculum outlined herein through a written and practical test to be given by the Board.

(2) Hold a current certificate as a registered "Class A" barber under this law.

(3) Demonstrate to the Board that such applicant is qualified to teach and instruct, to be determined at the discretion of the Board, and show evidence that the applicant has had at least six (6) months experience as a teacher in an approved school or college in Texas or in another state approved by the Board, or have completed a six-month postgraduate course as a teacher in an approved barber school or college in Texas.

Applicants desiring an examination for a teacher's certificate shall make an application to the Board and accompany same with an examination fee of \$35. A new application and fee must be presented for each examination taken by the applicant and fees paid are not refundable. A teacher's certificate shall be issued upon satisfactory completion of the

examination and payment of a certificate fee of \$35 if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or \$17.50 if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year. Teacher's certificates shall be renewed biennially on or before November 1st of odd-numbered years upon the payment of a renewal fee of \$35.

[See Compact Edition, Volume 5 for text of 9(g)]

(h) No barber school or college shall be issued a permit to operate under the provisions of this Section until it has first furnished the following evidence to the Board:

(1) A detailed drawing and chart of the proposed physical layout of such school, showing the departments, floor space, equipment, lights and outlets.

(2) Photographs of the proposed site for such school including the interior and exterior of the building, rooms and departments.

(3) A detailed copy of the training program.

(4) A copy of the school catalog and promotional literature.

(5) A copy of the building lease or proposed building lease where the building is not owned by the school or college.

(6) A sworn statement showing the true ownership of the school or college.

(7) A permit fee of \$500.

No such school or college shall be operated and no students shall be solicited or enrolled by it until the Board shall determine that the school has been set up and established in accordance with this Section and the proposal submitted to the Board and approved by it prior to the issuance of a permit. Any such school or college must obtain renewal of its certificate by September 1st each year by the payment of an annual renewal fee of \$150.

[See Compact Edition, Volume 5 for text of 9(i) to (m)]

(n) Repealed by Acts 1975, 64th Leg., p. 2136, ch. 691, § 10, eff. Sept. 1, 1975.

[See Compact Edition, Volume 5 for text of 10]
Conduct of Examinations

Sec. 11. The Board shall conduct examination of applicants for certificates of registration to practice as Class A registered barbers and of applicants to enter barber schools to determine their educational fitness, not less than four times each year, at such times and places as the Board may determine and designate. The examination of applicants for certificates of registration as Class A registered barbers

shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the Board.

Certificates to Successful Applicants

Sec. 12. Whenever the provisions of this Act have been complied with, the Board shall issue to any applicant a certificate of registration as a Class A registered barber, where such applicant shall have passed a satisfactory examination making an average grade of not less than seventy-five per cent, and who shall possess the other qualifications required by this Act.

Permit to Practice as Journeyman Barber

Sec. 13. Any person who is at least sixteen and one-half years of age, and who has a diploma showing graduation from a seven-grade grammar school, or its equivalent as determined by an examination conducted by the Board, and either

(a) Has a license or certificate of registration as a practicing barber from another State or country, which has substantially the same requirements for licensing or registering barbers as required by this Act, or

(b) Who can prove by personal affidavit that he has practiced as a barber in another State for at least two years immediately prior to making application in this State, and who possesses the qualifications required by this Act, shall, upon payment of the required fee, be issued a permit to practice as a journeyman barber only until he is called by the Board of Barber Examiners to determine his fitness to receive a certificate of registration to practice barbering. Should such applicant fail to pass the required examination he shall be allowed to practice as a journeyman barber until he is called by the Board for the next term of examination. Should he fail at the examination he must cease to practice barbering in this State.

Assistant Barbers; Barbers' Technicians

Sec. 14. (a) Any assistant barber who is at least sixteen and one-half years of age and who has a diploma showing graduation from a seventh grade grammar school, or an equivalent education as determined by an examination conducted by the Board, and who has a certificate of registration as an assistant barber in a State or country which has substantially the same requirements for registration as an assistant barber as is provided for by this Act, shall upon payment of the required fee be issued a permit to work as an assistant barber until called by the Board of Examiners for examination to determine his fitness to receive a certificate of registration as an assistant barber. Should such person be

able to pass the required examination, he will be issued a certificate of registration as a registered assistant barber, and that the time spent in such other State or country as an assistant barber shall be credited upon the period of assistant barber required by this Act as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber.

(b) Any person who has spent at least 30 working days at a licensed barber school or college as a barber's technician including the study of shampooing, shampoos, manipulations, making appointments, preparing patrons, sterilizing tools, and the study of sterilization and the barber laws may be licensed to practice as a barber's technician. Any licensed barber's technician may assist the barber in shampooing and sterilizing in a barber shop and shall work under the personal supervision of a registered Class A barber.

Manicurist License

Sec. 15. (a) A person holding a manicurist license issued by the board may perform for compensation only the practice of barbering defined in Section 4(b)(6) and Section 4(b)(7) of this Act.

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 150 hours instruction in manicuring.

(c) The application shall be made on a form prescribed by the board and a \$5 manicurist administration fee must accompany the application. The application and fee shall be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a manicurist license if such applicant possesses the qualifications enumerated in Section 15(b), satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for denial of a license under this Act.

Wig Specialist License

Sec. 16. (a) A person holding a wig specialist license issued by the board may perform for compensation only the practice of barbering defined in Section 4(b)(11) of this Act.

(b) An applicant for a wig specialist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours of instruction in the care and treatment of wigs.

(c) The application shall be made on a form prescribed by the commission and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig specialist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for revocation of a license under this Act.

(e) Any person who at the time this Act takes effect holds a cosmetology license or manicurist license issued by the cosmetology commission may make application for and upon paying the fee be granted a manicurist license by the barber board without examination.

Wig Instructor License

Sec. 17. (a) A person holding a wig instructor license issued by the board may perform for compensation the practice of barbering as defined in Section 4(b)(11) of this Act and may instruct a person in such practice.

(b) An applicant for a wig instructor license must have a valid wig specialist license and have completed 200 hours of instruction in advanced wig courses and methods of teaching.

(c) The application shall be made on a form prescribed by the board and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig instructor license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$35 license fee, and has not committed any act constituting grounds for revocation of a license under this Act.

Wig Salon License

Sec. 18. (a) A person holding a wig salon license issued by the board may maintain an establishment in which only the practice of barbering as defined in Section 4(b)(11) of this Act is performed for compensation.

(b) An applicant for a wig salon license shall submit an application on a form prescribed by the board. The application shall contain proof of the particular requisites for a wig salon as established by the board and shall be verified by the applicant.

(c) The applicant is entitled to a wig salon license if the application shows compliance with the rules and regulations of the board, a \$25 license fee is paid, and such applicant has not committed an act which constitutes grounds for revocation of a license under this Act.

Wig School License

Sec. 18.1. (a) A person holding a wig school license issued by the board may maintain an establishment in which only the practice of barbering as defined in Section 4(b)(11) of this Act is taught for compensation.

(b) An applicant for a wig school license shall submit an application on a form prescribed by the board. The application shall contain proof of the particular requisites for a wig school as established by the board and shall be verified by the applicant.

(c) The applicant is entitled to a wig school license if the application shows compliance with the rules and regulations of the board, a \$100 license fee is paid, and applicant has not committed an act which constitutes grounds for revocation of a license under this Act.

[See Compact Edition, Volume 5 for text of 19]

Renewal of Certificates; Restoration of Expired Certificates; Fees

Sec. 20. (a) Every registered Class A barber and barber technician who continues in active practice or service shall renew his certificate of registration on or before November 1, 1975, and biennially on or before November 1 of odd-numbered years thereafter. The Board of Barber Examiners shall issue the renewal certificate upon payment of a biennial renewal fee of \$35. Every certificate of registration which has not been renewed prior to that date shall expire on November 1 of that year.

(b) A Class A registered barber, whose certificate of registration has expired, may, within 30 days thereafter, and not later, have his certificate of registration restored upon making a satisfactory showing to the Board, supported by his personal affidavit, which in the opinion of the Board, will excuse the applicant for having failed to renew his certificate within the time required by this Act.

(c) Any registered barber who retires from the practice of barbering for not more than five (5) years may renew his certificate of registration by making proper showing to the Board, supported by his personal affidavit, which, in the opinion of the Board, would justify the Board in issuing a certificate to such applicant as upon an original application upon payment of a fee of \$35 if the applicant applies during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or \$17.50 if the applicant applies during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

(d) Any registered barber who retires from the practice of barbering for more than five (5) years may renew his certificate of registration by making application to the Board and by making proper showing to the Board, supported by his personal

affidavit, and by paying an examination fee of \$35, passing a satisfactory examination conducted by the Board, and paying a license fee of \$25 if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or \$12.50 if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

[See Compact Edition, Volume 5 for text of 20a and 20b]

Refusal, Suspension or Revocation of Certificates; Grounds

Sec. 21. The board shall either refuse to issue or to renew, or shall suspend or revoke any certificate of registration for any one of, or a combination of the following causes:

- (A) Gross malpractice;
- (B) Continued practice by a person knowingly having an infectious or contagious disease;
- (C) Advertising by means of knowingly making false or deceptive statements;
- (D) Advertising, practicing, or attempting to practice under another's trade name or another's name;
- (E) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (F) The commission of any of the offenses described in Section 24 of this Act;
- (G) No certificate shall be issued or renewed, unless and until each applicant shall present a health certificate from a regular practicing medical doctor showing that the applicant is free from any kind of infectious or contagious diseases, tuberculosis, communicable diseases, and free from the use of any kind of morphine, cocaine, or other habit-forming drug, or a habitual drunkard and that said applicant shall make affidavit to said medical examiner that all of the said facts are true.

Violation or Noncompliance with Requirement, Hearing; Denial, Revocation or Refusal to Renew Certificate; Appeal

Sec. 22.

[See Compact Edition, Volume 5 for text of 22(a)]

(b) If, after due notice and hearing, the board denies, revokes, or refuses to renew any certificate, license, or permit, the holder thereof shall have the right to appeal from the order of the board. Any appeals filed hereunder shall be filed within 20 days from the date of the order of the board in a district court of the county where the person filing such appeal has his residence, or in any of the district courts of Travis County, Texas. In all appeals pro-

ceeded in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act.

[See Compact Edition, Volume 5 for text of 23 to 25]

State Board of Barber Examiners: Appointment; Qualifications; Term; Removal; Vacancy

Sec. 26. The State Board of Barber Examiners is hereby created and shall consist of six members appointed by the governor with the advice and consent of the senate. The board shall be composed of the following: two members shall be Class A barbers actually and actively engaged in the practice of barbering for at least five years prior to being appointed and while serving as a member of the board and who are not holders of a barber shop permit issued by the board; two members shall be barber shop owners holding a permit issued by the board and who are actively and actually engaged in the practice of barbering for at least five years prior to being appointed and while serving as a member of the board; two members shall be persons holding a permit from the board to conduct or operate a barber school or college; provided, however, that the three members of the board serving at the time this Act takes effect shall continue to serve for the terms of office to which they were appointed. Within 30 days after the effective date of this Act the governor shall appoint three additional members and at the time of appointment designate one appointee to serve for the same remaining period of time in office as each of the three members then serving so that hereafter the terms of office shall be for six years with terms for two of the six board members expiring at the same time every two years, and so as to at all times have on the board two working barbers, two shop owners working barbers, and two school owners as hereinabove provided. All members appointed by the governor to fill vacancies in the board caused by death, resignation, or removal shall serve during the unexpired term of such member's predecessor. Before entering upon the duties of office, each member of the board shall take the constitu-

tional oath of office and file it with the secretary of state. Members of the board may be removed from office for cause in the manner provided by the statutes of this state for public officials who are not subject to impeachment. In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

[See Compact Edition, Volume 5 for text of 27 and 27a]

Rules and Regulations; Violations

Sec. 28. The State Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops and barber schools. The State Board of Barber Examiners, by and through the Health Department of the State of Texas, shall have authority, and it is made its duty to enter upon the premises of all barber shops, barber schools or any place where any of its licensees are practicing or performing any service, act or treatment by authority of any license issued by the board and inspect same at any time during business hours. A copy of such sanitary rules and regulations adopted by the Board of Health shall be furnished to the Secretary of the State Board of Barber Examiners who shall in turn forward to each barber, barber school or licensee of the board a copy of such rules and regulations. A copy of the sanitary rules and regulations promulgated and adopted by the State Board of Health shall be posted in barber shops and barber schools in this State. Subject only to the authority of the State Board of Health to make and promulgate reasonable rules and regulations as to sanitation, the State Board of Barber Examiners shall have full authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provisions of this Act, and to regulate the practice and teaching of barbering in all of its particulars in keeping with the purposes and intent of this Act or to insure strict compliance with and enforcement of this Act. The violation by any licensee, permittee, or certificate holder of the board of any provisions of this Act or any rule, regulation, or order of the board shall be sufficient reason or ground to cancel, suspend, or revoke any license, certificate, permit, or authority issued under this Act. In addition to any other action, proceeding, or remedy authorized by law, the board shall have the authority to institute any action in its own name to enjoin any violation of any provision of this Act or rule or regulation of the board, and, in order for the board to sustain such action, it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof.

Either party to such action may appeal to the appellate court having jurisdiction of such cause. The board shall not be required to give any appeal bond in any cause arising under this Act. The attorney general shall represent the board in all actions and proceedings to enforce the provisions of this Act.

[See Compact Edition, Volume 5 for text of 29 and 30]

[Amended by Acts 1975, 64th Leg., p. 2132, ch. 691, §§ 1 to 26, eff. Sept. 1, 1975.]

Sections 48 and 49 of the 1975 amendatory act provided:

"Sec. 48. If any word, clause, sentence, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"Sec. 49. All laws or parts of laws inconsistent or in conflict with this Act or any part thereof are hereby repealed."

CHAPTER TWO. COSMETOLOGY

Art. 8451a. Cosmetology Regulatory Act

Definitions

Sec. 1. As used in this Act:

(1) "Person" means any individual, association, firm, corporation, partnership, or organization.

(2) "Commission" means the Texas Cosmetology Commission.

(3) "Cosmetology" means the performing or doing, or offering or attempting to do or perform, any, all or any combination of the following acts, services, works, treatments, or undertakings:

(A) arranging, beautifying, bleaching, tinting, cleansing, coloring, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, waving, or otherwise treating the hair as primary services, treatments or undertakings by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services;

cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated herein, or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, as such, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner whatsoever;

(B) cleansing, stimulating, or massaging the scalp, face, neck, arms, bust, or upper

part of the human body, by means of the hands, devices, apparatus, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; beautifying the face, neck, arms, bust, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(C) removing superfluous hair from the body by use of depilatories or tweezers;

(D) cutting, trimming, polishing, tinting, coloring, cleansing or manicuring the nails of any person; or attaching false nails or massaging, cleansing, treating, or beautifying the hands of any person;

(E) servicing a wig or artificial hairpiece either on a human head or on a block subsequent to the initial retail sale and servicing by any of the practices enumerated in Paragraph (A) of this subsection;

(F) administering facial treatments;

(G) hair weaving;

(H) shampooing and conditioning hair;

(I) advertising or holding out to the public by any manner whatsoever that any person is a cosmetologist or authorized to practice cosmetology;

(J) advertising or holding out to the public by any manner whatsoever that any location or place of business is a beauty salon;

(K) receiving any fee, salary, compensation, or financial benefit, or the promise of any fee, salary, compensation, or financial benefit, for performing, doing, offering, or attempting to perform or do any act, work, service, or thing, which is any part of the practice of cosmetology as herein defined.

(4) "Public school" includes public high school, public junior college, and any other state-supported institution conducting a cosmetology program.

[See Compact Edition, Volume 5 for text of 2 to 12]

Manicurist License

Sec. 13.

[See Compact Edition, Volume 5 for text of 13(a) and (b)]

(c) The application shall be made on a form prescribed by the commission and a \$5 manicurist administration fee must accompany the application. The application and fee shall be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a manicurist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

Wig Specialist License

Sec. 14.

[See Compact Edition, Volume 5 for text of 14(a) and (b)]

(c) The application shall be made on a form prescribed by the commission and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

[See Compact Edition, Volume 5 for text of 14(d)]

Operator License

Sec. 15.

[See Compact Edition, Volume 5 for text of 15(a)]

(b) An applicant for an operator's license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 1,500 hours of instruction in a licensed beauty culture school, of which a minimum of 800 hours shall be in the actual practice of cutting and styling hair as a primary service (provided, however, that any licensed operator who, at the time this Act takes effect has had 300 hours of instruction in the actual practice of cutting and styling hair as a primary service in a licensed beauty culture school, or who has had the equivalent in actual practice as determined by the Texas Cosmetology Commission shall be exempt from the provision of this Act requiring 800 hours of instruction in the actual practice of hair cutting and styling as a primary service in a licensed beauty culture school) or 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a public vocational school.

(c) The application shall be made on a form prescribed by the commission and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

[See Compact Edition, Volume 5 for text of 15(d)]

Specialty Salon License

Sec. 15A. (a) A person holding a specialty salon license may maintain an establishment in which only the practice of cosmetology as defined in Paragraph (F), (G), or (D) of Subdivision (3) of Section 1 of this Act is performed for compensation.

(b) An applicant for a specialty salon license shall submit an application on a form prescribed by the commission. The application shall contain proof of the particular requisites for a specialty salon as established by the commission and shall be verified by the applicant.

(c) The applicant is entitled to a specialty salon license if the application shows compliance with the rules and regulations of the commission, a \$25 license fee is paid, and he has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

(d) Except as provided by Subsection (a) of this section, no person may operate or own a salon for the purpose of administering facials, weaving hair, or giving manicures unless that person has a specialty salon license issued by the commission.

(e) Subsection (b) of this section does not apply to a salon operated pursuant to a beauty shop license issued by the commission.

Specialty License

Sec. 15B. (a) A person holding a specialty license may perform for compensation only the practice of cosmetology defined in Paragraph (F), (G), or (H) of Subdivision (3) of Section 1 of this Act.

(b) An applicant for a specialty license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours of instruction in the specialty for which he seeks to be licensed.

(c) The application shall be made on a form prescribed by the commission and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a specialty license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$15 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

(e) Except as provided by Subsection (a) of this section, no individual may administer facials, weave hair, or shampoo hair unless that individual has a specialty license issued by the commission.

(f) Subsection (a) of this section does not apply to an individual who has an instructor's license or an operator's license issued by the commission.

(g) Any person who has, at the time this Act takes effect, been regularly practicing any of the specialties described in Paragraph (F), (G), or (H) under the definition of cosmetology may be issued a license for such specialty without further qualifications or examination.

Instructor License

Sec. 16.

[See Compact Edition, Volume 5 for text of 16(a) and (b)]

(c) The application shall be made on a form prescribed by the commission and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to an instructor license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$35 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

Wig Instructor License

Sec. 17.

[See Compact Edition, Volume 5 for text of 17(a) and (b)]

(c) The application shall be made on a form prescribed by the commission and a \$5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig instructor license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a \$35 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 42 of this Act.

Temporary License

Sec. 18. (a) A person holding a temporary license may perform for compensation any practice of cosmetology.

[See Compact Edition, Volume 5 for text of 18(b) and (c)]

(d) A temporary license expires on the 30th day after the date of issue and may not be renewed.

[See Compact Edition, Volume 5 for text of 19 and 20]

Refund of Fee

Sec. 21. An administration fee may not be refunded.

[See Compact Edition, Volume 5 for text of 22 to 26]

Nonprofit, Tax-Exempt Vocational Schools

Sec. 26A. A nonprofit, tax-exempt vocational educational institution that offers cosmetology courses is subject to the provisions of Section 26 of this Act, and may not be classified as a private beauty culture school.

[See Compact Edition, Volume 5 for text of 27 to 37]

Renewal of Unexpired Licenses

Sec. 38. (a) All licenses issued under this Act except temporary and private beauty culture school licenses expire two years from the date of issue.

[See Compact Edition, Volume 5 for text of 38(b) and (c)]

(d) Notwithstanding Subsection (a) of this Section, all licenses issued by the commission may be prorated based on the renewal fee provided in Section 40 of this Act for the number of months the renewal license issued under this subsection will be valid.

[See Compact Edition, Volume 5 for text of 38A and 39]

Renewal Fees

Sec. 40. The renewal fees for licenses issued under this Act are:

- (1) manicurist license—\$15;
- (2) operator license—\$15;
- (3) wig specialist license—\$15;
- (4) instructor license—\$35;
- (5) private beauty culture school license—\$150 per year;
- (6) beauty shop license—\$25;
- (7) wig salon license—\$25;
- (8) wig school license—\$55;
- (9) wig instructor license—\$35;
- (10) specialty salon license—\$25;
- (11) specialty license—\$15.

[See Compact Edition, Volume 5 for text of 41]

Grounds for Denial, Suspension, or Revocation of Permit

Sec. 42. A license may be denied, or after hearing, suspended or revoked if the applicant or licensee has:

- (1) secured a license by fraud or deceit;
- (2) violated or conspired to violate the provisions of this Act or rules and regulations issued pursuant to this Act;
- (3) knowingly made false or misleading statements in any advertising of the licensee's services;
- (4) advertised, practiced, or attempted to practice under the name or trade name of another licensee under this Act; or
- (5) been found by the executive director to be an habitual drinker or addicted to the use of any narcotic drug.

[See Compact Edition, Volume 5 for text of 43 to 45]

Exemptions

Sec. 46.

[See Compact Edition, Volume 5 for text of 46(a) and (b)]

(c) Nothing in this Act shall be construed to include those persons lawfully engaged in barbering under Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 8407a, Vernon's Texas Civil Statutes), so long as such persons practice within the scope of the license duly issued by the Barber Board to such person.

[See Compact Edition, Volume 5 for text of 47 to 55]

[Amended by Acts 1975, 64th Leg., p. 2144, ch. 691, §§ 28 to 47, eff. Sept. 1, 1975.]

Sections 48 and 49 of the 1975 amendatory act provided:
 "Sec. 48. If any word, clause, sentence, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.
 "Sec. 49. All laws or parts of laws inconsistent or in conflict with this Act or any part thereof are hereby repealed."

CHAPTER SIX. AUCTIONEERS [NEW]

Art. 8700. Regulation of Auctioneers

Definitions

Sec. 1. For the purpose of this Act:

- A. "Auction" means the sale of any property by competitive bid.
- B. "Person" means an individual, partnership, company, corporation, association, or other group, however organized.
- C. "Property" means any property, tangible and intangible, real, personal, or mixed.
- D. "Auctioneer" means any person who, for another, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at auction.
- E. "Secured party" means a person holding a security interest.
- F. "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.
- G. "Licensee" means any person holding a license under this Act.
- H. "Applicant" means any person applying for a license hereunder.

Exempt Transactions

Sec. 2. The provisions of this Act shall not apply to the following transactions:

- (1) a sale conducted by order of any United States court pursuant to Title II¹ of the United States Code relating to bankruptcy;

(2) a sale conducted by an employee of the United States or the State of Texas or its political subdivisions in the course and scope of his employment;

(3) a sale conducted by a charitable or non-profit organization;

(4) a sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a regular basis;

(5) a foreclosure sale of realty conducted personally by a trustee under a recorded deed of trust;

(6) a foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee of such mortgagee or other secured party acting in the course and scope of his employment, under a recorded chattel mortgage or other security agreement; or

(7) a sale conducted by sealed bid.

¹ So in enrolled bill; see 11 U.S.C.A. § 1 et seq.

Application

Sec. 3. (a) Each person applying for an auctioneer's license shall apply to the commissioner on forms provided by the commissioner and accompany such application with the required bond, the required license fee, and the limited sales tax permit number issued by the comptroller of public accounts of this state.

(b) Consent to suit in this state by nonresident licensees. Every nonresident applicant for a license under this Act shall file with the commissioner, as part of the application for a license, a written irrevocable consent that actions growing out of any transaction subject to this Act may be commenced against the licensee 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 commissioner as the licensee's 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 has been made upon the person according to the laws of this or any other state; and such instrument shall be in such form and supported by such additional information as the commissioner may by rule require.

Fees

Sec. 4. (a) The annual fee for each auctioneer's license issued by the commissioner to a resident of this state is \$100. The annual fee for each auctioneer's license issued by the commissioner to a nonresident is \$300. The commissioner shall issue the

license upon receipt of payment of all license fees. All licenses expire annually on the last day of December of each year and shall be renewed upon the receipt of the written request of the licensee and the required license fee.

(b) The commissioner shall annually prepare and deliver to each licensee a license certificate and pocket card.

(c) All fees shall be paid to the state treasury and placed in the General Revenue Fund.

Bond

Sec. 5. (a) Each application for an auctioneer's license must be accompanied by a surety or cash performance bond in the principal amount of \$5,000 and shall be in conformity with the Insurance Code.

(b) The bond shall be payable to the state for the use and benefit of any damaged party and conditioned that the licensee will pay any judgment recovered by any consumer, the state, or any political subdivision thereof in any suit for damages, penalties, or expenses, including reasonable attorney's fees resulting from a cause of action involving the licensee's auctioneering activities. The bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

Partial Exemption for Livestock Auctioneers

Sec. 6. The provisions of Section 5 of this Act shall not apply to livestock auctioneers who are engaged exclusively in the livestock auction business in Texas through bonded livestock auction facilities, nor shall livestock auctioneers be required to report their limited sales tax permit number as set forth in Section 3(a).

Denial, Suspension, or Revocation of License

Sec. 7. The commissioner may deny, suspend, or revoke the license of any auctioneer for any of the following causes:

(a) for obtaining a license through false or fraudulent representation;

(b) for making any substantial misrepresentation in an application for an auctioneer's license;

(c) for a continued and flagrant course of misrepresentation or for making false promises through agents, advertising, or otherwise;

(d) for failing to account for or remit, within a reasonable time, any money belonging to others that comes into his possession and for commingling funds of others with his own or failing

to keep such funds of others in an escrow or trustee account;

(e) for conviction in a court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony;

(f) for violation of any rule or regulation of the department; or

(g) for any conduct of an auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness.

Investigation of Complaint; Action

Sec. 8. The commissioner may, upon his own motion, and shall, upon the written complaint of any person, investigate alleged violations of this Act by any licensed or unlicensed auctioneer or any applicant.

Rules and Regulations; Hearing of Testimony

Sec. 9. The commissioner may make reasonable rules and regulations relating to the form and manner of filing applications for licenses, the issuance, denial, suspension, and revocation of licenses, and the conduct of hearings consistent with the provisions of The Administrative Procedures Act. The commissioner or other person authorized by him may administer oaths and hear testimony in matters relating to the duties imposed on the commissioner.

Advertising an Auction

Sec. 10. Any licensed auctioneer who advertises to hold or conduct an auction shall indicate in such advertisement his name, address, and such other reasonable information as the commissioner may by rule require.

Penalties

Sec. 11. (a) Whoever acts as an auctioneer as defined in this Act without first obtaining a license commits a Class B misdemeanor.

(b) Whoever violates any other provisions of this Act or any rule or regulation promulgated by the commissioner in the administration of this Act, for the violation of which no other penalty is provided, commits a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 827, ch. 320, eff. Sept. 1, 1975.]

Section 12 of the 1975 Act repealed Tax.-Gen. art. 19.01, § (1).

CHAPTER TWENTY. MISCELLANEOUS

Article

9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper, Brass and Bronze Materials [NEW].

Art. 9008. Repealed by Acts 1975, 64th Leg., p. 2305, ch. 719, art. I, § 1, eff. Jan. 1, 1976

Art. 9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper, Brass and Bronze Materials

[See Compact Edition, Volume 5 for text of 1]

Duty to Maintain Record; Exhibition; Form and Contents

Sec. 2. (a) Every secondhand metal dealer in this state shall keep a written record of all sales to and purchases from any individual of copper or brass material in excess of 50 pounds made in the course of his business. The record shall be exhibited on demand to any peace officer of this state or the United States. The record shall be in the English language in written form and shall include:

(1) the place and date of each sale to or purchase from an individual of copper or brass material in excess of 50 pounds made in the conduct of his business;

(2) the name and address of each individual from whom copper or brass material in excess of 50 pounds is purchased or obtained, and the license number of any motor vehicle used in transporting such copper or brass material to the secondhand metal dealer's place of business;

(3) a description of the article or articles of copper or brass material sold or purchased and the quantity thereof.

(b) Every secondhand metal dealer in this state shall keep a written record of all purchases from any individual of any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary made in the course of his business. The record shall be exhibited on demand to any peace officer of this state or the United States. The record shall be in the English language in written form and shall include:

(1) the place and date of each purchase from an individual of any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary made in the course of his business;

(2) the name and address of each individual from whom any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary is purchased or obtained, and the license number of any motor vehicle used in transporting the bronze pieces to the secondhand metal dealer's place of business;

(3) a description of the bronze cemetery vase or receptacle, bronze cemetery memorial, or bronze statuary purchased and the weight of it.

Preservation of Records

Sec. 3. Every secondhand metal dealer shall preserve the records required by Section 2 of this Act for a period of at least two years.

Reports; Mailing

Sec. 4. Every secondhand metal dealer shall, within seven days after the purchase or other acqui-

sition of any material required to be recorded under Section 2 of this Act, mail to or file with the Department of Public Safety a report containing the information required to be recorded in Section 2 of this Act.

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

[Amended by Acts 1975, 64th Leg., p. 380, ch. 169, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 9017. Repealed by Acts 1975, 64th Leg., p. 2305, ch. 719, art. II, § 1, eff. Jan. 1, 1976

TITLE 133

SAFETY

Art. 9206. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4)

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Acts 1975, 64th Leg., p. 1286, ch. 481, § 1 amended subsections (3) and (9) and added subsections (14) to (16) of sec. 2a of this article, without reference to repeal of this article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). As so amended and added these subsections, read:

"(3) 'Motorboat' means any vessel propelled or designed to be propelled by machinery, whether or not such machinery is permanently or temporarily affixed or is the principal source of propulsion."

"(9) 'Dealer' means a person, firm, or corporation customarily engaged in the business of buying, selling, or exchanging motorboats or outboard motors at an established or permanent place of business in this State and that at each such place there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products."

"(14) 'Manufacturer' means any person engaged in the business of manufacturing new and unused motorboats and outboard motors for the purpose of sale or trade.

"(15) 'New' means every motorboat or outboard motor after its manufacture and before its sale or other transfer to a person not a manufacturer or dealer.

"(16) 'Outboard motor' means any self-contained internal-combustion propulsion system, excluding fuel supply, which is used to propel a vessel and which is detachable as a unit from the vessel."

Section 2 of Acts 1975, 64th Leg., p. 1286, ch. 481 amended sec. 5 of this article, without reference to its repeal, to read:

"Sec. 5. (a) Ownership of a motorboat or an outboard motor shall be evidenced by a certificate of title issued by the Department or, if the vessel or outboard motor is new, by manufacturer's or importer's certificate on a form prescribed by the Department. Ownership of any vessel other than a motorboat or an outboard motor of any horsepower may but need not be evidenced by a certificate of title or, if new, by a manufacturer's or importer's certificate. A separate certificate of title or manufacturer's or importer's certificate shall be secured for a motorboat and an outboard motor.

"(b) No person may sell, assign, transfer, or otherwise dispose of an interest in a motorboat or outboard motor without either (1) delivering to the transferee a certificate of title in the name of the transferor properly endorsed to show the transfer, or (2) if the transferee is not a manufacturer or dealer and the vessel or outboard motor is new, delivering to the Department a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners, or (3) if the transferee is a manufacturer or dealer and the vessel or outboard motor is new, delivering to the transferee a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners, or (4) if the motorboat or outboard motor is not covered by a certificate of title or manufacturer's or importer's certificate, delivering to the Department (if the transferor is a manufacturer or dealer) or to the transferee (if the transferor is not a manufacturer or dealer) sufficient evidence of title and other information so that a certificate of title will be issued thereto to the transferee. No person shall acquire an interest in a motorboat or outboard motor until a certificate of title to the motorboat or outboard motor has been issued in the name of such person, or if such person is a dealer or manufacturer and the motorboat or outboard motor is new, until the manufacturer's or importer's certificate is properly endorsed showing the signature of the manufacturer and all intervening owners.

"(c) Except as provided in Subsection (f) of this Section 5, all liens, encumbrances, and security interests in a motorboat or outboard motor created after the effective date of this Act shall (i) be noted on the certificate of title pertaining to such motorboat or outboard motor, (ii) take priority according to the order of time in which they are noted on the certificate of title, and (iii) be valid as against other general creditors of the owner of the motorboat or outboard motor, subsequent purchasers thereof, and holders of unnoted or subsequent liens or security interests thereon.

"(d) Application for a certificate of title shall be made to the Department on forms it prescribes showing, among other items, the name and address of the owner, a description of the motorboat or outboard motor (including, as appropriate, its manufacturer, make, model, year, length, construction material, manufacturer's or builder's number, hull identification number (HIN), motor number, outdrive number, horsepower), name and address of purchaser and date of purchase, name and address of any security interest owner, and such other information as the Department may prescribe to reflect the ownership of the motorboat or outboard motor, a security interest thereon, or to further describe the above items. The application shall be accompanied by the fee provided herein and by such evidence as the Department shall reasonably require to establish that the applicant or other person is entitled to a certificate of title or

a noted security interest. Such evidence may include a certificate of title issued by another state or jurisdiction, manufacturer's or importer's certificate, bill of sale, assignment, contract, promissory note, security agreement, invoice, bill of lading, affidavit, probate or heirship proceedings or information, judgment of a court of competent jurisdiction, or other documents. Every manufacturer or dealer selling or exchanging a motorboat or outboard motor to a person not a manufacturer or dealer shall make application for a certificate of title in the name of the purchaser or transferee. In all other cases the purchaser shall make the application for a certificate of title. The application shall be made within 20 days after the date of sale of the motorboat or outboard motor. If a dealer acquires a used vessel or outboard motor covered by a certificate of title, the dealer need not secure a certificate of title in his name but may apply for a certificate of title in the name of the person, other than another dealer, to whom he subsequently sells or otherwise transfers the motorboat or outboard motor, submitting the certificate of title with an appropriate assignment endorsement.

"(e) The certificate of title issued by the Department shall contain the name and address of the owner of the motorboat or outboard motor, the owner of any security interest therein, a description of the motorboat or outboard motor, and be in the form prescribed by the Department. If there is no lien on the motorboat or outboard motor, the original certificate of title, marked 'Original,' shall be delivered to the owner and a copy retained by the Department. If there is a lien, the original certificate shall be sent to the first lien holder and the duplicate original, marked 'Duplicate Original,' shall be delivered to the owner and a copy retained by the Department. Title may be transferred only by surrender of the original certificate of title properly endorsed to show the transfer.

"(f) The manufacturer's or importer's certificate shall describe the motorboat or outboard motor per Subsection (d) above, certify to the manufacture or other origin of the motorboat or outboard motor, be signed by the manufacturer or the equivalent thereof, and show thereon the endorsement of the original and each subsequent transferee up to and including the applicant for the certificate of title. No lien, encumbrance, or security agreement shall be shown thereon. Any security interest or other lien may be perfected as provided by Chapter 9 of the Business and Commerce Code as long as the motorboat or outboard motor is new.

"(g) The provisions of Subsections (d), (e), and (f) shall likewise apply to those vessels on which a certificate may but is not required to be issued.

"(h) The Department shall by regulation provide for the replacement of lost, stolen, or mutilated certificates.

"(i) A certificate of title shall be required as proof of ownership of a motorboat on an application for a number as required by this Act unless a certificate of title has not otherwise been required by the terms of this section; in which event a certified statement of ownership will be sufficient to secure a number. A certificate of number may be cancelled and the identification number voided by the Department even though such action occurs before the expiration date on the certificate, and such certificate is not surrendered to this Department. Certain causes for cancellation of certificates and voiding of numbers include but are not limited to the following:

"(1) Surrender of certificate for cancellation;

"(2) Issuance of a new number for the same boat;

"(3) Issuance of a marine document by the Bureau of Customs for the same vessel;

"(4) False or fraudulent certification in an application for number;

"(5) Failure to pay the prescribed fee; and

"(6) The dismantling, destruction, or change in the form or character of a motorboat or outboard motor so that it does not fit the definition thereof or is not correctly described in the certificate.

"(j) The provisions of this Section 5 shall not apply to vessels with a valid marine document issued by the Bureau of Customs of the United States or any federal agency successor thereto, nor to any outboard motor of less than 12 horsepower as determined by the manufacturer's rating, nor to any motorboat 14 feet in length or less.

"(k) The fee for the issuance of a certificate of title or the notation of a security interest or other lien or encumbrance shall be treated as fees collected pursuant to Section 27 of this Act and shall be \$2.00 until September 1, 1977, and \$1.50 then and thereafter."

Section 3 of the aforesaid 1975 amendatory act provided: "The effective date of this Act is January 1, 1976."

Acts 1975, 64th Leg., p. 108, ch. 48, § 1 amended sec. 24 of this article by adding a new subsection (g), also without reference to repeal of this article. As so added subsection (g) reads:

"(g) A person who intentionally or knowingly violates or fails to comply with the provisions of Subsection (a), Section 21 of this Act is guilty of a misdemeanor and on conviction is punishable by confinement in jail for a term not to exceed one year, or by a fine not to exceed \$2,000, or by both."

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